OUTDATED, HARMFUL AND NEVER IN THE PUBLIC INTEREST -

THE URGENT NEED TO MODERNISE SCOTLAND'S ABORTION LAW AND PREVENT PROSECUTIONS

"Criminalization does grave harm to women's health and human rights by stigmatizing a safe and needed medical procedure."
UNITED NATIONS HUMAN RIGHTS COUNCIL

"Decriminalisation is a necessary response to clinical and societal changes."
BRITISH MEDICAL ASSOCIATION

ENGENDER

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EXECUTIVE SUMMARY

Reform of abortion law in Scotland is long overdue. The legal framework which currently governs when an abortion is permitted is made up of a patchwork of laws that stem from as far back as the 17th century. These measures largely reflect the eras in which they were introduced, and the degrees of patriarchal control women were subject to at the time.

The law is therefore out of step with the experiences of women in modern Scotland for whom abortion is routine healthcare, accessed by around one in three in their lifetimes.

With a few high-profile exceptions, countries across the world are increasingly modernising and liberalising their legal frameworks on abortion. Laws in Scotland, England and Wales now trail behind more progressive regulatory frameworks in most other European countries. Britain, including Scotland, has also failed to keep pace with international human rights standards. These are clear that access to safe, legal and timely abortion is a fundamental human right that must not be regulated using criminal law and penalties.

Under the current law women and pregnant people in Scotland have no legal right to end a pregnancy. That decision ultimately sits with doctors, two of whom must authorise the request for an abortion. This layers unnecessary complexity onto service delivery and creates delays and barriers for women. Without this permission and compliance with other rules set out in the Abortion Act 1967, abortion is illegal across Britain, and women, healthcare providers and people assisting someone to have an abortion can be subject to prosecution.

The sharp increase in prosecutions for abortion related offences in England throws into stark relief how the legal framework is increasingly working at odds with modern clinical realities, and public health, human rights and gender equality obligations.

This report examines the shortcomings of the current legal framework in Scotland in detail, including evidence that women have been charged and prosecuted for abortion related offences in recent years. It sets out pathways to decriminalisation and explores what a modernised and human rights compliant regulatory framework for abortion could look like.

The report is informed by input from legal experts and medical professionals, detailing the wide ranging support that exists for decriminalisation. It concludes with clear recommendations for Scottish Government and other key decisionmakers on what the next steps towards a modernised regulatory framework should be. These actions will be vital to support ongoing improvement in reproductive healthcare services and the safeguarding of reproductive rights for future generations of Scotland's women and pregnant people.

The report concludes that the law, related policies, and regulations should be reformed so that no one is punished for accessing abortion, for providing safe abortion, or for assisting someone to have an abortion with their consent. Such a system would ensure regulation of abortion is removed from the criminal justice system and is instead treated like all other areas of healthcare, with issues such as malpractice or unsafe abortion dealt with through medical regulation and existing general law.

IN SUMMARY

The current legal framework in Scotland is:

- Outdated and non-compliant with international human rights standards.
- Out of step with guidelines from global and national health bodies.
- Impeding access to quality abortion care for women.
- Perpetuating abortion stigma, harmful gender stereotypes and women's inequality.
- Preventing healthcare practitioners from providing the highest standards of care.
- Causing women trauma and lasting harm, that is most pronounced for marginalised women and those in situations of vulnerability.

The report sets out how:

- Women have been charged and prosecuted for crimes related to abortion in Scotland in the 21st century.
- Abortion is vital, routine healthcare and is one of the safest and most frequently accessed medical procedures used by women and pregnant people across the world.
- Decriminalisation of abortion is recommended by the World Health Organisation, major international human rights mechanisms, and all relevant professional medical bodies in the UK.
- Decriminalisation is needed for realisation of a wide range of women's human rights and for government compliance with international human rights law.
- Safe and legal abortion is a cornerstone of progress towards women's equality.
- Decriminalisation is in line with high-level commitments from Scottish Government on gender equality and would help future-proof against regression on women's rights.
- Decriminalisation would remove unnecessary "chilling" pressures on healthcare professionals, who are exposed to potential criminal sanctions at work.
- Public opinion in Scotland is overwhelmingly in favour of women's right to have an abortion if she chooses. In January 2024, 93% of those polled indicated support for a woman's right to choose.[1]

NOTE ON TERMINOLOGY

This box sets out some legal and medical terms used in this report that may not be familiar to all readers.

• **SCOTS LAW:** Scots law encompasses all criminal, common and civil law that applies in Scotland. This includes devolved legislation set by the Scottish Government and reserved legislation set by the UK Government.

• **CRIMINAL LAW:** Criminal law defines the parameters of criminal offences and the processes used in response to those who are alleged to commit them. In Scotland, this incorporates both statutory and common law offences.

• **COMMON LAW:** Common law is a form of law that is not set out in legislation. It is instead based on customs and principles, key institutional texts and decisions made through the courts.

• **CASE LAW:** Case law, or 'judicial precedent' is established through the outcome of previous court cases. A court must apply the law in line with decisions made by higher courts.

• **DECRIMINALISATION:** Decriminalisation is the act of amending the law to remove criminal sanctions for certain activity (or lack of activity), and therefore ending the threat of related investigation and prosecution.

• **CRIMINALISATION:** Criminalisation is the act of making something illegal and/or applying criminal sanctions against those in breach of the parameters set out in law.

• **THERAPEUTIC ABORTION:** Therapeutic abortion is the termination of pregnancy for medical reasons.

• **NON-THERAPEUTIC ABORTION:** Non-therapeutic abortion is the termination of a pregnancy that is not required for medical reasons.

NOTE ON INTERSECTIONALITY

This report makes the case for decriminalisation of abortion in Scotland and sets out potential models for legal reform to modernise the abortion care system. This discussion also provides an opportunity to review current service provision and to create a best practice framework that works for all women and pregnant people in Scotland.

Data is collected on the age and residence of those accessing abortion in Scotland, enabling analysis of abortion across age groups, of remote and rural access, and of rates within areas of deprivation/affluency. However, other equalities data is not routinely gathered. Due to the limitations in available data and research, there is therefore a lack of detailed evidence outlining the specific barriers that many marginalised groups of women face when accessing abortion in Scotland, including how they may be explicitly disadvantaged by the current legal framework.

However, a breadth of evidence - in Scotland, the UK and globally - outlines wider reproductive health inequalities that impact Black and minority ethnic women,[2] migrant women,[3] disabled women,[4] LGBTI people,[5] care-experienced women and girls,[6] and women of faith,[7] amongst other groups. This demonstrates clearly that experiences of intersectional discrimination and marginalisation are likely to further undermine women's access to quality abortion care. International evidence also indicates that criminalisation often disproportionately impacts women and girls who experience intersecting structural inequalities, including poverty and racism.[8]

We have included some commentary on these issues throughout the report, however data constraints mean that comprehensive intersectional analysis of the Scottish context is not possible. We frequently call for better intersectional data collection and use by government to address these knowledge gaps.

Throughout the report we use language interchangeably to recognise those who need and access abortions. For the most part, we reference women and in other instances use terms such as 'women and pregnant people'. In doing so, we acknowledge that the majority of individuals who access abortion are cisgender women and girls (women and girls whose gender identity corresponds with the sex they were assigned at birth) and that abortion is a key issue for women's equality. Additionally, much of the available legal, health-based and research material cited in this report refers only to cisgender women. However, we also want to recognise that transgender men and boys, people who identify as non-binary or gender diverse and people who are intersex can also become pregnant, need access to abortion, and will also have been impacted by the issues set out in this report.

1. INTRODUCTION

International human rights bodies have long established that women's reproductive rights include the freedom to decide when, or if, to have children and the right to the highest standard of sexual and reproductive health, care and support.[9] Abortion is increasingly recognised as vital, routine healthcare[10] that around one in three women will access in their lifetime.[11]

Nevertheless, women and pregnant people in Scotland currently have no legal right to end a pregnancy. That decision ultimately sits with doctors, two of whom must agree and authorise the request for an abortion. Without this permission, abortion is illegal across Britain,[12] and both women and healthcare providers can be subject to prosecution.[13] This stands in contrast to increasingly robust international human rights standards against criminalisation of abortion, and the more progressive regulatory frameworks in place in most other European countries.[14] Abortion also deviates from all other areas of healthcare in Scotland, which are increasingly focused on patient-centred care and human rights compliance, and are governed by medical regulations and professional frameworks, as opposed to criminal law.

Access to safe abortion is a crucial component of progress towards women's equality, with profound implications across areas including financial security and autonomy, unpaid caring, health and wellbeing, education and paid work, and gender-based violence. Removing women's reproductive decision-making from the reach of criminal law, the police and the courts can contribute to destigmatisation of abortion,[15] and result in positive outcomes for women, their families, and society more broadly.[16]

There is increasing international consensus regarding the human rights obligation to remove criminal sanctions for abortion.[17] This is reflected in the global trend towards liberalisation of abortion laws and human rights compliance in this area. According to the Centre for Reproductive Rights, in 2024, 77 countries across the world now allow abortion on request within varying gestational periods.[18] This means that, unlike in Scotland, England and Wales, there are no conditions, other than time limits, set out in law regarding women's routine access to abortion in these countries.[19]

This includes Northern Ireland, where legislation decriminalising abortion was passed in 2019.[20] This followed a high-profile investigation by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), which criticised its highly restrictive regime and called on the UK Government to reform laws to ensure no criminal charges can be brought against women and girls who undergo abortion or against qualified healthcare professionals who provide abortion.[21] For Scotland to create a human rights-based and modernised approach to abortion, it needs to take similar action to remove criminal penalties for abortion[22] and instead regulate abortion care in line with all other aspects of healthcare.

In such a system, the law, related policies, and regulations would be reformed so that no one is punished for accessing abortion, for providing safe abortion, or for assisting someone to have an abortion with their consent.[23] Decriminalisation of abortion results in the removal of specific criminal sanctions against abortion from the law.[24] This does not mean that the provision of abortion care would not be appropriately regulated. Indeed, regulation would ensure that abortion was undertaken safely, with consent, within gestational time-limits and by qualified medical professionals.

DECRIMINALISATION: KEY OUTCOMES

As we set out in detail throughout this report, decriminalisation of abortion in Scotland should seek to secure the following outcomes:

- Scotland's legal framework for abortion is human rights compliant, modernised and fit for purpose
- Regulation of abortion is removed from the criminal justice system – there is no police or courts involvement in the management of safe and consensual abortion
- Abortion is treated like any other form of healthcare:
    - Malpractice or unsafe abortion is dealt with by medical regulations and existing general law
    - There is an emphasis on patient-centred care and best practice in service delivery
- Women are not subject to the threat of criminal penalties for having an abortion
- Health practitioners are not subject to criminal penalties for providing safe abortion
- Those assisting women to secure an abortion with their consent are not subject to criminal penalties.

Support for decriminalisation of abortion is widespread. Legal reform that removes abortion from the criminal law is backed by all relevant professional bodies in the UK, by global health organisations, by abortion care providers, by trades unions, and by human rights and equality organisations. Political support for the campaign to modernise abortion law is growing across the political spectrum. In Scotland, the Programme for Government 2023-24 includes a commitment to review abortion law to identify potential proposals for reform by 2026,[25] and politicians across political parties have recognised the need for reform at the Scottish Parliament.[26] Public opinion in Scotland is overwhelmingly in favour of women's right to have an abortion if she chooses. In January 2024, 93% of those polled indicated support for a woman's right to choose.[27]

This report sets out the case for decriminalisation of abortion, the current legal landscape in Scotland, prosecutions for the crime of abortion, and respective options for reform. It highlights key issues that need to be considered within review of the current law, including the regulatory framework, and concludes with a set of recommendations for Scottish Government and other key decision makers in Scotland.

AN OVERVIEW OF THE LAW REGULATING ABORTION IN SCOTLAND

COMMON LAW OFFENCE OF ABORTION

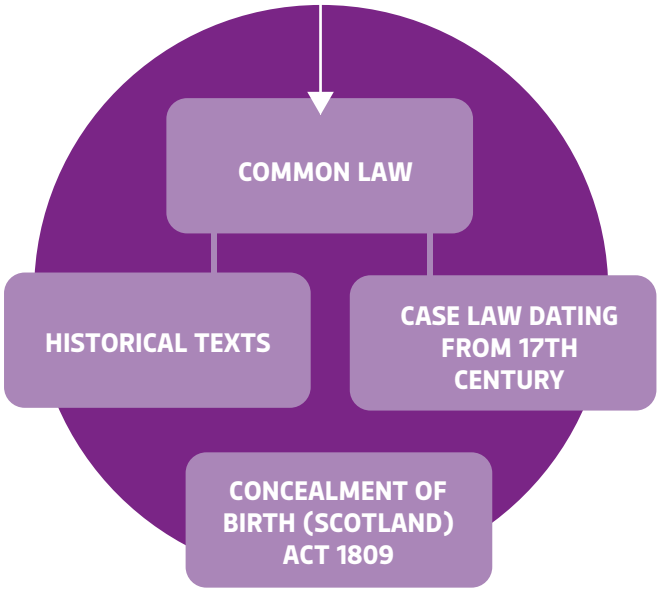
Abortion is permitted within a narrow set of circumstances in Scots law. Outside of these strict parameters, abortion is a crime and can attract criminal prosecution and punishment.

The law in Scotland differs from that of England and Wales, where abortion is criminalised by the Offences against the Person Act 1861. Like much of Scotland's criminal law however, there is no specific legislation setting out the parameters of the crime. Instead, abortion in Scotland is a crime under common law. Such crimes are determined by key historical texts that serve as authorities on Scots law, and by precedents set by judges in court cases, known as case law.

Whilst abortion is only mentioned sporadically in these historical texts, the authors clearly outline it as a distinct crime. [28] Case law on abortion in Scotland dates from the 17th century, however it is not an area of law that has historically been given prominent consideration by the courts. Nonetheless, this relative low profile has not meant that women and third parties involved in providing abortion have been able to entirely avoid prosecution or investigation for crimes of abortion. Recent data demonstrates that people have been charged and prosecuted for crimes relating to abortion in the 21st century (see Section 4).

ABORTION IN ENGLAND AND WALES CRIMINALISED BY:

ABORTION IN SCOTLAND CRIMINALISED BY:



THE ABORTION ACT 1967

The Abortion Act 1967 sets out circumstances in which abortion is permitted in Scotland, England and Wales.[29] These include the requirement for two doctors to authorise almost all abortions,[30] for women to demonstrate that their reason for seeking an abortion sits within certain 'grounds',[31] and for abortion to be provided in specified locations and by specified healthcare practitioners.[32]

If these conditions are not met, abortion is a common law crime in Scotland used in recent years to charge and prosecute people seeking abortion, healthcare professionals, and those assisting someone to have an abortion could be subject to criminal sanctions.

The Abortion Act did not create a right to abortion, nor did it overturn existing common law criminalising abortion.[33] Instead, it provides a defence for doctors and those seeking an abortion, provided the restrictive requirements it sets out are met. It means that women and pregnant people cannot access abortion unconditionally as a right.

THE CONCEALMENT OF BIRTH (SCOTLAND) ACT 1809

Section 2 of the Concealment of Birth (Scotland) Act 1809 criminalises concealing a birth if the 'child be found dead or be amissing'. The Act was passed to repeal earlier legislation from 1690, which held that women were liable for murder and subject to the death penalty in these circumstances.

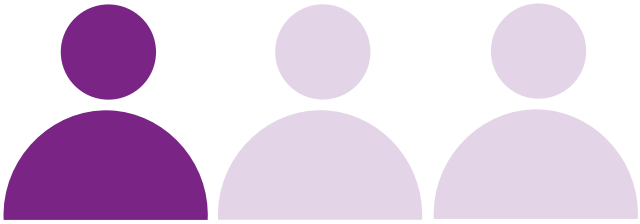
It does not directly govern abortion but has been used in recent years to prosecute women and third parties when an illegal abortion is suspected. It states that the punishment for concealing a birth is imprisonment.

2. THE CASE FOR DECRIMINALISATION

This section of the report sets out key arguments for decriminalisation of abortion as a foundational component of women's equality and human rights. This is kept relatively brief, but we point to resources that contain further information as relevant. These include evidence and position papers from UN agencies and human rights mechanisms, professional bodies and trades unions, advocacy and campaigning materials, and academic papers.

2.1 ABORTION IS ROUTINE HEALTHCARE

Abortion is vital, routine healthcare. It is one of the safest and most frequently accessed medical procedures used by women and people that are pregnant across the world, but national laws and policies do not always reflect this reality.



ABORTION IS VITAL, ROUTINE HEALTHCARE THAT AROUND ONE IN THREE WOMEN WILL ACCESS IN THEIR LIFETIMES

Retaining specific criminal offences around abortion sends a damaging message to women and to society more broadly. It infers that abortion is 'different' from other healthcare procedures, in ways that legitimise policing of women's reproductive decision-making under threat of criminal prosecution.

This legal framework stigmatises those who seek abortion[34] by requiring them to meet outdated and excessive procedural thresholds when making decisions that are ultimately inherently personal. Women have to endure these unnecessary infringements on their privacy in the delivery of routine healthcare, in order to protect themselves and medical caregivers from criminal prosecution.

Abortion methods have evolved significantly since the 1960s and are now predominantly managed and induced by medication. In 2022, this safe and effective use of abortion pills accounted for 99% of abortions in Scotland.[35] Meanwhile, laws regarding the use of drugs and medicines regulate any illegal supply of abortion medication without prescription.[36] The argument for criminalising unsafe "back street" abortions, which shaped the parameters of the Abortion Act, therefore no longer applies in 21st century Scotland. Social norms have also evolved substantially since the 1960s. There is growing consensus that the 1967 framework, which was developed at a time when women had significantly fewer rights and cultural freedoms, is in need of modernisation.[37]

Legal restrictions regarding abortion impacts on service provision in a number of ways. Evidence suggests that criminal sanctions for abortion contribute to abortion delay.[38] A major study that examined decades of research into abortion restrictions concluded that as well as criminalisation creating delays for women seeking abortions, it also places an undue burden on medical staff.[39] The requirement for two medical opinions and signatures contributes to delays in care provision. Nurses and midwives who are trained to provide care throughout pregnancy are unable to proceed to appropriate abortion care until the required paperwork is completed. Such delays are particularly pronounced in rural parts of Scotland. In these areas there may only be one doctor working at an abortion service at a given time, ultimately meaning that women at certain gestations may have to travel outwith their health board to access abortion, wait unacceptably long periods, or ultimately not be able to end their pregnancy.[40]

The threat of criminal prosecution is one that can also hinder the ability of physicians to act in the best interests of their patients. Clinicians have told us that growing public awareness of legal restrictions around abortion is leading to increased uncertainty and a 'climate of fear' regarding protocol within abortion care services. Clinicians have also told us that care and safety can sometimes be compromised regarding abortion, with the law forcing them to act against the best interest of a patient. In other areas of health, it is accepted that sometimes a doctor might act outwith guidance if in the patient's best interest, but this is not possible with regard to abortion because of the constraints of the law.

