

## How will abortion be regulated in the United Kingdom if the criminal sanctions for abortion are removed?



The provision of medical and surgical treatments, including abortion, is highly regulated. If legislation is amended so that abortion is no longer a criminal offence in the United Kingdom, the following legal, regulatory, and professional controls will continue to apply.



There will continue to be strict controls on the sale and supply of medicinal products, including abortifacients (the prescription medicines which are used to perform a medical abortion). Any person who procures or supplies abortifacients without a prescription could face criminal sanctions.



Only registered and licensed medical practitioners with appropriate training will be able to legally perform surgical abortions. If an unregistered, unlicensed person without appropriate training attempts to perform an abortion, criminal sanctions will apply.



Serious or persistent failures to follow the General Medical Council's (GMC) guidance as it relates to abortion will put a doctor's registration at risk. Action could include suspension or removal from the medical register. The GMC may also refer a doctor to the police if it believes a criminal offence has taken place. GMC guidance which is relevant to abortion includes guidance on:

- consent,
- personal beliefs,
- treating 0-18-year olds,
- child and adult safeguarding, and
- prescribing.

When considering a doctor's fitness to practise, the GMC will take into account professional guidance on abortion produced by other organisations.

Abortion providers are also regulated on a national level by:

- in England: the Care Quality Commission (CQC),
- in Wales: Healthcare Inspectorate Wales (HIW),
- in Scotland: Healthcare Improvement Scotland (HIS), and
- in Northern Ireland: the Regulation and Quality Improvement Authority (RQIA).



The civil and criminal laws that apply to other aspects of clinical care will continue to apply to abortion. For example:

- informed consent,
- assault,
- medical negligence and gross negligence manslaughter,
- wilful neglect or ill-treatment, and
- data protection and confidentiality.

For more information on the BMA's views on abortion and on the removal of criminal sanctions for abortion go to [www.bma.org.uk/ethics](http://www.bma.org.uk/ethics)



**There will continue to be strict controls on the sale and supply of medicinal products, including abortifacients (the prescription medicines which are used to perform a medical abortion). Any person who procures or supplies abortifacients without a prescription could face criminal sanctions.**

The [Human Medicines Regulations 2012](#) protect the health of the public by ensuring that medicines, including abortifacients, meet appropriate standards of safety, quality, and efficacy, and impose conditions for selling or supplying prescription-only medicines.

Any person who sells or supplies prescription-only medicines, including abortifacients, without a valid prescription given by an appropriate practitioner could be charged with an offence under [section 214](#) of the Human Medicines Regulations 2012.

Any person who makes a false representation in order to procure abortifacients for themselves or another person could be charged with an offence under [section 2](#) of the Fraud Act 2006.

Any person who sells abortifacients which are counterfeit could be charged with an offence under [section 2](#) of the Fraud Act 2006.

### What might this look like in practice?

*A fifteen-year-old girl, Judy, has found out that she is pregnant. She has missed a couple of periods. Her parents are very strict, and she lives in a small community where everyone knows her; her GP is a close friend of her parents. Her older boyfriend, Zac, purchases some drugs online to end the pregnancy. After taking these drugs, she starts bleeding heavily.*

Abortifacients are prescription-only medicines. It is illegal to [supply](#) a prescription-only medicine, except when acting in accordance with the directions of an appropriate medical practitioner. Zac could be charged and prosecuted for illegally supplying abortifacients to Judy.

It is also illegal to [sell](#) a prescription-only medicine to a person without a valid prescription. If they can be located within the United Kingdom, the persons who sold the abortifacients to Zac without a prescription could also be charged and prosecuted.

Across the United Kingdom, it is illegal to engage in sexual activity with a person under the age of 16. Dependent on Judy's particular circumstances, for example the nature of her relationship with Zac, the medical practitioners who attend to her may be required to consider the appropriateness of sharing information about Judy's situation with relevant safeguarding or other authorities.\* The GMC provides detailed guidance on [Protecting children and young people](#).

\* In addition, it should be noted that [section 5](#) of the Criminal Law (Northern Ireland) Act 1967 places a duty on all persons to report information they may have about the commission of a 'relevant offence'. A 'relevant offence' is one that is punishable by a term of imprisonment that is five years or longer. As the penalty for a person of 18 years or over engaging in sexual activity with a minor is a term of imprisonment which exceeds five years, medical practitioners in Northern Ireland are likely to be required to report Zac and Judy's relationship to the most appropriate authority, if Zac is 18 years or older.



