

Citizen Participation and Public Petitions Committee

3rd Meeting, 2023 (Session 6), Wednesday
22 February 2023

PE1969: Amend the law to fully decriminalise abortion in Scotland

Petitioner	Gemma Clark
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to bring forward legislation to fully decriminalise abortion services in Scotland and make provisions to ensure abortion services are available up to the twenty-fourth week of pregnancy across all parts of Scotland.
Webpage	https://petitions.parliament.scot/petitions/PE1969

Introduction

1. This is a new petition that was lodged on 19 October 2022.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition. On this occasion, the petitioner elected to collect this information. 1,558 signatures have been received.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.

Action

The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe A

PE1969: Amend the law to fully decriminalise abortion in Scotland

Petitioner

Gemma Clark

Date lodged

19 October 2022

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to bring forward legislation to fully decriminalise abortion services in Scotland and make provisions to ensure abortion services are available up to the twenty-fourth week of pregnancy across all parts of Scotland.

Previous action

I have written to my local and regional MSPs calling for the abortion rights summit. I received a response from Tom Arthur MSP, which included a response from the Minister for Public Health, Women's Health and Sport.

I have also contributed to and signed open letters calling for policy reform.

Background information

Abortion is not decriminalised in Scotland. The Offences Against the Person Act 1861 made abortion a criminal offence (punishable with life in prison in the U.K.) The Abortion Act 1967 did not actually decriminalise abortion (it means a patient cannot be prosecuted under certain conditions). The 1967 Act set out criteria to make abortion permissible. These criteria include two doctors' signatures confirming that certain conditions have been met, e.g. that continuing the pregnancy would cause severe physical or mental harm to the pregnant person. The conditions of Abortion Act 1967 ignore a great many reasons for seeking an abortion including rape, incest, poverty or simply not wanting to be pregnant. This means women remain at risk of prosecution for choosing to end their pregnancy.

Annexe B

The logo for SPICe (The Information Centre) is a purple rounded rectangle. The text 'SPICe' is in white, with 'The Information Centre' and 'An t-Ionad Fiosrachaidh' in white text on a dark blue background to the right.

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE1969](#): 'Amend the law to fully decriminalise abortion in Scotland', lodged by Gemma Clark

[PE1969](#) calls on the Scottish Parliament to urge the Scottish Government to bring forward legislation to fully decriminalise abortion services in Scotland, and make provisions to ensure abortion services are available up to the twenty-fourth week of pregnancy across all parts of Scotland.

Brief overview of issues raised by the petition

Legal status of abortion in Scotland

The petition references the criminalisation of abortion under the Offences Against the Person Act 1861. However, [this Act does not apply in Scotland](#).

Prior to the introduction of the [Abortion Act 1967](#), abortion in Scotland was considered a crime under common law when provided without medical sanction.

Under the Abortion Act 1967, which currently applies to Scotland, England, and Wales, an abortion can legally be accessed up to 24 weeks of pregnancy. The Abortion Act 1967 did not decriminalise abortion, but rather established conditions under which abortion can be performed. Abortion procedures performed outwith these conditions would remain subject to Scottish common law regarding abortion.

Abortion law [was devolved to Scotland](#) under Section 53 of the Scotland Act 2016.

Conditions for lawful abortion

Under the Abortion Act 1967, abortion procedures [must be conducted](#) in a hospital or other place approved by Scottish Government Ministers. However, in May 2022, [the Scottish Government confirmed](#) that the arrangements put in place during the COVID-19 pandemic to enable access to early medical abortion at home when clinically appropriate would continue long-term, and would no longer be dependent on considerations associated with the pandemic.

Before an abortion is conducted, [two doctors must provide signatures](#) to confirm that the terms of the Abortion Act 1967 will not be breached by carrying out the procedure, and that continuing with a pregnancy would pose a greater risk to the pregnant person's mental or physical health than accessing an abortion. [98.6% of abortions](#) conducted before 24 weeks' gestation in Scotland in 2021 were performed under this criterion.

Abortions can be conducted at any point in pregnancy if there is a significant risk to the life of the pregnant person, or evidence of foetal abnormality.

Opinion on the current legal status of abortion

[It is argued](#) by some that the "two doctors rule" risks delaying access to abortion procedures and undermining the autonomy of people seeking abortions, as the final decision is placed in the hands of doctors rather than the pregnant person. In [their 2016 report](#) on access to abortion in Scotland, Engender, a Scottish feminist policy and advocacy organisation, stated that in practice, this requirement criminalises abortion, as the power to decide whether a person can legally access an abortion rests with the doctors.

Engender further argued that access to abortion procedures should not be dependent on medical decision-making, as the decision to have an abortion is increasingly not informed by medical factors. The [most common reasons for seeking an abortion](#) are socioeconomic concerns, and the potential impact of a pregnancy on the person's future opportunities or existing family size.

In June 2022, The Royal College of Obstetricians & Gynaecologists and the Faculty of Sexual & Reproductive Healthcare [released a joint statement](#) calling for the decriminalisation of abortion across the UK.

The [British Medical Association's policy](#), agreed in 2007 and still in place, is that abortion should be decriminalised, and the "two doctors rule" removed for first trimester abortions. The BMA stated that "no

other medical procedure requires the agreement of two medical practitioners, making current abortion law increasingly out of step with the emphasis on patient autonomy elsewhere in medicine.”