The need for a system that is based on the health needs of women, rather than outdated legal restrictions, is underscored by rising demand for abortion care[41] alongside significant pressure on resources in Scotland. In 2022, over 16,500 abortions were carried out for Scottish residents.[42] Capacity gaps regarding surgical abortion (and other gynaecological surgeries) that emerged during the pandemic, as well as ongoing resourcing and capacity issues within sexual health services, are yet to be addressed. Burdensome procedures required by the legal abortion framework create additional pressures on reproductive healthcare services that are already under strain.

The World Health Organisation's 2022 abortion care guidelines make clear that a supportive framework of law and policy is vital to create the environment required for provision of quality, comprehensive abortion care. The WHO recommends the full decriminalisation of abortion, and specifically removal of abortion "from all penal/criminal laws… ensuring there are no criminal penalties for having, assisting with, providing information about, or providing abortion, for all relevant actors."[43] It also calls on lawmakers to take immediate practical steps to suspend the use of criminal law as it applies to abortion, whilst the process of repealing criminal law takes place.[44]

WHO's 2022 guideline also advocates "against laws and other regulations that restrict abortion by grounds" (such as those set out in the Abortion Act) and clarifies that best practice abortion care should be available "on the request of the woman, girl or other pregnant person without undue interference or restriction."[45]

International evidence shows that decriminalisation of abortion does not directly increase the incidence of abortion or the gestational age at the time of abortion, affect male-to-female birth ratios or have a negative impact on the safety of abortion.[46] Instead, jurisdictions that impose the least restrictions or criminal sanctions on abortion consistently have the fewest abortion related deaths and tend to see a higher proportion of all abortions undertaken at earlier gestations.[47] In short, decriminalisation of abortion improves women's experiences in accessing healthcare and health outcomes.

Decriminalisation of abortion is supported by all relevant professional bodies in the UK including the British Medical Association (BMA), the Royal College of General Practitioners (RCGP), the Royal College of Obstetricians and Gynaecologists (RCOG), the Royal College of Nursing (RCN), the Royal College of Midwives (RCM), and the Faculty of Sexual and Reproductive Healthcare (FSRH). It is supported by the World Health Organisation (WHO) and the International Federation of Gynaecologists and Obstetricians (FIGO), which represents national societies of medical professionals in 132 countries and territories around the world.

Abortion care providers, including the Scottish Abortion Care Providers (SACP) network and the British Society of Abortion Care Providers (BSACP), also advocate for legal reform to remove abortion from the criminal justice system. These organisations are clear that restrictions imposed by the Abortion Act 1967 impede access to services.

CLINICIANS' PERSPECTIVES

"The Scottish Abortion Care Providers support decriminalisation of abortion in Scotland. There is no medical reason to require two doctors to sign a form to support a request for abortion and no reason to prevent other appropriately trained individuals from providing abortion care. The current situation is out of step with other countries and with modern views on an individual's autonomy and multidisciplinary healthcare provision.

Services have become adept at minimising the effect of the current requirements on service delivery. However, the impact may be greatest in remote areas or small scale services.

The exceptionalisation of abortion – treating it differently to all other health treatments – creates stigma around what is essential healthcare. This may delay treatment which may then reduce the choice of abortion method and increase the risk of complications.

A move to robust regulation – as for other areas of healthcare – would support safe service provision and facilitate improved abortion care in Scotland."

Sarah Wallage and Sharon Cameron, Co-Chairs Scottish Abortion Care Providers.

2.2 ABORTION ACCESS IS A HUMAN RIGHT

In recent decades, international human rights bodies have consistently recognised access to abortion as a fundamental component in the realisation of women's rights. The UN Committee on the Elimination of Discrimination against Women (CEDAW), for example, has been explicit in its criticism of barriers to abortion access, including criminalisation. It has made persistent calls to the effect that "legislation criminalising abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion,"[48] and noted that "[e]ven in countries in which abortion is legal, restrictive conditions, including unreasonable waiting periods, often impede access".[49] The Committee has also directly critiqued "convoluted abortion laws which require women to get certificates from two certified consultants before an abortion can be performed", stating that this makes "women dependent on the benevolent interpretation of a rule which nullifies their autonomy."[50]

Numerous other UN bodies, agencies and special procedures have called on states to liberalise and repeal discriminatory abortion laws, and to decriminalise abortion. These include but are not limited to the Human Rights Committee,[51] the Committee on Economic, Social and Cultural Rights (CESCR),[52] the Committee on the Rights of the Child (CRC),[53] the Committee on the Rights of Persons with Disabilities (CRPD),[54] the Office of the High Commissioner for Human Rights (OHCHR),[55] the Special Rapporteur on the Right to Health[56] and the UN Working Group on the issue of discrimination against women in law and in practice.[57]

The CESCR Committee has included a focus on sexual and reproductive rights in its current examination of the UK Government's compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR). In 2023, it requested that all jurisdictions of the UK (including the Scottish Government) provide information on whether legal reform is planned to improve access to abortion services.[58] In 2024, the UN Human Rights Committee concluded its eighth examination of the UK's compliance with the International Covenant on Civil and Political Rights. It raised concerns that abortion remains criminalised in Scotland, England and Wales, and recommended that governments of the UK revise legislation to fully decriminalise abortion.[227]

At European level, the Parliamentary Assembly of the Council of Europe has adopted a report calling on member states to decriminalise abortion and guarantee access to safe and legal abortion for women.[59] The Council of Europe's Commissioner for Human Rights has called on states to decriminalise abortion and highlighted that punitive criminal sanctions around abortion do not reduce abortion, but contribute to stigmatisation of vital reproductive healthcare.[60]

2.2.1 Scotland's ambitions as a leader in Human Rights

In March 2021, the National Taskforce for Human Rights Leadership in Scotland recommended that the Scottish Government introduce a new legal framework that will enshrine various internationally recognised human rights into Scots law. The Scottish Government is currently drafting a Human Rights Bill that will – to varying extents – incorporate four international human rights treaties into domestic law.[61]

These include the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the UN Convention on the Elimination of Discrimination against Women (CEDAW). As set out, the treaty bodies for these conventions have both made clear and persistent calls for liberalisation of abortion law. The Bill is also set to incorporate the UN Convention on the Rights of Persons with Disabilities, the Committee for which has asserted that "States parties should decriminalize abortion in all circumstances and legalize it in a manner that fully respects the autonomy of women, including women with disabilities."[62]

The Scottish Parliament has already passed legislation to incorporate the United Nations Convention on the Right of the Child (CRC), which has also been used internationally to challenge lack of access to legal abortion by the UN CRC Committee.[63] It has consistently called upon states to "decriminalise abortion in all circumstances and review its legislation with a view to ensuring children's access to safe abortion and post-abortion care services".[64]

The continued criminalisation of abortion is incompatible with the Scottish Government's aims on human rights leadership. Without change, the Scottish Government is likely to attract further criticism from these treaty bodies. After incorporation of international human rights into domestic law in Scotland, the criminalisation of abortion could also potentially attract human rights challenge in Scottish Courts.

2.3 ABORTION IS CRUCIAL FOR WOMEN'S RIGHTS AND EQUALITY

Abortion is transformative for women's rights, and for society more broadly.[65] Indeed, without a legal right to access abortion, women's human rights cannot be fully realised. When abortion was decriminalised in the Australian state of Victoria, it was described as representing:

> **"a profound shift in the relationship between the state and its female citizens. It changes both nothing and everything. Nothing, because the number, rate and incidence of abortion will not change. And everything, because for the first time women will be recognised as the authors of our own lives. With that comes our full citizenship."[66]**

Access to safe abortion is essential for the realisation of rights to privacy, bodily integrity and autonomy. It underpins realisation of economic, social and cultural rights for women, girls and pregnant people, including access to employment, training and education, adequate income and housing, household resources and financial security, and high standards of health and wellbeing.

Safe, accessible abortion provision also underpins progress towards women's equality. Lack of quality abortion care disrupts women's access to education, training and paid work. The Trades Union Congress (TUC), Scottish Trades Union Congress (STUC) and various affiliated unions advocate for decriminalisation of abortion with regards to women's workplace rights.

Timely and accessible abortion care can be crucial for women experiencing domestic abuse and their children, and for survivors of sexual violence. Good physical and mental health for women depends, in part, on access to quality and timely abortion care and entrenched gendered health inequalities, when unchallenged, undermine women's access to income, wellbeing, security and safety.

Abortion is also vital in preventing poverty or worsening poverty for women and their children. Social security entitlements in the UK are premised on women's reproductive choices, with the UK Government's 'two-child limit' restricting financial support to the first two children in a family.[67] Practitioners report that the 19% increase in the abortion rate in Scotland seen in 2022[68] is linked to the cost of living crisis, with financial concerns frequently cited alongside requests for a termination. The abortion rate in the most deprived areas of Scotland is now twice that of the most affluent areas.[69]

Intersectionality impacts on access to reproductive healthcare, including abortion. Young women, disabled women, LGBTI people, Black and minority ethnic women, migrant women, women in rural areas, and women from some faith-based communities, for instance, have specific needs and encounter different barriers to quality abortion care. For example, disabled women have differing support needs when accessing abortion services, and learning disabled women face particular injustices regarding fertility, pregnancy and reproductive rights.[70] Systemic gendered health inequalities also indicate likely intersectional issues regarding abortion care. For instance, racialised maternal health inequalities, related to structural racism and sexism within medicine and healthcare, mean that Black women are four times more likely to die during pregnancy or in the following year than white women.[71]

The continued criminalisation of abortion, and associated pressures on services and barriers to access, therefore undermines progress towards women's equality in Scotland. It runs against the Scottish Government's high-level commitments to tackle structural gender inequality as a key priority.[72] It also leaves a doorway open to future weaponisation of the criminal law against women's human rights. Decriminalisation future-proofs against any political or social direction that is hostile to women's equality.

2.4 CRIMINALISATION STIGMATISES ABORTION

Women's enjoyment of their bodily autonomy, privacy and sexual and reproductive rights has been limited throughout history by patriarchal culture and norms. These systems have restricted and policed women's decision-making about their bodies, sexuality and reproductive capacity. This has had profound implications in all areas of women's lives, in terms of systemic gender inequality. Despite progress in recent decades, these social systems persist to varying degrees in communities throughout the world, and hard-won developments on women's rights are still too frequently at risk of being rolled back.

Patriarchal control is partly established and perpetuated through the stigmatisation of certain choices and behaviours, and through gender stereotyping. This determines 'appropriate' roles for women, particularly relating to sexuality, reproduction, and family responsibilities.[73] Within this culture, abortion has been highly stigmatised as opposing women's role as mothers, and has been associated with moral failing and shame.[74] Criminalisation of abortion has played a key role in perpetuating this stigma.[75]

CLINICIANS' PERSPECTIVES

"We fully support the decriminalisation of abortion care in Scotland and across the UK. Abortion care is an essential part of healthcare. It is highly regulated and should be subject solely to appropriate professional standards, in line with any other area of healthcare, not criminal sanctions.

The removal of criminal sanctions associated with abortion will help to remove stigma and fear and reiterate to women that they have the right to control their own sexual and reproductive health choices.

Prosecuting a woman for ending her pregnancy will never be in the public interest, it merely causes harm to women (many of whom will be in vulnerable circumstances), their families and wider society.

We call on governments and politicians to urgently look to reform our current out-dated abortion laws, recognising that abortion is an essential form of healthcare. It's time to listen to what the public want."

Dr. Janet Barker, President of the Faculty of Sexual & Reproductive Healthcare.

The Abortion Act of 1967 was developed at a time when such gender stereotyping was highly pervasive in the UK. Whilst it improved the situation for women, it did so in a way that retained patriarchal control and abortion stigma. The Act was not designed to uphold and realise women's rights, but rather as a harm reduction measure at a time when clandestine abortion carried a high mortality risk.

The Abortion Act ensures the state retains control by requiring two doctors to arbitrate whether a woman's decision to have an abortion is legitimate within the restrictions set out by the Act. This approach is unique within Scotland's health system. It singles out abortion care as 'different' from other healthcare and subjects women's personal choices to a level of oversight and restriction that is not justifiable on any medical grounds. This creates paternalistic and unequal power dynamics between doctors and women seeking abortion. Making an exception of abortion is closely connected to ongoing stigma and stands at odds with women's lived reality of requiring access to abortion as routine healthcare.

2.5 THE IMPACT ON HEALTH PROFESSIONALS

In deciding whether a woman can access abortion, doctors must also consider their own potential exposure to criminal sanctions. If they are deemed to incorrectly judge a woman's choice against the restrictions of the Abortion Act or are perceived to be too permissive, they may be subject to investigation and criminalisation. This dynamic puts unnecessary pressure on medical professionals and potentially compromises the relationship between doctors and patients seeking to end their pregnancies. The European Court of Human Rights has recognised that criminalisation of abortion can create a "chilling effect" on doctors.[76] The WHO has raised similar concerns:

> **"[A]lmost all countries where abortion is lawfully available regulate abortion differently to other forms of health care. Unlike other health services, abortion is commonly regulated to varying degrees through the criminal law in addition to regulation under health-care law. This has an impact on the rights of pregnant individuals and can have a chilling effect (e.g. suppression of actions due to fear of reprisals or penalties) on the provision of quality care."[77]**

Around the world, criminalisation of abortion has severely limited women's ability to access necessary care, where women have been refused abortion or reported to the police by medical professionals, often after undergoing miscarriage. These violations have largely been avoided in Britain since the Abortion Act was introduced. However, the increasing availability of abortion medication online is changing the landscape rapidly, and the legal framework is failing to keep pace.

Following a sharp increase in prosecutions in England in recent years (see Section 4), the Royal College of Obstetricians and Gynaecologists (RCOG) has developed best practice guidance for healthcare professionals alongside other professional bodies.[78] This emphatically states that staff should not contact the police with regards to abortion, pregnancy loss or unattended delivery. This position is based on patient confidentiality and best interests, as well as the clear lack of public interest in investigating women in these circumstances. Dr Ranee Thakar, President of the Royal College of Obstetrics and Gynaecology stated:

> **"Outdated, antiquated abortion laws mean women who have experienced unexplained pregnancy loss are... vulnerable to criminal investigation, and health professionals are placed under unacceptable and unwarranted scrutiny."**

In the current context of increasing prosecutions, there is a need for this guidance to be promoted widely, as practitioners in other areas (for instance in A&E, treating a woman presenting with a miscarriage, or neonatal care, treating a preterm baby) could potentially suspect abortion and contact police.

SUMMARY

• Abortion is vital, routine healthcare. It is one of the safest and most frequently accessed medical procedures used by women and pregnant people across the world.

• Criminalisation makes abortion an outlier amongst healthcare procedures, which are increasingly focused on patient autonomy and choice.

• Decriminalisation of abortion is recommended by the World Health Organisation, human rights institutions, and all relevant professional medical bodies in the UK.

• Decriminalisation is needed for realisation of a wide range of women's human rights and for government compliance with international human rights law.

• Such legal reform is in step with international human rights standards and global trends towards liberalising abortion law.

• Safe and legal abortion is a cornerstone of progress towards women's equality, and decriminalisation would represent a further step along this path.

• Decriminalisation is in line with high-level commitments from Scottish Government on gender equality and would future-proof against regression on women's rights.

• Criminalisation perpetuates abortion stigma and damaging gender stereotypes.

• Decriminalisation would remove unnecessary "chilling" pressures on healthcare professionals, who are exposed to potential criminal sanctions at work.

3. THE CURRENT LEGAL POSITION OF ABORTION

This section of the report sets out how abortion is criminalised in Scotland and in what situations it is permitted. This includes a summary of the common law on abortion, an overview of the Abortion Act 1967, which creates exceptions to the common law crime, relevant provisions in the Human Fertilisation and Embryology Act 1990, and the Concealment of Birth Act (Scotland) 1809.

3.1 THE COMMON LAW CRIME OF ABORTION IN SCOTLAND

Abortion is a common law crime in Scotland.[79] This means that the offence is not set out in legislation but has been established through legal customs and interpreted and clarified by the courts through individual legal cases.

Certain key historical texts are considered to be authoritative on criminal law in Scotland.[80] These are clear that abortion is criminal, and distinct from the crime of homicide which applies only once the child is born.[81] However, there has been a lack of clarity around the parameters of the crime of abortion. This stems from a limited amount of recorded case law,[82] through which common law offences are established. Key texts do, however, outline the offence of 'administering drugs to procure abortion'[83] and reference cases involving the use of both drugs and instruments.[84] Early recorded cases[85] make clear that procuring an abortion itself is criminalised, and not merely the use of drugs or instruments.[86]

These texts largely date from the 19th century. The terminology is therefore outdated and detached from the modern reality of women's lives, the evolution of human rights norms and standards, and current medical practice.

3.1.1 The lack of case law

Historically there have been very few high-profile prosecutions for procuring an abortion recorded in Scotland. It is unclear whether cases were infrequent or whether they were deemed of insufficient interest to historical authors. Whilst the common law is clear that abortion is a criminal offence, this lack of case law contributes to a lack of clarity regarding the parameters of the crime. This complexity is sometimes held up as a barrier to decriminalisation, or as an argument that reform is unnecessary. However, in the modern context, allowing a situation of ambiguity to remain around criminalisation and access to healthcare, is increasingly untenable and outdated.

3.1.2 Therapeutic and non-therapeutic abortions in Scots law

'Non-therapeutic' abortions are those that are chosen for personal reasons, as opposed to 'therapeutic' abortions, which are deemed necessary on grounds of safety by a physician. There has been some debate over whether the common law in Scotland has always exempted therapeutic abortions from criminality. Some argue that prior to the Abortion Act 1967, therapeutic abortion in Scotland was permitted as long there was no 'wicked intent'. However, this appears to derive from the opinions of a small number of lawyers and practitioners in the 1960s.