**Only registered and licensed medical practitioners with appropriate training will be able to legally perform surgical abortions. If an unregistered, unlicensed person without appropriate training attempts to perform an abortion, criminal sanctions will apply.**

In the United Kingdom it is illegal to practise medicine, or work in a role that requires registration (such as a nurse or midwife), without first registering with the relevant regulatory body. Regulatory bodies are responsible for ensuring each person who is registered possesses the requisite qualifications.

Any unregistered, unlicensed person who falsely pretends to be a doctor, nurse, midwife, or pharmacist could be charged with an offence under [section 49](#) of the Medical Act 1983, [section 44](#) of the Nursing and Midwifery Order 2001, [section 38](#) of the Pharmacy Order 2010, or [section 14](#) the Pharmacy (Northern Ireland) Order 1976. They could also be charged with an offence under [section 2](#) of the Fraud Act 2006.

Any unregistered person without appropriate training who performs a surgical procedure, including a surgical abortion, could be charged with an offence under [section 47](#) (assault occasioning actual bodily harm), [section 18](#) (wounding), or [section 20](#) (grievous bodily harm) of the Offences Against the Person Act 1861.

#### **What might this look like in practice?**

*Mark is a retired vet. Recently, his neighbour and close friend Sally has approached him for help in terminating her pregnancy. Sally's relationship has broken down. She says that she had considered buying abortifacients online but that her pregnancy is too far advanced for this to be an option. After she refuses to see a doctor, Mark reluctantly agrees to perform a surgical abortion. After the procedure, Sally experiences extreme cramping and begins bleeding heavily. She attends her local hospital seeking assistance.*

Only a registered, licensed medical practitioner with appropriate training can legally perform a surgical abortion. As Mark is not suitably qualified, by terminating Sally's pregnancy, Mark could be charged with an offence under [section 47](#), [section 18](#), or [section 20](#) of the Offences Against the Person Act 1861.



**Serious or persistent failures to follow the General Medical Council's (GMC) guidance as it relates to abortion will put a doctor's registration at risk. Action could include suspension or removal from the medical register. The GMC may also refer a doctor to the police if it believes a criminal offence has taken place.**

- **consent,**
- **personal beliefs,**
- **treating 0-18-year olds,**
- **child and adult safeguarding, and**
- **prescribing.**

**When considering a doctor's fitness to practise, the GMC will also take into account professional guidance on abortion produced by other organisations.**

All doctors working in the United Kingdom must be registered with the [General Medical Council](#) (GMC) and follow the GMC's guidance, [Good Medical Practice](#), which sets out the standards expected of them. Serious or persistent failures to follow the GMC's guidance will put a doctor's registration at risk. The GMC can suspend or remove doctors from the medical register. The GMC may also refer a doctor to the police if it believes a criminal offence has taken place.

The following GMC guidance applies to doctors who provide abortion services, or who have received an enquiry from a patient who wishes to access abortion services:

1. consent with regard to [adults](#),
2. [personal beliefs and medical practice](#),
3. [treating 0-18 year old persons](#),
4. [child and adult](#) safeguarding, as well as [raising and acting on concerns about patient safety](#), and
5. [prescribing](#).

In addition, *Good Medical Practice* requires doctors to keep their professional knowledge and skills up to date, and to be familiar with guidance and developments that affect their work. This includes the [detailed clinical guidelines on termination of pregnancy](#) produced by the Royal College of Obstetricians and Gynecologists (RCOG).

Amongst other things, this guidance ensures that:

1. women receive timely, good quality information about the implications and the options open to them to enable informed consent to be provided;
2. women are supported and treated as individuals, with respect for their dignity and privacy;
3. the correct decision-making processes are followed when a patient lacks capacity; and
4. physicians act within their competency.

The independent regulators of nurses, midwives, and pharmacists are the [Nursing and Midwifery Council \(NMC\)](#), the [General Pharmaceutical Council \(GPhC\)](#), and the [Pharmaceutical Society of Northern Ireland](#) respectively. These bodies publish codes or standards with which their registered members must comply. Failure to comply will place the relevant person's registration at risk.

