Written evidence submitted by Mr J Lee (CJB53)

CRIMINAL JUSTICE BILL 2023/24

Evidence relating to Amendment 1, New Clauses 1 and 2

INTRODUCTION

1. This submission relates to Amendment No. 1 and New Clauses 1 and 2.

2. The first two headings include a basic statement of the law on abortion as it currently stands and a summary of the background to the present amendments. These are provided for reference and the sake of context. The substance of this written submission runs from the 'Objections' on page 3. A summary of recommendations is provided on page 11.

THE LAW ON ABORTION

3. The law on abortion in England and Wales is comparatively straightforward. Sections 58 and 59 of the Offences Against the Person Act 1861 (the 1861 Act) set out the offences of unlawfully procuring an abortion and of unlawfully supplying or procuring the means for causing an abortion. The Infant Life (Preservation) Act 1929 (the 1929 Act) created the offence of child destruction. The Abortion Act 1967 (the 1967 Act), as amended, provides exceptions to the criminal law on abortion for procedures performed by registered medical practitioners under that Act.

4. Until Devolution at the turn of the 21st Century, this represented the law on abortion in Great Britain, with Scotland taking on abortion as a devolved competence under the Scotland Act 1998. The 1861 Act and section 25 of the Criminal Justice Act (Northern Ireland) 1945 (the 1945 Act) – for the offence of child destruction – formed the equivalent criminal law on abortion in Northern Ireland. The 1967 Act has not extended to Northern Ireland.

5. In July 2019, Parliament adopted an amendment to the Northern Ireland (Executive Formation etc.) Bill that became section 9 of the resulting Act (the 2019 Act). This section:
   (a) required the Secretary of State to "ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report [defined in subsection (10)] are implemented in respect of Northern Ireland,"
   (b) repealed sections 58 and 59 of the 1861 Act,[1]
   (c) made provision for subsequent regulations and about the coming into force of section 9, and
   (d) made other provisions not relevant to this submission.

[1] Section 25 of the 1945 Act was amended by regulations made under section 9 of the 2019 Act so as to exempt from its provision "(a) the pregnant woman herself; or (b) a registered medical professional" acting "in accordance with" the regulations.

6. Since the passage of the 2019 Act, the Government have made regulations under it with the aim of fulfilling their statutory obligations in relation to section 9. These have established a regulatory framework for abortion in Northern Ireland, based evidently on the scheme contained in the 1967 Act.

AMENDING THE LAW ON ABORTION

Recent attempts to de-criminalise abortion in England and Wales

7. There have been various attempts to de-criminalise abortion in England and Wales since the passage of the 2019 Act. These include:
   (a) in July 2020, New Clause 28 to the Domestic Abuse Bill (on Report) was not selected as being out of scope,
   (b) in July 2021, New Clause 55 to the Police, Crime, Sentencing and Courts Bill (on Report) – substantially the same as New Clause 28 – was considered, but not moved.
   (c) In November 2021, New Clause 50 to the Health and Care Bill (on Report) was considered, but not moved.

8. New Clauses 28 and 55 would both have repealed sections 58 and 59 of the 1861 Act; provided that no offence is committed under section 1 of the 1929 Act by "(a) a woman who terminates her own pregnancy or who assists in or consents to such termination, or (b) a registered medical practitioner, registered nurse or registered midwife acting in good faith;" and created a new offence of "non-consensual termination of pregnancy."

9. New Clause 50 would have amended sections 58 and 59 of the 1861 Act to exempt "a woman in relation to the procurement of her own miscarriage" from the provisions of those sections.

Amendment No. 1 and New Clauses 1 and 2 to the Criminal Justice Bill

10. New Clause 1 provides that

> No offence [under sections 58 and 59 of the 1861 Act] is committed by a woman acting in relation to her own pregnancy."

Amendment 1 is consequential on New Clause 1 and provides that the Clause come into effect on Royal Assent to the Bill.

11. New Clause 2 appears to be based on section 9 of the 2019 Act and provides that:

> 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…

The Secretary of State, amongst other things, *must*:
   (a) provide for the repeal of sections 58, 59 **and 60** of the 1861 Act,
   (b) provide that no relevant offence is committed by a person acting in relation to their own pregnancy where their action has been coerced,
   (c) provide that no person so acting may be given a custodial sentence, and
   (d) provide for alternative offences where consent has not been obtained.

