

Abortion Law Review

Stakeholder Questionnaire on the Expert Group Report

Introduction

The Scottish Government is continuing to review the law on abortion in Scotland. On 14 November 2025, the report of the independent Expert Group on the Review of Abortion Law in Scotland was published. The Scottish Government is now seeking stakeholder views on the report, and this questionnaire is part of that process. The questionnaire is being shared with key stakeholders and will be supported by further engagement with stakeholders. This process is designed to inform views on the recommendations made by the Expert Group.

It should be noted that if Scottish Ministers decide, following a review of all the evidence, that abortion law should be reformed, a full public consultation on any proposals will be carried out.

How to use this document

1. Supporting Information

The questionnaire is structured into sections that reflect the main areas considered in the report. For each topic, the relevant sections or page numbers in the report are set out. You may wish to refer to these sections when preparing your responses.

The full report is available online: [Supporting documents - Review of Abortion Law in Scotland Expert Group: report - gov.scot](https://www.gov.scot/resources/consultations-petitions/embedded/Supporting_documents-Review_of_Abortion_Law_in_Scotland_Expert_Group_report-gov.scot)

2. Answering the Questions

You may respond to as many or as few questions as you wish. The contents page will help navigate to relevant sections.

The questions within this document are long text responses. Within your responses, please explain your position, drawing on professional, clinical or organisational experience. We would also welcome any accompanying evidence that you wish to share.

3. Further Engagement

If you wish to attach additional evidence, position papers, or research, please attach alongside your email when returning this document.

If you wish to meet with the abortion policy team to discuss your position in more detail, please get in touch at abortionteam@gov.scot.

4. Timelines

Please submit your complete response to abortionteam@gov.scot, along with any accompanying evidence, by Friday 5th June 2026.

If you have any queries, please contact the email address above.

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General

This section seeks your views on the methodology and overarching principles adopted by the Expert Group to underpin their process of reviewing the law and subsequent recommendations.

These can be found on pages 19-27 of the report.

Q. What are your views on the Expert Group's methodology?

No comment.

Q. What are your views on the “overarching principles” adopted by the Expert Group?

We remain neutral on this question, although we do not object to any of the principles. And we note that principles 1 and 3 in particular are congruent with key elements of RCN's published position on abortion law reform (links below) to do with the right to choose and access to safe care:

- “The RCN believes that all women must be able to continue to access safe and effective abortion care and be able to decide for themselves about their own pregnancy.”

On a related point, there are a number of questions in this questionnaire which appear to be to getting at the extent to which the Expert Group “did its job properly.” These types of questions are repeated throughout this questionnaire with respect to various groupings of the Expert Group's recommendations. They get at the quality and rigour of the Expert's Groups (1) considerations, (2) assessments, (3) evidence-gathering, and (4) analysis.

We suppose that inviting stakeholders to take a view at this stage on these four matters is intended to allow them firstly to posit that the very basis on which the Expert Group has made its recommendations is either “sound” or “flawed” (or somewhere in-between); secondly to critique the recommendations based on that position; and thirdly to justify their own alternative recommendations by way of that critique, whilst presumably inviting the Scottish Government to prefer those alternative recommendations.

This appears to us to risk this stakeholder engagement process adopting the form of “re-run in miniature” of the process that the Expert Group conducted, with the Abortion Team at the Scottish Government standing in place of the Expert Group.

We are not convinced that it would be fruitful for that to happen or for the results of the stakeholder engagement process to be-or at least risk being -treated as essentially amounting to an alternative report to that of the Expert Group.

We would suggest that having convened an Expert Group, there is limited value in Scottish Government effectively asking stakeholders whether or not the Group has done its job properly. This is essentially a question about process, as opposed to prioritizing the gathering in of stakeholder comments on the Group's recommendations and then moving on to producing its own proposals for reform. Those proposals will

presumably involve inviting comment on what will then be the *Scottish Government's* (1) considerations, (2) assessments, (3) evidence-gathering, and (4) analysis.

All that being the case, we have generally chosen to provide “no comment” responses to matters that concern the Expert Group's (1) considerations, (2) assessments, (3) evidence-gathering, and (4) analysis. And we have only done so when our comments on the recommendations themselves cannot be made coherently without reference to one or more of those four matters.

