

# Decriminalisation: The Legal Consequences of Removing Women from Abortion Law

## *A briefing on Clause 191 of the Crime and Policing Bill*

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On Tuesday 17 June, MPs debated New Clause 1, tabled by Tonia Antoniazzi MP, to the Government's Crime and Policing Bill. After less than two hours debate, MPs approved the proposal by 379 votes to 137. New Clause 1 is now Clause 191 to the Crime and Policing Bill.

Past calls for decriminalisation were sparked by the trial of Carla Foster, who was prosecuted for a late-term illegal home abortion, and more recently by the case of Nicola Packer who again was charged with carrying out an illegal late-term home abortion; she was acquitted by a jury following a trial. Several more cases have come to light of women being investigated for taking abortion pills, obtained under the Government's pills-by-post abortion policy, past the legal limit.

This briefing scrutinises the proposal, examines the reasons why some women are being prosecuted for illegal abortion, and considers if removing abortion from the criminal law is the correct solution.

### CLAUSE 191

The wording of the Clause is:

#### **"Removal of women from the criminal law related to abortion**

For the purposes of sections 58 and 59 of the Offences Against the Person Act 1861 and the Infant Life (Preservation) Act 1929, no offence is committed by a woman acting in relation to her own pregnancy."

The explanatory statement given by Tonia Antoniazzi MP was:

"This new clause would disapply existing criminal law related to abortion from women acting in relation to their own pregnancy at any gestation, removing the threat of investigation, arrest, prosecution, or imprisonment. It would not change any law regarding the provision of abortion services within a healthcare setting, including but not limited to the time limit, telemedicine, the grounds for abortion, or the requirement for two doctors' approval."

Some points about this amendment:

- 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 for women would therefore remove any legal restrictions on women regarding abortion. A woman could abort for any reason, including the sex of the baby.
- As the explanatory statement says, this applies to a pregnancy at any gestation. This, therefore, would legalise abortion up to birth, if it is induced by the woman herself. This is a massive expansion of abortion, and one not supported by the public. 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.<sup>1</sup>
- The primary purpose of the ILPA is to provide legal protection to a child during the process of being born.<sup>2</sup> Therefore, if NC1 becomes law, **a woman who kills her baby during delivery would not commit an offence.**
- While the amendment applies only to a woman in relation to her own pregnancy, if self-induced abortions were never investigated, it is difficult to see how a third party could be charged in cases of coerced abortion.
- Section 59 criminalises a third party who “shall unlawfully supply or procure any poison...” and so already does not apply to a woman relating to her own pregnancy.
- Removing women from the criminal law relating to abortion removes an important deterrent to carrying out dangerous late term abortions at home. Women would also not have the protection of such an abortion being illegal if being coerced to perform one.
- A paving amendment, seeking to put the Clause into force on the day the Crime and Policing Bill receives Royal Assent, was passed without division. This would leave virtually no time for the Government to prepare the necessary secondary legislation/guidance and consultations for such a momentous change

## Additional points to consider

### Protection of the Unborn

Both the 1861 Act and the 1929 Act recognise the unborn foetus as a child. Removing this recognition is an affront to human dignity enshrined in several international human rights instruments that the United Kingdom has signed and ratified. These include the Universal Declaration of Human Rights and the Convention on the Rights of the Child (CRC). The Preamble to the UN Convention on the Rights of the Child states that the child “needs special safeguards and care, including appropriate legal protection, before as well as after birth”. Removing the offence of a woman self-aborting up to birth would remove the few remaining legal protections for the unborn.

### Prosecution of Women

As this amendment aims to prevent women from being prosecuted for abortion, it is important to examine the claims being made in this regard. In a debate on 10 March 2025, Tonia Antoniazzi said that “Under that cruel and outdated law, about 100 women have been investigated by the police in the past five years alone...” In July 2024, Stella Creasy MP said in the Commons that there had been “67 prosecutions in the UK in the last 10 years”.<sup>3</sup> Similarly, Jonathan Lord, medical director at MSI Reproductive Choices, told the BBC<sup>4</sup> in February 2024 that he knew of up to 60 women facing criminal inquiries for suspected abortion crimes in England and Wales since 2018, compared with almost zero before. Investigations are of course quite different to prosecutions, but even these more significant figures are disputed.