Anti-abortion groups such as the [Society for the Protection of Unborn Children](#) have argued that the decriminalisation of abortion, and removing the “two doctors rule”, could endanger pregnant people by removing criminal sanctions for abortions performed in unsafe settings or under coercion. The group also expressed that in their view, abortion involves taking a human life, and the provision of abortion services should therefore be governed by criminal law, rather than medical regulation.

However, both the British Medical Association and Engender emphasised that decriminalisation does not mean deregulation, and that legislation should ensure that the criminal law would still apply if other criminal offences, such as assault or reckless conduct, are conducted in the course of abortion provision.

Access to later gestation abortions in Scotland

Later gestation abortions are relatively uncommon in Scotland; [Public Health Scotland's latest report](#) on terminations states that of the 13,758 abortions that took place in 2021, 9.1% were performed between 10 and 17 weeks' gestation, and 0.9% at 18 weeks or over.

Second trimester abortions after 18-20 weeks require a more complex procedure called [dilatation and evacuation](#), which is performed under general anaesthetic. Some NHS Scotland boards, including NHS Lothian and NHS Greater Glasgow and Clyde, offer abortion services up to 20 weeks' gestation, but [many of Scotland's NHS health boards](#) are currently only able to provide abortions until a lower gestation. Pregnant people in Scotland who need an abortion after 18-20 weeks' gestation are usually required to travel to British Pregnancy Advisory Service (BPAS) or other clinics in England for this specialist procedure.

It is unclear why late term abortions are not commonly available in Scotland, but [research suggests that](#) a lack of senior management support, a perceived lack of need due to low numbers of pregnant people accessing later abortions, and 'distaste' for performing the procedure among medical professionals, may be contributory factors

Scottish Government action

In response to question [S5W-16699](#), lodged on 18 May 2018, the then Minister for Public Health and Sport, Aileen Campbell MSP, stated that the Scottish Government “had no current plans to change the law on abortion.”

In response to written question [S6W-09073](#), lodged on 10 June 2022, Maree Todd MSP, the Minister for Public Health, Women’s Health and Sport, said that “The Scottish Government is continuing to work with NHS Boards to improve abortion services, including NHS Boards providing abortions up to the legal limit. Some NHS Boards provide abortion services up to the legal limit for fetal anomalies, however we are aware that women seeking abortions after 20 weeks' for other reasons are often referred to services in England. The Scottish Government is committed to progressing work which would allow women to access abortions services in a way that is right for them.”

Scottish Parliament action

On 26 September 2019, Monica Lennon MSP lodged motion [S5M-19128](#) calling on the Scottish Parliament to consider that “the Scottish Government should take steps to decriminalise abortion and move towards removing the “two doctors rule” to ensure women’s legal right to choose”. However, this motion was not taken in the Chamber.

Sarah Swift

Researcher

19 October 2022

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Annexe C

Scottish Government submission of 19 October 2022

PE1969/A: Amend the law to fully decriminalise abortion in Scotland

I refer to your email of 22 September asking for the Scottish Government's views on the action called for in the above petition.

The petition calls for action to fully 'decriminalise' abortion in Scotland and to make provision to ensure abortion services are available up to 24 weeks' gestation across all parts of Scotland. The Scottish Government has made clear that all women should be able to access abortion services, as set down within the limits of the law, where they wish.

We have committed through the [Women's Health Plan](#) to work with NHS Boards to support women having later stage abortions. The Healthcare Improvement Scotland (HIS) sexual health standards now make clear that all Boards should be able to offer abortions up to at least 20 weeks' gestation. Where NHS Boards cannot offer abortions services above 20 weeks' gestation locally, they must work to provide an appropriate, person-centred care pathway for all patients seeking abortions up to the legal limits.

The Scottish Government wrote to Health Board Chief Executives in June to make clear it expects them to meet the HIS standards and support patients upfront with travel and accommodation costs if they do need to go to England for treatment. We are working with NHS Boards to look at all options to try and ensure that services up to 24 weeks are established here so that women can access all forms of abortion services in Scotland.

In addition, we have committed through the [Programme for Government](#) to support Gillian Mackay MSP with the development and drafting of her proposed Member's Bill to protect safe access for women to healthcare facilities that provide abortion services, subject to the detail of a forthcoming Supreme Court judgement.

The Scottish Government understands and appreciates the concerns raised and has indicated that it may be open to reviewing the law on abortion in future. The Programme for Government published in

September notes that we will consider what further actions we need to take to embed women's rights to safe access to healthcare in the future. This consideration would follow delivery of the actions set out above and as such we have no immediate plans to amend the Abortion Act 1967 at this time. I note the petitioner has stated that '*The conditions of the Abortion Act 1967 ignores a great many reasons for seeking an abortion including rape, incest, poverty or simply not wanting to be pregnant. This means women remain at risk of prosecution for choosing to end their pregnancy*'. However, I would like to make clear that women can lawfully access abortion in Scotland up to 24 weeks' gestation in all the circumstances listed above, in accordance with the terms of the Abortion Act 1967.

In the meantime, the Scottish Government continues to focus its attention on the key priority issues outlined above and in the Women's Health Plan to ensure that women can access abortion services safely and in a way which meets their needs. Once these key issues have been resolved, we can consider further if other actions are needed.

It is also worth clarifying that the petitioner has stated that abortion is a criminal offence under the '[Offences against the Person Act 1861](#)'. This is factually inaccurate as the relevant part of that Act does not apply to Scotland. Whilst there is a common law offence in relation to abortion, it does not necessarily follow that if a termination of pregnancy was obtained outwith the requirements of the Abortion Act 1967 that an offence would have been committed and the patient would be prosecuted.

I hope this response is helpful.