

Citizen Participation and Public Petitions Committee

16th Meeting, 2023 (Session 6), Wednesday
8 Novemebr 2023

PE1969: Amend the law to fully decriminalise abortion in Scotland

Lodged on 19 October 2022

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. The Committee last considered this petition at its meeting on [22 February 2023](#). At that meeting, the Committee agreed to write to stakeholder organisations and civil society groups including the British Pregnancy Advisory Service, Sexual Health Scotland, British Medical Association, the Scottish Human Rights Commission, Abortion Rights Scotland, faith organisations, and the Humanist Society Scotland.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from the humanist Society Scotland, the Society for the Protection of Unborn Children (SPUC), the British Pregnancy Advisory Service, the Catholic Bishops' Conference of Scotland, CARE for Scotland, the Free Church of Scotland, the British Medical Association, Monica Lennon MSP, the Petitioner, which are set out in **Annexe C**.

4. Requests to provide the Committee with written submissions have been received from Scottish Council on Human Bioethics, and the Evangelical Alliance.
5. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
6. Further background information about this petition can be found in the [SPICe briefing for this petition](#).
7. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#). The Committee have also received an update from the Scottish Government highlighting the commitment included in the Programme for Government to review the law on abortion. A copy of the update is included in **Annexe C**.
8. Every petition collects signatures while it remains under consideration. At the time of writing, 2,414 signatures have been received on this petition.

Action

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

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

Extract from Official Report of last consideration of PE1969 on 22 February 2023

The Deputy Convener: Our first new petition today is PE1969, on amending the law to fully decriminalise abortion in Scotland, which has been lodged by Gemma Clark. The petition calls on the Scottish Parliament to urge the Scottish Government to introduce legislation to fully decriminalise abortion services in Scotland and make provision to ensure that abortion services are available up to the 24th week of pregnancy across all parts of Scotland.

Gemma highlights that, although the Abortion Act 1967 sets out criteria making abortion permissible, such as the requirement for two doctors' signatures, it does not explicitly decriminalise abortion. Gemma believes that that leaves women open to the risk of prosecution if they choose to end their pregnancy.

In responding to the petition, the Scottish Government makes clear its view that all women should be able to access abortion services, as set down within the limits of the law, where they wish. The Government's response refers to work being undertaken with national health service boards to ensure that services up to 24 weeks are established in Scotland. It also makes reference to the support that is being provided to Gillian Mackay in drafting her member's bill on safe access zones for abortion services.

The Scottish Government has indicated that, although it may be open to reviewing the law on abortion in the future, it has no immediate plans to amend the Abortion Act 1967.

The committee has also received a submission from the Scottish feminist policy and advocacy organisation Engender, which briefly sets out its argument in support of decriminalising abortion.

Members should also be aware, as highlighted in both the briefing we received from SPICe and the Scottish Government response, that the Offences Against the Person Act 1861 mentioned in the petition does not apply in Scotland.

Do members have any suggestions or comments??

Carol Mochan: I am quite supportive of the general principles of the petition about decriminalising abortion. In a modern society, it seems right that the Abortion Act 1967 should be updated. I would be interested to know why the Government says that it is supportive of that but has not set out any plans to do it. Can we explore that?

I know that there is medical support behind changing the law, so it would be interesting to ensure that we have all that information. I would like us to take the petition forward.

The Deputy Convener: We could write to the stakeholders involved, such as the British Pregnancy Advisory Service, Sexual Health Scotland, the British Medical Association, the Scottish Human Rights Commission, Abortion Rights Scotland and faith organisations—Interfaith Scotland, the Society for the Protection of the Unborn Child and the Humanist Society Scotland—to seek their views on the actions that are called for in the petition.

Alexander Stewart: It is important that we collate as much information on this topic as we can. If we contact those agencies and organisations that you indicated, convener, they will be able to give us their views on any action that may be required. That will enable us to take a much better and a more holistic approach to challenging the issues raised by the petition. As Carol Mochan has said, the law requires updating. It has been decades since the issue has been examined in that way. By collecting that information and putting it all together we will have a much better picture as to how the issue is being approached across those organisations in Scotland.

The Deputy Convener: Does the committee agree to all those recommendations?

Members *indicated agreement.*

Annexe C

Humanist Society Scotland submission of 30 March 2023

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

Thank you for contacting us asking for our view on petition 1969. I am writing in response on behalf of Humanist Society Scotland to present our views on the decriminalisation of abortion within Scotland.

Humanist Society Scotland is in support of amending the law to decriminalise abortion in Scotland.

