Application of criminal law of England and Wales to abortion

A briefing on proposed amendment NC17 to the Crime and Policing Bill

MAY 2025

A number of amendments related to abortion have been tabled at the Report Stage of the Crime and Policing Bill. Tonia Antoniazzi's NC1 would decriminalise abortion by removing women from the criminal law related to abortion (please see SPUC's standalone briefing on this amendment). Stella Creasy has now tabled a new amendment, NC17, which uses different means to decriminalise abortion.

This briefing scrutinises NC17, and considers what its consequences would be.

MS CREASY'S AMENDMENT IS:

Application of criminal law of England and Wales to abortion

1. The Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of England and Wales.
2. Sections 58, 59 and 60 of the Offences Against the Person Act 1861 are repealed under the law of England and Wales.
3. The Infant Life Preservation Act 1929 is repealed.
4. No investigation may be carried out, and no criminal proceedings may be brought or continued, in respect of an offence under those sections of the Offences Against the Person Act 1861 or under the Infant Life Preservation Act 1929 under the law of England and Wales (whenever committed).
5. The Abortion Act 1967 is amended as follows.
6. In section 6 remove, "sections 58 and 59 of the Offences Against The Person Act 1861, and".
7. Notwithstanding the repeal of the criminal law relating to abortion, the provisions of sections 1-4 of the Abortion Act 1967 remain in place.
8. The Secretary of State must (subject to subsection (9)) by regulations make whatever other changes to the criminal law of England and Wales appear to the Secretary of State to be necessary or appropriate for the purpose of complying with subsection (1).
9. But the duty under subsection (8) must not be carried out so as to—
    a. amend this section,
    b. reduce access to abortion services for women in England and Wales in comparison with access when this section came into force, or
    c. amend section 1 of the Abortion Act 1967 (medical termination of pregnancy).

Society for the Protection of Unborn Children

10. The Secretary of State must carry out the duties imposed by this section expeditiously, recognising the importance of doing so for protecting the human rights of women in England and Wales.
11. In carrying out the duties imposed by this section the Secretary of State must have regard in particular to the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Economic, Social and Cultural Rights in considering what constitute the rights of women to sexual and reproductive health and to gender equality.
12. The Secretary of State may (subject to subsection (9)) by regulations make any provision that appears to the Secretary of State to be appropriate in view of subsection (2) or (3).
13. For the purpose of this section,
    a. "the United Nations Convention on the Elimination of All Forms of Discrimination against Women" or "the Convention on the Elimination of All Forms of Discrimination against Women" means the United Nations Convention on the Elimination of All Forms of Discrimination against Women, adopted by United Nations General Assembly resolution 34/180, 18 December 1979;
    b. "the International Covenant on Economic, Social and Cultural Rights" means the International Covenant on Economic, Social and Cultural Rights 1966, adopted by United Nations General Assembly resolution 2200A (XXI), 16 December 1966; and
    c. "the CEDAW report" means the Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/OP.8/GBR/1) published on 6 March 2018."

CEDAW REPORT

Section (1) directs that "The Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of England and Wales."

As these recommendations would be adopted wholesale into the law in England and Wales under this amendment, they are worth quoting in full:

85. The Committee recommends that the State party urgently:

a. Repeal sections 58 and 59 of the Offences against the Person Act, 1861, so that no criminal charges can be brought against women and girls who undergo abortion or against qualified health-care professionals and all others who provide and assist in the abortion;

b. Adopt legislation to provide for expanded grounds to legalize abortion at least in the following cases: (i) Threat to the pregnant woman's physical or mental health, without conditionality of "long-term or permanent" effects; (ii) Rape and incest; (iii) Severe fetal impairment, including fatal fetal abnormality, without perpetuating stereotypes towards persons with disabilities and ensuring appropriate and ongoing support, social and financial, for women who decide to carry such pregnancies to term;

c. Introduce, as an interim measure, a moratorium on the application of criminal laws concerning abortion and cease all related arrests, investigations and criminal prosecutions, including of women seeking post-abortion care and health-care professionals;

d. Adopt evidence-based protocols for health-care professionals on providing legal abortions particularly on the grounds of physical and mental health and ensure continuous training on the protocols;

e. Establish a mechanism to advance women's rights, including through monitoring authorities' compliance with international standards concerning access to sexual and reproductive health, including access to safe abortions, and ensure enhanced coordination between the mechanism with the Department of Health, Social Services and Public Safety and the Northern Ireland Human Rights Commission;

f. Strengthen existing data-collection systems and data sharing between the Department and the police to address the phenomenon of self-induced abortion.

