

Abortion Law in Scotland

As well as being subject to the wide range of laws that govern other areas of medical practice, abortion is currently subject to a specific legal regime. Since 2016, in accordance with s.53 of the Scotland Act 2016, power to legislate on abortion has been devolved to the Scottish Parliament.

1) Common Law

Neither the Offences Against the Person Act 1861 nor the Infant Life Preservation Act 1929 extends to Scotland. Prior to the Abortion Act 1967, abortion was governed by the common law. Performing an abortion could constitute a criminal offence depending on the circumstances. A key feature of the offence was the intent of the person performing the abortion. It was accepted that abortion could be justified at any stage, up until birth, if performed by a doctor for therapeutic purposes (to save the life or health of the pregnant woman).

Unlike the law in England and Wales no distinction was made between abortions performed pre- and post-viability. This remained the case until the Abortion Act 1967 was amended by the Human Fertilisation and Embryology Act 1990.

Decriminalisation of abortion in Scotland therefore requires legislation to clarify the position at common law.

2) The Abortion Act 1967

Under s.1, the 1967 Act provides that no offence is committed where:

- *Two doctors agree in good faith that one and the same condition for authorising an abortion is met.* The conditions are that:
 - the pregnancy has not exceeded 24 weeks and poses a greater risk to the woman's health or that of an existing child than would abortion; or
 - abortion is necessary to prevent grave permanent injury to her health; or
 - continuance of pregnancy would involve greater risk to her life than would abortion; or
 - there is a substantial risk that the future child would be born with mental or physical abnormalities so as to be 'seriously handicapped'.
- *The abortion is performed by, or under the supervision of, a doctor; and*
- *The abortion is performed on NHS or other approved premises.*

The Act provides for a right of conscientious objection, meaning that no person is under a duty to participate in any treatment authorised by the Act. This does not apply where an abortion is performed to save the life of, or prevent grave permanent injury to, a woman. The Act also lays down requirements for the notification of abortions.