Engender response to the Scottish Government consultation on Abortion notifications and data - changing the process

April 2021

1. BACKGROUND

Engender unequivocally supports women's autonomy over their bodies and lives and considers abortion access fundamental to women's rights and reproductive justice.[1] Women in Scotland must have a legal right to choices around family planning, as outlined by the Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is supported by intersectional and gender-sensitive abortion services, adequate and culturally sensitive information, and support.

Access to safe abortion is essential for women's economic and social rights, to women's autonomy, employment, education, and access to resources, and therefore to women's equality. Abortion is vital, routine healthcare that around one in three women will experience in her lifetime. As CEDAW has outlined, it "it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women" [2] and that barriers to that care – legal or practical – should be removed.[3]

Clearly developing local services which deliver quality and autonomy for all women requires access to quality data, analysis, and research. Notification via the Chief Medical Officer (CMO) is one of the primary sources of abortion data in official publications.[4] Public bodies that fail to gather and use gender-sensitive sex-disaggregated data in decision-making may also be in breach of the public sector equality duty, which mandates that all public authorities use equality evidence when making decisions.

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[1] "SisterSong defines Reproductive Justice as the human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities." See: https://www.sistersong.net/reproductive-justice.

[2] General Recommendation 24 (1999) on women and health, para. 11.

[3] Committee on the Elimination of Discrimination against Women, General Recommendation 34, paras. 38-39; Committee on the Rights of Persons with Disabilities, General Comment 3 (2016), on women and girls with disabilities, para. 44; Working Group on Discrimination against Women, A/HRC/32/44 (2016), para. 107; Special Rapporteur on extrajudicial, summary or arbitrary executions, A/73/314 (2018), para. 53; Committee on the Elimination of Discrimination against Women, Concluding Observations on Iceland, CEDAW/C/ISL/CO/7-8 (2016). paras. 35-36; Concluding Observations on Rwanda, CEDAW/C/RWA/CO/7-9 (2017), paras. 38-39; Human Rights Committee, CCPR/C/BGD/CO/1, paras. 15-16.

[4] See ISD Scotland (Data and Intelligence). Termination of Pregnancy. Available at <https://www.isdscotland.org/Health-Topics/Sexual-Health/Abortions/>

However, the 'yellow forms' that abortion providers are required to return within seven days of the abortion taking place as part of the notification require a significant amount of personal data which is not anonymised. This data is then communicated to Public Health Scotland for statistical publication and analysis.[5] The notification and return of the information in the yellow form thus serve two purposes – collecting useful statistical data and a check on whether abortion is carried out in compliance with the Abortion Act's legal limits, and there are criminal sanctions for failure to comply with the Act and Regulations.[6] Separating out these purposes will, in our view, engender greater trust, enable better quality data collection, and reduce unnecessary barriers to abortion care.

2. CONSULTATION QUESTIONS

1. **Should registered medical practitioners be required to send abortion notifications to the Chief Medical Officer (CMO) electronically (rather than on a paper form)?**

Yes.

Digital notification is likely to enable the information needed by Public Health Scotland (PHS) to be received more quickly while reducing administrative burdens for those who work in abortion care, PHS and the CMO's office. The current returns process requires that forms be sent via signed for or courier service and that a reference number also be emailed to the CMO.[7] We believe that digital processes are likely to better protect women's and their physicians' privacy and security by reducing the number of people involved in the notification or opportunities for interception or disclosure.

We support the proposal that PHS work with providers on a Data Protection Impact Assessment and that notification does not create a barrier to abortion care. We believe that equalities monitoring data can be collected in a manner that better protects individual women's privacy.

[5] See Public Health Scotland. 'Termination of Pregnancy in Scotland.' Available at <https://www.opendata.nhs.scot/sv/dataset/termination-of-pregnancy-in-scotland>

[6] Abortion Act 1967 s.3 "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 [level 5 on the standard scale]."

[7] NHS Scotland (2015) Guidance for Completing the Notification of Abortion Form. Available at <https://www.ndc.scot.nhs.uk/docs/Guidance%20for%20Completing%20the%20Notification%20of%20Abortion%20form%20-%20v3.7%20-%20FINAL.pdf?

2. Should registered medical practitioners be given a longer time period to return abortion notifications to the CMO?

Engender is not aware of any need for the CMO's office or PHS to have the data within seven days and supports the suggestion of increasing the period for return of the notification to the maximum. The consultation paper is clear that extending the timeframe for returns would have no impact on statistics publication. In any event, we would suggest that it is more likely that a move to digital returns and data recording could in fact help expedite the process of returns.

Engender strongly supports the suggestion that providers only be required to send regular, summarised notifications to the CMO. Engender is not aware of any other common health procedure that is subject to a seven-day individual notification period. The UN Committee of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) outlines barriers to the realisation of women's right to health, including laws which criminalise procedures which are only needed by women[8] and that therefore criminalisation of these procedures amounts to sex discrimination.[9] It is our strong view that a compelling justification must be made for the need for such a process that marks abortion as different to other healthcare. As part of necessary broader abortion care reform, we suggest that the need for formal notification to the CMO of individual termination of pregnancies be evaluated.