> **"Scots criminal law has a quite different theoretical foundation to English criminal law, being based primarily on the wickedness of the accused's intent and so was able to recognise much more easily than English law that a doctor performing an abortion for therapeutic reasons does not have wicked and felonious intent[87] and is therefore not acting criminally."[88]**

This is why some commentators have claimed that abortion has never been criminalised under Scots criminal law and that the criminality that underpins the Abortion Act 1967 relates only to the English offence. [89]

This appears to be largely based on the example of Sir Dugald Baird who practised medicine from the 1930s to the 1970s in Aberdeen. Baird claimed that abortion "ha[d] long been legal"[90] in Scotland and that it was common for doctors in Aberdeen to provide abortions to those in need.[91] He was advised by Thomas Smith, Professor of Law at the University of Aberdeen, that there was little likelihood of the Lord Advocate or procurator fiscal initiating prosecutions for abortion unless they were convinced of Baird's 'criminal intent'.[92] Baird and his colleagues provided therapeutic abortions in Aberdeen long before abortion practice had been liberalised in any other part of Scotland, and decades before the Abortion Act was introduced.[93]

Baird is said to have been instrumental in convincing parliamentarians to extend the Abortion Act to Scotland,[94] remarking "whatever you do, don't let them drop Scotland out of the Bill on the spurious grounds that it is easier under the common law; it is easier under the common law, but I am the only person doing it".[95]

In Glasgow, The Regius Chair of Midwifery, Ian Donald, was an outspoken critic of Baird, calling his approach to abortion and contraceptives a 'doctrine of hideous atheistic expediency'.[96] He claimed that while one in 50 pregnancies were terminated in Aberdeen, it was only one in 3750 in Glasgow. This example indicates that although there were physicians willing to carry out abortions in Scotland prior to the Abortion Act, abortion was not widely practised due to flexibility within the common law. On the contrary, ambiguity in the law appears to have contributed to a predominantly censorious approach to abortion.

In this period in Scottish history, therapeutic abortions were not provided universally or on demand. Women had extremely limited options and little control over proceedings. Abortion was seen as a tool to assist in the fight against maternal mortality. It was utilised rarely and was heavily dependent on the willingness of clinicians to risk criminal sanctions, with major variations in access.[97] This context and these attitudes are reflected in the Abortion Act, which empowered doctors to make the ultimate decision on whether a woman's request for an abortion was legitimate.

While it is true that Scots criminal law was understood to provide more flexibility and was able in some circumstances to allow therapeutic abortions (based on this question of intent), this did not mean that the law generally allowed for abortion in Scotland prior to 1967. Non-therapeutic abortions were never considered to be permitted under Scots law.

3.2 THE ABORTION ACT 1967

It is often assumed that the Abortion Act 1967 decriminalised abortion and provided for abortion on request in Britain. This is not the case. Anything done to induce a miscarriage outwith the provisions of the Act is unlawful and therefore liable to prosecution and criminalisation.

The Act sets out the circumstances in which an abortion may be carried out without attracting criminal prosecution. These are known as grounds for abortion. Firstly, the pregnant woman must consent to the procedure. Secondly, two registered medical practitioners must confirm their opinion, formed in good faith, that one of the following circumstances applies:

> (a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or
>
> (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 or mental abnormalities as to be seriously handicapped.

An abortion that does not fall within the scope of these parameters, as set out in Section 1 of the Abortion Act, is not protected from prosecution and is potentially a crime under the common law in Scotland. Anyone carrying out an abortion without the permission of two registered medical practitioners, even the pregnant woman acting alone through sourcing pills, remains vulnerable to prosecution. The Act also mandates that any treatment for the termination of pregnancy must be carried out in an NHS hospital or a place approved by the Secretary of State.[98]

There is no defence to the crime of abortion in the courts beyond those created by the Abortion Act. In Scots law, 'necessity' - when an individual is said to have no alternative but to act in a way that is generally prohibited by law - can be a defence to common law crimes. Section 1(4) of the Abortion Act permits registered medical practitioners to terminate a pregnancy where necessary in emergency situations (to save the life or to prevent grave permanent injury to the pregnant woman), without securing authorisation from a second doctor. This does not exclude the possibility of other defences being made in a court of law, but in practice, most cases involving a claim that the action was necessary would fall within Section 1(4).

3.3 THE HUMAN FERTILISATION AND EMBRYOLOGY ACT 1990: TIME-LIMITS FOR ACCESSING ABORTION

The circumstances in which abortion is permitted were restructured by the Human Fertilisation and Embryology (HFE) Act 1990. The common law in Scotland never set down time limits for abortion, unlike in England and Wales where from 1929 the law distinguished between viable and non-viable foetuses.[99]

The Abortion Act 1967 did not initially set out time limits but relied instead on the 28-week presumption enshrined in section 1(2) of the Infant Life (Preservation) Act 1929 (an Act that does not extend to Scotland).[100] Until 1990, this left abortion without a time limit in Scotland, whilst England and Wales had a 28-week limit. The HFE Act amended the Abortion Act to reduce the 28-week limit to 24 weeks in relation to 'ground a', regarding risk to the physical or mental health of the pregnant woman or her family. This introduced a time limit to Scotland for the first time. There is no upper time limit in Scotland, England or Wales for grounds regarding grave permanent injury, risk to life to the pregnant woman, or serious foetal abnormalities. 98% of abortions in Scotland occur under 'ground a)' regarding risk to the physical or mental health of the pregnant woman, and as such are subject to the 24-week limit.[101]

3.4 THE CONCEALMENT OF BIRTH (SCOTLAND) ACT 1809

The Concealment of Birth (Scotland) Act dates from the early 19th century. It is based on a law enacted in 1690,[102] which was partly concerned with the abandonment of 'illegitimate' children.[103] This earlier legislation presumed women's guilt and positioned them as committing murder if they were deemed to have 'concealed' a birth. It "directed juries to capitally convict women who had concealed their pregnancy and the birth of an illegitimate infant that had subsequently died, with or without direct evidence of murder", and those executed under its provisions were primarily unmarried domestic servants.[104]

The 1809 Act in Scotland repealed the law from 1690, stating that "the punishment of death has been found too rigorous for such an offence." Instead, it rules that concealing a birth is punishable with imprisonment. Section 2 of the Act provides that:

> **"And if, from and after the passing of this Act, any woman in Scotland shall conceal her being with child during the whole period of her pregnancy, and shall not call for and make use of help or assistance in the birth, and if the child be found dead or be amissing, the mother, being lawfully convicted thereof, shall be imprisoned for a period not exceeding two years in such common gaol or prison as the court before which she is tried shall direct and appoint."[105]**

This legislation does not formally govern abortion, but it is used in the modern context to prosecute women where an illegal abortion is suspected. Today, as well as historically, it puts women suffering stillbirth and other extreme circumstances at risk of criminalisation and punishment.

CLINICIANS' PERSPECTIVES

"A niche part of the abortion law, Section 60 of the Offences against the Person Act 1861 [the equivalent law in England and Wales] has its origins in a law from 1623, over 100 years before the last woman was burnt alive at the stake. This has had some of the most damaging and oppressive impacts on women, including banning them from having contact with [their] children."

Jonathan Lord, Co-chair British Society of Abortion Care Providers & RCOG abortion taskforce.

SUMMARY

• Legal texts that are authorities in Scots law make clear that abortion is a crime.

• Case law on the crime of procuring an abortion is very limited and there is a lack of clarity regarding the parameters of the common law offence.

• This lack of clarity relates to the way in which abortion is criminalised, with respect to outdated terminology and theoretical ambiguity regarding 'intent'.

• Allowing ambiguity to remain around criminalisation and access to healthcare, is unnecessary, and increasingly untenable, outdated and confusing.

• The Abortion Act 1967, as amended by the Human Fertilisation and Embryology Act 1990, create a complicated regime that provides exceptions to the crime of abortion.

• This criminalising framework is detached from the modern reality of women's lives, the evolution of human rights norms and standards, and current medical practice.

4. PROSECUTIONS IN SCOTLAND AND ENGLAND

It is sometimes argued that the criminal status of abortion in Scotland, England and Wales is an abstraction that has no bearing on women's lives. This section outlines historical prosecutions in Scotland, as well as 21st century prosecutions in both Scotland and under English law.

4.1 HISTORICAL PROSECUTIONS IN SCOTLAND

Prior to the Abortion Act in 1967, women seeking abortion and those assisting them were prosecuted on a range of grounds. These included charges against pregnant women for using drugs to procure abortion, and against third parties for providing abortion, connecting a pregnant woman to an abortion provider, and supplying drugs.[106]

Between 1900 and 1930 around 53 people were indicted for abortion charges in the Scottish High Court.[107] The majority of these were third parties involved in providing or procuring an abortion, with cases mainly ending in court because problems had come to light. In around 20% of cases the woman had died from abortion complications, leading to prosecution of third parties. In cases where complications occurred and women survived, many were reported to the authorities by attending doctors who suspected or established that the woman had undergone an abortion.

In one case, a woman recorded that the doctor threatened to let her die unless she disclosed that she had undergone an abortion and offered the identity of the abortionist to the police. Women in this position were then expected to give evidence in court against their abortionist.[108]

In HM Advocate v Ross in 1967, Dr Ross was believed to be the first doctor in modern times to be charged with procuring an abortion. The Crown was keen to imply that Dr Ross, a GP, understood that his activities fell beyond any understanding of therapeutic abortion.[109] He was convicted and sentenced to four years' imprisonment in 1967.[110] There is no suggestion that these abortions were non-consensual or caused harm to the women involved. Instead, it seems to that Dr Ross's behaviour was considered criminal because he was providing abortion on demand to women and charging them for the service.

4.2 MODERN PROSECUTIONS

It is a commonplace assumption that arrests, prosecutions and convictions for offences related to abortion are a thing of the past, particularly in Scotland. This is not the case. It is also important to note that comprehensive information is only in the public domain for cases that make it to court. We do not have full records of the number of investigations related to abortion in Scotland, or the number of reports made to police (see Section 4.2.1 for details).[111] Being investigated by the police, or indeed the threat of being reported to the police – explicit or otherwise – is often extremely harmful. Policing in Scotland has been recognised by Police Scotland as institutionally misogynistic and racist,[112] as elsewhere in the UK. This further increases the likelihood that investigations into abortion, a highly gendered health issue that attracts considerable stigmatisation, will be poorly handled, resulting in particularly harmful outcomes for racialised and other marginalised groups.

Recent reports of invasive investigation methods by the police in England are also extremely concerning and appear to be on the rise.[113] There have been reports of English police forces requesting blood tests to detect whether abortion medication has been used, including where women have undergone unwanted pregnancy loss. Police investigations into suspected illegal abortions south of the border have also reportedly involved removal of women's phones or computers to search for menstrual tracking data.[114] One 15-year-old girl was subjected to a year of investigations, having experienced stillbirth at 28 weeks. Her phone and computer were confiscated by police, only for the case to be dropped once it was established that the pregnancy had ended naturally.[115]

CLINICIANS' PERSPECTIVES

"Recent cases in the media have raised suspicions when women present with a later pregnancy loss. Instead of clinical staff focusing on care and support for the woman, they can be uncertain if they must report a potential crime. If women think staff may report them to the police, they may delay or avoid seeking medical care."

Dr. Audrey Brown, Consultant in Sexual and Reproductive Healthcare and former Chair of the Scottish Abortion Care Providers.

Undergoing miscarriage, whether induced or not, is often a traumatic experience that leaves women deeply distressed. These investigations by police compound this trauma and amount to a shocking invasion of privacy and violation of human rights.

4.2.1 Scotland

In April and November 2023, Freedom of Information (FoI) requests were made to the Crown Office and Procurator Fiscal Service (COPFS) and Police Scotland to determine how many people had been investigated, charged and convicted of abortion related offences over the last 20 years.

Table 1 details COPFS data showing that there have been at least 11 charges for crimes related to abortion in 21st century Scotland, and that one person has been convicted under the Abortion Act 1967. This data is based on the response we received from COPFS[116] and additional evidence of a reported charge in 2023/24.[117]

Table 1: Charges and convictions in Scotland Between 2002 and September 2023

Offence	**Total number of charges**	**Total number of convictions**
Abortion	1	0
Abortion Act 1967 (s5(2))	4	1
Concealment of Birth (Scotland) Act 1809 (s2)	6	1
Total	**11**	**2**

Further information was sought from COPFS regarding sentencing, when the charges and convictions took place, and whether those affected were women, health professionals or other third parties. Personal information on those charged and convicted was not made available due to data protection. Both convictions (see Table 1) were "disposed of" by way of Probation Order. The years in which charges took place are set out in Table 2.

Table 2: Years in which charges for abortion related offences were reported to COPFS

Year	Number of reported charge
2003-04	1
2005-06	1
2007-08	1
2008-09	3
2011-12	1
2014-15	1
2018-19	2
2023-24	1
Total	11

Data released from Police Scotland in response to our FoI request show that at least eight people have been investigated for offences relating to abortion over the past 20 years.[118] The statistics from COPFS suggest this number may be higher.

Abortion and abortion related offences therefore continue to be investigated and prosecuted in Scotland. However, there are no published prosecutorial or sentencing guidelines regarding abortion and the concealment of birth in Scotland.[119] Nor is there Police Scotland guidance in relation to abortion. Given the alarming rise in prosecutions occurring in England, Scotland should take proactive steps to protect women and others from risks associated with criminalisation and the criminal justice system. In the immediate term, this should include immediate development of guidance by COPFS and Police Scotland to create in effect a moratorium on these investigations, charges and prosecutions.

4.2.2 Prosecutions in England

There has been an alarming recent rise in police and court activity regarding abortion in England. Between 1861 and late 2022, only three women had been convicted for the crime of abortion under the 1861 Offences Against the Person Act.[120] However, 67 people have been prosecuted in England and Wales over the last ten years.[121] In the nine months between January and September 2023, five women appeared in court on abortion related charges.[122]

1861 - 2022 **3** **CONVICTIONS**

2014 - 2024 **67** **PROSECUTIONS**

This has sparked widespread media coverage, extreme concern from activists and women's groups, and intervention from professional bodies. The co-chairman of the Royal College of Obstetrics and Gynaecology (RCOG) abortion taskforce said "it is clear that prosecutors are taking a much more aggressive stand against women with unexplained pregnancy loss or who are suspected of having an illegal abortion".[123] He describes the devastating impact of police investigations on women's lives:

> **"We've had patients lose everything – lose their home, lose their children, lose their relationship with their partner – purely as a consequence of the investigation [...] we're aware of cases where women have had death threats against them and needed to have panic alarms installed – and bearing in mind this is after the most traumatic event in their lives."[124]**

The RCOG has published guidance instructing healthcare staff not to contact the police after suspected induced miscarriage, alongside other health bodies.[125]

In June 2023, a woman was convicted of procuring an abortion in an English crown court under the Offences Against the Persons Act.[126] She was thought to be around 30-34 weeks pregnant. She pled guilty to the charge but was sentenced to 28 months in prison. The judge noted that there was no guidance for sentencing but that the maximum sentence was life imprisonment. He said he was obliged to apply the existing law and that those seeking change should address the UK Parliament.[127] Following a successful appeal, the woman was released from prison with a suspended sentence.[128] The judgement for this appeal details the profound impact that the prolonged process had on the accused and her children, one of whom is autistic and for whom she provides a high level of unpaid care.[129]

In August 2022, a 22-year-old woman appeared in court for charges alleging that she procured her own miscarriage with abortifacient drugs during the pandemic. In December 2023, the case was dropped following review by the Crown Prosecution Service (CPS). The CPS concluded that the required "evidential standard" had not been met and there was "no real prospect of conviction".[130] The woman's lawyer said that she had been investigated for three years by police and did not attend her formal acquittal in court as she had "suffered so extensively over this prosecution and investigation, all the while grieving what took place".[131]

In December 2022, the CPS dropped charges against another woman accused of procuring her own miscarriage. The judge had previously stated that he was "flabbergasted" the case had been brought and that "there [could] be no conceivable public interest in pursuing it".[132]

In January 2024, at least another five people were awaiting trial for abortion charges south of the border.[133] It is not entirely clear what is driving this increase in prosecutions in England and Wales, however it is likely that lack of clarity in the law is playing a part, alongside high profile media coverage, availability of abortion pills, awareness of this amongst healthcare professionals, high-profile international regressions such as the overturning of Roe v. Wade,[134] and sexism across policy and institutions.

4.2.3 Prosecutorial and police guidance that creates a moratorium

The WHO has called on lawmakers to take immediate practical steps to suspend the use of criminal law as it applies to abortion, until these laws are repealed.[135] The cases outlined above highlight the immediate need for prosecution and sentencing guidance regarding abortion, in both England and Wales, and in Scotland.

The role of individuals in interpreting the law can be pernicious. This is made clear in an English case from 2012, in which a woman was sentenced to eight years in prison. This judge "had made no secret of his opposition to abortion"[136] and stated in his sentencing remarks that "all right thinking people would consider this offence more serious than manslaughter or any offence on the calendar other than murder".[137] He described giving her credit for pleading guilty (as per her entitlement) as him being "generous". The woman served three years in prison before her "manifestly excessive sentence" was reduced at appeal. At this point it was noted that her obstetric history was characterised by "disturbance, personal misery and entrenched problems".[138]

In 2022, a wide range of organisations called on the Director of Public Prosecutions at the Crown Prosecution Service (in England) to issue guidance to "stop the prosecution of women who end their own pregnancies with immediate effect".[139] These included professional bodies, abortion care providers, health and women's rights groups, and the TUC. The statement pointed to the lack of public interest in investigating and imprisoning women who have delayed their decision-making due to complex circumstances and emotional trauma, highlighting that this is unlikely to deter others in similarly desperate situations.[140]

Such guidance is needed in the immediate term in Scotland for crimes related to abortion and the concealment of birth, with a view to ending scope for prosecutions and convictions as soon as possible. This should be developed by the Crown Office and Prosecutor Fiscal Scotland (COPFS) in line with human rights standards and guidance from professional medical bodies including the World Health Organisation (WHO).[141] It should, in effect, create a moratorium until such time that the Scottish Parliament can legislate to decriminalise abortion.

Police Scotland should also urgently adopt human rights-based guidance that is informed by the expertise and positioning of medical bodies. This should seek to end charging and investigations into offences relating to abortion, which are shown to cause women "life changing harm".[142] The WHO recommends that governments act to "stop arrests, investigations and prosecutions for abortion" as part of a suite of immediate changes to support quality abortion care.[143] If needed, interim guidance should ensure that "horrendously disabling"[144] procedures including the use of blood testing, women's personal tech devices, and reproductive tracking apps are not used as evidence within investigations into abortion.

SUMMARY

• There have been prosecutions and convictions for crimes related to abortion in Scotland in the 21st century.

• In England, there has been a marked increase in prosecutions and convictions in 2022-23, but it is not yet wholly clear why.

• Police investigations and subsequent prosecutions are gendered and can be deeply harmful to women.

• There is no public interest in prosecuting these rare cases where women have ended a pregnancy in desperate circumstances.

• There is a pressing need for prosecutorial guidelines regarding abortion in Scotland, to create in effect a moratorium on investigations, charging and prosecutions until such time as abortion is decriminalised.

• Police Scotland guidance, that effectively ends investigations and charges for crimes relating to abortion, is also urgently needed.