As advocates for the humanist community within Scotland, we believe in the importance of bodily autonomy and freedom of choice for each individual. This includes women's right to decide about their own bodies, including the decision to have an abortion if they so wish.

Decriminalising abortion is not only a matter of individual rights but also a matter of social justice due to the fact that women from disadvantaged backgrounds often face greater barriers to accessing reproductive healthcare.

In addition, decriminalising abortion would bring Scotland in line with international human rights standards. The United Nations has recognised access to safe and legal abortions as a human right and countries around the world are taking steps to ensure that women have access to these services. Scotland would join a plethora of other European nations in decriminalising abortion. These nations include Denmark (1973), The Netherlands (1984), Belgium (1990) and France (1975). Scotland has the opportunity to be a leader in this movement and show its commitment to upholding human rights for all.

We understand the complex nature of this issue and that there are many different perspectives on this matter. However, we believe that the decriminalisation of abortion is a necessary step towards creating a more just and equitable society, one that upholds the fundamental

principles of humanism. We also note that decriminalisation of abortion is a view supported by many of the front-line service providers with first-hand experience of abortion care including the British Medical Association, the Royal College of Obstetricians and Gynaecologists, the Royal College of Midwives and the British Pregnancy Advisory Service,

We urge you to consider this petition PE1969 with care and compassion and to take the necessary action to decriminalisation abortion within Scotland.

Society for the Protection of Unborn Children (SPUC) submission of 31 March 2023

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

The first thing to note about this petition is that it is factually incorrect. It states “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.).” As *Scottish Legal News* has pointed out, the Offences Against the Person Act 1861 does not apply to Scotland. Section 78 of the 1861 Act is entitled: ‘Act not to extend to Scotland’. It reads: “Nothing in this Act contained shall extend to Scotland, except as herein-before otherwise expressly provided.”

Given the fundamental inaccuracy in this petition, it is unclear what the petitioner means by “fully decriminalise abortion services in Scotland”. Before the 1967 Abortion Act, abortion in Scotland was regulated under Common Law. Jonathan Brown of the University of Strathclyde says that “in Scotland, ‘therapeutic abortion’ was regarded as lawful and women who sought termination even from ‘back-alley’ providers were not expressly criminalised.”¹ The contention in the petition that Scottish women are at risk of imprisonment for abortion is therefore not supported – and indeed, no woman in Scotland has ever been criminalised for abortion.

¹ <https://www.strath.ac.uk/humanities/lawschool/blog/decriminalisingabortionchallengesforscotland/>

Dr Brown further says: “advocates of the ‘de-criminalisation’ of abortion in Scotland must reckon with what, exactly, ‘de-criminalisation’ is to mean. While...legislative clarity would be welcome, it is not altogether clear that a woman or girl who seeks to procure termination herself commits a crime. Rather, it seems that the fundamental nature of the crime of abortion in Scotland is the intentional or reckless provision of an unsafe termination in circumstances which might put the prospective mother’s life at risk. That such is criminal, it might be thought, is reasonable.”

We agree that keeping abortion within the criminal law is essential for women’s safety. While, as stated, the 1861 Act does not apply to Scotland, in England and Wales it is most often used to prosecute men who have caused or attempted to cause an abortion through physical violence or through administering drugs without the woman’s consent. There must be protections for women against such abuse. The increasing evidence of the extent to which women are coerced into abortion (a recent BBC poll found that 15% of British women have experienced coercion or pressure to have an abortion they did not want²) shows that it is essential to have a way of prosecuting abusive partners and others who abuse women in this dreadful way.

We also contend that on a contentious moral issue such as abortion, laws and regulations should be decided by accountable elected politicians, rather than devolved solely to the healthcare profession, as would happen if it were not regulated by the law. Decriminalisation would mean that MSPs (and so the public) would have no say on how late abortion is allowed (abortion providers now openly argue that there should be no upper limit), for what reasons (eg whether sex-selective abortion should be permitted), and what safety standards are in place. In addition, abortion providers themselves admit that the vast majority of abortions are carried out not on ‘medical’ grounds but simply because the pregnancy is ‘unwanted’.³ This alone would suggest that a non-medical procedure, involving the taking of a human life, should be governed by the criminal law, not by unaccountable medical bodies.

² <https://savanta.com/knowledge-centre/poll/reproductive-coercion-poll-bbc-radio-4-8-march-2022/>

³ Furedi A, ‘Are there too many abortions?’ in Abortion Review Special Edition 2: Abortion and Women’s Lives (Papers from the BPAS conference, London 25-26 June 2008), p3

Turning now to the demand to ensure that “abortion services are available up to the twenty-fourth week of pregnancy across all parts of Scotland”, it is also unclear how the petitioner expects this to be achieved, especially without risking conscience rights. Given that only 71 abortions, 0.5% of the total, were carried out over 20 weeks in 2021, it does not seem like a priority for the strained Scottish NHS.

