

Impact case study (REF3)

Institution: University of Kent		
Unit of Assessment: 18: Law		
Title of case study: Influencing Abortion Law Reform in the UK and South Australia		
Period when the underpinning research was undertaken: 2013-2018		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Sally Sheldon	Professor of Law	2006–present
Period when the claimed impact occurred: 2016–2020		
Is this case study continued from a case study submitted in 2014? No		
1. Summary of the impact		
<p>Sheldon's research has informed abortion law reform proposals and debates in the UK and South Australia, directly influencing the activities of parliamentarians and other key stakeholders, and making an important contribution to shifting the terms of the public debate. Her research has offered the leading legal analysis relied upon in making the case for the removal of specific criminal prohibitions against abortion. Specifically, it:</p> <ol style="list-style-type: none"> (1) Formed the basis for the first three Bills – two in the House of Commons (HC), one in the House of Lords (HL)) – to fundamentally challenge the status quo in English law that criminalises abortion rather than seeing it as a matter of health law. (2) Shifted the political, organisational, and broader public conversation towards decriminalisation in the UK, helping to shift the debate in a way that contributed to the groundwork for radical abortion law reform in Northern Ireland in 2019. (3) Influenced abortion law reform advocates and parliamentarians in South Australia, contributing to the development of a decriminalisation bill that successfully completed its second reading in the Legislative Assembly of the South Australian Parliament in December 2020, and is expected to pass into law in 2021. 		
2. Underpinning research		
<p>Abortion is a very common procedure: over 207,000 abortions were performed in England and Wales in 2019, with up to one in three women terminating a pregnancy at some point during their lives. In England and Wales, it is regulated by the Offences Against the Person Act 1861, which lays down onerous sanctions for unlawful abortion; and the Abortion Act 1967, which provides that those offences do not apply to abortions performed under strict medical control.</p> <p>Sheldon's longstanding research on abortion underpinned her election to the Academy of Social Science (2017), and her invitation to sit on the British Pregnancy Advisory Service (BPAS) Board of Trustees (2009-18). Her more recent work has explored how this law impacts negatively on women and health professionals [R1-R3] and the form that decriminalisation might take in England and Wales [R3]. It argues that the Abortion Act reflects the social norms and clinical realities of the late 1960s, including, in particular, the now anachronistic assumption that abortion is a technically demanding, dangerous surgical procedure (today, abortion can be induced using pills which a woman places in her own body, with a better safety record than an injection of penicillin) [R1]. R2 considers the regulation of techniques of fertility control that operate very early in pregnancy but following implantation (e.g. in a pill taken monthly or following a missed period), criticising the fact that it would not be practically feasible to make such potentially beneficial techniques available, given the constraints of current abortion law. R3 sets out the arguments for decriminalising abortion; considers the principles</p>		

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which should guide it; and explores the shape that reform would be likely to take in the UK. Specifically, Sheldon's research has made the case for:

- Removing specific prohibitions against consensual abortion before 24 weeks, leaving abortion services subject to the same regulatory framework as other areas of medicine [R1-R3];
- Widening the category of health professionals who might lawfully perform an abortion [R1, R3];
- Making specific provision to repeal the associated offence of concealment of birth [R3];
- Retaining criminal liability in case of non-consensual abortion [R3];
- Retaining conscientious objection rights [R3];
- Retaining notification requirements (allowing for monitoring of the impact of legal change on the incidence of abortion), but ensuring that these are framed so as not to interfere unduly with the prescription of monthly methods of fertility control [R3, R2].

