

Abortion “on the grounds of the sex of the unborn child”: the threat to women posed by an amendment to the Serious Crime Bill

A briefing from the British Pregnancy Advisory Service (bpas)

Key points:

- **An abortion in the UK cannot be authorised on the basis of gender alone, and Department of Health guidance on this is clear**
- **Despite intensive efforts at dozens of clinics across the UK, the Daily Telegraph’s 2012 sting investigation did not find a single doctor prepared to authorise an abortion on the basis of gender alone**
- **There is no evidence that sex-selection abortion is occurring routinely within any UK community, however this amendment could harm the women it purports to protect by preventing them from speaking openly to their caregivers**
- **Abortion doctors already feel under intense scrutiny; this amendment will make them more wary of providing care to women from certain ethnic communities**
- **The amendment would prevent women accessing abortion where there are concerns about a sex-prevalent disorder**
- **The amendment would prevent a victim of sexual violence accessing abortion where she does not wish to carry a male foetus to term**
- **Sex-selection abortion is a result of deeply entrenched gender discrimination which is not tackled by criminalising women’s bodies and decisions but by confronting root causes**
- **Sex-selection abortion bans are rare across the world, as legislators recognise the problems of criminalising women and doctors. Where they have been enacted they have failed to correct the imbalance and have harmed women in the process**
- **Sex-selection abortion bans are now a major plank of the anti-choice movement in the US, passed in 7 states openly hostile to women’s access to abortion, and have paved the way for further encroachments on women’s choice**

What is the amendment and why is it being tabled?

The intention of the amendment appears to be to ensure an abortion cannot be carried out where the sex of the foetus is a factor in the woman’s request for an abortion. It has been tabled for Section 5 of the Serious Crime Bill and reads:

Termination of pregnancy on the grounds of the sex of the unborn child:

Nothing in section 1 of the Abortion Act 1967 is to be interpreted as allowing a pregnancy to be terminated on the grounds of the sex of the unborn child.

The amendment has been brought forward by Fiona Bruce MP. It follows a high-profile investigation by the Daily Telegraph, which in 2012 claimed to find 2 UK doctors agreeing to sex-selective abortions. In fact after a myriad of unsuccessful attempts at clinics across the UK, including at centres run by bpas, the undercover reporters were only able to secure approval for an abortion after introducing the risk of a female sex-linked chromosomal disorder with the pregnancy in question. This has never been acknowledged by The Telegraph or those currently campaigning for greater restrictions on abortion, yet this was one of the key reasons why prosecutions were not be pursued.ⁱ

In support of her proposal, Ms Bruce also cites a series of case studies of women from the South Asian community.ⁱⁱ One had been physically assaulted by her partner on the discovery that she had been carrying a girl while others aborted female foetuses under pressure. This briefing will explain that women in these appalling circumstances are already protected by UK law, and that greater restrictions on women's already curtailed reproductive freedoms will not help women from these communities or any other.

How is the Abortion Act 1967 currently interpreted?

Abortion is legal when 2 doctors determine that a woman meets one of the 5 grounds laid out in the 1967 Abortion Act. Many European countries now allow abortion on request into the second trimester, and so the UK is now one of few countries which requires that a woman explain her decision and seek the permission of 2 doctors before an abortion can be carried out. Gender is not a ground for abortion within the act and most abortions are carried out under Ground C, which stipulates 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 (section 1(1)(a)).

The Act does not prohibit a doctor from authorising an abortion where a woman has referenced the sex of her foetus, but the abortion could not be carried out on that basis alone – she must meet the grounds laid out in the Act. It is very unusual for gender to be a factor in a woman's request for an abortion, not least because the majority of abortions are performed before it is possible to determine the sex of the baby. While women may have a sex preference, abortion is rarely seen as a way to achieve it. However there may be compelling individual circumstances where the sex of the foetus plays a role in her request, and the doctors' decision to authorise it. For example, a doctor who is told by a woman that she will commit suicide if forced to carry a female foetus to term and whose repeated offers of referrals to supportive agencies are rejected may well believe that the continuation of the pregnancy pose a serious risk to her health, greater than if the pregnancy were terminated. A woman who has escaped a violent and abusive partner to discover she is carrying a male foetus may also see her request for an abortion authorised by 2 doctors, even if she suggests she may have made a different decision if she had been expecting a girl. Gender may also be a factor in decisions made for medicosocial reasons but which would not fall under the foetal anomaly clause (Ground E) of the Act. For

example, a woman who has a severely autistic son may decide against a further male pregnancy due to her concerns about the impact on herself and her family were a subsequent son similarly affected (autism is 4 times more prevalent among boys than girls). All of these women could lawfully obtain an abortion under the current interpretation of the Act, but their requests would be denied were this amendment to pass.

Is other legislation needed?