RECOMMENDATIONS

WE ARE CALLING ON THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE TO:

• Produce prosecutorial guidelines regarding:
    • offences that relate to abortion, to create in effect a moratorium on prosecutions and convictions
    • unsafe and non-consensual abortion within existing criminal law in Scotland, once decriminalisation is in place.

WE ARE CALLING ON POLICE SCOTLAND TO:

• Develop guidance regarding abortion offences, creating in effect an immediate moratorium on charging and investigations.
• Take interim measures to exclude the use of invasive and harmful procedures, including blood testing and the use of women's personal tech.

WE ARE CALLING ON SCOTTISH GOVERNMENT TO:

• Advocate for and support development of an immediate moratorium on investigations and prosecutions regarding the common law crime of abortion.

5. WHAT WOULD DECRIMINALISATION MEAN IN PRACTICE: PATHWAYS TO LEGAL REFORM

We now turn to different potential models of decriminalisation in Scotland. We set out five approaches below that could fully or partially remove abortion from the criminal justice system. All of these would involve introduction of primary legislation to the Scottish Parliament, to overturn the common law crime of abortion. Some models also include repeal or revision of the Abortion Act as it applies in Scotland, and all include review of the Concealment of Birth Act with a view to its repeal.

5.1 REMOVING ABORTION FROM THE CRIMINAL LAW

5.1.1 Decriminalisation of abortion

Decriminalisation of abortion means fully removing specific offences of abortion from the criminal law. Under such a model the parameters of abortion access are not set via unnecessarily restrictive laws and threats of prosecution. Instead, abortion is fundamentally treated as a health and human rights issue, the pregnant person has the right to determine their own health needs, and abortion is available on request in line with medical guidance and evolving best practice.

Full decriminalisation of abortion means that women and pregnant people who procure their own abortions, practitioners providing safe abortion, and those assisting someone to have an abortion with their informed consent cannot be prosecuted. The broader supply and procurement of abortion medication by third parties without prescription would be managed under general legislation on the control of drugs (see Section 6).

This is in line with comprehensive guidance from the World Health Organisation, which defines decriminalisation as follows:

> **"Decriminalization: Removing abortion from all penal/criminal laws, not applying other criminal offences (e.g. murder, manslaughter) to abortion, and ensuring there are no criminal penalties for having, assisting with, providing information about, or providing abortion, for all relevant actors."**[145]

Decriminalisation does not mean deregulation. This is exemplified by models of reform that have been pursued internationally, where abortion continues to be regulated like other medical procedures. In these instances, abortion care is governed by healthcare regulations and professional standards, as opposed to a specific criminal legal framework. Malpractice is dealt with in the same way as other instances of medical negligence or harm, via the existing processes of professional bodies and general criminal law (see Section 6).

Canada, which fully decriminalised abortion in 1988,[147] may provide a useful model regarding its post-decriminalisation regulation of abortion. This was initiated by a group of doctors who challenged the Criminal Code that set out the provisions on abortions. The Canadian Supreme Court held that the Criminal Code was unconstitutional and violated women's rights. Some issues with access to abortion in Canada still exist. However, decriminalisation has led to better realisation and safeguarding of women's rights, improved funding for abortion care and better integration into the healthcare system.[148]

Others useful models for a fully decriminalised approach to abortion care include various state legislatures in the USA. Abortion is legal with no limits in Alaska, Colorado, New Jersey, New Mexico, Oregon, Vermont and Washington DC.[149]

Overhaul of the existing regulatory system, including clinical guidance, would accompany decriminalisation of abortion in Scotland, to ensure that it was fit for purpose in the 21st century. The British Medical Association and other professional health bodies support this approach. In 2019, the BMA set out its detailed position on removing abortion from the criminal law, calling for "the removal of criminal sanctions for abortion and for abortion to be regulated in the same way as other medical procedures."[150]

Decriminalisation of specific abortion offences would be achieved through introduction of legislation in the Scottish Parliament, overturning the common law crime. However, without targeted legislative action, the provisions of the Abortion Act 1967 would remain in place. These include the need for two doctors to authorise almost every abortion, time limits, and restrictions regarding where and by whom an abortion can be prescribed and administered. Women and health professionals would no longer be subject to criminal sanctions for not adhering to these rules, but the restrictions on quality service provision and access to services would persist.

Development of this model of decriminalisation, and all others set out in this report, must involve best practice participation work with different groups of women and pregnant people. This should seek to learn from women from areas with high levels of social and economic deprivation, and other marginalised groups whose experiences of accessing abortion care in Scotland are not well understood. These include Black and minority ethnic women, disabled women, LGBTI people, young women and girls, migrant women, women in rural areas, unpaid carers, lone parents, women from faith-based communities, women who sell sex, and care-experienced women.

MODEL 1: DECRIMINALISATION OF ABORTION

- Primary legislation in the Scottish Parliament overturning the existing common law crime of abortion
- Participatory development with marginalised women and pregnant people
- Review of the regulatory system and amended clinical guidance
- No specific criminal offences for non-consensual or unsafe abortion, or supply or procurement of abortion drugs without prescription
- Restrictions set out in the Abortion Act 1967 remain in place
- Repeal of the Concealment of Birth (Scotland) Act 1809, subject to review

5.2 'PARTIAL' DECRIMINALISATION

Sometimes the term 'partial decriminalisation' is used to describe systems where certain elements of abortion regulation remain within the criminal law. This can include when criminal penalties are removed for individuals seeking abortion but remain in place for third parties (providers or 'assisters') in certain circumstances.[151] In some jurisdictions specific offences are retained or created in relation to unsafe or non-consensual abortion, or abortion is available on request until certain gestational time limits, after which women and/or third parties are criminalised.[152] The Abortion Act 1967 is sometimes described as having partially decriminalised abortion in Scotland, England and Wales.[153]

We set out these 'partial decriminalisation' approaches in Models 2-4. Elements of these systems sometimes overlap in legal abortion frameworks around the world.

5.2.1 Criminalisation of third parties

Criminalisation of third parties is more common globally than criminalisation of the woman or pregnant person seeking abortion. A review of abortion-related offences in 182 countries shows that abortion providers are subject to penalties in 181 countries,[154] with those assisting someone to access or provide an abortion and 'abortion seekers' penalised in 159 and 134 countries respectively.[155] The sanctions, primarily imprisonment and fines, and the mechanisms by which these are codified in law vary widely across the world.

In Europe, only 38% of countries criminalise the woman or pregnant person seeking abortion, whilst 98% penalise those who provide an abortion in certain circumstances and 67% penalise those who assist someone to access an abortion.[156]

Since 2020, abortion has been largely decriminalised in Northern Ireland. On paper, abortion is available on request up to 12 weeks and up until 24 weeks and beyond on the same grounds as the rest of the UK.[157] Legislation passed by the UK Parliament in 2019 repealed laws that criminalise abortion, established a moratorium on abortion-related prosecutions, and mandated introduction of a new legal framework by 2020.[158]

However, the provisions of the subsequent 2020 Abortion Regulations[159] reintroduced criminal penalties (in the form of fines up to £5000) for medical professionals and others providing abortion outside of the regulatory framework. For instance, contravention of notification requirements may amount to a criminal offence. Human rights organisations describe these regulations as "unnecessarily restrictive and create[ing] barriers to accessing abortion services".[160] The woman or pregnant person who has had the abortion is not subject to criminal sanctions under the Northern Irish model.

MODEL 2: CRIMINALISATION OF THIRD PARTIES

- Primary legislation in the Scottish Parliament that:
    - overturns the common law crime of abortion
    - creates penalties for providing or assisting with abortion in certain circumstances
- Participatory development with marginalised women and pregnant people
- Review of the regulatory system and amended clinical guidance
- Restrictions set out in the Abortion Act 1967 remain in place
- Repeal of the Concealment of Birth (Scotland) Act 1809, subject to review

5.2.2 Specific offences for unsafe or non-consensual abortion

Partial decriminalisation can also refer to models where standard abortion provision is removed from the criminal law, but specific offences that criminalise non-consensual abortion or other forms of unsafe practice are retained or created (see Section 6 for further information). Under such an approach, some aspects of abortion criminal law regulation are left in force or new specific offences are created for situations where it is considered that existing criminal law does not adequately cover unsafe or non-consensual abortion.

In the Australian state of Victoria, the Abortion Law Reform Act 2008 repealed legislation that had codified the common law crime of abortion. It removed the criminalisation of women for ending their own pregnancies in any circumstances. The Act creates offences where an abortion is carried out by a non-qualified person, so abortion is still a specific crime in some circumstances.

The Act also provides some procedural direction for abortion provision, setting out specific requirements on abortions over 24 weeks gestation. Under this law, two medical practitioners must consent that an abortion is appropriate after 24 weeks and can face criminal penalties if their decision is considered inappropriate. [161]

The BMA's position on abortion reform in the UK is to remove criminal sanctions for women who procure and administer their own abortion at any stage of pregnancy and for health professionals "administering abortions within the context of their clinical practice."[162] They do not call for criminal sanctions to be removed in circumstances where:

- individuals perform an abortion without appropriate training;
- individuals maliciously and covertly try to procure an abortion or administer an abortifacient, without the woman's consent;
- individuals illegally supply abortifacients; or
- individuals illegally procure abortifacients on behalf of others.

It does not take a position on the legal mechanisms by which this should be achieved. Our analysis shows that in Scotland these circumstances (excepting where individuals assist women to have an abortion with their consent) would be sufficiently covered and criminalised via existing general 'offences against the person', and the regulation of medicine and drugs. This approach would bring regulation of abortion in line with all other aspects of healthcare, therefore ending the exceptionalism within current governance of abortion. Please see Section 6 for full details on broader legislation that could govern unsafe and non-consensual abortion.

Our position is that individuals procuring abortion medication on behalf of others should not be automatically subject to criminal liability. This is in line with guidance from the World Health Organisation.[163]

There are routine circumstances in which it would be incoherent to remove sanctions for someone ending their pregnancy but to criminalise that person's relative, partner or other support. Many of these instances have intersectional elements that are linked to experiences of marginalisation. Social and economic deprivation, disability, immigration status, race, faith, age, experience of abuse and coercion, lone parenthood and unpaid caring can all shape access to abortion medication. For instance, young women may rely on practical and financial support from a parent, digital inequality may shape access for disabled women, Black and minority ethnic women and migrant women,[164] and survivors of sexual violence or domestic abuse may require particular forms of support. In such circumstances, and many other individualised situations, we are convinced that there is no public interest in criminalising those assisting women to access abortion with their consent.

Organised provision of abortion medication, outwith the formal framework, can and should be addressed through the wider regulation of medical practice and the use of drugs and medicines. This should be adequately flexible to cover individuals who assist women to have an abortion without their full and informed consent. We advocate for prosecutorial guidance regarding the application of wider criminal sanctions for non-consensual abortion (please see Section 4).

MODEL 3: SPECIFIC OFFENCES FOR UNSAFE OR NON-CONSENSUAL ABORTION

- Primary legislation in the Scottish Parliament that:
  - overturns the common law crime of abortion
  - creates specific criminal offences for providing unsafe or non-consensual abortion in specified circumstances
- Participatory development with marginalised women and pregnant people
- Review of the regulatory system and amended clinical guidance
- Restrictions set out in the Abortion Act 1967 remain in place
- Repeal of the Concealment of Birth (Scotland) Act 1809, subject to review

5.2.3 Decriminalisation within gestational time limits

Some countries or legislatures around the world provide abortion on request up to specified gestational limits, with applicable criminal sanctions outside of the prescribed framework. Most commonly, these apply to healthcare professionals or others who assist women to have an abortion. In Europe, the majority of countries do not penalise women for obtaining an abortion at any stage of pregnancy.[165] Even in Andorra, where a total ban on abortion is in place, there is no criminal liability for a woman ending her own pregnancy. 17 European countries including Germany and Spain, continue to criminalise women for obtaining an abortion in certain circumstances, whilst 27 do not.[167]

We do not consider decriminalisation within time limits to be an adequate response for Scotland. In practice this would change little, particularly without parallel reform or repeal of the Abortion Act. Cases of criminal prosecutions for abortion-related offences on the public record in Britain have all related to pregnancies above the 24 week limit set out in the Abortion Act. These cases occur because women are desperate to end a pregnancy, often in the context of highly traumatic personal circumstances,[168] or are erroneously suspected of having done so.

This does not mean that we are advocating for a change in the gestational time limit for abortion, but that governance of this should be removed from the criminal law. It should be noted, however, that the World Health Organisation "recommends against laws and other regulations that prohibit abortion based on gestational age limits." This is based on international human rights standards regarding sexual and reproductive health and rights, including intersectional and identity-based inequalities such as disability and age, and factors such as financial hardship and rurality.[169]

MODEL 4: DECRIMINALISATION WITHIN TIME LIMITS

- Primary legislation in the Scottish Parliament overturning the existing common law crime of abortion up to 24 weeks of pregnancy
- Participatory development with marginalised women and pregnant people
- Review of the regulatory system and amended clinical guidance
- No specific offences for non-consensual or unsafe abortion, or supply or procurement of abortion drugs without prescription
- Restrictions set out in the Abortion Act 1967 remain in place
- Repeal of the Concealment of Birth (Scotland) Act 1809, subject to review

5.3 WIDER LEGISLATIVE REFORM: THE ABORTION ACT 1967

As a minimum, decriminalisation requires legal reform to overturn the common law offences related to abortion in Scotland. However, the provisions in the Abortion Act that stigmatise and impede access to abortion care would remain in place unless repealed or reformed. The current review of abortion law by the Scottish Government should evaluate wider legislative reform and how this could be achieved in Scotland.

Review of all aspects of the legislative abortion framework is required, with a view to whether this would be best situated within standard medical regulations. Repeal or reform of the Abortion Act, as part of the decriminalisation process, would offer the opportunity to learn what women want and need from abortion services in Scotland (see Section 5.4 on consultation).

5.3.1 Repeal of the Abortion Act alongside decriminalisation

Since the purpose of the Abortion Act is to provide exemptions to the crime of abortion, there is little logical need for such a framework once abortion is no longer a crime. Issues that are currently regulated by the Act, including time limits, would be governed by professional regulation or in broader law. However, as the Act does not itself criminalise abortion, its repeal is not strictly necessary. Decriminalisation could occur, as set out in Section 5.1, leaving the existing abortion framework in place.

However, the Abortion Act is increasingly recognised as a "badly outdated piece of law, with multiple inadequacies rendered ever more apparent in the face of evolutions in clinical practice".[170] Calls for its repeal or radical reform are growing in momentum, with a recent position statement from 33 organisations in England setting out detailed principles and priorities for a new abortion regime in England and Wales.[171] Its signatories include professional medical bodies, trades unions, and human rights, health and women's equality organisations. Key priorities that also pertain to Scotland include:

- Women must be removed from the criminal law for ending their own pregnancies;
- Healthcare professionals must be able to provide abortion without the threat of criminal sanctions which do not apply to any other healthcare procedure;
- People who support women to access abortion services they need should also be free from criminal sanction;
- The requirement for two doctors' signatures to authorise an abortion should be removed;
- Women should be able to make their own decisions about accessing an abortion without requiring them to disclose intimate details in order to access medical care and exercise their reproductive rights

Decriminalisation and repeal of the Abortion Act could be achieved through a phased approach, if needed, to allow for sufficient review of the provisions of the Abortion Act, including participatory development with women from marginalised communities on what best practice abortion services would look like. Such an approach would see a Bill decriminalising abortion introduced in the first instance, followed by action to repeal the Abortion Act in Scotland. This could be achieved through amendments to the Act that decriminalises abortion or further legislation in the Scottish Parliament.

Abortion law is devolved to the Scottish Parliament. As the Abortion Act also applies to England and Wales, it is possible that such action to repeal the Act could be challenged by the UK Government. Equally, given growing concerns in England and Wales, collaboration could be sought with the UK Government to take a coordinated approach across Scotland, England and Wales. We do not consider potential challenges by the UK Government a sufficient reason to stall on efforts to modernise the abortion care system in Scotland.

MODEL 5: DECRIMINALISATION OF ABORTION + REPEAL OF THE ABORTION ACT 1967

- Primary legislation in the Scottish Parliament that
    - overturns the common law crime of abortion
    - states that the Abortion Act 1967 does not apply in Scotland
- Participatory development with marginalised women and pregnant people
- No specific offences for non-consensual or unsafe abortion, or supply or procurement of abortion drugs without prescription
- Review of the regulatory regime and updated clinical guidance, including with regards to time limits
- A phased approach to this may be desirable
- Repeal of the Concealment of Birth (Scotland) Act 1809, subject to review

5.3.2 Reform of the Abortion Act 1967 alongside decriminalisation

If the Abortion Act was not repealed, reform of the Act alongside decriminalisation would still be needed for movement on aspects of clinical practice that are no longer in step with modern medical standards and act as a barrier to quality and timely care. These include the third-party authorisation requirement, the expansion of early medical abortion at home, and the expansion of midwife-led abortion and pharmacist provision.

THIRD PARTY AUTHORISATION REQUIREMENT: 'THE TWO DOCTORS RULE'

As outlined, the need for two doctors to sign off on an abortion is one of the most paternalistic and obstructive aspects of the Abortion Act. Regardless of the model of decriminalisation adopted, the 'two doctors rule' should be removed from our abortion care system.

Support for removing the 'two doctors' requirement' is robust. Following a lengthy investigation, the UK Parliament's Science and Technology Committee recommended that it should be removed, as it serves no benefit. In the subsequent 2007 report on Medical Advances on Abortion, the Committee concluded: "the requirement for two signatures may be causing delays in access to abortion services and [their investigation] found no evidence of its value in terms of safety."[172] In the 16 years since these findings were published, the increased availability of abortion pills online has made the need to remove this barrier to safe abortion even more pressing.

CLINICIANS' PERSPECTIVES

"Current abortion legislation is outdated and was designed to protect patients in a time when surgical techniques were less advanced and when medical abortion had not yet been invented.

Services work hard to ensure that patients are largely shielded from the administrative burden of the Abortion Act but adequate staffing to ensure two signatures from doctors are available who have reviewed their clinical notes (in addition to qualified nursing/midwifery staff), can be a strain on services particularly in remote and rural settings.

The way we treat abortion medicolegally, exceptionalises it and forces us to treat patients and their pregnancies differently from other types of pregnancy. This creates a false dichotomy between abortion care and miscarriage care, when the treatments are the same, and ultimately the patients are the same people at different times in their lives."

Dr. John Reynolds-Wright, NES/CSO Clinical Lecturer in Sexual and Reproductive Health.

EARLY MEDICAL ABORTION AT HOME (EMAH)

The Abortion Act provides strict restrictions on where abortions can be carried out. Until recently, unlike women experiencing miscarriage, women choosing abortion were not permitted to take abortifacient medication at home in their own time.[173] This is known as early medical abortion at home (EMAH).

