

SECTION Q
ILLEGAL ABORTIONS

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I. The Law before the Abortion Act 1967

500. In England and Wales the statutory provisions against abortion were contained in sections 58 and 59 of the Offences Against the Person Act 1861 and the Infant Life (Preservation) Act 1929. In Scotland illegal abortion was a common law offence. These statutory provisions and the relevant common law are still of full force and effect today, save in so far as their effect is modified by the 1967 legislation. They are discussed and set out in the Appendix to Section A.

II. The Effect of the Act on Pre-existing Law

501. The Act of 1967 is permissive in that it legalises abortions on grounds which would not previously have afforded lawful justification. Briefly, risks to the life or health of the pregnant woman of less gravity than before were made sufficient and, for the first time, risk to the health of her existing children, or a risk of the expected child being born seriously handicapped, could afford grounds for abortion. Further it was laid down that the pregnant woman's environment could be taken into account in assessing the specified risks. On the other hand, the Act was restrictive in requiring (except in an emergency) the opinion of two doctors as to the existence of the prescribed grounds and in limiting the places where abortion could lawfully be performed. Further, so far as concerns Scotland, it was restrictive in that no conditions for legal abortion had previously been defined by statute or by judicial decision. Additionally, the Regulations made under the Act imposed requirements as to certification of opinion and notification of abortions. (See Part IV of this Section.)

III. The Incidence of Illegal Abortions before and since the Act

(1) Introductory

502. One of the principal reasons advanced for passing the Abortion Act was that it would reduce the number of illegal abortions which were being carried out before 1967: one of the principal claims for the success of the Act is that it has done so.

Illegal abortions may be:—

- (a) Self-induced.
- (b) Induced by medical practitioners.
- (c) Induced by others ("Back-street" abortions).

503. It appears to the Committee that the number of illegal abortions has been reduced since the Act came into operation but that it is impossible to make any reliable estimate of the extent of this reduction. At no time has it been practicable to calculate accurately the numbers performed either before or since the Act.

504. Numerous methods of attempting an assessment of the relevant figures have been used both before and since the Act, none of which appears to us to give a reliable result. So far as we know, no comprehensive official figures have ever been given even as estimates, although there are some tables based on N.H.S. patients which show hospital admissions and deaths arising from illegal abortions. Data considered for the purpose of unofficial estimates have included H.I.P.E., Hospital Emergency Bed admissions, case-studies in Camberwell, Aberdeen, Salford and elsewhere, the birth rate, the illegitimacy rate, the mortality rate, the septic abortion cases in hospital, the rate of criminal convictions, and so forth.

505. Before the Act, the figure frequently suggested for all illegal abortions was 100,000 a year but we can find no satisfactory justification for this figure.

(2) *Range of Estimates of pre-Act Illegal Abortions*

506. Amongst others, the following estimates of pre-Act numbers per annum have been made:—

- (a) 1939 The Report of the Inter-Departmental Committee on Abortion (the Birkett Committee) suggested that 110,000–150,000 abortions were performed annually, of which 40 per cent. were illegal.
- (b) 1966 The Report of the Royal College of Obstetricians and Gynaecologists referred to estimates which had been given of 50,000, 100,000 and 250,000 respectively, but said that these were “without any factual foundation of which we are aware”.
- (c) 1966 Mr. Philip Rhodes, F.R.C.S., F.R.C.O.G., in *Abortion in Britain* suggested a figure of 87,000.
- (d) 1966 A National Opinion Poll produced a figure of 31,000.
- (e) 1971 Dr. W. H. James in *Population Studies*, Vol. XXV, No. 2, p. 327, referred to 60,000.
- (f) 1972 Professor H. L. A. Hart and David Soskice in the *Guardian* newspaper of 3 May 1972 referred to the number 66,000 as being “a very conservative estimate”.
- (g) 1972 Dr. C. B. Goodhart in *Population Studies*, 16 August, mentioned earlier estimates he had made and concluded that “the true rate could not have exceeded 20,000 and was probably nearer 15,000”.