The Secretary of State *may* "by regulations make any provision that appears to the Secretary of State to be appropriate…"

12. If Parliament has not approved the relevant regulations within three months of Royal Assent, subsection (4) of New Clause 2 provides for the express repeal of sections 58, 59 and 60 of the 1861 Act. These Regulations would be subject to the affirmative procedure.

OBJECTIONS TO THE DRAFTING OF THE AMENDMENTS

New Clause 1 and the consequences of de-criminalisation

13. I shall deal firstly with the consequences of simple de-criminalisation, which is, effectively, what is proposed by New Clause 1 with Amendment No. 1.

14. It is critical that Parliamentarians understand that the law on abortion is based on a primary *prohibition* (in the form of sections 58 and 59 of the 1861 Act) and a secondary set of *exceptions* (provided for in and under the 1967 Act) for abortions performed or carried out in accordance with a statutory regulatory framework. This regulatory framework is based, largely, in primary legislation. *If that primary prohibition is removed, the regulatory framework has no effective basis in law. Since there would be no prohibition, there would be no legal requirement to act only according to the regulatory framework – unregulated abortions would be possible outside of that framework.* ***Parliament must ensure that an adequate framework exists in primary legislation that provides that every abortion, whether carried out in a medical or an at-home setting, is regulated by an enforceable scheme. This should not be left to regulations made by statutory instrument.***

15. In the Member's explanatory statement to New Clause 1, it is stated that:

> It would not change any law regarding the provision of abortion services **within a healthcare setting**, including but not limited to the time limit, the grounds for abortion, or the requirement for two doctors' approval. [*Emphasis added*]

However, as stated, this fact would apply only to provision "within a healthcare setting," yet more than 50% of terminations each quarter[2] are carried out by self-administration of medication outside a healthcare setting. *Without the framework of the 1967 Act, these crucial safeguards would not so much as exist, much less be enforceable, if sections 58 and 59 of the 1861 Act are repealed.* **Parliament**

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[2] This figure is taken from the following webpage published on the Gov.uk website: https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-january-to-june-2022/abortion-statistics-for-england-and-wales-january-to-june-2022. For reference, the relevant paragraph states in full:

> There has been a continuing upward trend in medical abortions since 1991, when mifepristone was first licensed for use in the UK. There was an additional effect during 2020 and 2021 due to the COVID-19 pandemic when the Secretary of State for Health and Social Care approved the **temporary measures** in England to limit the transmission of COVID-19 by **approving the use of both pills for early medical abortion at home, without the need to attend a hospital or clinic**. This measure was made permanent on 30 August 2022 (see [hyperlink not reproduced]) and **has accounted for over 50% of terminations each quarter since April to June 2021**. [*Emphasis added*]

***must not agree to any provision that would, under any circumstances, remove the effect of such critical safeguards as the 24-week limit, the section 1 grounds, the requirement for two doctors' approval, etc., as New Clause 1 would do. To do so would be a gross dereliction of responsibility*.**

16. To be clear, if sections 58 and 59 are simply repealed, there would be no basis for the Abortion Act 1967 and the framework contained in it. It would, effectively, reduce the Act to non-legally binding guidance and to being an anomaly on the statute book: one could either abide by it or disregard it – there would be **no** legal consequences either way. Pregnancies could, not unlawfully, be terminated up to birth and for any reason. Is Parliament remotely contemplating the leaving of such a complicated and potentially dangerous medical or surgical procedure to the discretion of individuals (including vulnerable individuals), as to whether or not they will opt into the observance of that 'guidance?'

17. It is also critical to understand that the criminal law on abortion deals with a wider array of circumstances than merely the prosecution of abortions obtained outside of the legal framework contained in the 1967 Act. For example:
    (a) Section 58 of the 1861 Act covers the offence of causing a miscarriage against the will of the mother. Repealing this provision would reduce the assault of a pregnant woman occasioning a miscarriage to mere battery.
    (b) Section 59 covers the offence of unlawfully supplying instruments or medication to procure an abortion, which includes the case of a coercive or abusive partner forcing an abortion without the mother's consent. Repealing this provision would provide a dangerous loophole in the law, where illegal or unregulated abortion-inducing drugs or methods could be supplied by and to persons with malicious or unlawful intent.

    By repealing those sections, Parliament would be removing more offences than simply those addressed by the present amendments. ***Parliament should carefully review and consider the effect of sections 58 and 59 of the 1861 Act on conduct other than an abortion consented to by a mother, and must ensure that legal provision exists to effectively prosecute the offences above mentioned, or any other offence that is currently prosecuted under those sections*.**

Specific objections to New Clause 2

18. New Clause 2 represents a more sophisticated approach to the de-criminalisation of abortion than New Clause 1. Nevertheless, it poses significant problems as a proposal for new legislation.

