

Written evidence submitted by Right To life UK (CJB60)

Pro-abortion amendments (NC1 & NC2) to the Criminal Justice Bill

Key points

- Stella Creasy and Diana Johnson have tabled amendments to the Criminal Justice Bill that would **remove offences that make it illegal for a woman to perform a self-abortion at any point right through to birth.**
 - Neither of the amendments outline circumstances in which it would continue to be an offence for a woman to perform a self-abortion – the changes to the law **would apply throughout all nine months of pregnancy** and **would not exclude sex-selective abortions.**
 - These amendments would **endanger women** by removing a deterrent against performing their own self-abortion late in pregnancy, thus exposing them to significant medical risks.
- NC2 goes further in seeking to force the Secretary of State to “**decriminalise**” abortion.
 - The full “decriminalisation” of abortion would require **fully repealing** Sections 58 and 59 of the Offences against the Person Act and the Infant Life (Preservation) Act. This would **make the Abortion Act 1967 redundant, including the current legal 24-week time limit** outlined in the Act.
 - Although the amendment would require regulations to be introduced, the amendment itself contains no clear stipulation to include time limits in such regulations.
- NC2 also **repeals Section 60** of the Offences against the Person Act.
 - Section 60 is currently used to make it illegal to hide the body of a dead newborn baby, including in circumstances when the baby has been killed through infanticide.

About us

- Right To Life UK is a charitable organisation focused on life issues. We seek to protect and defend the right to life of every human being from conception to natural death through our work across education, politics, the media and through a large network of people in constituencies across the UK.
- We are committed to an evidence-based approach to life issues, uniting people from different political ideologies and philosophical beliefs.
- Right To Life UK welcomes the opportunity to submit evidence to the Criminal Justice Bill Committee.
- **We are submitting evidence only regarding amendments NC1 and NC2.**

Amendments NC1 & NC2 and their effects

a) Diana Johnson amendment (NC1)

NC1 would remove offences that make it illegal for a woman to perform a self-abortion at any point right through to birth.

- By amending the abortion law in this way, self-abortions will, de facto, become possible **up to birth** for any reason **including abortions for sex-selective purposes**, as women could mislead abortion providers about their gestational age (as in the case of Carla Foster,¹ who falsely claimed to be 7 weeks pregnant but took pills at 32-34 weeks gestation).²

¹ Riyah Collins, 'Mother jailed for taking abortion pills after legal limit', *BBC News*, <https://www.bbc.co.uk/news/uk-england-stoke-staffordshire-65882169>

² <https://www.judiciary.uk/wp-content/uploads/2023/07/R-v-Carla-Foster-190723.pdf>.

- In such circumstances, neither the woman nor the abortion provider (who only has to act in “good faith” and does not need to verify gestational age via an in-person appointment) could be held accountable for a late-term abortion.³
- Prior to her tabling the amendment, Diana Johnson insisted that her proposal “would not change any law regarding the provision of abortion services within a healthcare setting in England and Wales”.⁴ However, since the majority of abortions now take place away from a clinical setting, women would be able to take abortion pills at home at any stage of their pregnancy up to birth without committing an offence.⁵
 - As it would continue to be illegal for medical professionals to perform an abortion in almost all circumstances between 24 weeks and birth, the likely consequences of decriminalising women who self-administer abortions would be that **more women will self-administer abortion pills to procure late-term abortions**, causing **serious risks to their health** (the return of the ‘backstreet abortion’).
- Diana Johnson has also tabled a paving amendment, which would require NC1 to come into force on the day the Criminal Justice Bill receives Royal Assent. With this in place, the Government would not have time to prepare relevant secondary legislation ahead of it coming into force.

b) Stella Creasy amendment (NC2)

NC2, which would require the Secretary of State to bring in “the decriminalisation of abortion”, would likely have the same effects as NC1. **In addition:**

