

The removal of criminal sanctions for abortion: BMA Position Paper



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The BMA:

1. believes that abortion should be regulated in the same way as other medical treatments;
 2. 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;
 3. 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.
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The current law

Induced abortion is a criminal offence throughout the United Kingdom. However, in each nation there are exceptions to the crimes associated with abortion, provided certain conditions are satisfied. This means abortion can be carried out legally in some circumstances.

Where the requisite conditions are not satisfied, women and doctors who procure or perform abortions can be prosecuted. A detailed explanation of the law in the UK can be found in *Decriminalisation of abortion: a discussion paper from the BMA* (available at www.bma.org.uk/ethics).

What do we mean by ‘decriminalisation’?

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 would be lawful except in exceptional circumstances.

Decriminalisation does not mean deregulation. Limits can still be set, subject to professional and regulatory rather than criminal sanctions. A resource which sets out the legislation, regulations, and professional guidelines which will continue to regulate abortion in the United Kingdom in the event that abortion is decriminalised is available at: www.bma.org.uk/ethics.

Why is the BMA calling for change?

The BMA believes that abortion needs to be decriminalised to ensure the safe and timely delivery of abortion services.

Clinical care, professional practice, and societal attitudes have changed significantly since the enactment of the current criminal law (in England, Wales, and Northern Ireland abortion was criminalised in 1861, in Scotland abortion is a crime at common law). The law must be amended to reflect these changes.

Today, abortion is a safe procedure for which major complications and mortality are rare at all gestations. More than 90 per cent of abortions are carried out in the first trimester of pregnancy, 83 per cent of which are carried out using medicines (the abortifacients, mifepristone and misoprostol).¹ When the Abortion Act was passed in 1967 (in England, Scotland and Wales) abortion carried significant risks. For this reason, amongst many others, the law imposes restrictions which do not reflect the current evidence-base. Abortion is, and should be treated as, a medical issue.

Abortion law is also out of step with the emphasis on patient autonomy found elsewhere in medicine. Today, the relationship between a healthcare professional and a patient is increasingly seen as a partnership, in which clinical decisions are jointly made. Patients are now seen as normally best placed to determine what is in their own interests, based on the provision of good quality, impartial information. Decisions are also guided by a raft of regulation, professional standards, and clinical guidelines which promote good practice and are responsive to changes in the delivery of healthcare.

Despite the developments in this area, abortion remains a criminal offence. This is stigmatising for both women and healthcare professionals who are providing a legal and necessary service. The BMA believes that doctors' ability to provide supportive care and treatment for women is hampered by this punitive approach.

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.

One of the purported aims of the criminal law is to act as a deterrent. However, according to the World Health Organization (WHO), the criminalisation of abortion does not reduce the incidence of abortion.² Instead, the criminalisation of abortion is more often associated with increased maternal mortality and morbidity. This means the criminal law is not deterring women from procuring their abortion via unregulated channels; instead it is potentially exposing them to serious harm.

It is of concern to the BMA that, due to inequitable provision, women are driven to seek the means to self-administer abortion, for example, from unregulated suppliers of abortifacients. Furthermore, that fear of criminal prosecution is potentially deterring these women from seeking appropriate medical care should they encounter complications.

The criminal law may also be deterring healthcare professionals from providing lawful abortion services and thus restricting the services available to women.

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 total number of such cases remains low, but they tend to attract significant publicity.³ To date, no case has resulted in a prosecution, but the impact on the doctors involved has been significant. The stress associated with facing police questioning, or of being challenged through the media, should not be underestimated.

1 In England, Wales and Scotland.

2 Sedgh G *et al.* (2016) 'Abortion incidence between 1990 and 2014: global, regional, and sub regional levels and trends' *Lancet* Vol 388:10041, p258-267. Available at: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)30380-4/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)30380-4/fulltext) (Accessed 16 July 2019)

3 An outline of some of the cases can be found in the BMA's paper *Decriminalisation of abortion: a discussion paper from the BMA, 2017*. Available at www.bma.org.uk/advice/employment/ethics/ethics-a-to-z/abortion

The risk of criminal prosecution in such instances as those described above, 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.

Decriminalisation is a necessary response to clinical and societal changes, and the potential deleterious effects of the current criminal law.

What is the BMA calling for?