Legislation and regulations already exist that should protect women in the dreadful circumstances described by Fiona Bruce. A woman who is attacked by her partner after he learns that she is carrying a female foetus would absolutely be protected by existing legislation: assault is obviously in itself a crime, but an attack aimed at causing a miscarriage would also be an offence under section 58 of the Offences Against the Person Act 1861, with a maximum penalty of life imprisonment attached.

An abortion that has been performed where consent has not been obtained would also constitute a criminal offence, and consent may not be valid if it has been given under pressure exerted by another person (*Re T (Adult) [1992] 4 All ER 649*). Women attending abortion services should always be seen alone to ensure that their decision is one they have reached themselves and not under duress. In addition, pregnant women are routinely screened for signs of domestic abuse or violence, whether they are attending abortion or antenatal services.

The principles of good practice, which all healthcare professionals are expected to follow when seeking patients' informed consent to examination or treatment, are set out in the GMC's 'Consent guidance: Patients and doctors making decisions together',ⁱⁱⁱ

The Care Quality Commission inspects all pregnancy advice and abortion care centres against these standards.

How prevalent is sex-selective abortion?

There is no evidence of gender imbalance in any ethnic community in the UK,^{iv} and it is not bpas' experience that women from any particular ethnic community are referencing the gender of their foetus when requesting an abortion. However if women are being forced into the abortion of female foetuses at home or abroad or assaulted by partners seeking to cause them a miscarriage, this needs to be taken seriously and acted upon. But the Abortion Act is not the vehicle to do this, and the answer does not lie in further criminalising women. It is bpas' belief that, far from protecting these women, this amendment could exacerbate their situation while denying other women access to perfectly lawful procedures.

What is the situation in other countries?

There are countries which face genuine issues with gender imbalance as a result of sex-selective abortion, but where there is no evidence that banning terminations on this basis prevents it

from happening or protects women. Such frameworks mean a woman is either forced to lie to her provider, seek an unsafe abortion or endure multiple pregnancies until a boy is produced – putting her health at serious risk. An interagency statement from the OHCHR, UNFPA, UNICEF, UN Women and WHO on preventing gender-biased sex-selection noted that states have an obligation to tackle discrimination against women and girls “without exposing women to the risk of death or serious injury by denying them access to needed services such as safe abortion to the full extent of the law. Such an outcome would represent a further violation of their rights to life and health as guaranteed in international human rights treaties, and committed to in international development agreements.”^v

In the US, where in common with the UK there is no evidence that sex-selective abortion is widespread, bans on treatment for women have now become a central plank of the anti-choice movement, and are now being introduced alongside bans on abortion for foetal disability. One influential anti-choice thinker, Professor Steven Calabresi, noted the: “key to eroding *Roe v. Wade* [the US constitutional right to abortion] is to pass a number of state or federal laws that restrict abortion rights in ways approved of by at least fifty percent of the public,” such as “a ban on abortion for sex selection.” As with this UK amendment, the US bans make liberal reference to the “unborn child”, a term primarily used by those who oppose women’s choice.^{vi}

What would this amendment do?

The intention, and the effect of this amendment, is that doctors would feel unable to authorise an abortion where foetal sex was a factor in the woman’s decision making, or where they suspected foetal sex may be a factor. As the discussion so far has focused squarely on women from South Asian communities, it would be reasonable to assume that these women’s requests for abortion would be treated differently from those from any other ethnic community, with doctors compelled to enact some form of racial profiling. South Asian women’s access to abortion services would therefore be compromised, with doctors feeling the need to further probe to uncover her “real” reasons, fearing prosecution for inadvertently authorising a sex-selective abortion.

It should be apparent to everyone that if a woman were under pressure to terminate her pregnancy on the basis of the sex of her baby, her needs would certainly not be served if she felt she was unable to divulge this fact. Any woman who feels she is being forced to end a pregnancy she wants to continue needs to be able to discuss in confidence what is happening. In this way appropriate help and support can be provided so that she can make the right decision for her. All services providing pregnancy advice and care should have in place appropriate referral pathways for women under pressure to terminate and who wish to continue their pregnancies. Women need to feel they can speak freely to healthcare staff about their reasons for requesting an abortion, and legislation which seeks to effectively criminalise these discussions would not serve women, let alone any broader aims of gender equality.

ⁱ <http://blog.cps.gov.uk/2013/10/statement-from-director-of-public-prosecutions-on-abortion-related-cases.html>

ⁱⁱ <http://www.telegraph.co.uk/women/womens-life/11362379/Gender-abortion-Its-time-for-urgent-action.html>

ⁱⁱⁱ http://www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_index.asp

^{iv} <https://www.gov.uk/government/publications/analysis-of-male-to-female-birth-ratios-in-the-uk-2008-to-2012>

^v http://www.unfpa.org/sites/default/files/resource-pdf/Preventing_gender-biased_sex_selection.pdf

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<https://ihrclinic.uchicago.edu/sites/ihrclinic.uchicago.edu/files/uploads/Replacing%20Myths%20with%20Facts%20-%20Sex-Selective%20Abortion%20Laws%20in%20the%20United%20States.pdf>