

Conscientious Objection (Medical Activities) Bill

British Pregnancy Advisory Service legislative briefing

The British Pregnancy Advisory Service (BPAS) is a British reproductive healthcare charity that offers abortion care, contraception, STI testing, miscarriage management, and pregnancy counselling to nearly 80,000 women each year via our clinics in England, Wales, and Scotland. We also treat hundreds of Northern Irish, Irish, and European women seeking abortion.

At a policy level, we advocate for the provision of comprehensive reproductive healthcare services to all women, the decriminalisation of abortion, and support the introduction of ‘buffer zones’ around abortion clinics to prevent harassment and protect access to services.

Conscientious objection

Conscientious objection refers to the **refusal to perform certain activities on moral or religious grounds**. In this Bill, conscientious objection refers to healthcare professionals (including doctors, nurses, midwives, pharmacists, and other healthcare professions) who opt out of providing certain medical treatments.

BPAS supports the legal provision of conscientious objection to allow healthcare professionals to practice in line with their personal beliefs, alongside guidelines that make clear the obligations of an individual with a conscientious objection to ensure their patient can access appropriate care.

Existing law

Abortion Act 1967

Section 4 of the Abortion Act provides for individuals to opt out of the provision of treatment authorised by the Act (therapeutic abortion):

- (1) *Subject to subsection (2) of this section, **no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment** authorised by this Act to which he has a conscientious objection:*

Provided that in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

- (2) **Nothing in subsection (1) of this section shall affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.**

Human Fertilisation and Embryology Act 1990

Along the same lines, section 38 of the Human Fertilisation and Embryology Act 1990 provides for individuals to opt out of providing fertility treatment (ie IVF), the storage of human eggs, sperm, and embryos, and research on early human embryos:

Interpretation

The interpretation of these provisions was laid out most clearly in the Supreme Court judgment in *Greater Glasgow Health Board v Doogan* (2014) which found that under the Abortion Act legislation, **“Participate”...means taking part in a “hands-on” capacity’:**

‘Parliament will not have had in mind the hospital managers who decide to offer an abortion service, the administrators who decide how best that service can be organised

within the hospital...the caterers who provide the patients with food, and the cleaners who provide them with a safe and hygienic environment. Yet all may be said in some way to be facilitating the carrying out of the treatment involved.'

Operation

Conscientious objection is recognised at an operational level as extending beyond legislation. For instance, pharmacists can refuse to sell Emergency Hormonal Contraception, and doctors are able to refuse to prescribe contraception.

Guidelines issued by medical bodies make clear that those individuals who have a conscientious objection have certain legal and ethical obligations to patients, including:

- Not refusing to treat a particular patient or group of patients, or the health consequences of lifestyle choices, because of an individual's personal beliefs about them
- Doing their best to ensure that patients are aware of their objection in advance
- Being open with employers, partners, or colleagues about their conscientious objection
- Ensuring the patient has enough information to arrange to see another professional
- In an emergency, not refusing to provide treatment necessary to save the life of, or prevent serious deterioration in the health of, a person because the treatment conflicts with personal beliefs.

What the Bill does

This Bill would **dramatically extend the scope of conscientious objection**, increasing the number of medical procedures to which it would apply under law, increasing the types of professionals to which it would apply, and expanding activities to which it would be applicable.

Professions

For the first time, a list of professionals covered by conscientious objection would be included in law, and the list is expansive – including not just doctors, nurses, midwives, and pharmacists, but also paramedics, psychologists, radiographers, and social workers. This would mean, for instance, that **if a woman, during the course of a medical abortion after she had left a clinic, encountered complications and called an ambulance, the attending paramedic could refuse to treat her** and that a **social worker would not be obliged to help a vulnerable client understand, decide upon, or access abortion services**

Activities

The Bill would extend the scope of conscientious objection to cover a wide array of activities that are not concerned directly with providing treatment, including supervision (such as **being a Ward Sister on a Labour ward where one woman is in the course of passing a medical abortion**), delegation (such as **being the Gynaecology Lead at a hospital which performs abortions**), planning (such as **a nurse receiving a phone call from another department or organisation to book a woman in for an abortion procedure**), or supporting (such as **being a counselling psychologist at a hospital whose job is to counsel staff members, and refusing to provide support for staff members who participate in abortion care**).

Procedures

Conscientious objection would be **expanded to cover 'the withdrawal of life-sustaining treatment'**, which is currently not present in legislation and would allow medical professionals to

opt out of providing not only end of life care, but also care for chronic and terminal illnesses where a patient had decided to cease treatment eg chemotherapy.

Employment law

The Bill would detail for the first time responsibilities on the employer not to ‘discriminate against or victimise’ an employee for invoking conscientious objection, including as to their terms of employment; opportunities for promotion, transfer, or training; dismissal; and by subjecting individuals to any other detriment. **This has the potential to undermine the ‘occupation requirement’ exemption under the Equality Act 2010** which allows, for instance, BPAS to not employ a midwife who, as a Catholic, has a conscientious objection to providing abortion care.

The impact of the Bill

Staffing

Extending conscientious objection in these ways has the **potential to cause a staffing crisis** in particular areas of healthcare. This is **particularly true in the NHS** where hospitals, wards, and disciplines simultaneously cover a number of procedures and conditions.

Service provision

In 2016, **55,000 abortions took place in NHS hospitals** – a figure which would be under threat if those staffing the ward were able to refuse to supervise, delegate, plan for, and support staff involved in abortion care.

In some areas, it could lead to women undergoing abortions in separate, isolated wards or increase the proportion of procedures which are outsourced to independent providers. For many cases, though, **outsourcing would not be possible as NHS hospitals continue to be responsible for treating women with multiple and complex needs**, including those with unstable diabetes, uncontrolled epilepsy, and serious hypertension – to allow specialist care if their condition deteriorates.

Care standards

We would **anticipate care standards to be heavily negatively impacted** – from an abortion perspective, particularly with regards to later abortions on the grounds of Foetal Anomaly where women are already in the situation of terminating a wanted pregnancy and who tend to undergo medical induction on a labour ward in an NHS hospital setting. In other words, **the women most affected would be those in the most difficult of circumstances.**

Recommendations

BPAS support the existing provision for conscientious objection in law, and have serious concerns about the effect extending this provision would have on staffing, service provision, and standards of care.

We recommend that Peers OPPOSE the Conscientious Objection (Medical Activities) Bill.

We further recommend that Peers enter their names on the speakers’ list for Second Reading on the 26th January 2018 to raise their concerns about this Bill.

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