

Debate Pack  
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## Debate on e-petition to include abortion rights in the Bill of Rights

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### Summary

On Monday 28 November there will be a debate in Westminster Hall on e-petition [619334](#) relating to legal rights to access abortion. The debate will be opened by Tonia Antoniazzi on behalf of the Petitions Committee.

# 1

## Background to the e-petition

Abortion is a medical intervention through which a pregnancy is ended. It is sometimes referred to as a ‘termination of a pregnancy’. A medical abortion involves taking two different medicines to end the pregnancy, usually one or two days apart. A surgical abortion involves an operation to remove the pregnancy from the womb. [Further information can be found on the NHS website.](#)

[E-petition 619334 calls on the Government](#) to “enshrine abortion rights in the new UK Bill of Rights”, so that “rights to abortion [are] specifically protected in this legislation”. The Government responded to the petition on 20 September 2022. It stated that it would be “looking again at the Bill of Rights to ensure it will deliver the Government’s objectives as effectively as possible”.

The purpose of this debate pack is to provide an overview of the law on abortion in Great Britain and Northern Ireland, together with information on the Bill of Rights Bill. The Bill would reform the law relating to human rights in the UK. This briefing does not comment on, or add to, the debate on the ethics of abortion.

## 1.1

### Law on abortion in Great Britain

In Great Britain, abortion is an offence under [sections 58 and 59 of the Offences against the Person Act 1861](#) and [section 1\(1\) of the Infant Life \(Preservation\) Act 1929](#). The [Abortion Act 1967](#) (as amended) established exceptions to these offences, under certain limited circumstances. Abortion is thus lawful in England, Scotland, and Wales provided the criteria in the Abortion Act 1967 are met.

#### Offences against the Person Act 1861

[Under section 58 of the 1861 Act](#), it is an offence to procure the miscarriage of a woman, irrespective of whether, or not, she is pregnant. This includes a woman procuring her own miscarriage. Section 59 of the same Act establishes that it is a criminal offence to supply or procure any “poison” or instrument in the knowledge that it will be used to procure a miscarriage of any woman.

#### Infant Life (Preservation) Act 1929

The [Infant Life \(Preservation\) Act 1929](#) sought to establish the principle that abortions that were for the sole purpose of preserving the life of the

pregnant woman were no longer an offence. Section 1(1) of the 1929 Act provides that it is an offence to “destroy the life of a child capable of being born alive” unless the act was carried out in “good faith” to preserve “the life of the mother”. Under Section 1(2) there is a presumption that a “child [is] capable of being born alive” if the pregnancy has reached “twenty-eight weeks or more”.

## Abortion Act 1967

The [Abortion Act 1967](#) (as amended) extends to England, Scotland and Wales and permits lawful abortions to be carried out, by a registered medical practitioner in an ‘approved place’, so long as certain statutory conditions are met. This includes that it is authorised by two doctors (or one in a medical emergency), acting in “good faith”, who are of the opinion that it meets one or more of the statutory criteria stipulated in the 1967 Act. The grounds for permitting abortions under Section 1 of the Abortion Act 1967, as amended, are:

- (a) that the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family; or
- (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
- (c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
- (d) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

The legality of abortion in Great Britain is thus subject to compliance with the 1967 Act.

[Section 37 of the Human Fertilisation and Embryology Act 1990](#) made changes to the Abortion Act 1967. It introduced two different time limits on abortions:

- For abortions undertaken on ground (a) of the Act, the time limit is 24 weeks gestation;
- For those undertaken under grounds (b), (c) or (d), there is no time limit. Abortion may be performed up until the end of pregnancy.

The Act contains a ‘conscience clause’ which allows doctors and other healthcare professionals to override any contractual obligations and opt out of performing abortions.

Most recently, the 1967 Act was amended by [Section 178 of the Health and Care Act 2022](#) (and the [Abortion \(Amendment\) Regulations 2022](#)). This

permits early medical abortion (where the pregnancy has not exceeded nine weeks and six days) to take place at home, providing certain conditions are met. More information on this change can be found in the Commons Library briefing on [Early medical abortion at home during and after the pandemic](#) (April 2022).

## 1.2

# Commentary on the right to an abortion in Great Britain

David Stephenson QC stated in an article for Westlaw that “no right to abortion is given expressly by the [1967] Act to the pregnant woman although such a right may exist by implication: there are conflicting obiter views in the reported cases”.<sup>1</sup>

Nonetheless, the current legal framework merely sets out the circumstances in which abortions can be performed without those involved attracting criminal liability. The proposed amendments to the Bill of Rights Bill would seek to give the right to abortion a different legal status, recognising it as a fundamental right which public authorities would be obliged to respect.