While SPUC believes that unborn children of all gestations should be protected by the law, this call for post-viability abortion is also out of line with public opinion. Recent polling shows that a minority (40%) of the population believe that abortion should be available even to 20 weeks⁴, let alone 24. As the survival rate for babies born prematurely at 23 and 22 weeks improves, public sympathy is more likely to swing behind reducing the current provision than pushing it to its limit.

British Pregnancy Advisory Service submission of 3 April 2023

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

As a group of organisations that both provide, and represent those who provide abortion healthcare, we support petition PE1969’s aims to remove abortion from the criminal justice system through a process of decriminalisation. It is a goal towards which we have been working across the UK for a number of years.

Current law

Abortion in Scotland has long been underpinned by common law offences. This is different to the statutory underpinning noted in the petition text which applies only to England and Wales, but one source describes the Scottish law as follows:

PROCURING ABORTION

⁴ <https://www.ipsos.com/sites/default/files/ct/news/documents/2022-07/Global%20Advisor-Global%20Opinion%20on%20Abortion%202022-Graphic%20Report.pdf>

*To cause or procure abortion whether by drugs or by instruments or violence is a crime. There must be criminal intent, for it may be necessary to cause abortion. The woman herself may be guilty, if she be aware of the purpose for which the drug is administered or the instrument used.*⁵

While a doctor providing a therapeutic abortion in a medical setting, and the woman involved, are not liable for prosecution under common law, it is less clear with regards to the woman if she seeks to end her pregnancy outside a medical setting – in a modern example, for instance, by buying abortion medication online.

The Abortion Act 1967 did not sweep away these common law offences – but codified the legalities of providing abortion in certain, fixed circumstances. Those include having two doctors certify that a woman meets one of the grounds for an abortion, that the abortion takes place in an NHS hospital or licensed premises, and requiring that the abortion is directed by a registered medical practitioner. The law also leaves in the hands of the Minister for Health decisions regarding licensed premises – most recently used to legalise (or potentially in future, remove) access to telemedical abortion.

Impact of the law on abortion provision

Prior to the introduction of the Abortion Act, provision of abortion in Scotland varied significantly – with the north east of Scotland carrying out a substantial number of procedures, while Glasgow declined to provide almost any. In this way, while the Abortion Act in England selectively legalised abortion, in Scotland it instead provided more of a standardised framework for access to healthcare. However, it also placed limitations on provisions which the underlying common law did not require.

It requires two doctors to approve every abortion, for instance. It limits the role of nurses and midwives in the direction of care provided under the Act. And it shaped the role and understanding of providers such that there is now nowhere in Scotland where any doctor, despite a lack of

⁵ A Practical Treatise on the Criminal Law of Scotland, 5th edn, by J Walker and D J Stevenson (1948) p114

formal criminalization, would seek to provide much-needed care to a woman in a way that contravened the provisions of the Act.

The case for change

Scotland lags behind the over 50 countries worldwide which have modernised their abortion laws since 1996, including Northern Ireland where Westminster decriminalised abortion in 2019⁶. Current laws are also out of step with The United Nations High Commissioner for Human Rights (OHCHR) who has stated that “*human rights bodies have provided clear guidance on the need to decriminalise abortion [...] to ensure women’s right to health as well as other fundamental human rights*”⁷.

Across the UK, and broad coalition of international, medical, and civil society bodies are all calling for a change in abortion law⁸ – treating it as a medical rather than criminal matter and ensuring no woman can be jailed for ending her own pregnancy.

We want to be clear that decriminalisation does not mean deregulation. Abortion services would be provided in accordance with legislation and regulation that already exist, and services would need to be provided in accordance with best practice and guidance. By changing the legal framework, abortion would be treated like any other medical procedure and governed by medical regulation and standards in the same way, for example, as maternity care.

Conclusion

We therefore fully support the aims of this petition and urge the committee to take further steps towards decriminalising abortion in Scotland.

We believe that this change in law would be a strong symbol in defining Scotland as a country that respects the bodily autonomy of women and upholds the right to access abortion on their terms.

⁶ [The World's Abortion Laws - Center for Reproductive Rights](#)

⁷ [INFO Abortion WEB.pdf \(ohchr.org\)](#)

⁸ [Decriminalise abortion - BPAS Campaigns \(bpas-campaigns.org\)](#)

It will align Scotland with the broader movement to strengthen women's reproductive rights and access worldwide, improve the ability of providers to innovate and vary delivery of services, and ensure that abortion continues to be treated as the healthcare it is.

