

Position Paper 2022: decriminalisation of abortion care in Great Britain

Summary of our position

MSI Reproductive Choices UK recommends that:

- Abortion in Great Britain be removed from criminal law, so that abortion is no longer governed by the Offences Against the Person Act 1861, the Infant Life (Preservation) Act 1929, or the Abortion Act 1967.
- Abortion should continue to be regulated in line with the same professional healthcare standards that apply to all other areas of medicine.
- There should be no requirement for two doctors to approve the decision to have an abortion.

This document sets out our position on decriminalisation, with six key recommendations.

Background: Abortion in Great Britain and criminal law

In Great Britain¹, abortion sits within criminal law. The Abortion Act 1967 permits provision where legal conditions are met. However, both clinicians and those ending their pregnancies risk potential criminalisation for ending pregnancies unless they can show they have fulfilled one of the exemptions to prosecution as outlined in the Abortion Act.

In England and Wales, abortion is governed and restricted by the following laws:

- The Offences Against the Person Act 1861
- The Infant Life (Preservation) Act 1929
- The Abortion Act 1967 (as amended by the Human Fertilisation and Embryology Act 1990).

In Scotland, abortion is restricted by:

- The Abortion Act 1967 (as amended by the Human Fertilisation and Embryology Act 1990).
Abortion was not criminalised in Scotland until this Act passed.

The Abortion Act 1967 does not overturn the two pieces of legislation preceding it, but rather, establishes criteria under which abortion is permitted.

These laws are unnecessarily proscriptive and are not rooted in medical evidence. They limit reasons for choosing abortion, add bureaucratic barriers for a health service facing ever-increasing pressures, and restrict the ability of abortion providers to deliver flexible care in line with modern clinical standards. These laws were written before medical abortion (pills) was available, and before medicine operated on the principle of informed consent (whereby clinicians discuss possible options with the person they treat, allowing them to make their own decisions) as it does today.

When compared with other countries around the world, abortion law in Great Britain (and, until 2019, in Northern Ireland) is unusual in that women can face criminalisation for ending their own pregnancies. Even in many countries where abortion is heavily restricted, it is only those carrying out the abortion or supplying medication who face criminalisation. The World Health Organisation (WHO)²

¹ In Northern Ireland, abortion is decriminalised and available unconditionally up to 12 weeks. Our position on abortion law in Northern Ireland can be found on our website.

² [Abortion care guideline: executive summary \(who.int\)](#)

and the International Federation of Gynaecology and Obstetrics (FIGO)³ recommend that abortion be decriminalised.

The UK government has signed multiple legally binding international commitments which are breached by the criminalisation of abortion. These include the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee)⁴ and the UN Committee on Economic, Social and Cultural Rights (CESCR)⁵.

In addition to the medical case for decriminalising abortion care, the right to make choices about one's own body, one's own healthcare, and one's own future are fundamental rights which should be protected, particularly for women and girls, to whom these rights have historically been denied. Abortion law in Great Britain reflects the values and norms of a society in which women did not have these rights, and consequently such laws are drastically out of step with our current cultural values in modern Britain.

Regulatory framework

Abortion is one of the most heavily regulated areas of healthcare, despite being one of the most common medical procedures, and despite being very safe. Smart regulation should support access, treat those seeking treatment with compassion, and be based on clinical evidence.

In addition to the Acts above, there are general regulations and laws which also regulate aspects of abortion. For example, the Human Medicines Regulations 2012 establishes the circumstances under which prescription-only medicines can be obtained or distributed.

These regulations and laws are not part of the Abortion Act 1967 or the Infant Life (Preservation) Act 1929, and therefore decriminalising abortion would not affect these existing protections, regulations, and laws.

What is decriminalisation of abortion?

Decriminalisation means removing abortion from criminal law so that abortion is no longer governed by the Offences Against the Persons Act 1861 or the Infant Life (Preservation) Act 1929. This means:

- Decriminalisation **would** protect both clinicians and those they treat from criminal prosecution.
- Decriminalisation **would not** impact regulations around safe medicine use, medical conduct, safeguarding, obtaining, or distributing medicines, consent, clinical safety, or any other medical, regulatory, or ethical standards which are in place.
- Decriminalisation **would not** affect the separate laws which protect women and others from abusive or coercive behaviours.

Our position

The legislation governing abortion in Great Britain:

- Is outdated, both medically and culturally
- Is not shaped by the needs of women, providers, or the NHS
- Puts people at risk of criminalisation, including frontline clinicians acting in the best interests of those they treat, and women making deeply personal and sometimes complex choices.

Criminalisation hinders the ability of providers to operate in the best interests of those seeking care and it creates unnecessary and costly bureaucratic barriers.