- It would repeal Sections 58 and 59 of the Offences against the Person Act (OAPA).
- Section 1 of the amendment states: “the Secretary of State must by regulations make whatever changes appear... to be necessary or appropriate for the decriminalisation of abortion”.
 - Decriminalising abortion fully would require not only the repeal of Sections 58 and 59 of the OAPA but also the full repeal of the Infant Life (Preservation) Act (ILPA).
 - As the Abortion Act 1967 was passed to create exemptions to sections 58 and 59 of the OAPA and the ILPA, fully repealing sections 58 and 59 of the OAPA and the ILPA **would make the Abortion Act 1967 redundant, including the current legal 24-week time limit outlined in the Act.**
- Although Stella Creasy has stated that her amendment “need not change the current clear regulation” of abortion, **the amendment itself contains no clear stipulation to include time limits or certain other important safeguards provided by the Abortion Act in any subsequent regulations.**
- Even if regulations including time limits for abortion were subsequently introduced, **they would sit in secondary legislation** and so could easily be removed or amended at any time with limited parliamentary scrutiny.
- NC2 requires that regulations **be published within three months of the Act receiving Royal Assent.**
 - This is a **very short timescale**, particularly when subsections (1) and 2(e) of the amendment would require the Secretary of State to draw up regulations that would repeal sections 58-60 of the OAPA, make the additional changes required to ‘decriminalise’ abortion’ and create an entire new regulatory framework for the provision of abortion.
 - NC2 calls for changes to be made by regulations rather than statutory law, **restricting parliamentary scrutiny and accountability** with regard to any proposed new framework. It would be

³ Abortion Act 1967, s 1(1), <https://www.legislation.gov.uk/ukpga/1967/87/section/1>.

⁴ HC Deb 28 November 2023, vol 741, col 756, ‘Criminal Justice Bill Second Reading’, <https://hansard.parliament.uk/commons/2023-11-28/debates/DAE52708-1BDF-4DB9-AC5D-3504754D3180/CriminalJusticeBill>.

⁵ Office for Health Improvement & Disparities, ‘Abortion statistics, England and Wales: 2021’, <https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2021/abortion-statistics-england-and-wales-2021>.

irregular, and potentially legally unviable, for primary legislation to be repealed by regulations in this way.

- Subsections (4) and (5) of the amendment require this regulatory framework to be approved by both Houses.
- If, as must be likely given the timescale, the above does not take place within three months, **Sections 58-60 of the OAPA would be repealed automatically.**
- NC2 goes further than previous attempts at ‘decriminalisation’ by also calling for **the repeal of Section 60 of the OAPA**, which does not concern abortion but ‘Concealing the birth of a child’.
 - Section 60 is currently used to make it illegal to hide the body of a dead newborn baby, including in circumstances when the baby has been killed through infanticide.
 - This legislation is also important in stopping individuals from **preventing an investigation into the cause of a child’s death when infanticide is suspected.**
 - The repeal of this legislation would also likely mean a full-term dead baby could be disposed of without a proper burial or in a location where it might cause distress to others when later found.

At-home medical abortion

- The real cause of the, albeit relatively small, recent number of cases of illegal late-term abortions is **the ‘pills-by-post’ scheme**, which was supported by Diana Johnson, Stella Creasy, BPAS and MSI Reproductive Choices (Marie Stopes).
- Diana Johnson and Stella Creasy’s amendments would make this situation worse, likely leading to more women self-administering abortion pills to procure late-term abortions, causing serious risks to their health (the return of the ‘backstreet abortion’).
- Rather than making the situation worse and making our abortion laws even more extreme, Parliament ought to protect women by seeking **the reinstatement of the requirement for in-person medical appointments to verify gestational age and assess a woman’s health** before abortion pills can be prescribed.

Convention on conscience issues

- It would be inappropriate, and contrary to convention, for backbench amendments on an issue relating to conscience, which would have far-reaching implications, to be taken up and considered at Committee stage. If such amendments were deemed relevant to the Bill, they ought to be considered by the whole House.

