Procuring a miscarriage

A woman has been jailed for 2½ years after she admitted taking poison she had bought on the internet to terminate her pregnancy (R v Towers [2015]). The woman pleaded guilty to administering a poison with intent to procure a miscarriage when she was between 32 and 34 weeks pregnant because she could not deal with the stress of the pregnancy.

It is essential that midwives and nurses working in family planning services make women aware that it is unlawful to procure a miscarriage and that any termination of pregnancy must follow the requirements of the Abortion Act 1967.

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Termination of pregnancy

The Abortion Act 1967 regulates the availability and delivery of treatment for the termination of pregnancy in the UK except for Northern Ireland, where it currently remains within the limits of the common law. To be lawful, a termination of pregnancy must be covered by the provisions of the Abortion Act 1967, which creates a defence to the long-established criminal offences of unlawfully procuring a miscarriage under section 58 of the Offences Against the Person Act 1861 or child destruction under section 1(1) of the Infant Life (Preservation) Act 1929.

Procuring a miscarriage has been a crime in England and Wales since 1803 under Ellenborough's Act. Prior to that, abortion was lawful providing it was carried out before the woman felt the fetus move, called quickening, when it was believed the soul entered the body. Abortions performed after quickening were an offence under common law but there were no fixed penalties and the woman was not necessarily held responsible (Keown, 1988). In 1803 the law changed and abortion became a criminal offence from the time of conception. Under the 1803 Act, an abortion performed after quickening carried the death penalty. The relatively lesser penalties of fine, imprisonment, whipping or transportation were prescribed for abortion before quickening. The Offences against the Person Act 1837 removed any distinction as to whether quickening had taken place, and the death penalty was abandoned in favour of transportation or imprisonment.

The 1837 Act was replaced by sections 58 and 59 of the Offences against the Person Act 1861, which remains in force today. The provisions of the section state that

> ***'Every woman being with child who with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing... or unlawfully use any instrument or other means... and whosoever, with intent to procure the miscarriage of any woman whether she be or not be with child shall unlawfully administer to her any poison or other noxious thing... or unlawfully use any instrument or other means... shall be guilty of a felony (a serious crime).' (Offences Against the Person Act 1861, section 58)***

It is, therefore, an offence for a pregnant woman, such as the woman in R v Towers [2015], to procure her own miscarriage. A person who unlawfully procures the miscarriage of any woman will also be guilty of the offence, whether or not the woman is pregnant. If the woman dies as a result of an unlawful termination of pregnancy then the charge becomes one of manslaughter. For example, in R v Buck (1964), Olive Buck was found guilty of the manslaughter of a woman on whom she had performed an unlawful abortion.

The Infant Life (Preservation) Act 1929 closed a loophole in the law where a child was killed in the course of being born and made it an offence to kill a child capable of being born alive before it had an existence independent of its mother. The 1929 Act creates a presumption that a fetus of 28 weeks' gestation was capable of being born alive. This does not, however, lower the limit on a child capable of being born alive and the courts have considered the application of the Act to less-mature fetuses. In Rance v Mid Downs Health Authority [1991] the Court held that a 26-week-old fetus was a child capable of being born alive, because after birth it existed as living breathing child. In C v S (Foetus: Unmarried Father) [1988] the court held that a fetus of 18–21 weeks was not a child capable of being born alive. Under the provisions of the Infant Life (Preservation) Act 1929, the offence of child destruction is committed unless the act which caused the death was done in good faith for the purpose only of preserving the life of the mother.

In May 2007, a jury convicted a woman

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of child destruction under the Infant Life (Preservation) Act 1929 when she had a backstreet abortion when she was 7½ months pregnant. The woman, who never explained to police what happened and who else was involved, received a suspended 12-month prison sentence (Britten, 2007).

The provisions of the Offences Against the Person Act 1861, section 58, and the Infant Life (Preservation) Act 1929 combine to make it an offence to unlawfully procure a miscarriage or kill a child capable of being born alive.

Midwives must ensure that women are aware that all terminations of pregnancy must meet the requirements of the Abortion Act 1967, which operates by providing a defence to these charges.

The 1967 Act was amended by the Human Fertilisation and Embryology Act 1990, which introduced an upper time limit of 24 weeks for the first ground for abortion that covers the risk of injury to the physical or mental health of the pregnant woman or any existing children of her family, but removing any time limit for the other grounds (Abortion Act 1967, section 1(1)) (*Box 1*).

The amendment introduced by the Human Fertilisation and Embryology Act 1990 does not confer on women a right to abortion. Doctors are the gatekeepers of the Abortion Act 1967 and they may grant or refuse an abortion. In R v Smith [1974] the Court of Appeal held that the Abortion Act 1967 places a great social responsibility on the shoulders of the medical profession, as before the procedure two doctors must agree in good faith that one or more of the criteria set out in the 1967 Act apply.

The judge in R v Towers [2015] found that the woman's internet history revealed that she had looked for and was aware of the provisions of the Abortion Act 1967 and the 24-week limit under section 1(1)(a) of the Act. She therefore knew that taking poison to procure a miscarriage was unlawful. **BJM**

Box 1. Grounds for seeking an abortion

A person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion formed in good faith:
(a) that the pregnancy has not exceeded its 24th 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.
From: Abortion Act 1967 section 1(1)

Britten N (2007) Jury convicts mother who destroyed foetus. http://tinyurl.com/ze7vfck (accessed 19 January 2016)
C v S (Foetus: Unmarried Father) [1988] QB 135
Keown J (1988) *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803 to 1982*. Cambridge University Press, Cambridge
R v Buck (1964) 44 Criminal Appeals Reports 213
R v Smith (John Anthony James) [1974] 58 Cr App R 106
R v Towers [2015] (Newcastle Crown Court, 17 December)
Rance v Mid Downs Health Authority [1991] 1 QB 587

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