In response to Dr Lord's claims, public health consultant Kevin Duffy looked into these numbers. The Home Office publishes annual data<sup>5</sup> for the numbers and categories of police-recorded crimes and outcomes. Over the last nine financial years, up to March 2023, the average annual total of the relevant offences (procuring illegal abortion and intentional destruction of a viable unborn child) combined has been nineteen; in 2022/23, the total was twenty-eight. These figures do not seem to match Dr Lord's claims.

Crucially, many of the prosecutions are not against the pregnant woman. FOI requests to police forces found that of the 51 cases of people being investigated for procuring illegal abortion there were 17 females, 13 males, and 21 cases with sex not recorded. For the offence of intentional destruction of a viable unborn child there were 15 females, 28 males, and 36 unknown – a total of 79 cases.<sup>6</sup>

The current campaign for decriminalisation is using the stories of just six women<sup>7</sup> (including Nicola Packer and Carla Foster) who have been brought to court, charged with having committed their own illegal abortion. These are very small numbers compared to the annual number of legal abortions (251,377 in 2022<sup>8</sup>, the last year we have statistics for). And it is a minuscule percentage of pregnant women – the 6 cases represent 0.00015% of pregnant women over 5 years. It is not self-evident that a law should be revoked because some individuals have transgressed it, especially on a serious moral and societal issue such as abortion. Most importantly, however, we need to look at why these prosecutions are happening. A pivotal shift in recent years has been the implementation of the pills-by-post policy, allowing abortion providers to dispatch abortion pills to women without an in-person consultation. Consequently, instances have emerged where women have received these pills beyond the legal gestational limits (10 weeks under the policy), sometimes dramatically so.

#### **Nicola Packer**

The story of Nicola Packer is a case in point. During Covid lockdowns in 2020, Nicola Packer, then 41 years-old, lived with a married couple. She was engaged in what has been described as a consensual "BDSM (bondage, domination, sadism, masochism) threesome relationship" with this husband and wife, although the wife was under the impression that her husband and Packer were not engaging in behaviour which could result in pregnancy.

Packer became pregnant. On 6 November 2020, Packer took the abortion drugs, obtained through the pills-by-post scheme. Despite the 10-week limit for pills-by-post, Packer had her abortion at 26 weeks' gestation. On 8 November, Packer attended the hospital with the body of her baby in a bag. She allegedly told two midwives that she had taken abortion pills supplied by Marie Stopes.

Packer was investigated in hospital because she allegedly told hospital staff she had taken abortion pills, and she was 16 weeks over the limit for the pills-by-post policy and 2 weeks over the legal limit for abortion. Packer was acquitted of the charges in May 2025. Despite the acquittal, the situation warranted an investigation, and Packer was legitimately charged as she procured her abortion past the legal limit both for a medical and a surgical abortion. Without the availability of abortion drugs via telemedicine this would not have been possible.

The crux of the issue lies not in the existing abortion law, then, but rather in a recent policy alteration in 2020, DIY home abortion, which enabled these illicit late-term abortions.<sup>9</sup>

## Women Investigated for Miscarriage/Stillbirth

In the Commons debate on 28 November 2023, Stella Creasy MP stated, "Indeed, we are increasingly seeing... any woman who has had a miscarriage or stillbirth being at risk of being dragged into a criminal investigation."