Our existing published positions on abortion are brought together at this link <https://www.rcn.org.uk/About-us/Our-Influencing-work/Position-statements/rcn-position-on-termination-of-pregnancy> and our specific position on decriminalisation is set out here <https://www.rcn.org.uk/About-us/Our-Influencing-work/Position-statements/rcn-position-on-decriminalisation-of-abortion-in-england-wales-and-scotland>

Our position may be summarised as follows:

- whether pregnancy is planned or unplanned... every woman and individual should have the right to choose how to deal with this life event, within... legislation.
- whether pregnancy is planned or unplanned... every woman and individual must be able to access safe and effective abortion care (and) termination of pregnancy and contraception are necessary and integral to the provision of a comprehensive sexual and reproductive health care service
- RCN acknowledges and respects individual members of nursing and midwifery teams who have a conscientious objection and we support of the rights of health care workers to conscientiously object to providing direct abortion care, except in an emergency.
- abortion should be governed by regulatory and professional health care standards rather than criminal law legislation,

and further, for the sake of brevity and ease of use in this response, as:

- 1 right to choose
- 2 access to safe care
- 3 right to conscientious objection except in an emergency
- 4 governed by regulatory not criminal law

In this document we use the phrasing in 1-4 above when referring to our public position and respond on the basis of that position.

When we refer to the numbers of the recommendations in our response, we are referring to the numbering in the list of “Final recommendations” on pages 113 to 117 of the Expert Group's Report (EGR).

Review of the Current Law

This section seeks your views on the Expert Group's review of the current law.

This can be found on pages 28-37 of the report.

Q. What are your views on the Expert Group's consideration of the current law?

No comment.

Gestational Limits and Grounds

Gestational Limits

The relevant sections within the report on this topic are on pages 38-45 and 52-54.

Q. What are your views on the Expert Group's assessment of the current law regarding gestational limits for abortion?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding gestational limits?

These recommendations are numbered 1 and 2.

RCN agrees that there should be a gestational limit and so we do not agree with Model A. We take this position on the basis that provision for a gestational limit

- (a) is set in the context (in the report at least), of provision for abortion to take place after the gestational limit in certain circumstances.
- (b) provides *greater* allowance for the specific health considerations to do with later abortions to be accounted for in decision making, by providing a point, common to all (or at least to most) situations of potential abortion, at which those considerations must be accounted for. We use the modifying word "greater" in recognition of the fact that healthcare professionals involved in abortion will always have such considerations uppermost in their minds.

We remain neutral on the precise number of weeks at which a gestational limit should be set.

That said, we do not find Model B ("Retain the Existing 24 Week Limit") to be an unreasoned or an unreasonable approach, particularly since it does not wholly preclude abortions taking place after the gestational limit.

Grounds

The relevant sections within the report on this topic are on pages 46-52 and 55-57.

Q. What are your views on the Expert Group's assessment of the current law regarding grounds for abortion?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding Grounds?

There are four recommendations to do with grounds. They are numbered 3 to 6. We deal with recommendations 3 to 5 here and recommendation 6 in the next section (on Sex Selective Abortion).

Recommendation 3 "No specified Grounds should be required to access abortion care up to 24 weeks gestation."

In order to be consistent with our position set out above regarding a gestational limit, it is logical for us to support the proposition that no specified ground should be required to access abortion care up to the gestational limit. In order to take that position, we do not need to take a view on the precise number of weeks at which the gestational limit is set.

Recommendation 4 "Decisions regarding abortions over 24 weeks gestation should be made in good faith by two healthcare professionals, who must agree that the abortion is appropriate, except in cases where an abortion is immediately necessary to save the life of the pregnant woman, in which case one healthcare professional may make a decision."

We support the replacement of "medical practitioners" with "healthcare professionals" since (a) it supports the right to choose and access to safe care and (b) does not oblige any "healthcare professional", however that term may come to be defined, to participate in an abortion because the provision for conscientious objection is to remain in law (see recommendations 17 & 18 below).

Recommendation 5 is:

“That Grounds for an abortion after 24 weeks’ gestation are amended in an updated abortion Act to the following:

1 An appropriately trained registered healthcare professional is authorised to provide an abortion for a person who is more than 24 weeks pregnant if –

- the healthcare professional decides in good faith that performing the abortion is appropriate; and
- the healthcare professional has agreed with one other registered healthcare professional that performing the abortion is appropriate.