3. References to the research

[R1] Sheldon, Sally (2016), 'British Abortion Law: Speaking from the Past to Govern the Future'. *Modern Law Review* 79(2): 283-316. doi:

<http://dx.doi.org/10.1111/1468-2230.12180>; <https://kar.kent.ac.uk/52566/>

[R2] Sheldon, Sally (2015), 'The Regulatory Cliff Edge between Contraception and Abortion: the Legal and Moral Significance of Implantation'. *Journal of Medical Ethics* 41: 762-5. doi:

<http://www.dx.doi.org/10.1136/medethics-2015-102712>; <https://kar.kent.ac.uk/51585/>

[R3] Sheldon, Sally (2016), 'The Decriminalisation of Abortion: An Argument for Modernisation'. *Oxford Journal of Legal Studies* 36(2): 334-365. doi:

<http://www.dx.doi.org/10.1093/ojls/gqv026>; <https://kar.kent.ac.uk/51583/>

R1 and R2 result from a competitively awarded AHRC grant: *How Can a State Control Swallowing? Medical Abortion and the Law* (AH/L006537/1; PI; 2014-6; £113,246). R1 and R3 are returned in REF2. All outputs were accepted following peer review.

4. Details of the impact

The reach and significance of the impact of Sheldon's work lies in its direct influence on UK and South Australian parliamentarians and campaigners, and South Australia's law reform body and government, and its contribution to a decisive shift in the public and political debate away from considering abortion within a criminal law framework to locating it within a health law framework.

(1) Drafting and informing the substance of proposed legislation

Between 1968 and 2018, the UK Parliament considered over 50 bills, amendments or sets of amendments proposing changes to abortion law. All but six envisaged restrictive reform. Of the six measures proposing liberalisation, four suggested amendments that worked within the existing statutory framework. The remaining two were Ten Minute Rule Bills introduced in 2017 and 2018 by Dame Diana Johnson MP (HC1) [a], which comprised just a long title; and HC2, for which a draft bill was produced [b, c]. These Bills represented a radical rupture with the past: for the first time, they envisaged the removal of specific criminal prohibitions against consensual pre-viability abortion. They thus offered the first gauge of support in the UK Parliament for decriminalisation of abortion and formed an important turning point in its consideration of this issue. Following the Johnson Bills, from 2019-20 nine further attempts were made to secure change, eight of which proposed liberalising reform. These included a Bill modelled on HC2, introduced by Baroness Barker in January 2020 (HL1) [d], and amendments tabled by Johnson to the Domestic Abuse Act (2020) [e].

Sheldon's legal research [R1-R3] fundamentally shaped the Johnson and Barker bills. Specifically, her role included:

- Working through seven drafts of HC2 with Gordon Nardell QC (a skilled parliamentary draftsman, with no expertise in abortion law) to produce its final text [c];
- Writing detailed explanatory notes for the HC2 and liaising with various stakeholders, including professional bodies to gain their support for it [c];
- Working with Johnson on amendments to the Domestic Abuse Bill (two included on the order paper, one selected for debate and withdrawn without a vote, having forced a Government commitment to review evidence of telemedical abortion services before ending the approval issued during the pandemic) [e].

The importance of Sheldon's analytical and practical contribution to the Bills has been repeatedly recognised by Johnson, who has twice thanked Sheldon in Parliament for her work [a, b]. When HC2 was published in November 2018 [c], Sheldon was one of three speakers invited to launch it, alongside Johnson and Lord David Steel (who sponsored the Bill that became the Abortion Act 1967), at a meeting in the House of Commons, attended by campaign groups, MPs, and their researchers [f].

(2) Reshaping political and public debate around abortion law reform in the UK

HC1 and 2, reflecting Sheldon's research, have played a fundamental role in reshaping the political and public debate on abortion to focus, for the first time, on the possibility of decriminalisation. The Bills demonstrated that a properly framed reform was capable of commanding broad support for decriminalisation within and outside Parliament, passing by 172 to 142 votes and 208 to 123 votes respectively. HC2 was sponsored by MPs from five political parties, including Dr Sarah Wollaston MP (then Conservative Chair of the House of Commons Health Committee).

Professor Lesley Regan, then President of the Royal College of Obstetricians and Gynaecologists, described HC1 as the 'first sign' of a 'significant shift' towards seeing abortion care as an integral part of women's health care, which should be treated and regulated accordingly, noting that it 'really lit a touch paper among like-minded MPs', with abortion subsequently discussed in Parliament more frequently than she could remember at any point in her time as a practising clinician [g].