Whichever of these estimates may have been most nearly right, it is clear that the number of women submitting themselves to the hazards of illegal abortion before the Act came into force was very considerable. (See Statistical Volume, Chapter 1.)

(3) *Incidence of Illegal Abortion since the Act*

507. So far as we are aware there has been no thorough investigation into the numbers of illegal abortions performed since the Act. However, there are factors pointing to a reduction in these numbers:—

- (a) As a matter of common sense we assume that many women who would otherwise have resorted to illegal means have obtained therapeutic abortion under the Act.
- (b) The Report on Confidential Enquiries into Maternal Deaths in England and Wales, 1967–69, shows that deaths attributed to illegal abortion totalled 28 in 1967, 29 in 1968 and fell to 17 in 1969 (which was the first full year in which the figures were available).

- (c) The Hospital In-Patient Enquiry shows an overall fall in categories of abortion other than therapeutic. It is probable that a large number of illegal abortions, whether or not suspected to be such, have in the past been classified either as “spontaneous” or as “not specified as induced or spontaneous”, rather than placed in the specific “illegal” category; indeed, estimates of specifically illegal abortions are not separately available for the years before 1966. The total number of abortions classified as septic and/or illegal (excluding septic therapeutic abortions) has fallen and a significant fall has also occurred in the sepsis rate, sepsis being a common concomitant of illegal abortion. The figures are set out in Table Q1 below:—

TABLE Q1
ILLEGAL AND/OR SEPTIC ABORTION DISCHARGES AND ALL NON-THERAPEUTIC ABORTION DISCHARGES, ENGLAND AND WALES, 1962–1972

	1 <i>All non-therapeutic</i> ICD642-645	2 <i>Septic</i> ICD642-645 ·0 or ·2	3 <i>Illegal</i> ICD642 *	4 <i>Septic and illegal</i> ICD642:0 or ·2 *	5 <i>Septic and/or illegal: any</i> ICD Cols 2 & 3 *
1962	64,900	2,400	—	—	—
1963	66,100	2,600	—	—	—
1964	69,900	3,000	—	—	—
1965	67,400	2,900	—	—	—
1966	68,600	2,520	170	50	2,640
1967	65,600	2,490	260	100	2,650
1968	66,000	2,850	520	260	3,110
1969	63,400	1,960	670	190	2,440
1970	68,100	1,910	760	140	2,530
1971	59,800	1,250	1,090	190	2,150
1972	59,100	1,040	1,070	40	2,070

Source: H.I.P.E.

* Figures for “illegal abortion” (ICD642) not available before 1966. See also 4 (a) below.

- (d) The Hospital Emergency Bed Service shows a steady decline in respect of abortion admissions from 5,731 in 1965 to 2,872 in 1971, although, owing to difficulties as to classification, these figures may not be wholly reliable.
- (e) E. E. Rawlings and A. A. Khan published in the *Lancet* of 4 December 1971 a survey relating to the Hope Hospital, Salford, which showed a reduction in illegal abortions, as will be seen from the following table:—

TABLE Q2
ABORTIONS AT SALFORD

	1964	1965	1964–65	1969	1970	1969–70
No. of abortions	281	298	579	484	530	1,014
Therapeutic			15 (2.59%)			447 (44.08%)
Criminal			84 (14.51%)			64 (6.31%)
Spontaneous			480 (82.90%)			506 (49.90%)

- (f) Committee members visiting hospitals found that many gynaecologists and nurses believe that the number of patients admitted with severe sepsis following illegal abortion has fallen significantly since the Act; some, indeed, regard such cases as a rarity now. A report to the Committee from a Hospital Management Committee in eastern England referred to a comment by nurses that "criminal abortions are notably less in number than previously and the very shocked ill patient who used to be admitted at night has disappeared from the scene".
- (g) In most, although not all, European countries which have liberalised their abortion laws, a decrease in the number of illegal abortions appears to have followed. There are reports from the U.S.A. to like effect.
- (h) The number of prosecutions in England and Wales under sections 58 and 59 of the Offences Against the Person Act 1861 for illegal abortion has fallen as the following table shows:—