2 In considering whether an abortion is appropriate, a registered healthcare professional should have regard to

- the gestational age of the fetus;
- all relevant current and reasonably foreseeable medical circumstances of the patient and the fetus;
- the patient’s current and reasonably foreseeable physical, psychological and social circumstances.

3 One appropriately trained registered healthcare professional may terminate a pregnancy without agreement from a second healthcare professional where they believe in good faith that an abortion is immediately necessary to save the life of the pregnant person.

4 In the case of multiple pregnancy, anything done to terminate the pregnancy as regards one particular fetus is authorised.”

There are then, four proposed amended grounds under recommendation 5.

Numbers 3 and 4 seem reasonable to us, with one caveat, which is explained below.

We have concerns about numbers 1 and 2.

Ironically, in attempting to support a “woman’s right to make their own decision regarding whether to continue or to end a pregnancy” (Expert Group Report (EGR) section 5.4), numbers 1 and 2 risk handing all the decision-making power to the healthcare professionals concerned by way of relatively unspecific criteria (i) on which a healthcare professional is obliged to make a decision, and which exposes them to potential jeopardy with respect to any decision they make, and (ii) with which a person seeking an abortion is unlikely to be able to engage -including being able to confidently disagree with a healthcare professional (albeit only in the case of abortions sought after the gestational limit has been reached).

Number 1

This has merit, but “in good faith” is a looser concept than, for example, “in the professional opinion of” which we would argue is a more useful phrasing. We note that the word “and” at the end of the first bullet point in number 1 locks in the requirement for two “healthcare professionals” to agree on a decision before the abortion can proceed. Should there be disagreement, it is not obvious from the proposed language of number 1 how the person seeking an abortion is supposed to understand the concept of “in good faith” or the basis on which healthcare professionals may agree or disagree -thereby leaving that person ill equipped to challenge a refusal to conduct an abortion on the basis of this ground. The use of the phrase “in the professional opinion of” would, in our view, overcome this

difficulty, if not entirely then at least to a more useful extent than would the use of the phrase “in good faith.”

We would therefore also take the position that the recommendation 5 (3) requirement that the belief “in good faith that an abortion is immediately necessary to save the life of the pregnant person” should be underpinned by a simultaneous reference to the healthcare professional’s professional opinion, so that it might read

“where they believe in good faith [and are of the professional opinion] that an abortion is immediately necessary to save the life of the pregnant person.”

Number 2

The proposal here is a recipe for inconsistency and endless multiple interpretations. It does not seem to square with the WHO abortion care guidelines cited at EGR section 5.3.2. On EGR section 5.4.2, we do not see that the recommendations automatically flow from the brief rationale provided and we do not agree that the language captures the clarity which the EGR apparently seeks, insofar as it is possible to infer from the brief rationale that clarity is what it seeks.

As the Expert Group knew (or ought to have known given the legal expertise to which it had access both in terms of its membership and otherwise) “have regard to” is a legal concept with a generally accepted meaning. It basically means taking any stated factors into account (here that means the three bullet points) and, as may be necessary, have and be able to give clear, cogent, and objectively proper, sufficiently compelling reasons justifying (i) the extent to which those factors have been taken into account and (ii) the decision that resulted.

The second two bullet points are essentially to do with the healthcare professionals’ professional assessment of the matters described. Those two bullets effectively amount to enabling a healthcare professional to only deem an abortion to be appropriate when it is appropriate in their professional opinion, insofar as medical and physical, psychological and social circumstances fall within the professional ambit of any given healthcare professional.

This phrasing raises a question about that professional ambit. Admittedly, nurses (and midwives), receive training to assess patients’ medical history, along with physical, psychological, and social circumstances. They regularly, perform safeguarding assessments, capacity assessments and complete referrals as appropriate. However, in practice there may be limits to the extent to which a given individual healthcare professional is in a position to make a judgement on medical, physical, psychological, and social circumstances. We do not want to see a situation arise where any healthcare professional is held to an opaque, unexplained, or ill-defined standard. If the Scottish Government chooses to take forward this recommendation we suggest that there would be a need for clear statutory guidance to support its operationalisation.

Number 2 as currently phrased would mean that different healthcare professionals may have appropriately had regard to the stated factors but could arrive at completely different decisions on the same facts. And because these are effectively matters of professional opinion, the person seeking the abortion is unlikely to be able to challenge them at the time the opinion is offered, even if they are subsequently able to obtain advice that would enable them to do so. That does not represent a significant departure from the current law, as far as we can see.