To back up these claims, Ms Creasy referred to the cases of two "young teenagers". The young woman referred to as "Megan" in the debate was 15 years old at the time of her stillbirth, which occurred at 28-weeks' gestation. The hospital staff contacted the police because they had reason to believe she had obtained abortion drugs online. They were aware that she had previously contacted the abortion provider BPAS, but no abortion was performed because she was past the 24-week legal limit. This information meant there was sufficient concern to warrant an investigation. A post-mortem found that her baby had died of natural causes, and the case was dropped.<sup>10</sup>

In the other case, "another young teenager, unaware she was pregnant, delivered a stillborn child". Domestic violence and abuse are often screened for and identified at pre-natal appointments. The fact that this young girl only discovered she was pregnant while miscarrying would have raised concerns for healthcare staff regarding her safety and wellbeing, including how she became pregnant whilst under the legal age of consent and whether she is the victim of sexual exploitation. Abortions are frequently forced on victims of incest.<sup>11</sup> It is appropriate for the police to investigate situations like these. Where there are safeguarding concerns, it may not be the woman herself who is the subject of the investigation, but rather the person who fathered the unborn child, or someone else in her life.

## Conclusion

At the end of the debate in the Commons, Jerome Mayhew MP raised a point of order, in which he said: "Irrespective of our position on the votes that we have just taken, we have to acknowledge that we have made a major change to abortion law, yet that was on the basis of no evidence sessions, no Committee stage scrutiny, and just 46 minutes of a Back-Bench debate and a winding-up speech by a Minister who refused to take any interventions." This being so, it is incumbent on Peers to submit this Clause to extensive scrutiny. The evidence suggests that this new provision does not address the true reason for recent prosecutions for late term abortion. The public response to the vote would also seem to vindicate the position that allowing women to induce their own abortion at any time for any reason is an extreme and dangerous proposal. Peers should consider very carefully whether it should be allowed to remain in the Bill.

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

1. Savanta ComRes, Where Do They Stand? poll, <https://righttolife.org.uk/wp-content/uploads/2023/01/Where-Do-They-Stand-Abortion-Survey-DataTables.pdf>
2. According to the sponsor of the ILPA: "It really is a Bill designed to prevent children being destroyed at birth." Hansard vol 72, col 269, (1928-9). Cited by John Keown, *Law and Ethics of Medicine: Essays in the Inviolability of Human Life* (OUP, 2012), p 177.
3. [https://hansard.parliament.uk/Commons/2023-07-19/debates/3CD15C8E-02F6-490D-A9B0-35C05BDB64E3/OffencesAgainstThePersonAct1861\(SentencingGuidelines\)?highlight=67%20prosecution#contribution-EA65139C-1983-48CC-B555-535E0AB9F7BA](https://hansard.parliament.uk/Commons/2023-07-19/debates/3CD15C8E-02F6-490D-A9B0-35C05BDB64E3/OffencesAgainstThePersonAct1861(SentencingGuidelines)?highlight=67%20prosecution#contribution-EA65139C-1983-48CC-B555-535E0AB9F7BA)
4. <https://www.bbc.co.uk/news/uk-68305991>
5. <https://www.gov.uk/government/statistics/police-recorded-crime-open-data-tables>
6. Some are Men, Percuity Blog, 23 February 2024, <https://percuity.blog/2024/02/23/some-are-men/>
7. <https://percuity.blog/2024/02/29/prosecutions-for-illegal-abortion/>
8. <https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2022/abortion-statistics-england-and-wales-2022>
9. <https://spuc.org.uk/wp-content/uploads/2025/03/FACT-SHEET-Pills-By-Post-A-Failed-Policy.pdf>
10. [https://www.theguardian.com/world/2022/jul/02/women-accused-of-abortions-in-england-and-wales-after-miscarriages-and-stillbirths?fbclid=IwAR2DG5XTPu-DuEJkZGWazsigzpsqgINwNzxdTRF2noqdEFWY7GKZx1\\_NXMaI](https://www.theguardian.com/world/2022/jul/02/women-accused-of-abortions-in-england-and-wales-after-miscarriages-and-stillbirths?fbclid=IwAR2DG5XTPu-DuEJkZGWazsigzpsqgINwNzxdTRF2noqdEFWY7GKZx1_NXMaI)



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