Yours sincerely,

- Chief Executive Officer of the British Pregnancy Advisory Service (BPAS)
- President of Royal College of Obstetricians and Gynaecologists (RCOG)
- Co-Chair of the British Society of Abortion Care Providers (BSACP)
- President of the Faculty of Sexual and Reproductive Healthcare (FSRH)
- Joint-Chair of the Royal College of General Practitioners Scotland (RCGP)

Catholic Bishops' Conference of Scotland submission of 5 April 2023

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

The Bishops' Conference of Scotland is a registered charity and permanently constituted assembly which enables the Roman Catholic Bishops in Scotland to work together, undertaking nationwide initiatives through its Commissions and Agencies.

The members of the Bishops' Conference are the bishops of the eight Scottish Dioceses.

The Catholic Parliamentary Office is an agency of the Bishops' Conference of Scotland and part of its remit is to engage with the work of Parliament and Government.

The petition 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.

The petition states that the Offences Against the Person Act 1861 made abortion a criminal offence and that the Abortion Act 1967 sets out criteria where abortion may be permissible in law.

It is important to point out that the Offences Against the Person Act 1861 does not apply to Scotland. In Scotland, abortion is illegal at common law and not by statutory provision. The petitioner correctly points out that the Abortion Act 1967 sets out criteria where abortion is permissible in law. We are not aware of any recent prosecutions by Police Scotland under the common law offence of abortion.

Every abortion involves the taking of innocent human life. We appeal to the Scottish Parliament and Scottish Government in the strongest possible terms to acknowledge the reality of abortion, which is always fatal for the prenatal child.

If abortion is decriminalised in Scotland, it would:

- result in Scotland having one of the most extreme abortion regimes in the world, far removed from the 12-week abortion time limit of most EU countries;
- allow for abortion up to birth for any reason, including abortion on the basis of sex and for any disability, no matter how severe; and
- result in the removal of the requirement for two doctors to sign off an abortion which could endanger pregnant women by removing criminal sanctions for abortions performed in unsafe settings or under coercion.

Statistics continue to bear out that women from the most deprived areas of Scotland are twice as likely to have an abortion than women from the least deprived areas. This suggests that poverty plays a significant role in a woman's decision to have an abortion. There is an obligation on the state to support women and families that find themselves in such difficult circumstances and who feel that they have no other option.

It was recently announced that a new memorial book will be introduced in Scotland for those who have experienced a baby loss prior to 24 weeks. The new book will be accompanied by the launch of a new service which will allow parents to apply for a commemorative certificate to give recognition to the child they have lost. These commendable

efforts to recognise the intrinsic dignity of the unborn child must not be contradicted by moves which fail to acknowledge that dignity and decree that those same lives are dispensable.

Article 6 of the UN Convention on the Rights of the Child, which the Scottish Parliament in 2021 voted to directly incorporate into Scots law, declares that States Parties must “recognise that every child has the inherent right to life.” Moreover, the Preamble to the Convention specifically quotes the Declaration on the Rights of the Child which states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, **before** as well as after birth.”

The Scottish Parliament and Scottish Government ought to respect the terms of the Convention and reject the petitioner’s proposal to decriminalise abortion.

Moreover, at the committee meeting of 22 March, the committee considered PE1996 Abortion Law (Disability). The committee agreed not to advance that petition, “particularly given the Scottish Government’s position that it does not intend to amend the Abortion Act 1967.”

In responding to this petition PE1969, the Scottish Government has again stated that it has “no immediate plans to amend the Abortion Act 1967.” For consistency, we urge the committee to agree not to advance this petition.

We appeal to parliamentarians and political leaders to work to increase efforts to promote alternatives to abortion, to ensure support is available to women experiencing a crisis pregnancy, and to acknowledge and enforce equality of rights for the child in the womb, the first of which is the right to life.

The mark of a humane and compassionate society is to work through the difficulties and challenges women face in the case of a crisis pregnancy in a life affirming, not life destroying, manner.

CARE for Scotland submission of 6 April 2023

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

1. We are extremely concerned about the potential impact of the petitioner's request to: "*bring forward legislation to fully decriminalise abortion services in Scotland*". The NHS Scotland website says "*It's legal to have an abortion during the first 24 weeks of pregnancy, so long as certain criteria are met.*"⁹

Why is CARE concerned about the law?