## What is the Bill of Rights Bill?

The Government has published a Bill of Rights Bill which would repeal the Human Rights Act 1998 and replace it with a new framework to implement the European Convention on Human Rights. It was introduced in the House of Commons on 22 June 2022. The Bill has not yet had its second reading and no date is currently scheduled.

The Bill of Rights Bill followed an independent review of the Human Rights Act and a Government consultation on reform. Second reading of the Bill was provisionally scheduled for 12 September. However, given the change of leadership and the period of mourning this did not take place. Following his reappointment as Justice Secretary, Dominic Raab confirmed that it will proceed.

The Library will publish a briefing paper in advance of second reading.

For background, please see our paper on [Reform of the Human Rights Act 1998](#).

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<sup>1</sup> David Stephenson QC, Abortion (Overview of topic), Last date of review: 11 April 2022 (accessed via Westlaw - Thomson Reuters, subscription required). Westlaw is a legal research service and database. Members can access Westlaw via the Commons Library website. ‘Obiter views’ refers to a remark in a legal opinion that is ‘said in passing’ in a judge’s comments or observations. Such remarks do not create a binding precedent.

The Bill, explanatory notes, Government response to the consultation, and other relevant documents are available on the [Bill page](#).

## Proposals to amend the Bill of Rights Bill

Several Labour MPs have indicated that they would table an amendment to the Bill of Rights Bill to include a right to an abortion. For example, in June 2022 Rosie Duffield asked the Deputy Prime Minister, Dominic Raab, whether he would “accept the cross-party amendment to the Bill of Rights Bill, which would enshrine in law a woman’s right to choose?” Mr Raab replied:

[...] As she knows, the position on abortion is settled in UK law and it is decided by hon. Members across the House. It is an issue of conscience, and I do not think there is a strong case for change. With the greatest respect, I would not want us to find ourselves in the US position, where the issue is litigated through the courts, rather than settled, as it is now settled, by hon. Members in this House.<sup>2</sup>

Similarly, during an Urgent Question on [Women’s Rights to Reproductive Healthcare in the United States](#) in June 2022, Stella Creasy asked the Government:

[...] if an amendment is tabled to the forthcoming Bill of Rights to protect a woman’s right to choose for every single woman in the United Kingdom — by those of us who recognise that it will be a conscience issue, and therefore a free vote — will she join me in voting for it?

Responding for the Government, Amanda Milling stated that she would “not pre-empt what will be in future legislation”, adding that it was a matter “for our conscience”.<sup>3</sup>

## What difference would the amendments make to the legal right to abortion?

**Clause 12** of the Bill of Rights Bill would replicate section 6 of the Human Rights Act 1998 in many respects, making it unlawful for a public authority to act in a way which is incompatible with a Convention right, and providing the legal basis for bringing a claim for breach of those rights.

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<sup>2</sup> [HC Deb, 29 June 2022, c292](#)

<sup>3</sup> [HC Deb, 28 June 2022, c175-176](#)

Therefore, if the Bill were amended to include a right to abortion, it may provide the basis for bringing legal claims against the Government or public authorities for breaching this right.<sup>4</sup>

If such an amendment became law, it would remain open to a future parliament to introduce legislation restricting access to abortion. The Human Rights Act and a future Bill of Rights do not prevent Parliament from intentionally legislating in a way that may breach rights.<sup>5</sup>

## 1.3 Law on abortion in Northern Ireland

The law on abortion in Northern Ireland is different to Great Britain. Detailed information can be found in the Commons Library briefing on [Abortion in Northern Ireland: recent changes to the legal framework](#) (June 2022).

Prior to 22 October 2019, abortion was illegal in Northern Ireland under the [Offences Against the Person Act 1861](#), subject to very limited exceptions specified in the [Criminal Justice Act \(NI\) 1945](#) and application of case law (chiefly *R v Bourne* [1939] 1 K.B. 687).<sup>6</sup> The [Abortion Act 1967](#) which, as noted above, sets out the conditions under which a registered medical practitioner may lawfully perform a termination in England, Wales and Scotland, was never extended to Northern Ireland.

Changes to the law were introduced by the UK Government through Section 9 of the [Northern Ireland \(Executive Formation etc\) Act 2019](#). The Act set out that Section 9 would come into force on 22 October 2019 if an Executive was not established by 21 October 2019. Since the Northern Ireland Executive was not in place by that date, the following changes to abortion law in Northern Ireland were made on 22 October 2019:

- sections 58 and 59 of the [Offences Against the Person Act 1861](#) in Northern Ireland (attempts to procure abortion) were immediately repealed (thus decriminalising abortion in Northern Ireland);

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<sup>4</sup> It is not clear how such a provision would interact with other clauses in the Bill, for example, clause 5, which would prevent the courts from adopting an interpretation of a Convention right that would require a public authority to comply with a positive obligation. Also, the Bill is currently drafted by reference to the 'Convention rights' because the substantive rights it would protect are those contained in the European Convention on Human Rights. The right to abortion is not a Convention right and therefore any amendment would need to take account of this.