Following debate of the Bills, in 2019, the Royal College of General Practitioners issued a statement in support of decriminalisation [h], and both the Labour and Liberal Democratic Party manifestos committed to decriminalisation for the first time [i]. HC2 was supported by a wide range of other medical, women's and human rights organisations, including: the British Medical Association, the Royal College of Obstetricians and Gynaecologists, the Royal College of Midwives, the Faculty of Sexual and Reproductive Healthcare, Amnesty International, the British Pregnancy Advisory Service, the Family Planning Association, Marie Stopes International, the End Violence against Women Coalition, Women's Aid, and the TUC [b]. The British Medical Association's 2017 discussion paper, which preceded its decision to support decriminalisation, also cites Sheldon's research [j]. Resisting decriminalisation has also now become a dominant focus of Pro-Life campaigning (see, for example, [k]). The parliamentary debates prompted widespread discussion of the Bills, and decriminalisation more generally, in the regional, national, and international press and broadcast media, including on the BBC's Victoria Derbyshire programme, Radio 5 Live, Radio 4's Moral Maze, and an open letter signed by over 60 UK actors, athletes, and writers [l].

These Bills, underpinned by Sheldon's legal research [R1-R3], helped to shape a favourable parliamentary climate and build momentum towards a large parliamentary majority for a series of amendments introduced by Stella Creasy MP culminating, in July 2019, in a vote in favour of decriminalising abortion in Northern Ireland (332 to 99 votes). The resulting Abortion (Northern Ireland) Regulations 2020 have set out a new legal framework for the provision of

abortion services, demonstrating how services can be effectively regulated outside a criminal law framework. While there are ongoing problems with the commissioning of services, this has had a significant impact on the options open to women facing unwanted pregnancies in Northern Ireland, many of whom have been able to end pregnancies within local NHS health services.

Changes in NI have added further weight to pressure for decriminalisation elsewhere in the UK. The decriminalisation of abortion in England and Wales was raised on a number of subsequent occasions in Parliament, with Johnson continuing to lead. As she noted in July 2019: 'We have voted to decriminalise abortion on two recent occasions, 13 March 2017 and 23 October 2018, which alongside last week's vote on the Northern Ireland (Executive Formation) Bill clearly shows the will of this House that abortion should no longer be part of our criminal law but should be a regulated health decision between a woman and her doctor' [m].

Sheldon has also contributed to raising public awareness of the problems with existing law, and the possibility of decriminalisation, through numerous media interventions (including over a dozen BBC radio interviews on the anniversary of the Abortion Act) [n]; the drafting and coordinating over 200 expert legal signatories to a letter in support of HC1, which was published in the *Guardian* and discussed in an accompanying article, with a comment from Sheldon [o]; and the production of an open access edited book setting out the evidence base for decriminalisation of abortion, which was downloaded over 5000 times across 25 countries from March 2020 to January 2021 [p]. The book was welcomed by Lesley Regan, then president of the RCOG, as offering 'robust and reliable evidence on this important issue' [p]. An event in the House of Commons hosted by Diana Johnson MP and Baroness Barker to mark its publication was planned for 23 March 2020, but had to be cancelled owing to COVID-19 restrictions.

(3) Informing abortion law reform in South Australia

South Australia's abortion legislation is closely modelled on British law, giving direct relevance to Sheldon's research. In 2019, the South Australian Law Reform Institute (SALRI) launched a consultation on abortion law reform. Drawing heavily on [R1] and [R3], Sheldon first-authored a submission from eight British law professors and subsequently was interviewed by SALRI. R1 and R3, her earlier writings on abortion, the submission, and her interview are cited extensively (37 instances) in the final SALRI report, which also makes reference to HC2 [q]. SALRI concluded that 'abortion should be treated as a health issue rather than as a criminal law matter', and made particular reference to Sheldon's work [R3] in suggesting ways of mitigating the impact of conscientious objection clauses; in recommending that consideration be given to removing the offence of concealment of birth; and in recommending how to make provision for abortion for fetal anomaly [q].