2. The current law affords the unborn some legal recognition and protection and in so doing recognises that an abortion is **not simply another medical procedure** — another human life is involved. As the Preamble to the UN Convention on the Rights of the Child says the child "*needs special safeguards and care, including appropriate legal protection, before as well as after birth*".
3. By definition, "decriminalisation" could lead to the removal of all existing legal safeguards protecting the child in the womb, **potentially leading to termination upon any grounds (including sex selection) and up to any stage of pregnancy (i.e. up to birth)**.
4. Baroness Hale in a Supreme Court judgment stated "*the community undoubtedly does have a moral interest in protecting the life, health and welfare of the unborn - it is that interest which underlies many areas of the law, including the regulation of assisted reproduction, and of the practice of midwifery, as well as of the termination of pregnancy*".¹⁰ The Westminster Government has stated that *the period from conception to age two is globally recognised as critical for building strong societies*".¹¹

⁹ <https://www.nhsinform.scot/tests-and-treatments/surgical-procedures/abortion>

¹⁰ [2018] UKSC 27, Baroness Hale at paragraph 21

¹¹ HM Government, *The Best Start to Life: A Vision for the 1,001 Critical Days*, 2021, pages 10, 5, 6 and see 125 and 126

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/973112/The_best_start_for_life_a_vision_for_the_1_001_critical_days.pdf

Are there reasons to be concerned about abortions on the grounds of sex selection?

5. We are firmly of the view that termination based on sex selection, or up to birth, have no place in a civilised society and would not have wider public support. The UK Government have made clear that under the Abortion Act 1967, which applies in Scotland, “*Sex selection is not one of the lawful grounds for termination of pregnancy.*”¹² It is contrary to many statements made under international law which require prohibition of sex-selective abortion:

5.1. UN Commission on Human Rights Resolution 1996/49 and UN General Assembly Resolution 52/106 calls upon states to “*enact and enforce legislation against... prenatal sex selection*”^{13 14}

5.2. The International Conference on Population and Development called to “*eliminate all forms of discrimination against the girl child*” which include prenatal sex selection.’¹⁵

5.3. The Beijing Platform for Action said: ‘*Eliminate all forms of discrimination against the girl child...which result in harmful and unethical practices such as prenatal sex selection ...often compounded by the increasing use of technologies to determine foetal sex, resulting in abortion of female foetuses*’.¹⁶

6. With the advent of non-invasive prenatal testing (NIPT),¹⁷ it is now possible to discern the sex of an unborn child the **sex of the baby between 7¹⁸ and 10 weeks’ gestation.¹⁹ A 2019 journal article**

¹² House of Commons [Written PQ 6069, Answered 28 Jan 2020.](#)

¹³ UN Commission on Human Rights, The elimination of violence against women, 19 April 1996, E/CN.4/RES/1996/49 <https://www.refworld.org/docid/3b00f22f18.html>

¹⁴ UN General Assembly, The girl child, 11 February 1998, [A/RES/52/106](#)

¹⁵ UN, Population and Development: [Programme of Action](#) Adopted at the International Conference on Population and Development, Cairo, Sept. 5–13, 1994, New York: Department for Economic and Social Information and Policy Analysis, UN, 1995.

¹⁶ https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf

¹⁷ See <https://www.belfastfertility.co.uk/treatments/harmony-prenatal-test/>

¹⁸ Bowman-Smart H, Savulescu J, Gyngell C, Mand C, Delatycki MB. Sex selection and non-invasive prenatal testing: A review of current practices, evidence, and ethical issues. *Prenatal Diagnosis*. 2019;1-10. <https://obgyn.onlinelibrary.wiley.com/doi/full/10.1002/pd.5555>

¹⁹ The Nuffield Council on Bioethics say “*NIPT can, in principle, provide earlier results than current screening tests. NIPT usually can be performed at nine to ten weeks of pregnancy, with results being delivered usually within a week of the test.*” *Non-invasive prenatal testing: ethical issues*, March 2017, page 4, <http://nuffieldbioethics.org/wp-content/uploads/NIPT-ethical-issues-full-report.pdf>.

<https://www.nidirect.gov.uk/articles/testing-abnormalities> says “Blood testing for Down’s syndrome can be carried out between 11 and 13 weeks of pregnancy”

stated, “*The introduction of NIPT has the potential to make the practice of sex-selective termination of pregnancy (TOP) an even more pressing issue. NIPT can determine the sex of the fetus very accurately and very early in the pregnancy. It is increasingly accurate from 7 weeks' gestation.*”²⁰

The concerns about access

7. We note that terminations reported for 2021 were occurring at **near record numbers in Scotland**, and that the provision for abortions at home, introduced during Covid-19, are to be continued. As such, we believe that the petition projects a **false narrative** that access to abortion services is being impeded. This is evidently not the case.