TABLE Q3A
PROSECUTION FOR ILLEGAL ABORTION, ENGLAND AND WALES

	TRIAL			FOUND GUILTY		
	Male	Female	Total	Male	Female	Total
1962	29	61	90	26	56	82
1963	26	36	62	21	33	54
1964	32	37	69	27	36	63
1965	16	51	67	15	45	60
1966	27	35	62	24	31	65
1967	34	37	71	30	35	65
1968	27	41	68	21	39	60
1969	34	25	59	29	23	52
1970	23	20	43	22	19	41
1971	24	14	38	23	13	36
1972	24	10	34	16	9	25

Derived from Criminal Statistics, England and Wales, H.M.S.O.

TABLE Q3B
PROSECUTION FOR ILLEGAL ABORTION IN SCOTLAND

	TRIAL			OUTCOME		
	Male	Female	Total	Imprisoned	Fined	Other
1962	1	7	8	6	1	1 discharged
1963	1	5	6	3	2	1 discharged
1964	1	2	3	1	1	1 not proven
1965	—	1	1	1	—	—
1966	1	3	4	—	3	1 not guilty
1967	1	2	3	2	—	1 not guilty
1968	1	1	2	1	—	—
1969	3	2	5	5	—	—
1970	1	4	5	3	1	1 charge withdrawn
1971	—	—	—	—	—	—
1972	—	4	4	1	3	—

- (i) The General Medical Council has reported a decrease in the number of registered medical practitioners convicted of illegal abortion.
- (j) A majority of senior police officers in England and Wales consider that the number of illegal abortions has decreased, or probably decreased,

since the Act; only one such officer reported an increase in his area, although many consider that "back-street" abortion will continue even though on a decreased scale.

(4) *Evidence to the contrary has also been given*

508. (a) As appears from Table Q1, there has been a rapid increase in the number of cases coded as illegal abortion in H.I.P.E., between 1966 and 1971. However, as was pointed out in paragraph (3)(c) above, no separate classification for illegal abortion is available for the years before 1966, and spells in hospital occasioned thereby were given codes which disguised the real reason for admission before that time. This may still be true in some cases but it seems probable that the increase in the numbers may be indicative of a greater willingness and opportunity to code suspected cases of illegal abortion as "illegal".

(b) The Board of Governors of two Metropolitan Teaching hospitals informed us that there had been "no significant drop in admission of criminally induced abortion".

(5) *Conclusions of the Committee*

509. (i) The actual numbers of illegal abortions performed before and since the Act is a matter for speculation, not of calculation. This is so because, as a general rule, it is only those illegal abortions resulting in illness or death which ever come to light and, even among these, cases are sometimes recorded as "spontaneous" or as of "unspecified" cause and therefore do not appear in any records as what they really are.

(ii) An unascertainable number of abortions performed in purported compliance with the Act are, strictly speaking, illegal because of disregard of the criteria of the Act.

(iii) Such data as are available point to an overall reduction in morbidity and mortality from illegal abortion, some part of this reduction being attributable to an increased skill and the use of antibiotics on the part of illegal abortionists.

(iv) The Abortion Act has made a real contribution to the reduction in illegal abortions: the lessening of the opprobrium attaching to abortion has encouraged many women to seek it openly. Other factors contributing to this reduction include an increased knowledge and practice of contraceptive measures (especially "the pill") which must have obviated many unwanted pregnancies; an increased awareness of the dangers of unskilled abortion; and a lessening of the stigma attaching to illegitimacy which has encouraged some women to give birth to a child conceived.

(v) Illegal abortions, whether self-induced or procured by another person are unlikely to disappear altogether if only because some women seem to be able to abort themselves without ill consequences and because also, where there is a local abortionist, the illegal operation can be obtained more speedily and conveniently (even though more dangerously) and without the formalities concerning enquiries, certificates, hospital admission and so forth, and more cheaply than in the private sector.