Implementing the CEDAW Recommendations in UK law

19. The New Clause requires the Secretary of State to bring forward regulations "in line with the recommendation in Paragraph 31 of the CEDAW General Recommendation No. 24: Article 12 of the Convention."

20. It is important for Parliamentarians to be cognisant of the differences in terms that are widely thrown about. The Convention on the Elimination of All Forms of Discrimination Against Women is an international treaty adopted by the UN in 1979

and signed by the UK in 1981 – it is formal international law under which the UK is obligated. Article 12 of the Convention states in full:

> 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
> 2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connexion with pregnancy, confinement and post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

There is no requirement under CEDAW (that is, the treaty) that specifically obliges a contracting state to ensure access to abortion services, nor to de-criminalise abortion-related offences – there is no express mention of abortion anywhere in the treaty. There is no consensus in formal international law that abortion is either a fundamental form of healthcare or a component of family planning.

21. The provision referred to in New Clause 1 is from General Recommendation No. 24 issued by the CEDAW Committee, one of the ten UN Treaty Bodies. This is, specifically, a portion of Paragraph 31(c), which reads in full:

> (c) [States parties should also, in particular:] Prioritize the prevention of unwanted pregnancy through family planning and sex education and reduce mortality rates through safe motherhood services and prenatal assistance. **When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion**; [*Emphasis added*]

22. It is important to note that General Recommendations (sometimes known as General Comments) by UN Treaty Bodies are **not** binding in international law. Neither does the foregoing recommendation suggest the **de-criminalisation** of abortion, but merely the **withdrawal of "punitive measures imposed on women who undergo abortion.**"

23. In the case of *R (on the application of A and B) (Appellants) v Secretary of State for Health (Respondent)* [2017] UKSC 41, the appellants contended that it was unlawful for the Respondent not to have provided abortion services in Northern Ireland. Lord Wilson, delivering the majority opinion, said at paragraph 34:

> The appellants correctly submit that, in interpreting Convention rights, the ECtHR now frequently refers to the text of international conventions and even to the recommendations of committees set up to oversee observance of them by the parties to them… [The Respondents and their interveners] therefore rely on article 12(2) of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979) ("CEDAW")… They also rely on CEDAW General Recommendation No. 24… And they further rely on General Comment No. 22 (2016) of the UN Committee on Economic, Social and Cultural Rights…
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> These three quotations represent the high point of the mass of such material now pressed upon the court. **The conventions and the covenant to which the UK is a party carefully stop short of calling upon national authorities to make abortion services generally available**. Some of the committees go further down that path. But, **as a matter of international law, the authority of their recommendations is slight**: see *Jones v Ministry of Interior of the Kingdom of Saudi Arabia* [2006] UKHL 26, [2007] 1 AC 270, para 23, Lord Bingham of Cornhill. [*Emphasis added*]

24. *Contrary to the rhetoric that may surround the introduction of New Clause 2, the UK is under* ***__no__*** *international legal obligation to implement the provision referred to in subsection (1) of the New Clause.* ***Parliament should not implement the law in any jurisdiction in the United Kingdom by way of reference to non-binding recommendations of treaty bodies, but should clearly originate the law from within that jurisdiction. Nor should Parliament deem itself obligated by such non-binding recommendations***. The fact that Parliament has so acted in the past (for example, in Northern Ireland on this subject through the 2019 Act) should not be a basis for repeating an inappropriate drafting of the law, based, as it was, on a false premise.

__Repealing section 60 of the 1861 Act__

25. New Clause 2 differs from previous proposals to de-criminalise abortion in that it provides for the repeal of section 60 of the 1861 Act. This section is entitled "Concealing the birth of a child." As it has not commonly been referenced in the abortion debate, it is quoted here in full:

> If any woman shall be delivered of a child, **__every person__** who shall, by any secret disposition of the dead body of the said child, whether such child died before, **__at, or after its birth__**, endeavour to conceal the birth thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years. [*Emphasis added*]

26. Section 60 provides a criminal offence for prosecuting cases where a person disposes of the dead body of a new-born baby and attempts to conceal the fact that he had been born (this could be done, for example, to frustrate an investigation into a death in suspicious circumstances). This offence applies where there is evidence to prove concealment, but insufficient evidence to prove infanticide.[3]