86. The Committee recommends that the State party:

a. *Provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion;*

b. *Ensure the accessibility and affordability of sexual and reproductive health services and products, including on safe and modern contraception, including oral, emergency, long-term and permanent forms of contraception, and adopt a protocol to facilitate access at pharmacies, clinics and hospitals;*

c. *Provide women with access to high-quality abortion and post-abortion care in all public health facilities and adopt guidance on doctor-patient confidentiality in that area;*

d. *Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation;*

e. *Intensify awareness-raising campaigns on sexual and reproductive health rights and services, including on access to modern contraception;*

f. *Adopt a strategy to combat gender-based stereotypes regarding women's primary role as mothers;*

g. *Protect women from harassment by anti-abortion protesters by investigating complaints and prosecuting and punishing perpetrators.*[1]

These provisions are wide-ranging and not outlined in the amendment itself, risking MPs voting without full knowledge. The recommendations cover issues like counselling, contraception access, compulsory sex education, and gender stereotypes—far beyond abortion law. Moreover, the CEDAW committee's recommendations are not binding or international law, as confirmed by the Northern Ireland Office, which stated: ""In particular, those recommendations are not binding and do not constitute international obligations."[2] No justification is given for incorporating them into UK law

FULL DECRIMINALISATION – ABORTION UP TO BIRTH FOR ANY REASON

The sections of the Offences Against the Person Act 1861 (OAPA) and Infant Life (Preservation) Act 1929 (ILPA) referred to here form the legal underpinning of the current abortion law. The 1967 Abortion Act merely sets out when doctors can lawfully perform abortions within this framework. Removing these offences would therefore remove any legal restrictions on abortion.

While Section (7) specifies that provisions of sections 1-4 of the Abortion Act 1967 would remain in place (which would include the 24-week time limit for most abortions), section (4) says that "No investigation may be carried out, and no criminal proceedings may be brought or continued" under the Acts referred to. If the law underpinning the Abortion Act were repealed, and breaches could not even be investigated, these provisions of the Act would have no legal force.

This would in effect mean full decriminalisation of abortion, up to birth, for any reason. The grounds for abortion under the Act would have no force, meaning abortion could be carried out for any reason, including the sex of the baby.

Such a massive expansion of abortion is out of step with public opinion. Polling shows that only 1% of the general public support abortion up to birth, and 70% of women would like to see a reduction (rather than removal) of UK time limits.[3]

A CHARTER FOR ABUSERS

NC17 repeals the sections of the OAPA and the ILPA wholesale, not just as regards the pregnant woman. There would therefore be no law under which to charge another party, often an abusive partner, who causes the death of an unborn child. There are very recent examples of these laws being used to bring perpetrators to justice.

In December 2024, Norfolk man Stuart Worby was jailed for 12 years (later increased by five years) for giving his pregnant partner abortion pills resulting in the death of her 15-week-old baby. Nueza Cepeda, a friend of Worby's, obtained the pills by lying about being pregnant in a telemedicine consultation. She was sentenced to 22 months in prison (suspended). Both Worby and Cepeda were convicted under sections 58 and 59 of the Offences Against the Persons Act.[4]

EXEMPTING ABORTION PROVIDERS

The wholesale repealing of the underpinning abortion law would also exempt all medical professionals involved with abortion from any criminal liability. Given that the vast majority of recent prosecutions for illegal abortion have come about because of abortion providers sending women abortion drugs through the post without correctly establishing the gestation of their pregnancies, an argument could be made for more scrutiny, not less.

LEGALISING INFANTICIDE

Section 60 of OAPA makes it an offence for anyone — not just the mother — to conceal the birth of a child by disposing of the baby's body. It is currently used when infanticide is suspected but cannot be charged due to lack of evidence. This amendment would make it extremely difficult to prosecute someone who performs an abortion at full term or kills a baby during delivery.

DRAFTING ERRORS

NC17 lacks the clarity and precision needed for legislation to function effectively. In several places, it is difficult to understand. Sections (2) and (3) repeal Sections 58, 59 and 60 of the Offences Against the Person Act 1861 and The Infant Life Preservation Act 1929. The provision in (4) that no investigation may be brought under these statutes is, therefore, redundant.

The 2018 CEDAW report addressed abortion law in Northern Ireland. Applying this report to England and Wales is arbitrary and incongruous. This is highlighted by the recommendations of 85 (e), which, if passed, would require the Secretary of State for Health for England to "establish a mechanism to advance women's rights" and ensure coordination with the Northern Ireland "Department of Health, Social Services and Public Safety and the Northern Ireland Human Rights Commission".

CONCLUSION

This amendment goes far beyond the reform of abortion law, by adopting wholesale the recommendations of a non-binding UN committee, which covers a wide range of issues. By removing the legal basis of the Abortion Act, it would de facto legalise abortion up to birth, for any reason. It would also make it extremely difficult to bring abusive partners who cause the death of an unborn baby to justice, as well as effectively decriminalising infanticide. Severe errors in drafting make it hard to see how it could be implemented. This amendment should be rejected.

If you need any more information, please contact Alithea Williams, SPUC's Public Policy Manager, on *alitheawilliams@spuc.org.uk*, or 0207 820 3121.

1. 1 https://digitallibrary.un.org/record/1480026?ln=en&v=pdf
2. https://www.legislation.gov.uk/uksi/2021/365/pdfs/uksiem_20210365_en.pdf
3. Savanta ComRes, Where Do They Stand? poll, https://righttolife.org.uk/wp-content/uploads/2023/01/Where-Do-They-Stand-Abortion-Survey-DataTables.pdf
4. See our briefing on this case, at https://spuc.org.uk/wp-content/uploads/2025/01/Worby-case-study.pdf