Wider concerns about abortions

8. The petitioner’s focus on widening access and decriminalisation also simultaneously risks diverting attention from important issues such as the current termination of babies with Downs’ Syndrome (already legal up to birth), ongoing advances in improving foetal viability, efforts to reduce the number of abortions from its current very high level, and wider discussions about drivers of abortion in Scotland, such as the links between termination and deprivation.²¹
9. Additionally, we note that on 22 March 2023, the Committee agreed to close Petition PE1996 ‘Take action to prevent discriminatory abortions for disability in Scotland’ on the sole grounds that the Scottish Government have indicated that they have no plans to amend the Abortion Act 1967. Consistent logic would therefore demand that this petition should also be closed for the same reason.
10. **We therefore strongly urge the Committee to reject the Petition and all subsequent calls for decriminalisation.**

²⁰ Bowman-Smart H, et al *Prenatal Diagnosis*. 2019;1-10, *Op Cit*

²¹ <https://www.publichealthscotland.scot/publications/termination-of-pregnancy-statistics/termination-of-pregnancy-statistics-year-ending-december-2021/> published 31 May 2022.

Free Church of Scotland submission of 8 April 2023

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

The Free Church of Scotland welcomes the opportunity to provide a written submission in relation to Petition PE1969: Amend the law to fully decriminalise abortion in Scotland. We recognise abortion is an emotive issue but believe any move towards decriminalisation would be harmful to women and to society as a whole.

The UN Convention on the Rights of the Child (1989) states that the child “needs special safeguards and care, including appropriate legal protection, before as well as after birth”²². This recognises that abortion is not simply another medical procedure – there is another life involved, which is worthy of protection. The criminal law recognises the need to protect the child in the womb and any move to fully decriminalise would undermine the inherent value and worth of the child. It would also reduce the seriousness of a decision to seek an abortion.

We also note there have been calls in recent years to strengthen the protection of the child in the womb by introducing a new offence to deal with situations where assault to a woman results in the loss of the child in the womb²³. This would be a positive move and is consistent with retaining the criminality of abortion. Decriminalisation would be a move in the opposite direction.

It is not clear how decriminalisation would work, but we note the petitioner’s suggestion this would broaden or abolish the number of categories for which an abortion could be carried out. We understand that decriminalisation would remove all restrictions and safeguards in relation to abortion. This could lead to a termination being obtained for any reason, could introduce the possibility of known sex-selective terminations and could allow a termination at any stage of pregnancy (even immediately preceding birth). This would represent a wide-ranging

²² Reaffirming the statement in the UN Declaration of the Rights of the Child (1959)

²³ <https://www.thenational.scot/politics/23121801.new-crime-needs-added-scots-law/>

expansion of the current law and would cease to show any concern for the rights of the child.

Moreover, decriminalising abortion has the potential to further outsource the provision of abortion services. Decriminalisation could lead to deregulation and increased risks to women. There is also a strong and increasing association between deprivation and the rate of abortion. In 2021 the rate of abortion in the most deprived areas was almost twice as high as in the least deprived areas of Scotland²⁴. Women from deprived areas are more likely to make use of abortion providers if abortion is decriminalised.

Any move to grant the petitioner's request would have serious consequences for the wellbeing of women. The decision of whether to have an abortion is already one of the most difficult decisions a woman can make during her lifetime. There are serious long-term consequences of a woman deciding to go ahead with an abortion²⁵. From pastoral experience we know that many women who underwent an abortion years ago still suffer trauma and grief associated with that decision. Organisations that offer post-termination counselling often encounter women who underwent abortions years ago (in some cases 10 or 20 years ago) who are still dealing with the psychological impact. We believe more research is needed into the long-term psychological impact of abortion before any change that could increase the prevalence of abortions.

²⁴ <https://www.publichealthscotland.scot/publications/termination-of-pregnancystatistics/termination-of-pregnancy-statistics-year-ending-december-2021>

²⁵ There is a lack of good research into the psychological risks associated with abortion and more work needs to be done. See David C Reardon, "The abortion and mental health controversy: A comprehensive literature review of common ground agreements, disagreements, actionable recommendations, and research Opportunities". SAGE Open Medicine 2018(6), 1-38 and Edna M. Astbury-Ward, "Emotional and psychological impact of abortion: a critique". J Fam Plann Reprod Health Care 2008: 34(3), 181-184. See also "Induced Abortion and Mental Health: A Systematic Review of the Mental Health Outcomes of Induced Abortion, Including Their Prevalence and Associated Factors" (https://www.aomrc.org.uk/wpcontent/uploads/2016/05/Induced_Abortion_Mental_Health_1211.pdf) which states: "An unwanted pregnancy was associated with an increased risk of mental health problems." and the authors recommend that "In the light of these findings, it is important to consider the need for support and care for all women who have an unwanted pregnancy because the risk of mental health problems increases whatever the pregnancy outcome."

