

Parliamentary briefing

Abortion amendment to Domestic Abuse Bill

Key points

- The Domestic Abuse Bill received a second reading on 2 October 2019.
- Abortion campaigners have made it clear that they will bring forward an amendment to the Bill, likely at Committee Stage, to repeal sections 58 and 59 of the Offences Against the Persons Act in England and Wales.
- Repealing these provisions would introduce **abortion on demand, for any reason, up until when a child is capable of being born alive with a ceiling of 28 weeks¹ to England and Wales**, removing almost all the legal safeguards around abortion provided by the Abortion Act.
- This would leave England and Wales with one of the most extreme abortion laws in the world and the law would be out of line with legislation in Scotland. The change would position England and Wales drastically away from Europe where the median gestational time limit for abortion is **12 weeks**.²
- Polling from ComRes shows that only 1%³ of women wanted the time limit to be extended to more than 24 weeks and 92%⁴ of women agree that a woman requesting an abortion should always be seen in person by a qualified doctor. In fact, large majorities of the women want more, not fewer, safeguards around abortion across a number of key areas including 70%⁵ wanting to see the current time limit reduced.
- The British public prides itself on being a reasonable, humane and tolerant society. Such an extreme and radical proposal has no place in the UK.

What would be the effect of removing sections 58 and 59 of the Offences Against The Person Act in England and Wales?

- There would be **no law regulating abortion** up to 28-weeks:
 - This would allow for abortion on demand, for any reason.
- An abortion could **be performed legally on any grounds**:
 - The Abortion Act provides that abortion can only be performed under specific grounds. Without this legal safeguard, it could allow for:
 - Sex-selective abortions (this has been a problem in Canada⁶), abortions purely for social reasons etc; abortion to take place in situations of coercion - there would be no legal mechanism to check whether a woman has been coerced or not.
- There would be **no legal restrictions on places where abortions could be performed**:
 - In England and Wales, the Abortion Act currently restricts abortion to hospitals or places approved by the Secretary of State (section 1(3)). Without this legal safeguard there would be no legislation governing:

¹ BMA - Update on the decriminalisation of abortion (March 2017) - <http://bit.ly/bmaupdate>. Please note we have received the following legal advice regarding this point: The statutory presumption provided by the Infant Life Preservation Act is that the point at which a child is 'capable of being born alive' is 28-weeks. Before 28-weeks, it would be left to the health professionals involved with the abortion to decide on a case-by-case basis whether that particular child was 'capable of being born alive' at an earlier stage. In practice, it would be unlikely that the doctors involved in individual cases would have any interest in challenging the presumption in the Acts - so this would likely in practice usher in a 28-week limit.

² <http://news.bbc.co.uk/1/hi/world/europe/6235557.stm>

³ <https://www.comresglobal.com/polls/where-do-they-stand-abortion-survey/>

⁴ http://comresglobal.com/wp-content/themes/comres/poll/Christian_Institute_Abortion_Survey_3rd_March_2014.pdf