Why should it continue to be an offence for a woman to perform a self-abortion at any point right through to birth?

- **The current law, whereby it is an offence for a woman to perform a self-abortion at any point right through to birth, protects women:**
 - By providing a key deterrent against women performing dangerous self-abortions late in pregnancy.
 - Self-administering abortion pills to procure late-term abortions poses serious risks to a woman’s health:

- A newly published Government review shows that the complication rate for medical abortions after 20 weeks that happen in a clinical setting is **over 160 times higher** compared to medical abortions under 10 weeks.⁶
 - The Government review looked at the data for complication rates for medical abortions that took place in a clinical setting, since medical abortion outside of this setting is not legal after 10 weeks.
 - The complication rate for women who perform their own medical abortions outside of a clinical setting at 10 weeks or beyond in a home abortion is likely to be **even higher** than the rates when an abortion is happening in a clinical setting. Such abortions would likely happen far more often if either of the amendments tabled by Diana Johnson and Stella Creasy were to pass.
- From **coerced abortions** - although NC1 and NC2 include prohibitions against coercion (only via secondary legislation in the case of NC2) it would be **more difficult for a woman to reject the attempted coercion** of a partner if she is no longer able to appeal to the risk of being criminalised for a late-term abortion.
- **The current law prevents a situation where self-abortions become possible up to birth for any reason including abortions for sex-selective purposes**
 - If offences that make it illegal for a woman to perform a self-abortion at any point right through to birth were repealed, self-abortions would, de facto, become possible **up to birth** for any reason **including abortions for sex-selective purposes**, as women could mislead abortion providers about their gestational age (as in the case of Carla Foster,⁷ who falsely claimed to be 7 weeks pregnant but took pills at 32-34 weeks gestation).⁸
 - In such circumstances, neither the woman nor the abortion provider (who only has to act in “good faith” and does not need to verify gestational age via an in-person appointment) could be held accountable for a late-term abortion.⁹
 - **The current law protects the legal rights of the unborn**
 - Human rights laws grant protection to the unborn that ought to be upheld in statutory law. The Preamble to the UN Convention on the Rights of the Child, to which the UK is a signatory, states that the child “needs special safeguards and care, *including appropriate legal protection, before* as well as after birth”.¹⁰ Removing the offence of a woman self-aborting up to birth would diminish the few legal protections for the unborn that still remain.

⁶ Office for Health Improvement and Disparities, ‘Complications from abortions in England, 2017 to 2021’, <https://www.gov.uk/government/statistics/complications-from-abortions-in-england-2017-to-2021>; See: Right to Life UK, ‘Complications rates 160 times higher for medical abortions at 20 weeks and after compared to before 10 weeks, according to Gov. review’ *Right To Life news*, <https://righttolife.org.uk/news/complications-rates-160-times-higher-for-medical-abortions-at-20-weeks-and-after-compared-to-before-10-weeks-according-to-gov-review>.

⁷ Riyah Collins, ‘Mother jailed for taking abortion pills after legal limit’, *BBC News*, <https://www.bbc.co.uk/news/uk-england-stoke-staffordshire-65882169>

⁸ <https://www.judiciary.uk/wp-content/uploads/2023/07/R-v-Carla-Foster-190723.pdf>.

⁹ Abortion Act 1967, s 1(1), <https://www.legislation.gov.uk/ukpga/1967/87/section/1>.

¹⁰ The United Nations Convention on the Rights of the Child, https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_PRESS200910web.pdf.

- **The current law is supported by a majority of the public**
 - Polling shows that only 1% of the general public support abortion up to birth and 70% of women would like to see a reduction (rather than removal) of UK time limits. 89% of the population also oppose sex-selective abortion, which these amendments would make possible.¹¹

January 2024

¹¹ Savanta ComRes, *Where Do They Stand?* poll, <https://righttolife.org.uk/wp-content/uploads/2023/01/Where-Do-They-Stand-Abortion-Survey-Data-Tables.pdf>