27. *If Section 60 of the 1861 Act were to be repealed, any person who secretly disposed of a baby killed at birth, including in the case of having been aborted at full-term, or* born alive and killed during or after birth*, would commit no offence*. ***Parliament must not agree to any provision that repeals section 60 of the 1861 Act. As with the removal of critical safeguards around abortion*** *(mentioned at para. 15)****, this would be a gross dereliction of responsibility.***

__Other Objections__

__The need for an offence of non-consensual termination of pregnancy__

28. New Clause 55, referred to at para. 7 of this submission, was widely opposed on its consideration in the House of Commons on 5 July 2021 due to its dangerous and irresponsibly broad scope, including by proponents of the liberalisation of abortion. However, even this proposal (as New Clause 28 before it) contained a new offence of "Non-consensual termination of pregnancy," which would include instances of a third party causing the death of an unborn child against the mother's will. Similarly, New Clause 50 (also at para. 7) would have removed from the terms of the offences in sections 58 and 59 only "a woman in relation to the procurement

[3] See Section 1(4) of the Infanticide Act 1938.

of her own miscarriage," leaving third parties within scope of the offences. However, neither of these amendments, would have addressed the lack of a meaningful regulatory framework containing the necessary safeguards, including those already extant in law.

29. As stated in para. 17(a) of this submission, the removal or omission of such a critical provision would reduce the assault of a pregnant woman occasioning a miscarriage to mere battery.

30. New Clause 2 to the present Bill does, in subsection (2)(e), state that regulations made in accordance with subsection (1) must:

    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.

    However, and importantly, there is no provision on the face of the New Clause. This matter should be dealt with by Parliament directly and not by the Government through regulations. Delegating this responsibility could leave a gap in the law.

31. ***Parliament should not open a significant loophole in the law on abortion in England and Wales by removing such a critical safeguard as provision for non-consensual termination of pregnancy as a criminal offence. The law as it stands adequately covers these crimes, without prejudice to the broad exemptions provided by the 1967 Act.***

The need for a basis of abortion law in criminal justice

32. There are two foundational questions that Parliament must consider, which are whether or not there should be a framework for the law on abortion in criminal justice and, if so, to whom should the balance of the criminal penalties fall to? Related to this is the question of how to enforce any such framework.

33. I submit to the Committee that such a framework is both necessary and appropriate, as are the handing down of custodial sentences in serious cases. It is of the greatest importance for Parliamentarians to understand that this is not, as many people insist, solely a matter of personal bodily autonomy: there are **two** lives involved in this debate. Abortion is the termination of a human foetus – the destruction of a human being's life.

34. Against a complicated social environment, Parliament has decided to provide access to abortions in certain circumstances (which, in practice, now permits abortion largely on request, provided that the pregnancy is under the 24-week limit). Be that decision as it may, Parliament chose to leave in place the protections in law that recognise the life (even the potential life) of that other person involved – that person who is blatantly ignored by the most ardent pro-abortion lobbyists. Parliament were right to ensure these protections. ***Since abortion involves the destruction of a potential human life, it is highly appropriate that the law on abortion is underpinned with criminal sanctions, including custodial sentences where necessary. Parliament must ensure that this remains the case, but may wish to consider where, to whom and in what circumstances the balance of custodial sentences are best applied;*** *for example, should the*

balance be shifted to focus a greater level of responsibility and accountability on abortion providers?

35. Regarding criminal prosecutions, the Committee will be aware that prosecutions under sections 58 and 59 of the 1861 Act cover more offences than merely that of a woman procuring an abortion outside the legal time limit (see para. 17). The Committee should also be aware that in undertaking prosecutions, the CPS has regard to the need for each prosecution to be necessary in the public interest, which ensures that most of the relevant investigations under the criminal law on abortion are not proceeded with at this point. Those that have been were not slight breaches of the law.

The need for a requirement for in-person assessments for all abortions

36. Since the recent Foster case has largely been the catalyst for the present amendments, it would not be inappropriate to reiterate some critical points of fact regarding it. The defendant was a 44-year-old woman who had obtained an abortion through the telemedicine scheme set up during the Covid-19 pandemic, having told the provider that she was under the relevant 10-week limit. The baby was delivered not breathing and was shortly afterwards pronounced dead, the subsequent post-mortem finding her to have reached between 32- and 34-weeks' gestation. It became evident through voluntary witness statements to the police from the defendant herself that she had lied to the provider to obtain the relevant medication and also to medical staff and the police in their initial inquiry. Through the subsequent investigation, it also became evident that the defendant knew that she was likely beyond the 24-week limit.[4]

37. Foster was sentenced at Stoke-on-Trent Crown Court to 28 months' imprisonment, with 14 months in custody and the remainder on license.[5] The case was brought to the Court of Appeal, who overruled the Crown Court on the following basis:
    (a) the judgement had arrived at a provisional sentence that was too high (at five years), and
    (b) whilst the judgement had correctly outlined the mitigating factors of the pandemic and the extreme emotional pressures on a woman of good character faced with immensely challenging circumstances, it failed appropriately to balance those factors to the provisional sentence.