It has also been well documented that coercion and undue pressure are common issues connected with a woman seeking an abortion²⁶. This can come both from the child's father but also often from other people such as the woman's parents. There can also be pressure from other third parties especially where the woman is caught up in prostitution or human trafficking²⁷. A coerced decision is not consent and more must be done to support women facing coercion. Decriminalisation would undermine the support that can currently be given by medical practitioners.

As Christians we believe all human beings have inherent worth and value, having been made in the image of God. We are concerned for the rights of the unborn child and believe more needs to be done to protect the child in the womb. We also are concerned about the impact abortion has on the health and wellbeing of women. We do not therefore share the State's view as to when abortion is permissible; indeed, we believe that there are few circumstances in which it is justified.

We believe any move towards decriminalisation would be harmful to the women involved and have a negative impact on society at large by devaluing the life of the child in the womb. As a church, we believe a truly compassionate future for Scotland is one where children are cherished, protected, and supported from conception until adulthood. And where each family has the support needed to welcome a child.

²⁶ See Hathaway J E, Willis G, Zimmer B, Silverman J G, "Impact of partner abuse on women's reproductive lives" *Journal of the American Women's Medical Association* 60 (2005), 42-45; Chibber KS et al, "The role of intimate partners in women's reasons for seeking abortion", *Women's Health Issues* 24 (2014), e131-38

²⁷ A recent survey commissioned by the BBC (<https://www.bbc.com/news/newsbeat-60646285>) found that 15% of British women had experienced pressure or coercion to have an abortion that they did not want. In addition, 3% of respondents said they had been given a substance or tablet to induce an abortion without their knowledge or consent. 5% said they had experienced physical violence with the intent to end their pregnancy.

British Medical Association (BMA) submission of 28 June 2023

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

The British Medical Association (BMA) believes that abortion should be regulated in the same way as other medical treatments. It supports the removal of criminal sanctions associated with abortion (the decriminalisation of abortion) for: women who procure and administer their own abortion; and health professionals administering abortions within the context of their clinical practice. The BMA believes that in these circumstances limits on the availability of abortion can, and should, continue to apply, subject to professional and regulatory rather than criminal sanctions.

At the most basic level, the decriminalisation of abortion involves the removal of some, or all, of the criminal sanctions associated with abortion, so that instead of abortion being a crime for which there are some exceptions, abortion should be lawful except in exceptional circumstances.

The BMA believes that abortion needs to be decriminalised to ensure the safe and timely delivery of abortion services in Scotland. Clinical care, professional practice and societal attitudes have changed significantly since the enactment of the current criminal law. We believe the law must be amended to reflect these changes.

The BMA encourages women to access lawful, regulated abortion services; but for a range of logistical, economic and social reasons, women are not always able to access these services. The fact that it is a crime does not stop some women accessing abortion via unregulated routes – for example by purchasing abortifacients online or by trying to self-administer an abortion by other means. The BMA believes it is critical in these cases that women feel able to access appropriate support and follow-up medical care, should it become necessary, without being deterred by the threat of criminal sanctions.

The criminal law may also be deterring healthcare professionals from providing lawful abortion services and thus restricting the services available to women. Within the UK there have been a number of attempts to initiate criminal proceedings against healthcare professionals for carrying out what they considered to be lawful abortions. The stress associated with facing police questioning, or of being challenged through the media, should not be underestimated. The risk of criminal prosecution in such instances, as well as for procedural irregularities (such as failing to submit an abortion notification form within the required timeframe), has a chilling effect on healthcare professionals who are, or may be considering, participating in the lawful provision of abortion services. The BMA is concerned by the impact this has on the UK's ability to train and recruit the future workforce necessary to deliver safe, equitable abortion services.

To conclude, the BMA supports the removal of criminal sanctions for abortion, and for abortion to be regulated in the same way as other medical procedures.

We do not support deregulation, nor the removal of criminal sanction which apply in circumstances where:

- Individuals perform an abortion without appropriate training
- Individuals maliciously and covertly try to procure an abortion or administer an abortifacient without the woman's consent
- Individuals illegally supply abortifacients
- Individuals illegally procure abortifacients on behalf of others

For further details on the BMA's position, please see our [paper on the removal of criminal sanctions for abortion](#) and our [guidance on how services will be regulated](#) if the criminal sanctions for abortion are removed.