⁵ <https://www.comresglobal.com/polls/where-do-they-stand-abortion-survey/>

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3281173/>

- Mail-order abortions; Abortion pills to be given out in schools; Abortions performed in school nurse clinics; A proliferation of private abortion clinics; Telemed abortions; Pharmacists providing abortion pills over the counter.
- There would be **no legal requirement that two doctors must certify an abortion**:
 - The Abortion Act prescribes that an abortion can only be carried out if two doctors are of the opinion in good faith that the abortion is medically necessary for the mother. Without this legal safeguard, it could allow for:
 - Healthcare assistants, nurses and pharmacists carrying out abortions, with no trained doctor present in the case of a complication.
- There would be no legal provision protecting **medical professionals' freedom of conscience with regard to abortion**.
 - The Abortion Act prescribes conscientious objection rights for medical professionals (see section 4 of Abortion Act).
 - Doctors, nurses, other healthcare professionals could be forced to perform abortions or leave their profession; they could also be forced to be complicit in the abortion process by having to refer to another doctor who will do a termination (eg Victoria, Australia a doctor was investigated for not referring for a sex-selective abortion; Pharmacists being forced to give out abortifacient drugs).
- It would be **more difficult to secure convictions against third parties that have forced a woman to terminate a pregnancy**.
 - Cases of non-consensual abortions (for example surreptitiously slipping abortion pills in a woman's drink) are currently prosecuted under sections 58 and 59. For example, in a recent case, a man was convicted for putting abortion pills in his wife's sandwich; he was convicted under s. 58.⁷ In another case a man had ordered abortion pills which he was about to deceive his wife into taking; he was convicted under s. 59.⁸ Without sections 58 and 59 such prosecutions would be very difficult, if not impossible, to bring.
 - Even if they could be prosecuted under the poisoning offences (sections 23 and 24 of the OAPA) the maximum sentence, 5 years, would be lower than what is available under sections 58 and 59. In any event, such alternative prosecutions would only vindicate the injuries that the woman suffered and would not vindicate the fact her unborn child was a victim.
- The situation would **likely allow for far greater abuses** than those which have already occurred under the current law in England and Wales:
 - Already within our current legal framework in England and Wales we have seen doctors pre-signing abortion forms⁹, gender-selective abortions being offered¹⁰, live babies being left to die following abortions that have gone wrong¹¹ and children with minor disabilities, such as cleft palate¹², being aborted. In this context, where the current law is supposed to be preventing such appalling practices, the thought of allowing abortion, on demand, until when a child is capable of being born alive with a ceiling of 28 weeks, is seriously concerning.

Where do women sit on this issue

- Contrary to the rhetoric from abortion campaigners behind this move, the position is out of step with the opinions of women on the matter:

⁷ R v Magira [2008] EWCA Crim 1939, [2009] 1 Cr App R (S) 68; <https://www.telegraph.co.uk/news/1580407/Jail-for-man-who-tried-to-kill-unborn-child.html>

⁸ R v Fletcher [2014] EWCA Crim 1876; <https://www.mirror.co.uk/news/uk-news/soldier-who-planned-kill-unborn-3948834>

⁹ <http://www.telegraph.co.uk/news/uknews/law-and-order/10807990/Pre-signing-abortion-forms-is-illegal-General-Medical-Council-admits.html>

¹⁰ <http://www.telegraph.co.uk/news/health/news/9099511/Abortion-investigation-doctors-filmed-agreeing-illegal-abortions-no-questions-asked.html>

¹¹ <http://www.dailymail.co.uk/health/article-512129/66-babies-year-left-die-NHS-abortions-wrong.html>

¹² <http://www.dailymail.co.uk/news/article-3761905/Fury-number-abortions-cleft-lip-babies-rises-new-womb-tests-offered.html>

- Polling from ComRes shows that only 1%¹³ of women wanted the time limit to be extended to more than 24 weeks and 92%¹⁴ of women agree that a woman requesting an abortion should always be seen in person by a qualified doctor.
- In fact, large majorities of the women want more, not fewer, safeguards around abortion across a number of key areas including¹⁵
 - 70% of women believe that the current 24-week gestational limit for abortion should be reduced.
 - 93% of women agree that a woman considering abortion should have a legal right to independent counselling from a source that has no financial interest in her decision.
 - 91% of women agree that gender-selective abortion should be explicitly banned by the law.
 - 84% of women agree women who want to continue with their pregnancies, but are under financial pressure to have an abortion, should be given more support.

Where does the rest of the world's legislation sit on this issue?

- As the UK prepares to leave the EU, we need to decide where we position ourselves globally.
 - The introduction of abortion for any reason, on demand, through until when a child is capable of being born alive, with a ceiling of 28 weeks, to England and Wales, would position the region drastically away from Europe where the median gestational time limit for abortion is **12 weeks**.¹⁶

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¹³ <https://www.comresglobal.com/polls/where-do-they-stand-abortion-survey/>

¹⁴ http://comresglobal.com/wp-content/themes/comres/poll/Christian_Institute_Abortion_Survey_3rd_March_2014.pdf

¹⁵ <https://www.comresglobal.com/polls/where-do-they-stand-abortion-survey/>

¹⁶ <http://news.bbc.co.uk/1/hi/world/europe/6235557.stm>