Prior to 2017, women were required to attend multiple appointments at a hospital clinic to receive 'medical abortion', which involves taking two medications 24-48 hours apart.[174] This meant that women were unable to control the timing and circumstances around ending their pregnancy, and that those who travelled long distances were put at risk of having an abortion on public transport.

In 2017, approval was issued for the second abortion pill (misoprostol) to be taken at home. In 2020, in light of the Covid-19 pandemic, EMAH was temporarily expanded to allow women to take both abortion medications at home.[175] Such flexibility is beneficial to women for a range of reasons that include the need for parental or other support, work and childcare commitments, unpaid caring and the experience of domestic abuse. It is particularly pertinent for women in rural areas who often struggle to access designated clinics, both practically and financially, with some having to spend long periods of time away from home.[176]

Following comprehensive evaluation setting out the efficacy, safety and positive impacts of EMAH,[177] these arrangements have been "extended" on an open-ended basis with two further approvals from the Scottish Government in 2022 and 2023.[178]

In England and Wales, EMAH was made permanent in 2022 through an amendment to the Health and Social Care Act.[179] However, this applies to England and Wales only. Though currently open-ended, the arrangements for EMAH in Scotland could be withdrawn in future via a change in policy or political leadership. In such circumstances, without repeal of the Abortion Act or action by the Scottish Parliament to put EMAH on a statutory footing, the prohibitions of the Act would return to force by default.

This demonstrates the rigidity of the current abortion framework and the fragility of a regime based on 'benevolent' exemptions to criminalisation, rather than a rights-based approach underpinned by legal reform. It also highlights that the Abortion Act does not allow for modern and medical best practice in abortion care.[180] In all other fields of healthcare, medical bodies are able to issue guidance based on best practice, as opposed to reliance on complex legal mechanisms and constitutional arrangements.

Furthermore, the arrangements that allow EMAH stipulate that the medication must be taken at the patient's registered address. This may not be suitable for young women, women experiencing domestic abuse, women from certain faith or ethnic backgrounds, women with certain impairments or support needs, single parents, unpaid carers and others seeking to end a pregnancy.

It is striking that national lockdown was needed for EMAH to be implemented, despite strong evidence of the harms being experienced and clear advocacy that it leads to better outcomes for diverse groups of women.[181] We urge political decision-makers in Scotland to take this into account when developing and scrutinising future developments in abortion care. This should include legislation to secure early medical abortion at home for women and pregnant people in Scotland on the same footing as in England and Wales. It is worth noting that EMAH is available up until 12 weeks gestation in Scotland, as opposed to 10 weeks in England and Wales. This should be retained under any new statutory arrangements.

MIDWIFE-LED ABORTION CARE

Abortifacient medication does not need to be prescribed by doctors. It can be safely and more efficiently issued by midwives or other healthcare professionals involved in the provision of abortion, following revised guidance and with appropriate training.

However, the Abortion Act prohibits the development of midwife or nurse-led services that are widespread elsewhere in the world.[182] Labour wards and maternity units are increasingly led by midwives and nurses, with doctors on call if required. However, nurses and midwives who provide highly skilled, complex care in other fields, including miscarriage care, are not permitted to lead abortion care, even when clinically straightforward. In 1967 when the Abortion Act was passed, abortion procedures may have been viewed as uncommon or complicated, but medical advances have ensured that this is not the case today.

For over 20 years, the World Health Organisation has recommended that abortion care be provided at the 'lowest' appropriate level of the healthcare system and that, in addition to administration of abortion medication, vacuum aspiration can be provided by mid-level care providers - including midwives and nurses - in primary care facilities throughout the first trimester of pregnancy.[183] This would expand early access to abortion care and reduce waiting times for women undergoing the procedure.[184] Recent research also suggests that pharmacists could be involved in abortion care in some instances.[185] In Scotland, capacity gaps regarding surgical abortion that emerged during the pandemic have yet to be addressed in some health boards.[186] Abortion services in Scotland are reportedly under severe and increasing strain, due to rising demand, making the need for reform all the more urgent.[187]

Removing restrictions imposed by the Abortion Act to bring abortion care in line with other comparable forms of healthcare would contribute to the much-needed destigmatisation of abortion. Expanding provision to allow midwives, nurses and pharmacists to provide aspects of abortion care could form part of a package of reforms to improve and reduce pressures on services. If the Abortion Act was repealed, this could be achieved through professional regulation.

FURTHER PROVISIONS OF THE ABORTION ACT 1967

The Abortion Act contains other legal conditions that are unique within our healthcare system. Notably these include notification of abortion and conscience-based refusals.

Any "registered medical practitioner who terminates a pregnancy" is required by law to notify Scotland's Chief Medical Officer of every abortion they authorise within a set timeframe. Although archaic rules surrounding this were finally updated in 2022 in Scotland, and this aspect of abortion criminalisation impacts less directly on women's access to services, practitioners say that protocols that make an exception of abortion add to a "climate of fear" amongst healthcare staff. Exceptionality adds to stigmatisation of abortion, which undermines access to necessary care and realisation of rights.

CLINICIANS' PERSPECTIVES

"A lot of fear was created for health professionals after the 2012 CQC inspections [in England] in which the health secretary and others were talking about arresting doctors and referring them to the General Medical Council for the 'criminal offense' of pre-signing abortion forms. The current climate of prosecutions is also adding to a climate of fear for many abortion care providers. Decriminalisation of abortion is needed to address this – staff should not be expected to provide care in these circumstances.

Meanwhile there is rising demand for abortions, across services that are not yet back to full capacity after the pandemic. The current unnecessary protocols, as set out in the Abortion Act, are exacerbating resource and capacity issues in Scotland."

Sinead Cook, Consultant in Sexual and Reproductive Health and Chair of the Faculty of Sexual and Reproductive Health Scotland Committee.

The Abortion Act also enshrines the right of any practitioner to refuse to participate in abortion treatment on grounds of conscience-based refusal. Again, this contributes to harmful stigma surrounding abortion, perceptions that abortion is not routine healthcare, misconceptions regarding women's established reproductive rights, and potential barriers to service provision. We advocate for review of the legal status of conscience-based refusals, within Scottish Government's review of all other aspects of current abortion law. This should draw on human rights standards, the impact on service provision and abortion stigma in Scotland, as well as the duties and rights of healthcare providers.

MODEL 6: DECRIMINALISATION OF ABORTION + REFORM OF THE ABORTION ACT 1967

- Primary legislation in the Scottish Parliament that:
    - Overturns the common law crime of abortion
    - Amends the Abortion Act to remove the 'two doctors rule' and modernise other aspects of the law
- Participatory development with marginalised women and pregnant people
- No specific offences for non-consensual or unsafe abortion, or supply or procurement of abortion drugs without prescription
- Review of the regulatory regime and updated clinical guidance, including with regards to time limits
- A phased approach to this may be desirable
- Repeal of the Concealment of Birth (Scotland) Act 1809, subject to review

5.4 CONSULTATION ON A NEW ABORTION FRAMEWORK

Repeal or reform of the Abortion Act, as part of the decriminalisation process, would offer the opportunity to learn what women want and need from abortion services in Scotland. This would require participatory engagement with diverse groups of women across Scotland, to explore lesser-known aspects of women's and pregnant people's experiences of abortion. This should have a particular focus on intersectionality and equality of access to reproductive healthcare, with a view to creating gold standard abortion care services in Scotland.

Any unintended consequences of decriminalisation should be envisaged and mitigated as fully as possible as part of the development process. Abortion is associated with deep stigma and complex decision-making. This, alongside factors of marginalisation, has always led some people to seek abortion outwith formal routes. For instance, young women and girls, women from certain faith backgrounds, racialised women, disabled women, migrant women, women experiencing domestic abuse, trans men, non-binary people, or women in rural areas may not feel able to approach their local GP or service provider, may not have access to services that meet their needs, or may encounter other barriers to abortion care.

Any process of abortion law reform must seek the views of women, girls and trans and non-binary people to ensure that such experiences and perspectives are built into the new system, and that services are duly designed to meet their needs.

Development of prospective proposals by Scottish Government, as per commitments in the Programme for Government 2023-24, should also seek the views of stakeholders as to the sequencing of decriminalisation and repeal or reform of the Abortion Act. There may be practical and strategic benefits to both approaches - implementing a combined package of legal reforms or a phased approach.

5.5 THE CONCEALMENT OF BIRTH ACT (SCOTLAND) 1809

Review of the Concealment of Birth Act, with a view to its repeal, is also long overdue. This 200-year-old legislation is used in the modern day to prosecute women and third parties who have induced and concealed an abortion in later stages of pregnancy. These cases (as well as those prosecuted under the Abortion Act and for concealment of birth in England)[189] demonstrate that women in this position act within desperate circumstances, are often vulnerable, and are at risk of lasting physical and mental harm.[190] We do not believe that criminalising women in these circumstances can ever be in the public interest.

The Act also places undue suspicion on women who may have experienced miscarriage and stillbirth, placing them at risk of potential police investigations. It criminalises failure to seek assistance "during the birth", operating under the assumption that all women and pregnant people will be able to seek medical attention, or will be aware that they are in labour. This may affect multiply-marginalised groups more acutely, including women with insecure immigration status, disabled women and trans people.

Analysis of cases brought under the English offence of concealment of birth suggests that it is also misused to obtain convictions where women are suspected of causing the death of an infant, but where evidence is lacking. The research finds that "other offences more appropriately and accurately" cover these circumstances and that the concealment of birth offence is obsolete.[191] Furthermore, it is being applied to "suspected but unproven crimes, resulting in injustices for vulnerable women who experience 'crisis pregnancies'". Whilst this analysis refers to the English system and commentary on the Scottish offence is scarce, the same risks apply and the "more appropriate" offences cited by the research have equivalents in Scots law.[192]

Scotland's Concealment of Birth Act has no place in a modern abortion care framework. It should be included within Scottish Government's current review of abortion law, with a view to incorporating its repeal within legal reform to decriminalise abortion.

SUMMARY

• Full decriminalisation means removing specific criminal sanctions for:

- women ending their own pregnancies
- health practitioners providing safe abortion and
- individuals assisting someone to have an abortion with their informed consent.

• This would require new legislation in the Scottish Parliament overturning the common law crime of abortion, alongside possible repeal or revision of the Abortion Act 1967 and repeal of the Concealment of Birth Act (Scotland) 1809.

• Globally, a range of decriminalisation models have:

- Removed all specific abortion offences from the criminal law
- Removed criminal sanctions for those seeking abortion but retained some criminal liability for medical staff and/or those assisting someone to have an abortion
- Introduced or retained offences to criminalise unsafe or non-consensual abortion (see Section 6 for information on regulation of this in Scotland)
- Removed criminal sanctions for women for accessing abortion within specified gestational limits

• Repeal of the Abortion Act, which provides exemptions to the crime of abortion, is not strictly needed to decriminalise abortion, but the requirements of the Act impede service provision.

• Review of the Abortion Act and development of an alternative regulation framework would include consideration of:

- Third party authorisation requirement (the 'two doctors rule')
- Early medical abortion at home
- Midwife-led abortion care
- Notification requirements
- Conscience-based refusals.

• Participatory development work, with an intersectional focus, will be crucial in creating a new abortion framework based on human rights and the needs of women and pregnant people.

RECOMMENDATIONS

WE ARE CALLING ON THE SCOTTISH GOVERNMENT TO:

• Introduce legislation to the Scottish Parliament that overturns the common law crime of abortion in Scotland.

• Develop a model of decriminalisation that:

  • Ensures women are never subjected to investigation, prosecution or criminal sanctions for ending their own pregnancy;
  • Removes criminal sanctions for health practitioners providing safe abortion;
  • Removes criminal sanctions for those assisting women to have an abortion with their informed consent, in line with clear guidance;
  • Criminalises non-consensual and unsafe abortion through existing general criminal law;
  • Is not subject to gestational time limits.

• Repeal the Abortion Act as it applies to Scotland, within the Bill to decriminalise abortion or through subsequent amendment or further legislation.

• Develop an intersectional participation model to create a replacement regulatory regime and best practice model of abortion care for Scotland, focused on improvements and equality of access to services.

• Review the Concealment of Birth (Scotland) Act 1809, with a view to its repeal within legal reform to decriminalise abortion.

• Legislate to make early medical abortion at home (EMAH) permanent in Scotland.

6. THE REGULATION OF NON-CONSENSUAL OR UNSAFE ABORTION IN SCOTLAND

Women should not be criminalised for ending their own pregnancies. Nor should medical practitioners acting within clinical guidelines or those who assist someone to obtain an abortion with their informed consent. However, non-consensual abortion or unsafe abortion would remain subject to criminal sanctions within a decriminalised abortion framework. Negligence by medical professionals and illegal behaviour by any individual or organisation that resulted in non-consensual abortion, including forms of violence, would be covered by general criminal offences 'against the person', those governing medical malpractice or the regulation of drugs.

6.1 EXISTING CRIMINAL OFFENCES THAT CRIMINALISE NON-CONSENSUAL OR UNSAFE ABORTION IN SCOTLAND

Full decriminalisation of abortion (Models 1, 5 and 6) would remove specific abortion offences from the criminal law in Scotland. However, this would not mean that all related behaviour would be decriminalised or removed from the scope of the law.

As set out by the British Medical Association, "the civil and criminal laws that apply to other aspects of clinical care will continue to apply to abortion." For example:

- informed consent
- assault
- medical negligence and gross negligence manslaughter
- wilful neglect or ill-treatment, and
- data protection and confidentiality."[193]

It recommends that the following circumstances are covered by ongoing criminal sanctions.[194] Here, we outline where existing areas of Scots law would or could criminalise these activities in Scotland.

Individuals perform an abortion without appropriate training

This would be criminalised by common law "offences against the person", such as reckless injury or culpable and reckless conduct. Clear prosecutorial guidance regarding these offences in relation to abortion should be introduced after decriminalisation is in place.

Individuals maliciously and covertly try to procure an abortion or administer an abortifacient, without the woman's consent

This would be criminalised by common law "offences against the person", such as the administration of a noxious substance. Again, clear guidance should set out context and application in relation to abortion, including with regards to 'informed consent' and other terminology.

Individuals illegally supply abortifacients

This is a criminal offence under the Human Medicine Regulations 2012.

Individuals illegally procure abortifacients on behalf of others

This could be criminalised through law that regulates the use of drugs and medicine, such as the Misuse of Drugs Act 1971. However, illegality in this scenario will be determined by the model of decriminalisation that is pursued. We advocate for an approach that does not criminalise procuring abortion medication on behalf of others in a blanket way. Issues including malicious intent, consent, coercion and scale are all relevant and should be addressed in prosecutorial guidance, in line with the model of decriminalisation that is introduced. Please see Section 5.2.2 for further details.

Under decriminalisation of abortion, therefore, the criminal law could remain otherwise largely unchanged. This is in line with all other areas of healthcare. Situations where unregulated or unqualified individuals carry out surgery or dentistry are criminalised without the need for specific related offences. Existing offences against the person would cover these situations, while the regulation of medicine and drugs would continue to criminalise those who illegally supply abortion medication at scale or procure it for others without their full and informed consent.

6.2 WOULD NEW OFFENCES RELATED TO ABORTION BE NEEDED?

There has been some suggestion that new offences would be required to capture the particular wrongs of causing a woman to miscarry, either through violence or ingestion of substances. Again, however, existing criminal law in Scotland covers these situations.

6.2.1 Violence leading to miscarriage

There has been some discussion in Scotland around specifically criminalising violence that causes miscarriage, known as a 'child destruction offence'. This reflects increasing court cases in other parts of the UK where it has been brought to court as a separate charge, alongside offences against the woman. However, unintended consequences of these charges for women must be carefully considered.[195] In other countries, there are examples of these offences being used against pregnant women themselves, particularly marginalised women who use drugs or alcohol.[196]

In Scotland, there is flexibility in the existing law where injuries are inflicted on a pregnant woman causing her to miscarry, or causing the death of a child who is born prematurely. Existing common law offences are used to prosecute such violence and a number of men have recently been convicted of assault in such circumstances.[197] The common law offence of assault can be 'aggravated' to capture the wrong in question. In practice, this means the accused's intent or the result of an attack can be specified as an 'aggravation', making the offence more serious and something that will be reflected in sentencing. It is a common aggravation that the accused's actions included a high risk of danger (often referred to as 'assault to danger of life'). Where such an aggravation is specified on a charge, there is no need to provide corroboration.[198] This can be important in the prosecution of violence against women, which often occurs in private without other witnesses.

Driving offences have also been used in prosecutions of this type in Scotland. In the recent unreported case of *HM Advocate v Morrison*,[199] there was a conviction for causing serious injury (which included but was not limited to miscarriage) by dangerous driving. In the case of intimate partner violence, there is also scope for prosecution under the Domestic Abuse (Scotland) Act 2018. In a situation where a child is born alive but then subsequently dies from injuries sustained in utero, case law has shown that a charge of culpable homicide may be possible. [202]

6.2.2 Broader non-consensual abortion

There is also scope within the current criminal law to deal with broader cases regarding non-consensual abortion. Legal experts have set out the role of aggravations to existing offences (which operate in the same way across Scotland, England and Wales), emphasising that because abortion is a 'regulated activity' under health and social care legislation, it is a criminal offence to offer services without being registered to do so.[203] In this way, the current criminal law is equipped to prosecute non-consensual abortion.

Lastly, the common law offence of 'administration of noxious substances' is capable of capturing certain conduct that leads to miscarriage against the will of the pregnant person. This might include, for instance, coercive behaviour by a women's abusive partner or the relative of a younger woman giving them abortion medication without their knowledge or consent.

We do not therefore recommend development of specific additional legislation to capture the crime of non-consensual abortion as part of reform to decriminalise abortion. If new offences were considered necessary in future, then targeted legislation could be created by the Scottish Parliament.

6.3 CONTINUED REGULATION OF ABORTION OUTSIDE THE CRIMINAL LAW

The provision of all medical care, including abortion, is closely regulated outwith the criminal law. Following decriminalisation, abortion would continue to be regulated to the same standards as other medical and surgical procedures. Such regulation would be consulted upon and designed to ensure that an agreed set of principles and criteria were met. These would cover issues such as consent, conscience-based refusals, data collection, clinical governance and professional standards.