    Consequently, the Court of Appeal allocated a revised provisional sentence of three years imprisonment, reduced to 14 months' after mitigations, etc. Unlike the verdict at the Crown Court, this enabled the sentence to be suspended.[6]

38. There are at least three lessons to be learned from this case. Firstly, ***Parliament must provide a requirement for assessments in person by a registered medical practitioner or other suitably qualified individual to determine the duration of a pregnancy before the prescription of abortion-inducing***

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[4] *R v. Foster* [2023] EWCA Crim. 1196, at paras. 4-12.
[See www.bailii.org/ew/cases/EWCA/Crim/2023/1196.pdf]

[5] *R v. Foster* (Sentencing remarks of Mr. Justice Popperall – 12 June 2023) [See www.judiciary.uk/wp-content/uploads/2023/06/R-v.-Foster-sentencing-remarks-12.6.23.pdf]

[6] *R v Foster* [2023] EWCA Crim. 1196, at paras. 46-50.

***medication. Had such a provision been in force at the time, the Foster case would not have materialized*.**

39. Secondly, ***Parliament should place a duty on abortion providers to proceed only after having confirmed that such an assessment has taken place. This duty should be backed up by suitable criminal penalties, including custodial sentences where necessary and appropriate*.**

40. Thirdly, ***Parliament should consider whether future cases involving the law on abortion would benefit from suitable sentencing guidelines, the lack of which was noted during the Foster case, both at first instance and on appeal. Parliament should also consider whether or not guidance should be issued to abortion providers, with duties to have regard thereto in forming a robust opinion as to the duration of a pregnancy*.**

41. It should be evident that these simple, but highly pertinent, changes in the law would not unduly prejudice the current framework for abortions in England and Wales, but would go a long way towards addressing the concerns brought into focus by the present amendments. In reforming such a delicate area of the law, it is, perhaps, wise to consider small but impactful adjustments (subject, if necessary to review) before adopting radical and sweeping measures that could have profound unintended consequences.

OBJECTIONS BASED ON PROCEDURE

42. The recommendations above lead to a further objection as to the manner in which these potential changes in the law are being considered: that is, that the procedure under which they are proposed is both inadequate and inappropriate.

43. It is well-known and respected that decisions relating to the law on abortion have, historically, been taken by Parliament under free votes on primary legislation and not by the Government under secondary legislation. However, since the 2019 Act, Parliament has stated only its broad intention before delegating the details to the Government to be implemented later by statutory instrument – a form of law one step removed from Parliament, less understandable and available to a public who do not read the Votes and Proceedings and less legally certain than an authoritative Act of Parliament. It erodes the important former principle that a free Parliament sets out the law on such matters as abortion and brings a formerly impartial Government into the controversial business of implementing an emotive area of the law.

44. This is not bare and technical detail, but substantial law. The proposer of New Clause 2 is, commendably, one of the leading opponents in the Commons of the creeping over-use of delegated powers, and should appreciate that this is manifestly **not** the appropriate manner in which to amend this area of the law. By amending a broadly-scoped Government Bill with a delegated power, debate will be confined to a relatively obscure committee room upstairs and one opportunity on the House floor for a discussion that could be dominated by the many other important and high-profile matters contained in the Bill.

45. The legislative process for stand-alone Bills ensures that such changes in the law are carefully considered at several stages and over a period of time long enough to deal with a matter responsibly and as wisely as can be achieved, with amendments proposed by Members who may closely involve themselves.

46. *If Parliament is to take such an emotive and consequential decision, then it is their duty to take it in the appropriate manner and not in haste.* ***Parliament should only undertake to amend the law on abortion through a stand-alone Private Member's Bill. Such a Bill could benefit from the conclusions of a relevant select committee inquiry or pre-legislative scrutiny, in order to ensure that proposals for change are carefully weighed against objections that are raised in sincerity and good faith*****.**

47. ***Parliament must not bring into force any repeal or change of the law without robust measures to ensure that dangerous loopholes are avoided and necessary safeguards are provided*****.**

CONCLUSION

48. In conclusion, Parliament must ensure that an adequate and enforceable framework for the regulation of abortion in England and Wales exists in primary legislation. This must preserve such critical safeguards as the 24-week limit, the section 1 grounds, the requirement for two doctors' approval, etc. Parliament should carefully review and consider the effect of the law, ensuring that legal provision exists to appropriately prosecute criminal offences, including those where third parties are involved.