³ [FIGO Calls for the Total Decriminalisation of Safe Abortion | Figo](#)

⁴ [Committee on the Elimination of Discrimination against Women General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19](#)

⁵ [General comment No. 22 \(2016\) on the right to sexual and reproductive health \(article 12 of the International Covenant on Economic, Social and Cultural Rights\)](#)

For example, until explicitly amended, the law stipulated that abortion may only be carried out in a clinical setting as approved by the Secretary of State, despite domestic and international guidance clearly stating that since the development of medical abortion pills, offering the option of remote or home use where safe and appropriate is recommended, and often preferred.⁶

Abortion, like any medical treatment, should be provided in the most effective setting for the person seeking treatment, based on clinical requirements. Abortion law restricts the locations in which early medical abortion (pills) can be provided, regardless of clinical or personal needs. For example, a woman may prefer (or may be safer) taking abortion pills at a friend, relative or carer's house, or a GP surgery or community hospital. Whether or not abortion treatment can be provided in these settings should be a matter for clinicians, for clinical and regulatory bodies, and for the NHS. Regulators may continue to restrict the premises where abortion can be provided. Criminal law has no place in determining the best place of provision for medical care, and there is no reason why abortion should be an exception to this principle.

The decision to follow or deviate from globally recognised clinical guidance should be made by medical bodies, and qualified providers, based on clinical evidence. Due to abortion sitting within criminal law, however, British providers are prevented from offering services in line with best practice (and, indeed, women's preferences) unless the government explicitly intervenes.

For example, during the COVID-19 pandemic, abortion providers could not offer telemedical abortion until the government amended the law, forcing the policy into a political context rather than a clinical one.

The law also prevents nurses and midwives from providing care. The WHO and the National Institute for Clinical Evidence (NICE) both recommend offering nurse-delivered care, and nurses already routinely provide miscarriage treatments in the NHS, using identical drugs and procedures to those used for abortion, such as the Manual Vacuum Aspiration (MVA).

If abortion were decriminalised, those prescribing medication or performing procedures could continue to be regulated by the government, as well as professional regulators such as the Care Quality Commission (CQC), Health Inspectorate Wales (HIW), Healthcare Improvement Scotland (HIS), the General Medical Council (GMC) and the Nursing and Midwifery Council (NMC).

Providers and clinicians would continue to face consequences, ranging from loss of license to prosecution, for breaching professional standards or breaking laws. Services would continue to be provided in line with clinical guidance such as NICE Guidance NG140⁷ and the WHO Abortion Care guidelines.

It is currently and would remain a civil offence and potentially a criminal assault to perform any medical procedure without clinical justification or consent.

How decriminalisation works: our recommendations

Our recommendations are that abortion be removed from criminal law, that specialist nurses and midwives be allowed to provide abortion care, and that no legal restrictions are placed on the location or premises at which abortion can be carried out beyond that which would be expected and appropriate for other comparable regulated medical treatment. The existing framework for provision and regulation should continue to operate as usual.

⁶ Studies from many countries including the UK have shown women find home use highly acceptable, even preferable, with 95% preferring home use to hospital. [Early medical abortion: best practice now lawful in Scotland and Wales but not available to women in England, BMJ Sexual & Reproductive Health 2018](#)

⁷ [Overview | Abortion care | Guidance | NICE](#)

Recommendations

1. Remove abortion from criminal law, allowing it to be regulated and provided in line with professional healthcare standards and women's preferences as for all other healthcare.
2. Allow specialist nurses and midwives who are trained and qualified to do so to prescribe mifepristone and misoprostol.
3. Allow specialist nurses and midwives who are trained and qualified to do so to perform procedures such as MVA, which they are already permitted to provide in other contexts, in the context of abortion care as well.
4. Discontinue the requirement for two doctors to sign off every abortion procedure.
5. Allow clinicians and the individuals they treat to determine the best place for treatment, based on medical and safeguarding considerations, and personal preferences.
6. Remove conditions and restrictions which stipulate acceptable reasons why an individual may end their own pregnancy.

In addition to the six key recommendations above, as a first step towards full decriminalisation, we recommend that intentionally ending one's own pregnancy be immediately removed from criminal law.

Implications for abortion cases outside current legal parameters

It should be noted that it is rare for women to end pregnancies outside the parameters of the law. In 2021, 89% of abortions took place under 10 weeks. 1% took place over 20 weeks, and 0.1% took place over 24 weeks⁸. The majority of the 0.1% that take place over 24 weeks are still legal and fall within the existing framework.

The small minority that does end pregnancies outside the parameters of the law are nearly always acting under extremely complex, even coercive circumstances. Coercion is already covered by laws designed to protect women and others from abuse and gender-based violence. Criminalising abortion does not protect women; such laws are designed to restrict abortion access.

As a leading global and UK abortion provider, we do not believe there is a public interest justification for prosecuting, criminalising, or imprisoning anyone for ending their own pregnancy.

Therefore, while we do not recommend that abortion is ever provided outside legal and regulatory parameters, we do not believe criminal law has a place in determining the circumstances under which an abortion may be sought. Such decisions should be a matter for clinicians, based on the best interests of the person ending their own pregnancy.

⁸ [Abortion statistics, England and Wales: 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/abortion-statistics-england-and-wales-2021)