

Written evidence submitted by the Society for the Protection of Unborn Children: Criminal Justice Bill (CJB03)

Introduction

The Society for the Protection of Unborn Children (SPUC) is a prominent pro-life campaigning organisation in the UK. We represent the views of tens of thousands of pro-life supporters across the country. We would like to submit evidence on amendments NC1 and NC2 to the Criminal Justice Bill.

Background

On Tuesday 28 November 2023, Labour MPs Dame Diana Johnson and Stella Creasy tabled amendments NC1 and NC2 respectively to the Government's Criminal Justice Bill. Both amendments would decriminalise abortion.

Recent calls for decriminalisation were sparked by the trial of Carla Foster, who was prosecuted for a late term illegal home abortion. Several more cases have come to light of women being prosecuted for taking abortion pills, obtained under the Government's pills by post abortion policy, past the legal limit.

This evidence scrutinises these amendments, examines the reasons women are being prosecuted for illegal abortion, and considers if removing abortion from the criminal law is the correct solution.

New Clause 1

Dame Diana's amendment, New Clause 1, states:

"For the purposes of the law related to abortion, including 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."

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 set out when doctors could 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.
- While the explanatory note claims that the amendment "would not change any law regarding the provision of abortion services within a healthcare setting, including...the time limit", this provides limited protection, because more than half of abortions are now carried out by a woman in her own home, using telemedicine. A woman who induced her abortion at home using pills (or any other method) at any stage of pregnancy, including just before natural birth, would commit no offence. In addition to the moral considerations of removing all legal protections from unborn babies, such abortions are dangerous and traumatic for women. While prosecutions are rare, laws against these dangerous and shocking abortions, where the baby is old enough to survive with a normal hospital delivery, help stop them taking place.
- 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 coercion.
- Dame Diana has also tabled a paving amendment, seeking to NC1 into force on the day the Criminal Justice Bill receives Royal Assent. This would leave virtually no time for the Government to prepare the necessary secondary legislation/guidance and consultations.

New Clause 2

Stella Creasy's amendment, NC2, states:

“(1) The Secretary of State must by regulations make whatever changes appear to the Secretary of State to be necessary or appropriate for the decriminalisation of abortion, in line with the recommendation in Paragraph 31 of the CEDAW General Recommendation No. 24: Article 12 of the Convention that “When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion”.

(2) Regulations under subsection (1) must—

(a) provide for the repeal of sections 58, 59 and 60 of the Offences Against the Person Act 1861,

(b) provide that no offence under these regulations or any other legislation is committed by a person complying with the requirements of subsection 1 of the Abortion Act 1967,

(c) provide that no offence under these regulations or any other legislation is committed by a person acting in relation to their own pregnancy where they have been coerced into taking that action,

(d) provide that no person acting in relation to their own pregnancy may be sentenced to a custodial sentence, and

(e) provide for alternative offences in relation to acts of abortion where the woman has not, or is suspected to have not, consented to the abortion.

(3) The Secretary of State may by regulations make any provision that appears to the Secretary of State to be appropriate in view of subsection (1), or (2).

(4) If regulations under subsection (1) are not approved by both Houses of Parliament within three months of this Act receiving Royal Assent, then sections 58, 59 and 60 of the Offences Against the Person Act 1861 are repealed.

(5) A statutory instrument made under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Some points about this amendment:

- Ms Creasy previously used CEDAW recommendations to change in Northern Ireland. The CEDAW committee referred to was not the UN speaking as a whole and its recommendations are neither binding nor international law.¹ There is no reason why the recommendation of a minor UN subcommittee should be written into UK domestic law.
- The amendment gives sweeping powers to the Secretary of State, lacking the precision and democratic accountability required for such a serious and emotive issue.
- The vast majority of convictions under ss58 and 59 are against men who cause the death of an unborn child by attacking a pregnant woman or giving her abortifacients against her will. For example, in May last year, a man was convicted under the act for spiking his pregnant girlfriend’s drink in order to cause a miscarriage. Repealing them would leave no way to charge such men, a gap that (e) seems insufficient to fill.
- While s58 pertains to a woman's actions regarding her own pregnancy, s59 of OAPA criminalizes supplying pills or instruments with knowledge of their use for an abortion. Repealing s59 means that anyone could supply the means for an abortion to anyone; for example, to abusive men wanting to coerce women into an abortion. There would be no safety standards, essentially heralding a return to backstreet abortion.
- Similarly to NC1, the repeal of ss58 and 59 would make abortion legal at any time, for any reason. It is difficult to see how (b) could be enforced, as the Abortion Act 1967, without the legal underpinning of OAPA and IPLA, would be defunct.