Such a regulatory framework would include:

- The independent regulators of healthcare professionals, including the General Medical Council, the Nursing and Midwifery Council, and the General Pharmaceutical Council
- Healthcare Improvement Scotland (and other independent regulators across the UK), and
- The civil and criminal laws that apply to other aspects of healthcare.[204]

In Scotland, abortion provision is regulated by the Abortion (Scotland) Regulations 1991.[205] Abortion providers are regulated by Healthcare Improvement Scotland. Clinical guidance and standards, from the Royal College of Obstetricians and Gynaecologists and other bodies, regulate the practice of medical professionals who provide abortion care.[206] Professional bodies also issue best practice guidance for healthcare professionals.[207] These respond to evolving circumstances, as with the recent RCOG guidelines regarding police involvement following abortion or pregnancy loss.[208]

Finally, abortion care practitioners must also comply with broader laws and professional standards that govern clinical care. Law that guards against clinical negligence requires informed consent from patients[209] and standards stipulate that clinicians must:

- Ensure women receive timely, good quality information about options
- Follow the correct decision-making process when a patient lacks capacity
- Support and treat women as individuals, respecting their dignity and privacy, and
- Act within competency.[210]

SUMMARY

• Abortion can be appropriately and effectively governed by statutory regulation of medical practice, clinical guidelines and professional standards.

• Existing criminal offences could be used to prosecute medical malpractice, unsafe abortion, non-consensual abortion and violent conduct that leads to miscarriage.

• Case law demonstrates use of offences against the person and driving offences to prosecute behaviour causing women to miscarry.

• There is scope to use domestic abuse legislation and offences related to misuse of drugs to prosecute unsafe and non-consensual abortion.

• Gaps in the law do not appear to exist but if new offences were considered necessary in future these could be created by the Scottish Parliament.

RECOMMENDATIONS

WE ARE CALLING ON SCOTTISH GOVERNMENT TO:

• Entrust governance of Scotland's abortion care framework, including time limits, to healthcare regulators and professional medical bodies.

WE ARE CALLING ON THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE TO:

• Create prosecutorial guidelines regarding unsafe and non-consensual abortions, once decriminalisation is in place.

CONCLUSIONS

Reform of abortion law in Scotland is long overdue. Abortion is routine healthcare accessed by around one in three women. International human rights bodies are clear that access to safe, legal and timely abortion care is a key reproductive right.

Yet the current legal framework is:

- badly outdated
- non-compliant with international human rights standards
- out of step with guidelines from global and national health bodies
- impeding access to quality abortion care for women
- perpetuating abortion stigma and women's inequality
- preventing healthcare practitioners from providing highest standards of care
- causing marginalised women trauma and lasting harm.

The World Health Organisation, UN treaty bodies and all relevant professional medical bodies in the UK support decriminalisation of abortion. So do trades unions, health organisations, and equalities and human rights advocates. Political and public awareness and consensus regarding the need for modernisation of abortion law is growing.

In England prosecutions for abortion offences have increased markedly in recent years, and, contrary to common belief, women and third parties have also been investigated, prosecuted and convicted for the crime of abortion in Scotland over the past 20 years. Although global trends are emphatically towards the liberalisation of abortion laws, regression has also been seen in some countries. This demonstrates the need to future-proof reproductive rights by removing abortion from the reach of the law. Women and pregnant people in Scotland need a modernised and progressive legal framework, which enables improved and standardised services, and is free from the threat of criminalisation for those seeking, providing, or assisting with safe and consensual abortion access.

This report outlines the current legal status of abortion in Scotland, encompassing the common law crime of abortion and the framework in which abortion is permitted under the Abortion Act 1967. We describe approaches that have been pursued internationally and set out a number of legal models that could decriminalise abortion in Scotland. These incorporate full or 'partial' decriminalisation, options for repeal or reform of the Abortion Act, and – subject to review – repeal of the Concealment of Birth (Scotland) Act 1809.

Within these prospective approaches, however, certain key outcomes must be achieved. In line with comprehensive guidance from the World Health Organisation, we are calling for an abortion regime in Scotland where:

- The legal framework is human rights compliant and fit for purpose
- Regulation of abortion is removed from the criminal justice system
- Abortion is treated like any other form of healthcare
- Women, health practitioners and other third parties are not subject to the threat of criminal penalties for having or providing a safe and consensual abortion.

Modernisation of the abortion framework would involve revision of the regulatory framework and clinical guidance. Non-consensual and unsafe abortion would be criminalised through existing criminal law that regulates medical malpractice and the use of drugs and medicines. Other laws could and have been used to prosecute violent or reckless behaviour that causes miscarriage.

Reform or repeal of the Abortion Act is also needed to enable modern clinical care, streamline and strengthen services, and reduce stigma. This would provide an opportunity to create a gold standard abortion care service in Scotland. The new system should reflect the highest international standards in human rights and in care provision. It should be developed following best practice intersectional participation work with women and pregnant people, healthcare practitioners, and human rights and gender equality advocates across Scotland.

RECOMMENDATIONS

Scotland needs a package of reforms to modernise the abortion framework in line with international human rights standards, best practice in clinical care, and its ambitions on gender equality.

WE CALL ON THE SCOTTISH GOVERNMENT TO:

1. Introduce legislation to the Scottish Parliament to remove the common law crime of procuring an abortion in Scotland.

2. Develop a model of decriminalisation that:

- Ensures women are never subjected to investigation, prosecution or criminal sanction for ending their own pregnancy
- Removes criminal sanctions for health practitioners providing safe abortion and for individuals assisting someone to have an abortion with their consent
- Criminalises non-consensual and unsafe abortion through existing general criminal law
- Is not subject to gestational time limits
- Entrusts the governance of abortion, including time limits, to healthcare regulators and professional medical bodies, in line with all other healthcare.

3. Repeal the Abortion Act as it applies to Scotland, within the Bill to decriminalise abortion or through subsequent amendment or further legislation.

4. Review the Concealment of Birth (Scotland) Act 1809, with a view to its repeal, within legal reform to decriminalise abortion.

5. Consult widely on a replacement regulatory regime and best practice model of abortion care for Scotland, focused on improvements and equality of access to services.

6. Advocate for and support development of an immediate moratorium on investigations, charges and prosecutions regarding the common law crime of abortion.

7. Legislate to make early medical abortion at home (EMAH) permanent in Scotland.

WE CALL ON THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE TO:

8. Produce prosecutorial guidelines regarding:

- offences that relate to abortion, to create in effect a moratorium on prosecutions and convictions
- unsafe and non-consensual abortion within existing criminal law in Scotland, once decriminalisation is in place.

WE CALL ON POLICE SCOTLAND TO:

9. Develop guidance regarding offences that relate to abortion, creating in effect a moratorium on charging and investigations.

10. Take interim measures to exclude the use of invasive and harmful procedures, including blood testing and the use of women's personal tech.

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ANNEX: FREQUENTLY ASKED QUESTIONS

This annex briefly addresses some of the common misconceptions and arguments made against decriminalisation of abortion.

1. WHY NOT FOCUS ON SERVICES RATHER THAN LAW IN THE ABSTRACT?

There are arguments that decriminalisation could end up being largely symbolic. This line of thinking hinges on belief that the Abortion Act effectively decriminalises abortion in Scotland, England and Wales, and that its restrictions do not impinge on access to services. We address these misconceptions throughout this report.

We are also clear that decriminalisation alone is not enough, and that improvements to services and protocols must also be made. This includes the need for a patient-centred abortion care model.[211] For this to happen in Scotland, repeal of the sorely outdated Abortion Act is needed. Please see Section 5.3 on the Abortion Act 1967 for further information on this.

Reform of the criminal law would be a first step towards dismantling the 1967 framework and replacing it with a modernised, patient-centred model that is rooted in the goal of better outcomes for those accessing services. However, this should be developed as part of a twin-tracked approach that continues to focus on improvements to care. Legislation to decriminalise abortion, even in its most straightforward form,[212] will necessarily take years to develop, be consulted upon, scrutinised and enacted.

In the meantime, the programme of service improvement that is being pursued through the Scottish Government's Women's Health Plan[213] and Programme for Government 2023-24[214] must be prioritised and built upon. Equality of access for marginalised groups of women and pregnant people should be made a core element of this ongoing work to improve abortion care in Scotland. Current pillars of work include development of a national service to provide abortions up to 24 weeks and progression of legislation to create safe access zones outside abortion services.[215]

2. WOULD DECRIMINALISATION ONLY SERVE TO LEGALISE UNSAFE 'BACK-STREET' ABORTION?

One argument put forward against decriminalisation is that it would "legalise non-medical, back-street abortions, as – legal time limits aside – those are the only kind of terminations that the law does not currently allow."[216] This is inaccurate. As set out in Section 3.2, the Abortion Act specifies the exact circumstances in which an abortion must occur, including in terms of location and third-party authorisation. Outwith these parameters, abortion is a crime.

Commentators have compared this fear regarding the decriminalisation of 'back-street' surgical abortions to other areas of medical practice:

> "In the same way that a specific criminal law provision prohibiting amateur dentistry is unnecessary to discourage patients from seeking out unqualified providers, women are highly unlikely to frequent backstreet abortionists in a context where free, safe, confidential services are available within the NHS."[217]

It is also worth restating that 99% of abortions in Scotland are now medical (induced by pills) rather than surgical.[218] Unsafe 'back-street' abortions that were common when the Abortion Act was enacted are simply not the threat they were in the 1960s. We set out existing criminal offences that would cover unsafe non-medical abortion in Section 6.3 of this report.

3. IS SCOTS CRIMINAL LAW MORE FLEXIBLE THAN LAW IN ENGLAND?

Discussions around the policy of decriminalisation do not benefit from a focus on the nature of the Scottish legal system and its perceived advantages over the English legal system. Decriminalisation of abortion is about removing an element of reproductive healthcare from the criminal law.

Similar arguments about distinctions between Scots criminal law and English criminal law, and the flexibility of Scotland's common law to distinguish between criminal intent and non-criminal behaviour (see Section 3.1), were made during the campaign to decriminalise male homosexual activity in Scotland. In England, homosexual acts between consenting adults were decriminalised following the Wolfenden Report in 1967. In Scotland the law was not amended until 1980. In the interim, it was argued that there was no need to change the law in Scotland as there were almost no prosecutions of private consensual homosexual activity because the common law was more flexible.[219]

This misses the fundamental point that criminalisation, including debate around it, creates and embeds stigma and prejudice. That this legal reform came so much later in Scotland is likely to have caused LGB people much harm. The parallels with abortion stigma and criminalisation are clear, and the impact of long overdue system-change on women and women's equality must not be underestimated.

Further arguments made against decriminalisation include that i) abortion is not prosecuted in Scotland, and that ii) the Scots common law can adequately distinguish between a non-consensual abortion and a wanted abortion, thus there is no need to overturn the common law crime. We rebut these claims in Sections 4 and 6 of this report.

4. WILL DECRIMINALISATION BE SUBJECT TO LEGAL CHALLENGE?

Abortion was devolved to the Scottish Parliament in 2016 and it is open to the Scottish Parliament to pass legislation that amends the Abortion Act. The UK parliament has historically tended to shy away from abortion reform at Westminster.

In 2022, the Scottish Government passed the Gender Recognition Reform (Scotland) Bill. Although this was passed by a majority of MSPs in the Scottish Parliament, the UK Government used its powers under Section 35 of the Scotland Act 1998 for the first time, to prevent the Bill from receiving royal assent. In addition to arguments regarding equal opportunities law, which is reserved, the UK Government asserts that having two distinct systems for gender recognition in the UK would create problems.

Repeal or reform of the Abortion Act by the Scottish Parliament may attract similar legal challenge from the UK Government on the basis that this would create different abortion regimes in the UK. Within such speculation, however, it's worth noting that Northern Ireland has always had a different abortion regime.

It is impossible to predict whether legislation to decriminalise abortion will be subject to legal challenge. It is likely that anti-abortion organisations would seek judicial review of any legislation that seeks to liberalise abortion law in Scotland. Anti-abortionists challenged the Northern Irish Assembly's legislation establishing safe access zones, but this was rejected by the UK Supreme Court.[220] Previous legal challenges to abortion law amendments in Scotland, regarding early medical abortion at home, were unsuccessful.[221] Legal challenge should be anticipated within the legislative process, but must not be viewed as a prohibitive barrier to seeking reform.

Meanwhile, in light of the rapidly increasing number of investigations, prosecutions and convictions of women seeking abortion in England, the campaign to repeal the Abortion Act at Westminster is rapidly gathering focus and pace.[222] Action to decriminalise abortion in Scotland, even if legal challenge was sought, would constitute major progress along the road towards a modern abortion care system, and aid the broader movement to secure a better framework in other parts of the UK.

5. IS THERE SUFFICIENT POLITICAL APPETITE FOR REFORM?

Historically, UK politicians have shied away from abortion reform. It is generally framed as a 'controversial' topic and decisions taken in parliament have tended to be free votes rather than along party lines. Reform has been largely proposed by individual parliamentarians through Private Members' Bills rather than by the government, including the Abortion Act 1967 itself. [223]Successive UK governments have declined to support any legislative reform of abortion.

However, Northern Ireland, Scotland and Wales have all exercised their devolved functions in relation to abortion law, Northern Ireland through primary legislation and Scotland and Wales through their executive action.[224] The Scottish Government has issued approvals for early medical abortion at home and revised notification requirements (see Section 5.3). Meanwhile, support for decriminalisation is growing across the political spectrum in Scotland. The Programme for Government 2023-24 includes a commitment to "undertake a review of abortion law to identify potential proposals, by the end of this parliamentary term, for reforms to ensure that abortion services are first and foremost a healthcare matter". Decriminalisation was also the subject of debate at the Citizen Participation and Public Petitions Committee of the Scottish Parliament in 2023, with cross-party MSPs recognising that the current system is badly outdated,[225] and at the Scottish Parliament Cross Party Group on Women's Health.

6. DOES THE PUBLIC SUPPORT ABORTION LAW REFORM IN SCOTLAND?

There is a perception that abortion is a highly polarised issue and that attitudes may be more regressive in Scotland than in some other parts of the UK. However, bimonthly 'tracker' polling from YouGov consistently shows that the overwhelming majority of people in Scotland are supportive of abortion rights.[226] In January 2024, 93% of those polled in Scotland agreed with the statement "women should have the right to an abortion." There is still a culture of stigmatisation and uncertainty regarding abortion in Scotland, partly due to its criminalisation. However, social attitudes have changed significantly over recent decades.

SUMMARY

• Decriminalisation is not an agenda that is pursued at the expense of service improvements. Both tracks should be prioritised and they are not separate issues – the current legal framework impedes access to services.

• Unsafe 'back-street' abortions are no longer a major threat to women, but criminalisation is harmful in numerous ways.

• Differences between Scots and English criminal law should not be held up as an argument against decriminalisation. The need for reform is based on women's access to reproductive healthcare, not subjective interpretations of the common law.

• The prospect of legal challenge should not deter action for abortion law reform. Such challenges have been unsuccessful in recent years across the UK.

• Support for decriminalisation is growing across the political spectrum.

• Abortion is not the socially polarising issue that it is often taken to be. Polling shows overwhelming support for a woman's right to choose in Scotland.

ANNEX 2: CASE STUDIES

CASE STUDY: 'TWO DOCTORS RULE'

A 25-year-old woman attends the abortion consultation clinic, and a scan shows that she is 14 weeks pregnant. She wants a medical abortion and will need to have the second part of abortion treatment in hospital. There is a space for admission to the ward in 24 hours. Therefore, the first tablet needs to be given immediately, as a 24-hour interval is needed between medications.

There is only one doctor on clinic that day, so it's not possible to have signatures from two doctors in place.

Options are therefore:

1. Delay start of treatment until a second signature can be obtained. The ward does not have a further space until next week. A delay of a week will increase risk of complications, and distress to the woman.

2. Go ahead and give the first tablet and get a colleague to sign the form when they are in the following day. The first part of medical abortion is the point when the abortion commences, so it is illegal to give mifepristone without two signatures in place. The doctor or nurse who gave the mifepristone would therefore be committing a crime.

This type of scenario is particularly common in smaller rural services with limited staffing.

There is no medical need for the two doctor certificate. Abortion care should be by clinical protocol and informed consent, like any other medical procedure.

CASE STUDY: EARLY MEDICAL ABORTION AT HOME (EMAH)

A 29-year-old woman does a telemedicine consultation and requests home based abortion. She lives with a partner who is controlling and would want her to continue the pregnancy. She wants to collect the treatment pack from the clinic, drop it off at her trusted friend's house and undertake the abortion there. The law does not allow this – abortion can only take place in a licenced clinic/hospital or the patient's home. So, pursuing her preferred option would be a crime within the current law.

To remain within the requirements of the Abortion Act, she could either:

1. Hide the medication at home, and take the treatment there, but with the risk of her abusive partner finding out.

2. Go into hospital for treatment, but this is likely to delay treatment, and of course may involve significant journey time and cost to access, or increase the potential for questions from her partner.

Decriminalisation would allow a woman who is suitable for self-managed abortion to choose the best place for this.

CASE STUDY: MIDWIFE-LED CARE

A midwife is doing an antenatal booking clinic.

Her first patient attends with her partner. She is 10 weeks into her first pregnancy. The midwife presents pregnancy care options, and the woman chooses midwife-led care. She subsequently has a great pregnancy, her baby boy is delivered by her midwife in the birthing pool, and she goes home later the same day.

The next patient is also 10 weeks pregnant. She attends alone. During the consultation, the patient becomes very upset, and discloses that her partner has become violent. She is going to leave him, and realises that she cannot continue with her pregnancy. She asks the midwife to arrange an abortion. The midwife cannot do this, as she cannot sign the required certificate, and is not allowed to prescribe the medication needed. She makes an appointment for the abortion clinic, where the woman will attend next week, repeat her story, and have to wait while legal certification from two doctors is secured.

Decriminalisation and/or reform of the Abortion Act would support midwives and nurses to provide all aspects of pregnancy care, centred on the needs of the woman.

CASE STUDY: STIGMATISATION

Two women attend the nurse-led early pregnancy clinic as they have experienced bleeding in pregnancy, and both have a scan carried out.

The first woman's scan shows that the pregnancy has stopped developing and is going to lead to a miscarriage. She decides to have medical management with mifepristone and misoprostol (the same drugs as medical abortion). The nurse prescribes the medications and the patient leaves to carry out her treatment at home.

The second woman's scan confirms a viable pregnancy of 6 weeks. She already has three children and knows she cannot continue this pregnancy. The nurse is not able to provide ongoing care for this woman. There are not two doctors available at the early pregnancy clinic, and the nurse is not allowed to prescribe the mifepristone and misoprostol for this woman. She therefore needs to get an appointment for the abortion clinic, and return so she can get a certificate signed by two doctors, and have the (same) medication prescribed by a doctor.

Reform or repeal of the Abortion Act would allow both these women to be treated by the nurse seeing them, would avoid repeat visits, and remove the potential stigma of needing 'extraordinary' care for an abortion.