49. Parliament should not implement the law by reference to non-binding recommendations of international treaty bodies, nor deem itself obligated by them.

50. Parliament must maintain the criminal underpinning of the law on abortion as it stands, despite the broad exemptions contained in the 1967 Act, and should recognise that this is manifestly justified by the fact that abortion is the termination of a human life. Custodial sentences must be included in any legal framework, but Parliament may wish to reconsider their application. Parliament must preserve the effect of section 60 of the 1861 Act.

51. As appropriate lessons from recent litigation, Parliament must ensure provision for in-person medical assessments and an effective duty on abortion providers to properly confirm the duration of a pregnancy before prescription of medication. Consideration should be given towards the issuance of guidance and of suitable sentencing guidelines.

52. Parliament must not proceed inappropriately towards the consideration of the proposals that are before the Public Bill Committee, but, for the reasons given above, should **reject these two amendments: New Clause 1 (with Amendment No. 1) and New Clause 2.**

SUMMARY OF RECOMMENDATIONS

1. Parliament must ensure that an adequate framework exists in primary legislation that provides that every abortion, whether carried out in a medical or an at-home setting, is regulated by an enforceable scheme. This should not be left to regulations made by statutory instrument. (Para. 14)
2. Parliament must not agree to any provision that would, under any circumstances, remove the effect of such critical safeguards as the 24-week limit, the section 1 grounds, the requirement for two doctors' approval, etc., as New Clause 1 would do. To do so would be a gross dereliction of responsibility. (Para. 15)
3. Parliament should carefully review and consider the effect of sections 58 and 59 of the 1861 Act on conduct other than an abortion consented to by a mother, and must ensure that legal provision exists to effectively prosecute the offences above mentioned, or any other offence that is currently prosecuted under those sections. (Para. 17)
4. Parliament should not implement the law in any jurisdiction in the United Kingdom by way of reference to non-binding recommendations of treaty bodies, but should clearly originate the law from within that jurisdiction. Nor should Parliament deem itself obligated by such non-binding recommendations. (Para. 24)
5. Parliament must not agree to any provision that repeals section 60 of the 1861 Act. As with the removal of critical safeguards around abortion, this would be a gross dereliction of responsibility. (Para. 27)
6. Parliament should not open a significant loophole in the law on abortion in England and Wales by removing such a critical safeguard as provision for non-consensual termination of pregnancy as a criminal offence. The law as it stands adequately covers these crimes, without prejudice to the broad exemptions provided by the 1967 Act. (Para. 31)
7. Since abortion involves the destruction of a potential human life, it is highly appropriate that the law on abortion is underpinned with criminal sanctions, including custodial sentences where necessary. Parliament must ensure that this remains the case, but may wish to consider where, to whom and in what circumstances the balance of custodial sentences are best applied. (Para. 34)
8. Parliament must provide a requirement for assessments in person by a registered medical practitioner or other suitably qualified individual to determine the duration of a pregnancy before the prescription of abortion-inducing medication. Had such a provision been in force at the time, the Foster case would not have materialized. (Para. 38)
9. Parliament should place a duty on abortion providers to proceed only after having confirmed that such an assessment has taken place. This duty should be backed up by suitable criminal penalties, including custodial sentences where necessary and appropriate. (Para. 39)
10. Parliament should consider whether future cases involving the law on abortion would benefit from suitable sentencing guidelines, the lack of which was noted during the Foster case, both at first instance and on appeal. Parliament should also consider whether or not guidance should be issued to abortion providers, with duties to have regard thereto in forming a robust opinion as to the duration of a pregnancy. (Para. 40)

11. Parliament should only undertake to amend the law on abortion through a stand-alone Private Member's Bill. Such a Bill could benefit from the conclusions of a relevant select committee inquiry or pre-legislative scrutiny, in order to ensure that proposals for change are carefully weighed against objections that are raised in sincerity and good faith. (Para. 46)
12. Parliament must not bring into force any repeal or change of the law without robust measures to ensure that dangerous loopholes are avoided and necessary safeguards are provided. (Para. 47)

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