### What might this look like in practice?

*At 30 weeks' gestation, Nadia finds herself in a situation where she does not know how she will cope with a baby. After becoming pregnant, her partner has become increasingly abusive, and the relationship has now broken down. She has also lost her job. She feels isolated and desperate. She visits a doctor and asks the doctor to end her pregnancy.\**

In the event that criminal sanctions are removed, limits on third-trimester abortions can, and we anticipate will, be maintained, as they have been in other countries that have decriminalised abortion. This can be achieved via professional guidelines, or by statute, where the limits are subject to professional or regulatory, rather than criminal, sanctions.

Nadia's doctor will need to carefully consider Nadia's circumstances and assess whether carrying out an abortion would meet these requirements, in the same way that doctors currently consider each case to assess whether the request complies with the current law. If Nadia's doctor agrees to perform an abortion in circumstances that do not meet the criteria, the doctor and the doctor's clinic could face regulatory action.

\*It is very rare for women to request an abortion late in their pregnancy. In England and Wales 9 out of 10 abortions are performed before 13 weeks. In Scotland 8 out of 10 abortions are performed before 9 weeks, while less than 1 per cent are performed at 18 weeks or later. In Northern Ireland, abortion remains illegal in all except very limited circumstances. Where women do seek an abortion later in their pregnancy it is usually because the fetus has a serious abnormality or there is a serious threat to their own physical or mental health.



### Abortion providers are also regulated on a national level by:

- in England: the Care Quality Commission (CQC),
- in Wales: Healthcare Inspectorate Wales (HIW),
- in Scotland: Healthcare Improvement Scotland (HIS), and
- in Northern Ireland: the Regulation and Quality Improvement Authority (RQIA).

#### England

In England, termination of pregnancy is a 'regulated activity' according to [schedule 1](#) of the [Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#). Registered providers (both NHS and independent) who provide regulated activities, including abortion, must comply with the [Care Quality Commission Registration Regulations 2009](#) and sections 4 to 20A of the [Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#). These regulations require providers to meet specific quality and safety standards. If providers fail to meet the required standards, the [Care Quality Commission](#) (CQC) can employ a range of enforcement actions, including issuing improvement notices, cancellation or alteration of registration, and prosecution.

The CQC will only register a service provider of a regulated activity (in this case termination of pregnancy) once it is satisfied that the relevant regulations and requirements of any other Act which appears to be relevant to the CQC are being met and will continue to be complied with in relation to the regulated activity. It is an [offence](#) to carry out a regulated activity without first registering with the CQC.

#### Wales

[Healthcare Inspectorate Wales](#) (HIW), acting on behalf of the Welsh Ministers, inspects all NHS healthcare services in Wales to check people are receiving good quality care. When conducting an inspection, HIW considers how services comply with legislation, professional standards, and guidance, including the legislation and professional guidelines that apply to abortion.

An independent hospital, clinic or agency that provides for the termination of pregnancies must be registered by HIW under [Part II](#) of the Care Standards Act 2000. It is an [offence](#) to provide an independent health service without being registered under that Act.

HIW will grant an application for registration if satisfied that the requirements of the [Registration of Social Care and Independent Health Care \(Wales\) Regulations 2002](#), the [Independent Health Care \(Wales\) Regulations 2011](#) and the requirements of any other relevant enactments are being, and will continue to be, complied with; otherwise HIW will refuse it.

When conducting an inspection of an independent health service, HIW considers whether the health care provider is complying with the [Care Standards Act 2000](#), the [Independent Health Care \(Wales\) Regulations 2011](#) and the [National Minimum Standards for Independent Health Care Services](#) in Wales. Non-compliance with regulatory requirements may result in HIW taking enforcement action which includes prosecution.

#### Scotland

[Healthcare Improvement Scotland](#) (HIS) quality-assures all NHS healthcare services and regulates independent healthcare services in Scotland.

In addition, the [National Health Service \(Scotland\) Act 1978](#) places a statutory duty on HIS to register and inspect independent hospitals and clinics. It is an [offence](#) to carry on an independent health service without first registering with HIS.

**Northern Ireland**

In Northern Ireland, abortion is currently a criminal offence, other than in very limited circumstances. As such, there are no independent abortion clinics currently operating. This being the case, it is likely that immediately following decriminalisation, abortion services would be provided by existing Health and Social Care (HSC) providers in Northern Ireland (HSC is the equivalent of the NHS in Northern Ireland).

The [Regulation Quality and Improvement Authority](#) (RQIA) quality-assures services provided by the HSC Board, and HSC trusts agencies, to ensure that every aspect of care reaches the standards laid down by the Department of Health and expected by the public.