Overall, abortion care and abortion journeys are complicated by the law as it stands. There are numerous scenarios where the law inhibits timely and patient-centred care.

CASE STUDY: POLICE INVESTIGATION

A 19-year-old consults with the abortion service. She is 8 weeks pregnant and decides on home medical abortion. Around five months later she presents to the maternity unit in pain and delivers a stillborn baby around 28 weeks gestation. The staff note that she was prescribed a medical abortion in early pregnancy. She says she thought it had worked and didn't know she was still pregnant. Staff are suspicious that she kept the medicine and took it much more recently, when she was over 24 weeks. They call the police, and the patient, her partner, family members, and abortion clinic staff are all interviewed. Her personal tech is confiscated, with a view to using her digital data to prosecute her for the crime of abortion.

Recent cases in the media have raised suspicions amongst staff when women present with a later pregnancy loss. Instead of clinical staff focusing on care and support for the woman, they can be uncertain over whether they must report a potential crime. If women think staff may report them to the police, they may delay or avoid seeking medical care.

Case studies provided by Dr. Audrey Brown, former Consultant in Sexual and Reproductive Health and Chair of the Scottish Abortion Care Providers network.

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[36]See Section 6 for details

[37] The Guardian 'MPs to get a free vote on decriminalising abortion in England and Wales'. Available at: https://www.theguardian.com/world/2024/feb/23/mps-to-get-free-vote-on-decriminalising-abortion-in-england-and-wales#:~:text=Polling%20of%20MPs%20for%20the,first%2024%20weeks%20of%20pregnancy;

Scottish Parliament (2023) Citizen Participation and Public Petitions Committee: Official report, Wednesday 22 February 2023. Available at: https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=14170.

[38]Aitken, and others (2017) The opinions and experiences of Irish obstetric and gynaecology trainee doctors in relation to abortion services in Ireland. Journal of Medical Ethics, volume 43:11, 778-783. Available at: https://pubmed.ncbi.nlm.nih.gov/28356488/#:~:text=88%25%20of%20respondents%20thought%20that,cases%20of%20rape%20and%20incest.
Aitken, and others (2018) The impact of Northern Ireland's abortion laws on women's abortion decision-making and experiences. BMJ Sexual & Reproductive Health, volume 45:1, 3-9. Available at: https://srh.bmj.com/content/45/1/3.citation-tools.

[39]De Londras, and others (2022) The impact of criminalisation on abortion-related outcomes: A synthesis of legal and health evidence. BMJ Global Health, volume 7:12. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9806079/.

[40]Abortion care providers based in rural areas of Scotland tell us that the two doctors requirement causes delays to service provision.

See also Heller, and others (2016) Barriers to accessing termination of pregnancy in a remote and rural setting: A qualitative study. BJOG An International Journal of Obstetrics and Gynaecology, volume 123:10. Available at: https://obgyn.onlinelibrary.wiley.com/doi/10.1111/1471-0528.14117.

[41]Public Health Scotland (2023) Termination of pregnancy statistics: Year ending December 2022. Available at: https://publichealthscotland.scot/publications/termination-of-pregnancy-statistics/termination-of-pregnancy-statistics-year-ending-december-2022/.

[42]Ibid.

[43]WHO (2022) Abortion care guideline. Available at: https://www.who.int/publications/i/item/9789240039483.

[44]WHO (2022) Towards a supportive law and policy environment for quality abortion care: Evidence brief. Available at: https://www.who.int/publications/i/item/9789240062405.

[45] WHO (2022) Abortion care guideline. Available at: https://www.who.int/publications/i/item/9789240039483.

[46] Johnson Jr, and others (2020) 'What would be the likely impact of decriminalisation on the incidence, timing, provision and safety of abortion?' in Sheldon and Wellings (Eds) Decriminalising abortion in the UK: What would it mean? Briston University Press. Available at: https://bristoluniversitypressdigital.com/edcollchap-oa/book/9781447354024/ch006.xml.

[47]Sedgh, and others (2012) Induced abortion: Incidence and trends worldwide from 1995 to 2008. The Lancet, volume 379: 9816. Available at: https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(11)61786-8/abstract.

[48]CEDAW (1999) General Recommendation 24: Article 12 of the Convention (women and health) [A/54/38/Rev.1]. Available at: https://www.refworld.org/legal/general/cedaw/1999/en/11953.
49 Ibid.

[50]CEDAW (2012) Concluding observations of the Committee on the Elimination of Discrimination against Women: New Zealand [CEDAW/C/NZL/CO/7]. Available at: https://www2.ohchr.org/english/bodies/cedaw/docs/co/cedaw-c-nzl-co-7.pdf.

[51]See, for example: Mellet v Ireland. United Nations Human Rights Committee (2016) Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2324/2013 [CCPR/C/116/D/2324/2013]. Available at: https://juris.ohchr.org/casedetails/2152/en-US.

[52]The Committee on Economic, Social and Cultural Rights (CESCR) calls on states party to "liberalise restrictive abortion laws; to guarantee women and girls access to safe abortion services and quality post-abortion care". See: CESCR (2016) General Comment No. 22: Article 12 (Right to Sexual and Reproductive Health) [E/C.12/GC/22].

[53]The Committee on the Rights of the Child (CRC) has advocated that abortion be decriminalised and called on the UK to "review its legislation". CRC (2016) Concluding observations on the 5th periodic report of the United Kingdom of Great Britain and Northern Ireland [CRC/C/GBR/CO/5]. Available at: https://digitallibrary.un.org/record/835015?ln=en&v=pdf.

See also: CRC Committee (2016) General Comment (2016) on the implementation of the rights of the child during adolescence [CRC/C/GC/20] para. 60. Available at: https://www.refworld.org/legal/general/crc/2016/en/115419.

[54]OHCHR (2018) Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities: Joint statement by the Committee on the Right of Persons with Disabilities and the Committee on Elimination of all forms of Discrimination Against Women. Available at: https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations.

[55]OHCHR (2020) Information Series on Sexual and Reproductive Health and Rights: Abortion. Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf.

[56]UNGA (2011) Right of everyone to the enjoyment of the highest attainable standard of physical and mental health [A/66/254]. Available at: https://digitallibrary.un.org/record/710175?ln=en&v=pdf#files.

[57]United Nations Human Rights Council (2016) Report of the Working Group on the issue of discrimination against women in law and in practice [A/HRC/32/44] Available at: https://digitallibrary.un.org/record/843061?ln=en.

[58]CESCR (2023) List of issues in relation to the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland [E/C.12/GBR/Q/7] https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGBR%2FQ%2F7&Lang=en.

[59]Council of Europe Parliamentary Assembly (2008) Resolution 1607: Access to Safe and Legal Abortion in Europe. Available at: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17638.

[60]Council of Europe Commissioner for Human Rights (2017) Women's sexual and reproductive health and rights in Europe: Issue paper. Available at: https://rm.coe.int/women-s-sexual-and-reproductive-health-and-rights-in-europe-issue-pape/168076dead.

[61]These are: the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the UN Convention on the Rights of Persons with Disabilities (CRPD).

[62]OHCHR (2018) Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities: Joint statement by the Committee on the Right of Persons with Disabilities and the Committee on Elimination of all forms of Discrimination Against Women. Available at: https://www.ohchr.org/en/treaty-bodies/crpd/statements-declarations-and-observations.

[63]See, for example: Camila v Peru. CRC (2016) Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 136/2021 [CRC/C/93/D/136/2021] Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2F93%2FD%2F136%2F2021&Lang=en.

[64]See, for example: CRC (2016) Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland [CRC/C/GBR/CO/5]. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CRC%2FC%2FGBR%2FCO%2F5.

[65]Herring (2022) The case for decriminalisation of abortion. National Law School of India Review, volume 33:1. Available at: https://repository.nls.ac.in/nlsir/vol33/iss1/5/.

[66]New Matilda 'Celebrate sisters, the battle is won.' Available at: https://newmatilda.com/2008/11/25/celebrate-sisters-battle-won/.

[67]House of Commons Library (2024) The impact of the two-child limit in Universal Credit. Available at: https://commonslibrary.parliament.uk/research-briefings/cbp-9301/.

[68]Public Health Scotland (2022) Termination of pregnancy: year ending 2022. Available at: https://publichealthscotland.scot/media/19737/2023-05-30-terminations-2022-report.pdf.

[69]ibid.

[70]Engender (2018) Our bodies, our rights: Identifying and removing barriers to disabled women's reproductive rights in Scotland. Available at: https://www.engender.org.uk/files/our-bodies,-our-rights-identifying-and-removing-barriers-to-disabled-womens-reproductive-rights-in-scoltand.pdf.

[71]MBRRACE-UK (2023) Saving lives, improving mothers' care: Lessons learned to inform maternity care from the UK and Ireland confidential enquiries into maternal deaths and morbidity 2019-21.
Available at: https://www.npeu.ox.ac.uk/assets/downloads/mbrrace-uk/reports/maternal-report-2023/MBRRACE-UK_Maternal_Compiled_Report_2023.pdf.

[72]Scottish Government (2021) National Advisory Council on Women and Girls report: Scottish government response. Available at: https://www.gov.scot/publications/scottish-government-response-first-ministers-national-advisory-council-women-girls/documents/.

[73]CEDAW's Article 5 (a) requires States Parties to take "all appropriate measures" to "modify the social and cultural patterns of conduct of men and women" to eliminate practices that "are based on the idea of … stereotyped roles for men and women."

[74]For further discussion of these issues see: United Nations Human Rights Council (2016) Report of the Working Group on the issue of discrimination against women in law and in practice [A/HRC/32/44] Available at: https://digitallibrary.un.org/record/843061?ln=en.

United Nation General Assembly (2011) Right of everyone to the enjoyment of the highest attainable standard of physical and mental health [A/66/254]. Available at: https://digitallibrary.un.org/record/710175?ln=en&v=pdf#files.

WHO (2022) Abortion Care Guideline. Available at: https://www.who.int/publications/i/item/9789240039483.

[75]In the case of Mellet v Ireland the UN Human Rights Committee found that Ireland's criminalisation of abortion had subjected Ms Mellet to stigma and shame. United Nations Human Rights Committee (2016) Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2324/2013 [CCPR/C/116/D/2324/2013]. Available at: https://juris.ohchr.org/casedetails/2152/en-US .

[76]European Court of Human Rights (2007 Tysiąc v. Poland. Available at: https://reproductiverights.org/wp-content/uploads/2020/12/Tysiac_decision.pdf.

European Court of Human Rights (2010) A, B and C v. Ireland. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-102332%22]}.

[77]WHO (2022) Abortion care guideline. Available at: https://www.who.int/publications/i/item/9789240039483.

[78]Royal College Obstetricians and Gynaecologists (2024) Involvement of police following abortion and pregnancy loss. Available at: https://www.rcog.org.uk/media/s3rf2brq/liaison-with-police-guideline-for-nhs-staff-in-womens-health-2.pdf.

[79]Scotland Act 1998, Section J1: Abortion. "At common law in Scotland it is a crime to procure or attempt to procure an abortion." Available at: https://www.legislation.gov.uk/ukpga/1998/46/notes/division/5/5/11/4/15.

[80]Burnett (1811) A treatise on various branches of the criminal law of Scotland (Printed by G. Ramsay for A. Constable), 5-6; Hume (1844) Commentaries on the law of Scotland, respecting crimes (2 vols Bell and Bradfute) (reprinted Butterworths 1986) vol I, 186-187.

[81]Homicide is not a single crime in Scots law but is the umbrella term covering the offences of murder and culpable homicide. The leading historical authorities on criminal law define homicide as the destruction of 'self-existent human life', a state regarded as coming into existence once breath has been drawn. See Macdonald (1867) A practical treatise on the criminal law of Scotland (5th edn by Walker and Stevenson, W. Green 1948), 87.

[82]The first documented prosecution for abortion in Scotland was John Fenton in 1763, see Burnett (footnote 80). Cases in the early 20th century include HM Advocate v Anderson [1928] J.C. 1 and HM Advocate v Semple [1937] J.C. 41.

[83]Alison (1832) Principles of the Criminal Law of Scotland, Blackwood, 628.

[84]Ibid, 628–629; Charles Munn [1824] and Catharine Robertson and Geo. Batchelor [1806] in Hume (footnote 73); Alex. Aitken [1823] in Alison (footnote 76)

[85]Hume (footnote 73), 186–187; Burnett (footnote 73); Alison (footnote 76), 628; Court cases: Wm Reid [1858] 3 Irv 235; HM Advocate v Chas Rae [1888] 2 White 62; HM Advocate v Grahan [1897] 2 Adam 412; Jessie Webster [1858] 3 Irv 95; HM Advocate v Baxter [1905] 5 Adam 609; HM Advocate v Anderson [1928] J.C. 1; HM Advocate v Semple [1937] J.C. 41.

[86]Macdonald (1867) A practical treatise on the criminal law of Scotland (5th edition, 1948), 114. Macdonald states that it is a crime to "cause or procure abortion whether by drugs or by instruments or violence" and that it would be "equally criminal to use other means, such as manual manipulation, or giving the mother a fright."

[87]R v Bourne [1938] 3 All ER 615.

[88]Norrie (1985) Abortion in Great Britain: One Act, two laws. Criminal Law Review, 475-495. Available at: https://pureportal.strath.ac.uk/en/publications/abortion-in-great-britain-one-act-two-laws.

[89]Brown (2015) Scotland and the Abortion Act 1967: Historic flaws, contemporary problems. Juridical Review, Issue 2; Brown 'Decriminalising Abortion: Challenges for Scotland' (University of Strathclyde Law Blog) accessed 7 June 2023; Norrie (1985) Abortion in Great Britain: One Act, two laws. Criminal Law Review, 475-495. Available at: https://pureportal.strath.ac.uk/en/publications/abortion-in-great-britain-one-act-two-laws.

[90]Baird (1975) Induced abortion: epidemiological aspects. Journal of Medical Ethics, volume 1:3, 122-126.
Available at: https://www.jstor.org/stable/27715513.

[91]ibid.

[92]Davis and Davidson (2006) 'A Fifth Freedom' or 'Hideous Atheistic Expediency'? The Medical Community and Abortion Law Reform in Scotland, c.1960–1975' Medical History, volume 50:1, 29-48. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1369012/.

[93]ibid.

[94]There was much opposition to including Scotland within the Abortion Act. Some argued that it was unnecessary as therapeutic abortions would not be prosecuted. Others objected to the liberalisation of abortion prohibition. The Lord Advocate claimed that there was no specific demand for reform in Scotland. See Davis and Davidson (2006) 'A Fifth Freedom' or 'Hideous Atheistic Expediency'? The Medical Community and Abortion Law Reform in Scotland, c.1960–1975' Medical History, volume 50:1, 29-48. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1369012/.

[95]Institute of Contemporary British History (2002) The Abortion Act 1967. Available at: https://www.kcl.ac.uk/sspp/assets/icbh-witness/abortionact1967.pdf.

[96]Davis and Davidson (2006) 'A Fifth Freedom' or 'Hideous Atheistic Expediency'? The Medical Community and Abortion Law Reform in Scotland, c.1960–1975' Medical History, volume 50:1, 29-48. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1369012/.

[97]Baird (1975) Induced abortion: epidemiological aspects. Journal of Medical Ethics, volume 1:3, 122-126. Available at: https://www.jstor.org/stable/27715513.

[98]See Section 5.2 regarding recent Scottish Government 'approvals' to allow early medical abortion at home.

[99]This was introduced within the Infant Life (Preservation) Act 1929.

[100]The Act was intended to create the crime of 'child destruction', a gap in the law which was not perceived to exist in Scotland. See Hansard: https://api.parliament.uk/historic-hansard/lords/1988/mar/25/infant-life-preservation.

[101]Public Health Scotland (2022) Termination of pregnancy: year ending 2022. Available at: https://publichealthscotland.scot/media/19737/2023-05-30-terminations-2022-report.pdf.

[102]'Act Anent Murthering of Children', see Internet Archive: https://archive.org/details/bim_early-english-books-1641-1700_act-anent-murthering-of-_scotland-privy-council_1690 https://www.silvercityvault.org.uk/index.php?a=ViewItem&key=QnsiTiI6MSwiUCI6eyJpdGVtX2lkIjpbOTgwNzNdfX0&pg=1&WINID=1708961246593#24_bEIST1hoAAAGN5gbs2Q/98073.

[103]Harrower-Gray (2014) Scotland's hidden harlots and heroines: Women's role in Scottish society from 1690-1969. Pen & sword books Ltd.

[106]Bennett (2017) 'Scottish women and the hangman's noose' in Capital punishment and the criminal corpse in Scotland, 1740-1834. Palgrave Macmillan.

[107]Concealment of Birth (Scotland) Act 1809. Available at: https://www.legislation.gov.uk/ukpga/Geo3/49/14.

[106]For instance: In the case against Jessie Webster in 1858, the charge was of taking and using drugs by a pregnant woman for the purpose of causing herself to abort. In the case against Catherine Robertson and George Bachelor Robertson carried out the abortion and Bachelor was found art and part guilty (guilty for participating in a joint activity) for introducing the pregnant woman to Robertson, who then provided the woman with an abortion. In the case HM Advocate v Semple , the accused was tried for administering what turned out to be a harmless substance to a woman who was pregnant.

[107]Davidson (2018) Illicit and Unnatural Practices: The Law, Sex and Society in Scotland since 1900. Edinburgh University Press.

[108]ibid.

[109]Davis and Davidson (2006) "A fifth freedom" or "hideous atheistic expediency"? The medical community and abortion law reform in Scotland c. 1960-1975. Medical History 50 (1): 29-48. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1369012/.

[110]National Archives of Scotland, HMA v Ross JC26/1967/117, High Court of Edinburgh Trial Papers. Cited in Davis and Davidson (2006).

[111]Freedom of information request responses from COPFS and Police Scotland do not tally precisely, indicating that records kept are not comprehensive regarding offences that relate to abortion.

[112]Engender (2023) Sex and Power. Available at: https://www.engender.org.uk/content/publications/SP2023NEW.pdf.

[113]Reports relate to police forces in England. We are unaware of any related evidence regarding Police Scotland at the time of writing. Tortoise media 'British police testing women for abortion drugs'. Available at: https://www.tortoisemedia.com/2023/10/30/british-police-testing-women-for-abortion-drugs/.

[114]ibid. Many women use apps to track their menstrual cycle.

[115]The Guardian 'Women accused of illegal abortions in England and Wales after miscarriages and stillbirths'. Available at: https://www.theguardian.com/world/2022/jul/02/women-accused-of-abortions-in-england-and-wales-after-miscarriages-and-stillbirths.

[116]This FoI request had not been published at the time of writing.

[117]What do they know 'Statistics on the prosecution of the common law crime of abortion and the statutory crime of concealment of birth'. Available at: https://www.whatdotheyknow.com/request/statistics_on_the_prosecution_of.