<sup>5</sup> Although legislating contrary to a fundamental right may be politically consequential, and where the right in question was a Convention right it would risk placing the UK in breach of its obligations under international law.

<sup>6</sup> This case established that a doctor will be protected from prosecution if their clinical judgment is that continuance of the pregnancy carries a real and grave risk to the mother's physical or mental health.

- a moratorium on abortion-related criminal prosecutions came into effect;
- a duty was placed on the UK Government to introduce, by regulations, a new legal framework for abortion in Northern Ireland which ensured that the “recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland” by 31 March 2020. The [CEDAW report](#) is the “Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women”.

A new legal framework for abortion services in Northern Ireland was introduced, by regulation, by the UK Government on 25 March 2020 following a [6 week consultation](#). [The Abortion \(Northern Ireland\) Regulations 2020](#) allow access to abortions up to 12 weeks gestation (11 weeks + 6 days), without conditionality, to be certified by one medical professional that the pregnancy has not exceeded its twelfth week. Abortions beyond 12 weeks gestation are lawful in specified instances, including when severe fetal impairment and fatal fetal abnormalities are detected.

The Regulations were subsequently re-made as the [Abortion \(Northern Ireland\) \(No. 2\) Regulations 2020](#) on 12 May 2020, correcting drafting errors identified by the Joint Committee on Statutory Instruments. The Regulations were approved by both Houses of Parliament in June 2020.

Concerns have been repeatedly raised in Westminster, and beyond, that full commissioning of abortion services in Northern Ireland has not taken place. More information on this matter is set out in the Commons Library briefing on [Abortion in Northern Ireland: recent changes to the legal framework](#) (June 2022).



## 2

# Parliamentary Questions

## Abortion: Telemedicine

### **Asked by: Johnson, Dame Diana**

To ask the Secretary of State for Health and Social Care, what steps her Department is taking to help ensure young people (a) can access and (b) retain the legal right to consent to early medical abortion via the telemedicine pathway.

### **Answering member: Dr Caroline Johnson | Department: Department of Health and Social Care**

In March 2022, Parliament voted in favour of making the temporary approval allowing home-use of both pills for early medical abortions a permanent measure for women and girls in England and Wales. The Department continues to work with abortion providers and other stakeholders on the provision of services, including ensuring timely access to all abortion services.

The Abortion Act 1967 does not set a legal age limit for access to early medical abortion via the telemedicine pathway. The Department commissioned the Royal College of Paediatrics and Child Health to develop independent safeguarding guidance for children and young people under 18 years old accessing early medical abortion services.

**HC Deb 24 October 2022 | PQ 59152**

## Abortion

### **Asked by: Lord Hunt of Kings Heath**

To ask Her Majesty's Government what plans they have to include within the Bill of Rights Bill provision for women across the UK to have access to safe abortion.

### **Answering member: Lord Bellamy | Department: Ministry of Justice**

The position on abortion is settled in UK law and it is rightfully decided by Parliament. It is an issue of conscience, and the Government has no current plans to introduce this issue into the Bill of Rights. We should be mindful of finding ourselves in the US position, where the issue is litigated through the courts, rather than settled as it is here by Parliament. Health Services across the UK are responsible for providing access to safe and legal abortion within the framework of the law.

**HL Deb 18 July 2022 | PQ HL1434**

## 3

### News and blogs

Elle

31 August 2022

[How Safe Are Women's Rights To Abortion In The UK?](#)

Royal College of Obstetricians and Gynaecologists

8 August 2022

[Women's health leaders renew calls for the UK Government to decriminalise abortion](#)

The Conversation

July 18 2022

[UK abortion laws are more precarious than they seem – replacing the Human Rights Act could unsettle them further](#)

UK Constitutional Law Association blog

11 July 2022

[Kirsty Hughes: The Bill of Rights and the Precarity of Abortion Rights](#)

UK Constitutional Law Association blog

19 July 2022

[Craig Purshouse: Abortion and the Bill of Rights: A reply to Kirsty Hughes](#)

Telegraph

1 July 2022

[Why the 'right to abortion' doesn't actually exist in Britain](#)

Guardian

29 June 2022

**Dominic Raab says right to abortion does not need to be in bill of rights**

Times [subscription]

29 June 2022

**Raab rejects call to include abortion in bill of rights**

Politics Home

28 June 2022

**MPs Call For Stronger UK Abortion Rights After Historic US Abortion Bans**

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