3. Should providers send data for the compilation of the abortion statistics directly to Public Health Scotland (PHS), rather than sending it via the CMO?

Yes.

Updating the information and purpose of abortion notification data as provided for in the yellow form is an opportunity to consider what information is actually needed for public health and healthcare planning and research.

Currently providers are required to include in the notification:

- The name, qualifications and practicing address of the provider.
- The name, date of birth and home address of the woman who has the abortion.
- The place of the abortion.
- The date of the abortion.
- The legal grounds for the procedure under the Abortion Act:

[8] UN CEDAW General Recommendation n. 24, Article 12 of the Convention (women and health) (1999) https://www.escr-net.org/node/387809#:~:text=It%20requires%20States%20to%20eliminate,during%20the%20post%2Dnatal%20period.

[9] See R. Cook (2007) Excerpts of the Constitutional Court's Ruling That Liberalized Abortion in Colombia. Women's Link Worldwide

    - Where Ground D is selected, the form must contain the woman's obstetric history.
    - Where Ground E is selected, the form must contain details of the condition of the pregnant woman or the foetus.
- The number of foetuses in the pregnancy, where the abortion is a selective reduction.
- The number of completed weeks of pregnancy.
- The marital status of the woman.
- The number of previous pregnancies the woman has had, and their outcome.
- The dates of admission and discharge.
- The method of termination.[10]

In isolation, much of this data is deeply personal; taken together it reveals a significant amount which may put women at risk, undermine their privacy and human rights. This data concerning women's lives can enable analysists to monitor trends and develop fit for purpose services,[11] and digitalisation enables data to be anonymised and robust. At the same time, other useful data such as race or disability is not centrally recorded in Scotland, contributing to significant evidence gaps.[12] While we do not think such data should be collected within the current paper form, a sensitive, trusted, secure, and anonymised data collection process could be engineered that encourages women to share demographic information, provided that refusal to does not prevent their access to care. England and Wales already allow for data to be returned with a patient number rather than name, providing some degree of privacy for women.[13]

4. Do you think there will be any impacts from the changes proposed in this consultation on the privacy of personal data about patients and staff?

Yes – positive impacts.

In our view, the changes proposed are likely to have positive impacts for privacy by reducing the time need to record information and reducing the likelihood of (accidental) disclosure, as information is sent directly from provider to PHS via a secure root.

[10] NHS Scotland (2015) Guidance for Completing the Notification of Abortion Form. Available at <https://www.ndc.scot.nhs.uk/docs/Guidance%20for%20Completing%20the%20Notification%20of%20Abortion%20form%20-%20v3.7%20-%20FINAL.pdf?

[11] Engender (2016) Our Bodies Our Choice. Available at <https://www.engender.org.uk/content/publications/Our-bodies-our-choice---the-case-for-a-Scottish-approach-to-abortion.pdf>

[12] Engender (2018) Our Bodies Our Rights. Available at < https://www.engender.org.uk/files/our-bodies,-our-rights-identifying-and-removing-barriers-to-disabled-womens-reproductive-rights-in-scoltand.pdf>

[13] UK Government (2020) Guidance notes for completing HSA4 electronic forms. Available at <https://www.gov.uk/government/publications/abortion-notification-forms-for-england-and-wales/guidance-notes-for-completing-hsa4-electronic-forms>

The proposal to replace the information currently required in the yellow form under Regulation 4 of the Abortion (Scotland) Regulations 1991[14] with dedicated data needed for statistical analysis at PHS is an opportunity to consider what data is absolutely necessary in advance of the provision of care and what is desirous to enable service improvements. In doing so, providers can build trust with women that information shared is not being used for other purposes. The proposals therefore separate out the reasons for the legal notification to the CMO and return of information and may actually allow for more robust and detailed information to be shared by women, such as race and ethnicity, disability, or the transgender status of trans men and non-binary people, that can lead to meaningful service improvements.

A clear separation needs to be understood between data shared for these purposes and data required to police the abortion act, it to be made clear when data is being collected anonymously and when it is not, what data is required and what is merely asked for and what it will be used for.

3. CONCLUSION

Engender supports the proposals to move data collection and notification of abortion to digital practices and to separate the formal notification to the CMO and data collection. In our view, this will reduce the administrative burden on providers of abortion care and on the CMO's office and enable PHS to develop the most robust data collection possible. While we believe that personal information data collection is a vital component of service delivery analysis and improvement, provision of data should not be compelled or used to police or prevent women's access to vital healthcare and the provision of this data should be anonymised, secure and freely given for outlined purposes.

Additionally, while we are conscious that the consultation does not propose amendments to the Abortion Act 1967 at this time and therefore notification to the CMO will continue, we are unclear as to the broader need for central notification and recommend that this be separately considered.

FOR FURTHER INFORMATION
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ABOUT US
Engender is Scotland's feminist policy and advocacy organisation, working to increase women's social, political and economic equality, enable women's rights, and make visible the impact of sexism on women and wider society. We work at Scottish, UK and international level to produce research, analysis, and recommendations for intersectional feminist legislation and programmes.

[14] The Abortion (Scotland) Regulations 1991. Regulation 4. Available at <https://www.legislation.gov.uk/uksi/1991/460/regulation/4/made>