[118]Our response has not been published, however a similar FoI request from September 2023 sets out the same data. Police Scotland disclosure log, available at: https://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log/disclosure-log-2023/october/23-2346-crime-statistics-abortion-concealment-of-birth/.

[119]We submitted a FoI request asking whether guidelines are in use. The response was negative.

[120]The Guardian 'The women being prosecuted in Great Britain for abortions: 'Her confidentiality was completely destroyed". Available at: https://www.theguardian.com/world/2023/nov/10/the-women-being-prosecuted-in-great-britain-for-abortions-her-confidentiality-was-completely-destroyed.

[121]Hansard 'Abortion: Offences Against the Person Act'. Available at: https://hansard.parliament.uk/commons/2023-06-15/debates/E4D63B08-4128-46D3-AFCD-EF8D377275EC/AbortionOffencesAgainstThePersonAct.

[122]The Times 'Fourth abortion charge in eight months - after only three trials in the past 160 years'. Available at: https://www.thetimes.co.uk/article/fourth-abortion-charge-in-eight-months-after-only-three-trials-in-the-past-160-years-vxmksngc3.

[123]ibid.

[124]The Guardian 'Abortion investigations causing women 'life-changing harm', says UK expert'. Available at: https://www.theguardian.com/world/2024/jan/27/abortion-investigations-causing-women-life-changing-harm-says-uk-expert#:~:text=Dr%20Jonathan%20Lord%2C%20a%20co,%E2%80%9Clife%2Dchanging%20harm%E2%80%9D.

[125]RCOG (2024) Involvement of the police and external agencies following abortion, pregnancy loss and unexpected delivery. Available at: https://www.rcog.org.uk/media/s3rf2brq/liaison-with-police-guideline-for-nhs-staff-in-womens-health-2.pdf.

[126]The Guardian 'Outrage at jail sentence for woman who took pills later than UK limit'. Available at: https://www.theguardian.com/world/2023/jun/12/woman-in-uk-jailed-for-28-months-over-taking-abortion-pills-after-legal-time-limit.

[127]Sheldon and Lord (2023) Guest editorial: Care not criminalization: reform of British abortion law is long overdue. Available at: https://jme.bmj.com/content/50/1/e1.

[128]Courts and Tribunals Judiciary (2023) R v Carla Foster: Summary Decision of the Court of Appeal, Criminal Division on 18 July 2024. Available at: https://www.judiciary.uk/wp-content/uploads/2023/07/R-v-Carla-Foster-190723.pdf.

[129]Courts and Tribunals Judiciary (2023) R v Carla Foster: Approved judgement. Available at: https://www.judiciary.uk/wp-content/uploads/2023/10/20231018-R-v-FOSTER-final-approved.pdf.

[130]BBC 'Eaglescliffe woman found not guilty of 'home abortion'. Available at: https://www.bbc.co.uk/news/uk-england-tees-67927099; Tortoise 'British woman cleared of lockdown abortion charges'. Available at: https://www.tortoisemedia.com/2024/01/10/british-woman-cleared-of-lockdown-abortion-charges/.

[131]The Guardian 'Teesside woman cleared over lockdown abortion charges after CPS offers no evidence'. Available at: https://www.theguardian.com/uk-news/2024/jan/09/teeside-woman-cleared-over-lockdown-abortion-charges-after-cps-offers-no-evidence.

[132]Oxford Mail 'CPS Drops Prosecution of Oxford Mum Accused of "Procuring Miscarriage"' Available at: https://www.oxfordmail.co.uk/news/23181446.cps-drops-prosecution-oxford-mum-accused-procuring-miscarriage/.

[133]The Guardian 'The women being prosecuted in Great Britain for abortions: 'Her confidentiality was completely destroyed". Available at: https://www.theguardian.com/world/2023/nov/10/the-women-being-prosecuted-in-great-britain-for-abortions-her-confidentiality-was-completely-destroyed.

[134]The 1973 'Roe v Wade' ruling, which had guaranteed women the right to abortion in the USA, was overturned in the US Supreme Court in June 2022.
135WHO (2022) Towards a supportive law and policy environment for quality abortion care: Evidence brief. Available at: https://www.who.int/publications/i/item/9789240062405.

[136]Sheldon and Lord (2023) Guest editorial: Care not criminalization: reform of British abortion law is long overdue. Available at: https://jme.bmj.com/content/50/1/e1.

[137]Judiciary of England and Wales (2012) R v Sarah Louise Catt: Sentencing remarks. Available at: https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Judgments/sarah-louise-catt-sentencing-remarks-17092012.pdf.

[138]ibid.

[139]Terrence Higgins Trust 'Ending prosecutions for women who terminate their own pregnancies.' Available at: https://www.tht.org.uk/news/ending-prosecutions-women-who-terminate-their-own-pregnancies.

[140]Sheldon and Lord (2023) Guest editorial: Care not criminalization: reform of British abortion law is long overdue. Available at: https://jme.bmj.com/content/50/1/e1.

[141]WHO (2022) Abortion care guideline. Available at: https://www.who.int/publications/i/item/9789240039483.

[142]The Guardian 'Abortion investigations causing women 'life-changing harm', says UK expert'. Available at: https://www.theguardian.com/world/2024/jan/27/abortion-investigations-causing-women-life-changing-harm-says-uk-expert.

[143]WHO (2022) Towards a supportive law and policy environment for quality abortion care: evidence brief. Available at: https://iris.who.int/bitstream/handle/10665/364081/9789240062405-eng.pdf?sequence=1.

[144]The Guardian 'Abortion investigations causing women 'life-changing harm', says UK expert'. Available at: https://www.theguardian.com/world/2024/jan/27/abortion-investigations-causing-women-life-changing-harm-says-uk-expert.

[145]WHO (2022) Abortion care guideline. Available at: https://iris.who.int/bitstream/handle/10665/349316/9789240039483-eng.pdf?sequence=1.

[146]'Specific' criminalisation of abortion refers to laws that explicitly cover abortion, as opposed to 'general' laws that concern broader crimes regarding healthcare or physical harm.

[147]Supreme Court of Canada R v Morgentaler (1988) R v Morgentaler: Supreme Court Judgements. Available at: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/288/index.do.

[148]Abortion Rights Coalition of Canada (2023) Statistics – Abortion in Canada. Available at: https://www.arcc-cdac.ca/media/2020/07/statistics-abortion-in-canada.pdf.

[149]AbortionFinder 'State by state guide'. Available at: https://www.abortionfinder.org/abortion-guides-by-state (Accessed 31 January 24). It is worth noting that some of these states require parental involvement for minors to access abortion.

[150]BMA (2019) The removal of criminal sanctions for abortion: BMA position paper. Available at: https://www.bma.org.uk/media/1963/bma-removal-of-criminal-sanctions-for-abortion-position-paper-july-2019.pdf.

[151]Ambast, and others (2022) A global review of penalties for abortion-related offences in 182 countries. Available at: https://gh.bmj.com/content/bmjgh/8/3/e010405.full.pdf.

[152]Ibid.

[153]Sheldon (2016) The decriminalisation of abortion: An argument for modernisation. Oxford Journal of Legal Studies, Volume 36: 2, 334-365. Available at: https://academic.oup.com/ojls/article/36/2/334/2472463.

[154]The review does not cover state jurisdictions where varying abortion laws apply in sub-legislatures. The UK and USA are not represented in this research.

[155]Ambast, and others (2022) A global review of penalties for abortion-related offences in 182 countries. Available at: https://gh.bmj.com/content/bmjgh/8/3/e010405.full.pdf.

[156]Global abortion policies database. Available at: https://abortion-policies.srhr.org/. Accessed 31 January 2024. In this calculation Northern Ireland is counted separately to Britain, due its different laws.

[157]Amnesty International UK (2023) Legal but not local: Barriers to accessing abortion services in Northern Ireland. Available at: https://www.amnesty.org.uk/press-releases/northern-ireland-four-years-decriminalisation-abortion-access-right-not-reality-new.

[158]House of Commons Library (2023) Abortion in Northern Ireland: recent changes to the legal framework. Available at: https://researchbriefings.files.parliament.uk/documents/CBP-8909/CBP-8909.pdf.

[159]The Abortion (Northern Ireland) (No. 2) Regulations 2020.

[160]Amnesty International UK (2023) Legal but not local: Barriers to accessing abortion services in Northern Ireland. Available at: https://www.amnesty.org.uk/press-releases/northern-ireland-four-years-decriminalisation-abortion-access-right-not-reality-new.

[161]It does not appear that any health professionals have been prosecuted under this provision since the Act was passed.

[162]BMA (2019) The removal of criminal sanctions for abortion: position paper. Available at: https://www.bma.org.uk/media/1963/bma-removal-of-criminal-sanctions-for-abortion-position-paper-july-2019.pdf.

[163]WHO (2022) Abortion care guideline. Available at: https://www.who.int/publications/i/item/9789240039483.

[164]Engender (2022) Women and the cost of living: A crisis of deepening inequality. Available at: https://www.engender.org.uk/content/publications/Women-and-the-cost-of-living---updated-copy.pdf.

[165] Centre for Reproductive Rights (2020) European laws: a comparative overview. Available at: https://reproductiverights.org/wp-content/uploads/2020/12/European-abortion-law-a-comparative-review.pdf.

[166]WHO (2017) Global abortion policies database. Available at: https://abortion-policies.srhr.org/country/andorra/. Accessed 31 January 24.

[167]Ibid. In this calculation Britain is counted as one country and Northern Ireland separately, given differing laws.

[168]Sheldon and Lord (2023) Guest editorial: Care not criminalization: reform of British abortion law is long overdue. Available at: https://jme.bmj.com/content/50/1/e1 .

[169]WHO (2022) Abortion care guideline. Available at: https://iris.who.int/bitstream/handle/10665/349316/9789240039483-eng.pdf?sequence=1.

[170]Sheldon (2016) The decriminalisation of abortion: An argument for modernisation. Oxford Journal of Legal Studies, Volume 36: 2, 334-365. Available at: https://academic.oup.com/ojls/article/36/2/334/2472463.

[171]This position statement from RCOG is signed by 33 organisations: https://www.rcog.org.uk/about-us/campaigning-and-opinions/position-statements/reforming-abortion-law/.

[172]House of Commons (2007) Science and Technology Committee – Twelfth report. Available at: https://publications.parliament.uk/pa/cm200607/cmselect/cmsctech/1045/104502.htm.

[173]Medical abortion, which accounted for 99% of abortions in Scotland in 2022, consists of abortion medication taken 24-48 hours apart. 'Early medical abortion at home' was introduced for the second medication (misoprostol) in 2017 in Scotland and for the first medication (mifepristone) at the start of the Covid-19 pandemic in 2020.

[174]Scottish Government (2020) Early medical abortion at home: consultation. Available at: https://www.gov.scot/publications/consultation-future-arrangements-early-medical-abortion-home/documents/.

[175]Ibid.

[176]Mitchell and Weldon-Jones (2023) Law's Invisible Women: The Unintended Gendered Consequences of the COVID-19 Lockdown. Amicus Curiae, Series 2 Volume 3:2 188-217. Available at: https://rke.abertay.ac.uk/ws/portalfiles/portal/35782113/Weldon_Johns_LawsInvisibleWomen_Published_2022.pdf.

[177]Scottish Government (2023) Telemedical early medical abortion at home: evaluation. Available at: https://www.gov.scot/publications/evaluation-telemedicine-early-medical-abortion-home-scotland/documents/.

[178]The Abortion Act 1967 (Place for treatment for the termination of pregnancy) (Approval) (Scotland) 2022. Available at: https://www.sehd.scot.nhs.uk/cmo/CMO(2022)23.pdf; The Abortion Act 1967 (Place of Treatment for the Termination of Pregnancy) (Approval) (Scotland) Act 2020. Available at: https://www.gov.scot/publications/consultation-future-arrangements-early-medical-abortion-home/pages/4/.

[179]Health and Care Act 2022, Section 178. Available at: https://www.legislation.gov.uk/ukpga/2022/31/section/178/enacted.

[180]Moreau, and others (2021) Abortion regulation in Europe in the era of COVID-19: A spectrum of policy responses. BMJ Sexual & Reproductive Health, Volume 47:4. Available at: https://srh.bmj.com/content/47/4/e14; Lohr, and others (2022) Should COVID-specific arrangements for abortion continue?

The views of women experiencing abortion in Britain during the pandemic. BMJ Sexual & Reproductive Health, Volume 48:4. Available at: https://srh.bmj.com/content/48/4/288.

[181]Scottish Government (2023) Telemedical early medical abortion at home: evaluation. Available at: https://www.gov.scot/publications/evaluation-telemedicine-early-medical-abortion-home-scotland/documents/ .

[182]For instance, midwife-led abortion care units were first introduced in Sweden in 2009 and the model is widely considered a success. Endler, and others (2020) How task-sharing in abortion care became the norm in Sweden: A case study of historic and current determinants and events. International Journal of Gynaecology and Obstetrics, Volume 150:1 34-42.

[183]World Health Organisation (2003) Safe abortion: technical and policy guidance for health systems. Available at: https://www.ncbi.nlm.nih.gov/books/NBK138196/.

[184]Fullerton, and others (2018) Abortion-related care and the role of the midwife: a global perspective. International Journal of Women's Health, Volume 10 751-762. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6260173/.

[185]Grossman, and others (2021) Medication abortion with pharmacist dispensing of mifepristone. Obstetrics and Gynaecology, Volume 137:4 613-622. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7984759/.

[186]Abortion care clinicians in Scotland report that reproductive healthcare has been adversely affected within Covid-19 recovery measures.

[187]Morven McKinnon (2023) 'Abortion rise in Scotland may be driven by cost of living, says charity'. Available at: https://www.bbc.co.uk/news/uk-scotland-65766795.

[188] Scottish Government (2022) Notifications of terminations of pregnancy to the Chief Medical Officer. Available at: https://www.sehd.scot.nhs.uk/cmo/CMO(2022)16.pdf. Prior to 2022, 'the yellow form' notifying individual abortions had to be sent to the CMO in a sealed envelope within seven days of the abortion. It contained patient data, including the name, address and marital status of the woman.

[189]This is an offence under Section 60 of the Offences Against the Person Act 1861.

[190]Durham University (2022) Concealment of birth: A case for repeal. Available at: https://www.durham.ac.uk/media/durham-university/research-/research-centres/centre-for-gender-and-law/vulnerable-women/Concealment-of-Birth.pdf; Sheldon and Lord (2023) Guest editorial: Care not criminalization: reform of British abortion law is long overdue. Available at: https://jme.bmj.com/content/50/1/e1.

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[192]The offences cited are 'perverting the course of justice' and 'disposal of a corpse with intent to obstruct or prevent a coroner's inquest when there is a duty to hold one'.

[193]BMA (2019) How will abortion be regulated in the United Kingdom if the criminal sanctions for abortion are removed? Available at: https://www.bma.org.uk/media/1141/bma-guidance-on-the-regulation-of-abortion-in-the-uk-2019.pdf.
194 Ibid.

[195]Andrew Learmonth (2022) 'Men whose abuse leads to miscarriage escaping prosecution in Scotland'. Available at: https://www.heraldscotland.com/politics/23112491.men-whose-abuse-leads-miscarriage-escaping-prosecution-scotland/.

[196]See, for example: Amnesty International (2017) "Criminalizing pregnancy: policing pregnant women who use drugs in the USA". Available at: https://www.amnesty.org/en/documents/amr51/6203/2017/en/.

[197]See, for example: HM Advocate v Rackstraw (2022), unreported. BBC (2022) 'Man found guilty for killing woman's unborn child'. Available at: https://www.bbc.co.uk/news/uk-scotland-south-scotland-60071378.

[198]Corroboration, the need for more than one form of evidence, is required before a case can go to trial in Scotland.

[199]HM Advocate v Morrison (2022), unreported. See also HM Advocate v Cuthbert and McIlravey (2016), unreported. BBC (2016) 'Couple jailed for 'appalling' abuse of pregnant woman'. Available at: https://www.bbc.co.uk/news/uk-scotland-tayside-central-37406963.

[200]Connor Gordon (2023) 'Man convicted of running over pregnant woman who lost her baby'. Available at: https://www.glasgowtimes.co.uk/news/23486043.man-convicted-running-pregnant-woman-lost-baby/.

[201]The Domestic Abuse Act could be used provided that the assault formed 'a course of conduct'. Corroboration may not be needed regarding an assault that led to miscarriage. See: A(C) v HM Advocate [2022] SCCR (Scottish Criminal Case Reports) 267.

[202]Hume (1797) Commentaries on the law of Scotland respecting the description and punishment of crimes (reprinted Butterworths 1986) Volume I, 187; McCluskey v HM Advocate (1989) SLT (Scottish Law Times) 175, 176-177.

[203]Herring, and others (2020) 'Would decriminalisation mean deregulation?' in Sheldon and Wellings (eds) Decriminalising abortion in the UK: What would it mean? Bristol University Press. Available at: https://bristoluniversitypressdigital.com/edcollchap-oa/book/9781447354024/ch006.xml.

[204]BMA (2019) How will abortion be regulated in the United Kingdom if the criminal sanctions for abortion are removed? Available at: https://www.bma.org.uk/media/1141/bma-guidance-on-the-regulation-of-abortion-in-the-uk-2019.pdf.

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[206]For example: General Medical Council (2024) Good medical practice. Available at: https://www.gmc-uk.org/professional-standards/professional-standards-for-doctors/good-medical-practice; RCOG (2011)

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[211]Holme (2022) Evidence-based abortion care: how Roe v Wade highlights the need for quality research in the UK and beyond. MIDIRS Midwifery Digest, Volume 32:4 406-408. Available at: https://researchonline.lshtm.ac.uk/id/eprint/4668294/1/Salaria_2022_Evidence-based-abortion-care.pdf; French, and others (2022) Are we prepared for change? The need for evidence on healthcare practitioner readiness for current and future trends in abortion provision in the UK. BMJ Sexual and Reproductive Health, Volume 48:2 149. Available at: https://srh.bmj.com/content/48/2/149.

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[222]Tara Cobham (2023) 'Thousands march to decriminalise abortion after woman jailed for ending pregnancy after legal limit.' Available at: https://www.independent.co.uk/news/uk/home-news/abortion-rights-march-london-woman-jailed-b2359503.html.

[223]Taylor and Wilson (2019) UK abortion law: reform proposals, private Members' Bills, devolution and the role of the courts. Modern Law Review, Volume 82:1, 71.

[224]The Abortion Act 1967 (Place of Treatment for the Termination of Pregnancy) (Approval) (Scotland) Act 2020. Available at: https://www.gov.scot/publications/consultation-future-arrangements-early-medical-abortion-home/pages/4/.

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