In November 2019, the South Australian Department for Health and Wellbeing stated that it 'accepts [SALRI's] recommendation of abortion being treated as a health issue', with its regulation largely removed from criminal law [r]. In February 2020, Sheldon was invited to address South Australian parliamentarians regarding the reform of abortion law [s]. Formally hosted by four Members of the Legislative Assembly (including one representing the office of the Attorney General, which was overseeing the drafting of their abortion bill), she addressed an audience of over thirty politicians and other key stakeholders; and was asked by the Health Minister to provide a written summary of her comments to circulate to parliamentarians who could not attend. In introducing the new Bill in October 2020, the state's Attorney General said: 'Our proposal removes abortion entirely from the criminal law' [t]. The Bill is expected to become law in 2021.

5. Sources to corroborate the impact

[a] Reproductive Health (Access to Terminations), HC Deb, 13 March 2017: col. 27. First reading debate: HC1; evidence includes MP's statement thanking Sheldon for her help with **HC1**, pdf.

[b] Abortion, HC Deb, 23 October 2018: col. 142. First reading debate: **HC2**; evidence includes MP's statement thanking Sheldon for her help with the second Bill, and a list of organisations supporting it, pdf.

[c] Abortion Bill (2017-19) and explanatory notes; pdf evidence is marked to show influence of Sheldon's research: <https://services.parliament.uk/bills/2017-19/abortion.html>

[d] Abortion Bill [HL], HL Deb, 15 January 2020, vol. 801, pdf.

[e] Domestic Abuse Bill, HC Deb, 6 July 2020, vol. 678, pp. 683-794, pdf.

[f] Agenda for Bill Launch in the House of Commons, showing the three speakers: see Bill Launch Event – Running Order, pdf.

[g] Commentary: 'Abortion: View from Westminster' (2018) 143(2), *Gynecology & Obstetrics* 133, pdf.

[h] Royal College of General Practitioners web news item, 22 February 2019, pdf.

[i] Labour Party Manifesto (p. 48) and Liberal Democrat Party Manifesto (p. 61), pdf.

[j] BMA, *Decriminalisation of abortion: A discussion paper from the BMA* (February 2017), citing Sheldon's research at footnote 13, 85, and 118, pdf.

[k] Statement by the Society for the Protection of Unborn Children: 'We care about women: Why abortion should not be decriminalised' (November 2018), pdf.

[l] Examples of media discussion of decriminalisation, pdf.

[m] Decriminalisation of Abortion, HC Deb, 23 July 2019, Vol. 633 col. 1223, pdf.

[n] Media and presentations – The Abortion Act (1967): A Biography, pdf.

[o] Newspaper article: 'MPs to discuss reform of UK's Victorian era abortion law', *Guardian* (10 March 2017), pdf.

[p] *Decriminalising Abortion in the UK: What Would It Mean?* (Policy Press, 2020), open access book co-edited by Sheldon disseminating the evidence base for decriminalising abortion, with endorsements on the cover and email from publisher giving download figures, pdf.

[q] Report: South Australia Law Practice Review Reform published by the South Australian Law Reform Institute, Adelaide, 2019. The report frequently refers to Sheldon's work, notably on pp. 22, 55-56, 64-65, 67, 88-90, 104, 106, 142, 159, 164, 186, 211, 213, 289, 318, 387, 389, 402, 420, 472, 540, pdf.

[r] Department for Health and Wellbeing, 'Response to SALRI report *Abortion: A Review of South Australian Law*' (November 2019). See p. 5 in particular, pdf.

[s] Email correspondence regarding invitation to address South Australian Parliamentarians, including details about the event and the subsequent request for a written copy of the presentation that would be distributed to SA parliamentarians, pdf.

[t] Government of South Australian, AG Department, Press release: 'Modernising South Australia's Abortion Law' (14 October 2020), pdf.