The BMA is calling for the removal of criminal sanctions for abortion and for abortion to be regulated in the same way as other medical procedures, including by:

- the independent regulators of healthcare professionals, including the General Medical Council, the Nursing and Midwifery Council, and the General Pharmaceutical Council;
- the independent regulators of healthcare providers, including the Care Quality Commission, Healthcare Improvement Scotland, Healthcare Inspectorate Wales, and the Regulation and Quality Improvement Authority; and
- the civil and criminal laws that apply to other aspects of healthcare.

The BMA is **not** calling for deregulation; nor the removal of criminal sanctions 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; or
- individuals illegally procure abortifacients on behalf of others.

In addition, the BMA supports the following principles which were agreed in 2017:⁴

1. Abortion must only be permitted in cases where the woman gives informed consent, or in cases where the woman lacks capacity and an abortion is determined to be in her best interests.
2. Health professionals must have a statutory right to conscientiously object to participating in abortion.⁵
3. There should be a central collection of abortion data (subject to agreed appropriate confidentiality protections) to ensure future services are fit for purpose.
4. There must be clarity about what is, and what is not, lawfully permitted, so that health professionals are clear about the scope of their clinical discretion.
5. There should be robust clinical governance in settings where abortion care is provided.
6. There should be the continuation of some degree of regulation and the setting of professional standards in the provision of abortion services.

We appreciate that abortion is a sensitive and complex issue, and one on which our members hold a range of views. The BMA has, however, long-established democratic processes for forming policy on such controversial issues through its Annual Representative Meeting (ARM). Our policy was adopted in 2017 after careful thought and consideration and following a long debate in which a wide range of views were expressed. It was reaffirmed at the ARM in 2019.

For more information on how abortion will be regulated in the United Kingdom if the criminal sanctions associated with abortion are removed, see the BMA resource at: www.bma.org.uk/ethics.

⁴ Annual Representative Meeting, 2017.

⁵ There is currently no right to conscientiously object to abortion in Northern Ireland, because it is illegal in all except very limited circumstances. If it were to be decriminalised, the BMA believes this right should be protected by statute.

When, how, and to whom should abortion be made available?

The BMA's policy on the removal of criminal sanctions for abortion does not concern the broader issues of when, how, and to whom abortion should be made available.

The BMA has established policy on other aspects of abortion provision including the time-limits for abortion, which reflects the BMA's gradualist approach to the moral status of the fetus.

The BMA:

1. supports the current time limit for abortion – being 24 weeks except in limited cases (including where the abortion is necessary to prevent permanent injury to the physical or mental health of the woman, where the pregnancy presents risk to the life of the pregnant woman, or where there is a diagnosis of serious fetal abnormality);⁶
2. calls for legislation to be amended so that first trimester abortion would be available on the same basis of informed consent as other treatment and therefore without the need for two doctors' signatures;⁷ and
3. supports reform of the law on abortion in Northern Ireland.⁸

The BMA believes that if abortion is decriminalised, limits on availability (e.g. the limits which are supported by the BMA) could, and should, be maintained via statute, subject to professional or regulatory rather than criminal sanctions. In these circumstances, doctors' and/or providers' failure to comply with the law would become a matter for the relevant regulatory body. This type of enforcement model has been employed by the UK Government in other circumstances.⁹

Further details on the BMA's views with respect to abortion can be found in the BMA publication: *The law and ethics of abortion: BMA views* (available at www.bma.org.uk/ethics).

Which other medical and professional organisations support the removal of criminal sanctions for abortion?

There is increasing support for the removal of criminal sanctions for abortion amongst key medical and professional bodies. The following organisations have now adopted formal policy in support of removing some or all of the criminal sanctions associated with abortion:

1. The Royal College of General Practitioners,
2. The Royal College of Obstetricians and Gynaecologists,
3. The Royal College of Nursing,
4. The Royal College of Midwives, and
5. The Faculty of Sexual & Reproductive Healthcare.

In addition, the British Pregnancy Advisory Service (BPAS) has launched the 'We Trust Women' campaign, which is supported by the Royal College of Midwives, and the Family Planning Association.

⁶ Annual Representative Meeting 1988 and 2013.

⁷ Annual Representative Meeting, 2007.

⁸ Annual Representative Meeting 1984, 1985, and 2003.

⁹ See for example, the *Female Genital Mutilation Act 2003*, as amended by sections 74 and 75 of the *Serious Crime Act 2015*. Section 5B of the *Female Genital Mutilation Act* imposes a statutory duty on doctors to report incidences of female genital mutilation. A failure to report under this section does not carry any criminal penalty. However, it is made clear in the supporting guidance that professionals who fail to comply with the duty should be dealt with in accordance with the existing performance procedures in place for that profession.

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