If an independent clinic begins providing abortion services in Northern Ireland following decriminalisation, the [Health and Personal Social Services \(Quality, Improvement and Regulation\) \(Northern Ireland\) Order 2003](#) would require that clinic to register with the RQIA.\* It is an [offence](#) to carry on an independent medical establishment or agency without first registering with the RQIA.

The RQIA inspects all independent clinics to ensure they are meeting minimum care standards. If independent clinics fail to meet the required standards, the RQIA can employ a range of enforcement actions including issuing improvement notices, cancellation or alteration of registration, and prosecution.

\*A medical service will not meet the definition for an independent clinic under the [Independent Health Care Regulations \(Northern Ireland\) 2005](#) if the medical practitioner who provides the service also provides HSC services.

**What might this look like in practice?**

*A 19-year-old, Lucy, is pregnant. She attends an abortion clinic in Birmingham to request a termination. She is accompanied by her uncle, who refuses to allow Lucy to see the doctor alone. Lucy appears very scared and does not speak. The doctor and attending nurse notice bruising on Lucy's arms and legs. The clinic's staff have not received appropriate safeguarding training. As a result, they fail to identify that Lucy may be at risk.*

The Care Quality Commission (CQC) is the independent regulator of health care in England. The CQC inspects health care services,\* including abortion clinics, to ensure that they meet fundamental standards of quality and safety and provide services that are safe, effective, caring, responsive, and well led. As a part of the CQC's inspection process, the CQC will assess compliance with the relevant regulatory requirements, which include that staff are appropriately trained.

Where the CQC finds that staff are not appropriately trained to deal with safeguarding issues, which includes training in safeguarding procedures, the CQC will take appropriate regulatory action specific to the circumstances of a case, to ensure compliance with the requirements. The CQC has a range of regulatory and enforcement powers which are set out in its enforcement policy, including cancellation or suspension of a provider's registration to carry on a regulated activity, including termination of pregnancy, until appropriate improvements have been made to ensure the safety of patients and staff.

In addition, in order for the abortion to proceed, Lucy's doctor must ensure that she has validly consented to the procedure. In order to provide a [valid consent](#), Lucy must receive sufficient information about the procedure, have capacity to understand the nature and consequences of the procedure, and provide consent voluntarily. If the doctor proceeds without first obtaining a valid consent, the doctor could be deemed guilty of an [offence](#). The GMC may decide to take regulatory action against the individual doctor.

\*The CQC inspects regularly, in accordance with its policy on frequency of inspections, but it will also investigate if it receives information of concern that a provider may not be delivering safe patient care and treatment.



**The civil and criminal laws that apply to other aspects of clinical care will continue to apply to abortion. For example:**

- informed consent,
- assault,
- medical negligence and gross negligence manslaughter,
- wilful neglect or ill-treatment, and
- data protection and confidentiality.

In addition, it should be noted that [section 5 of the Criminal Law \(Northern Ireland\) Act 1967](#) places a duty on all persons to report information they may have about the commission of a 'relevant offence'. A 'relevant offence' is one that is punishable by a term of imprisonment that is five years or longer.

### What might this look like in practice?

*At 38 years old, Nina learns that she is nine weeks' pregnant. Nina is overjoyed, but her husband does not want to have another child. Nina's husband purchases abortifacients online and slips them into her drink. Nina notices a gritty substance at the bottom of her drink in the morning. Later in the afternoon Nina miscarries and seeks help at the local hospital. When she returns home, Nina finds the packaging for abortifacients in her husband's office.*

Abortifacients are a prescription-only medicine. It is illegal to [supply](#) a prescription-only medicine, except when acting in accordance with the directions of a medical practitioner. Nina's husband could be charged and prosecuted for illegally obtaining and supplying abortifacients to Nina.

Further, it is illegal to [sell](#) a prescription-only medicine to a person without a valid prescription. If they can be located within the UK, the persons who sold the abortifacients to Nina's husband without a prescription could also be charged.

In addition, Nina's husband's actions are likely to constitute an offence under section [23](#) or [24](#) (maliciously administering poisons) of the Offences Against the Person Act 1861. It is also possible that an offence which specifically criminalises non-consensual abortion will be created in any legislation that removes criminal sanctions for abortion,\* in which case Nina's husband could also be charged under that provision.

\*To date, many nations, states, and territories which have passed legislation to decriminalise abortion have created provisions which criminalise non-consensual abortion.