- S60 of OAPA deals with the crime of concealing the body of a baby who dies before, during or after birth, and is currently used when infanticide is suspected but cannot be charged due to lack of evidence. A woman would commit no offense if she self-induced abortion at full term or killed her baby during birth.
- (4) means that if Parliament votes against changes to abortion law, or if changes are not carried out in this short time frame, ss58, 59 and 60 will be repealed wholesale, with no concern for gaps in the law. There would be no law under which a man causing the death of an unborn child could be charged.

Prosecution of Women

As both of these amendments aim to prevent women from being prosecuted for abortion, it is important to examine the claims being made in this regard. In a debate on 14 November 2023, Stella Creasy said that “hundreds of women are now being prosecuted under outdated abortion legislation”ⁱⁱ. This contradicts figures that she and other abortion lobbyists have given in recent months. In July, she said in the Commons that there had been “67 prosecutions in the UK in the last 10 years”ⁱⁱⁱ. This figure is itself misleading, as it implies that 67 *women* had been prosecuted for illegal abortion. In fact, as mentioned above, the majority of such prosecutions are against men. A FOI request to the Metropolitan Police revealed that between 1 Jan 2012 - 31 July 2022, 42 people were arrested under ss58 and 59 of the OAPA and ILPA. Of these, 8 were female and 34 male. Of the 7 arrests that led to charges, all perpetrators were male.^{iv}

There has been an increase in women prosecuted this year for illegal abortion. Five women (including Carla Foster) are known to have been indicted. Firstly, those five prosecutions should be contextualized against the backdrop of over 200,000 legal abortions annually. 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.

The tragic story of Carla Foster is a case in point. Ms. Foster acquired abortion pills by falsely telling a BPAS telephone operative that she was seven weeks pregnant. BPAS then sent her the pills without correctly confirming the gestation of the pregnancy, or ensuring her welfare, leading to the death of the unborn child, baby Lily, who was found to be between 32-34 weeks' gestation. The pills by post policy resulted in an illegal and dangerous late-term abortion, exposed a traumatised woman to prosecution and left a fully viable baby dead. None of this would have happened if Carla Foster had been seen and examined in person. It is noteworthy that the very advocates for decriminalisation championed the policy that precipitated this tragedy. Abortion provider BPAS launched a campaign website, with a mechanism to contact MPs calling for decriminalisation, within minutes of Foster's sentencing.

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.^v

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.^{vi}

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 woman only discovered she was pregnant while miscarrying would have raised concerns for healthcare staff regarding her safety and wellbeing, including by whom she became pregnant under the legal age of consent. 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

These amendments seek to remove abortion from the criminal law, and prevent women from being prosecuted for illegal abortion. However, examination of the issue shows that:

- These amendments do not solve the problem of women being prosecuted – the true cause of recent prosecutions is the pills by post policy.
- Repealing law relating to abortion would allow women to induce their own abortion at any time for any reason – an extreme and dangerous proposal. NC2 would also remove a key way to prosecute infanticide.
- Repealing abortion law removes the means to prosecute abusive men who end a pregnancy through violence or deception.
- Cases where stillbirths have been investigated by police have involved minors where serious safeguarding concerns merit investigation.

These amendments should therefore be rejected.

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ⁱ That has been specifically confirmed by the Northern Ireland Office in its explanatory memorandum to the Abortion (Northern Ireland) Regulations 2021, which states, with reference to paragraphs 85 and 86 of the CEDAW report: “In particular, those recommendations are not binding and do not constitute international obligations.”

ⁱⁱ <https://hansard.parliament.uk/Commons/2023-11-14/debates/89BEA327-4A7A-47E7-919D-9E8F5CDBCD15/EconomicGrowth#contribution-6ECDBEFD-5529-411B-A980-36A995F01713>

ⁱⁱⁱ [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)

^{iv} https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure_2022/september_2022/s58-oapa-s59-oapa-1861-infant-life-preservation-act-1929-crimes.xlsx

^v (A full briefing on the pills by post policy is available [here](#)).

^{vi} [Women accused of illegal abortions in England and Wales after miscarriages and stillbirths | Abortion | The Guardian](#)