Petitioner submission of 21 October 2023

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

In my endeavour to gather information to support my petition, [PE1969: Amend the law to fully decriminalise abortion in Scotland](#), I contacted Police Scotland via 101 on 21 October 2023. During this call, I inquired whether purchasing abortion pills online and their subsequent use would constitute a criminal offense.

An officer informed me that, while there may not be extensive guidance available to the police, their actions are governed by the Abortion Act of 1967. I was advised that if there were indications of potential criminal activity, such as the procurement of abortion pills without a doctor's involvement, it would trigger a police investigation. Furthermore, I was made aware that such cases could escalate to involve CID detectives, and human rights lawyers might also be consulted in the process.

Monica Lennon MSP submission of 23 October 2023

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

I support the aims of petition PE1969 to remove abortion from the criminal justice system in Scotland.

The petitioner, Gemma Clark, is a dedicated abortion rights campaigner. I am grateful to Ms Clark for lodging this petition. As a Central Scotland MSP and in my role as Convenor of the Cross-Party Group on Women's Health, I recognise that improving abortion care in Scotland, including decriminalisation, is an important issue to many people across the country.

Many people are unaware that abortion was never fully decriminalised in Britain, despite significant legal reform in the 1960s. Recent high-profile cases in England have brought these issues into sharper focus.

Commenting on the criminal case involving a woman accused of inducing abortion, Humanists UK said: ‘It is shocking that in 2023 in Britain a woman faces a sentence of up to life imprisonment for having an abortion under a law passed at a time when women could not even vote.’”

The Abortion Act 1967 was approved following a compromise to create a legal defence, provided that a woman had the sign-off of two doctors and other similar regulations.

Currently, the only part of the UK where abortion is fully decriminalised is Northern Ireland. The new law was passed in 2019 by the UK Parliament to reflect the recommendations of the UN Committee for Elimination of Discrimination Against Women report on the UK.

On a point of accuracy, I understand that the petition originally referenced the incorrect statute (the Offences Against the Person Act 1861). However, I note that this has been clarified by the helpful SPICE briefing and in submissions from key organisations. I will turn to the fact in hand, which is that abortion is not fully decriminalised in Scotland under the Abortion Act 1967.

Abortion law was devolved to Scotland under Section 53 of the Scotland Act 2016. In 2022, the US Supreme Court delivered a historic ruling that ended the nationwide right to abortion, impacting the lives of millions of women and transforming the political landscape. This contrasts with recent developments in Mexico, where abortion was decriminalised by the Supreme Court in September. Decriminalising abortion is an issue I first raised with the Scottish Government in 2017.²⁸

In June 2022 in collaboration with women’s organisations and healthcare stakeholders, I called on the First Minister Nicola Sturgeon to hold an emergency summit on abortion care.²⁹ At the summit held on 27 June 2022, several policy areas of improvement were identified including telemedical abortion provision and buffer-zones. It was also raised that decriminalising abortion in Scotland would be a significant, yet appropriate next step, a suggestion that Ms Sturgeon was open to.

²⁸ [Written question and answer: S5W-10236 | Scottish Parliament Website](#)

²⁹ [Meeting of the Parliament: 12/05/2022 | Scottish Parliament Website](#)

Since then, a second abortion healthcare summit has taken place, and as successor to Ms Sturgeon, First Minister Humza Yousaf has said he intends to bring forward abortion decriminalisation legislation.

The Committee has received helpful submissions from the British Pregnancy Advisory Service, Abortion Rights Scotland, Engender and the BMA. I align with the positions expressed. It is also important that any discussions and decisions made by the Scottish Parliament and the Scottish Government are informed by the lived experiences of women and people who have experience of the current system.

As I am not able to attend the Committee session in person, I wish to put my support for the petition on record and to thank the Committee for its consideration of the petition's aims. I hope this is helpful.

Scottish Government submission of 26 October 2023

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

The above petition was published back in September 2022, and the Scottish Government provided a submission to the Committee in [October of 2022](#) setting out our position at that current time.

Since our submission was sent to the Committee, the Scottish Government has committed in the 2023-24 Programme for Government to 'subsequently (following Parliamentary consideration of Ms Mackay MSP's Safe Access Zones Bill) undertake a review of abortion law to identify potential proposals, by the end of this parliamentary term, for reforms to ensure that abortion services are first and foremost a healthcare matter'.

The commitment can be found on page 27 of the [Programme for Government](#).

Population Health Directorate