IV. *The Prosecution of Offenders*

(a) *For Illegal Abortion*

510. It is a notorious fact that both before and since the Abortion Act came into force, a substantial, albeit unquantifiable, number of illegal abortions

have taken place without any prosecution being brought in respect of them. Illegal abortion is an offence which is difficult to detect unless complications or death result, and even then it is frequently difficult or impossible to bring the offender to justice.

511. Among the reasons for these difficulties are the following:—

- (i) Pregnant women who abort themselves or knowingly obtain an illegal abortion are guilty of a criminal offence which, like any other crime, they naturally wish to conceal.
- (ii) Even though it is the practice not to prosecute a woman for aiding and abetting an abortion upon herself and even though she be informed of this, she usually desires to avoid being called as a witness in a criminal case and is likely to be unhelpful to the police in their enquiries. Such women as might be disposed to help the police usually enquire whether, if they give evidence, their names will be disclosed in court. It is well known that, as a rule, in blackmail cases the victim's name is not disclosed, but there is no statutory provision to this effect: it is a matter for the discretion of the presiding judge in each case. It may be that in some cases the courts would permit a similar anonymity for a woman illegally aborted, but no assurance to this effect could be given to a potential witness.
- (iii) Without the evidence of the woman concerned, and sometimes even with it, it may be difficult to prove that she was in fact pregnant. This is particularly the case where the person charged with illegal abortion is a registered medical practitioner: the prosecution would have to show that the operative procedure carried out was in order to procure abortion and not, for example, dilatation and curettage for reasons unconnected with pregnancy, or treatment for spontaneous abortion. Further, even where it could be established that an abortion had been performed, if this was carried out in a hospital or an approved place it would be a hard task to show that it was not performed "in good faith" under the Act.

(b) *For Breach of the Regulations*

512. Section 2(1) of the Act requires Regulations to be made concerning certification, and notification and also with regard to the disclosure of notices and information furnished pursuant thereto. Subsection (2) provides in effect that notification of termination shall be given only to Chief Medical Officers. Subsection (3) enacts that:—

"Any person who wilfully contravenes or wilfully fails to comply with the requirements of Regulations under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds".

(See Part II of Appendix to Section A.)

The Regulations may be paraphrased as requiring that:—

the certificate of opinion be in the prescribed form, given before the commencement of treatment for termination or, in the case of emergency treatment under section 1(4) of the Act, within 24 hours thereafter, and that *the certificate* be preserved by the operating doctor for three years after

the notification of termination and information required be given by the doctor who terminates a pregnancy within seven days of doing so, to the Chief Medical Officer, in the prescribed form; and that

a notice given or information furnished in pursuance of the Regulations be not disclosed except for the purposes and to the persons specified.

(See Part II of the Appendix to Section A.)

513. It thus appears that an offence against the Regulations may be committed:—

- (i) by certifying doctors who fail to use the prescribed form or to complete it at the appropriate time;
- (ii) by operating doctors who fail to preserve the relevant certificate for three years after terminating pregnancy, or who fail to notify and give the required information in the prescribed form to the Chief Medical Officer within 7 days of such termination;
- (iii) by anyone who discloses any notice or information given to the Chief Medical Officer in pursuance of the Regulations, otherwise than as therein provided.

514. We have no evidence of any breach, or suspected breach, of the requirements as to non-disclosure and need say no more about this.

515. As to certification and notification, a real obstacle in proving a breach of the relevant Regulations is that such a breach is made a summary offence only, which necessitates proceedings being commenced within six months of the commission of the offence. The collection and presentation of evidence to establish a breach may take considerably longer than that period. Further the maximum penalty laid down by section 2(3) of the Act is a fine of £100. This would be a paltry sum to those practitioners who make large amounts out of abortion and who may not wish to disclose the number of terminations which they are performing.

516. The Committee cannot offer any practical suggestions as to how prosecutions could be facilitated where illegal operations are performed, but recommends that section 2(3) should be amended to make a breach of the Regulations triable, alternatively, on indictment (when there would be no time limit for the initiation of proceedings), with a maximum penalty of, say, 12 months' imprisonment or a fine of £1,000, or both.