But at least the second two bullet points are linked to the concepts of professional opinion or assessment. The first bullet point is too distant from those concepts to be acceptable. By separating out the issue of “the gestational age of the foetus” from “all relevant current and reasonably foreseeable medical circumstances of the patient and the foetus” the language bestows upon “the gestational age of the foetus” an elevated status in the process of making decisions, placing it above all other “relevant current and reasonably foreseeable medical circumstances.”

If this were to be the language of the law, it would oblige the healthcare professionals to make explicit decisions about the relevance of the gestational age of the foetus in order to make their decision as to whether or not to proceed with an abortion, on a case-by-case basis with no applicable criteria to which they might refer. The law would do this while simultaneously making it clear that, although legislators believed that the gestational age of the foetus should have that elevated status, they were not sufficiently sure of why that should be the case to stipulate a gestational limit beyond which abortion was not permitted in any circumstances.

The legislature should not place healthcare professionals in the position of being obliged to give elevated status to the gestational age of the foetus over and above any other relevant current and foreseeable medical circumstances when making their decision. This is especially so when the point arises as a result of the legislature abdicating its responsibility to either (i) set a clear limit beyond which abortion is not permitted or (ii) to provide more robust criteria in law to guide those healthcare professionals.

A further potential problem is that abortion is clearly something that must happen within certain time limits and if the exercise of a healthcare professional’s judgement leads to the refusal to conduct an abortion there may not be time for the person seeking the abortion to actually get one before it is “too late.” The ability to challenge a healthcare professional in retrospect about the basis for their decision is clearly of no use with respect to any procedure subject to a biological deadline once that deadline has passed.

So, what is the solution? We would argue that number 2 should be rewritten as follows:

“In considering whether an abortion is appropriate, a registered healthcare professional

- should have regard to all relevant current and reasonably foreseeable physical and mental health circumstances of the patient and the fetus and
- if any such circumstances fall outwith the professional competencies of that healthcare professional to the extent that they are unable to properly have regard to them as part of the required consideration, that healthcare professional should secure a suitable understanding of those circumstances from another healthcare professional within whose professional competences such circumstances fall.”

We appreciate that number 2 may be tidied up other than by way of our proposed changes depending on the approach taken to defining a “healthcare professional” in any new law.

It may be that this definition will be written to mean that there could never be a situation where one healthcare professional would need to seek the advice of another in order for the first healthcare professional to discharge their duty to “have regard to.”

But if the intention is that, in the case of any given abortion, between the two healthcare professionals involved (or for that matter the one healthcare professional involved in the case of an emergency, as per recommendation 4) medical, physical, psychological and social circumstances can always be accounted for, then the definition of “healthcare professional” will need to include a requirement for those four matters to be capable of being considered either between the two healthcare professional involved or in the person of a single healthcare professional in an emergency. Or alternatively the definition may be more sophisticated and allow for greater or lesser consideration of these matters as between an emergency and a non-emergency abortion.

Either way, it would appear that the definition of “healthcare professional” is likely to have to include a requirement that a person is suitably qualified and/or trained, which may mean that person having to secure qualifications and training that go beyond that which the healthcare professional already has/has undergone.

An analogous provision might be that made by The Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Regulations 2007.

Also, it is not quite clear from recommendations 10 and 11 (see below) where and to what extent a healthcare professional should keep a record of having had regard to any factors that may ultimately be stipulated. This should be made clear.

Sex Selective Abortion

The relevant sections within the report on this topic are on pages 49-50 and 57-58.

Q. What are your views on the Expert Group's assessment of the current law regarding sex selective abortion?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendation regarding sex selective abortion?

Re: recommendation 6, we accept the EGR's summation of the challenges in prohibiting sex selective abortion. If we accept that "no specified Grounds should be required to access abortion care up to" the gestational limit, then the issue does not arise for abortions taking place prior to that limit.

Matters to do with sex selective abortion that call into question the extent to which the person intending to undergo the abortion is doing so entirely at their own volition should and will, in our view, be appropriately covered by way of recommendations 35 (Procurement of abortion through fear, force, or fraud) and 36 (Offences relating to ending a pregnancy without consent).

Pathways

Provision

The relevant sections within the report on this topic are on pages 60-64 and 81-82.

Q. What are your views on the Expert Group's assessment of the current law regarding abortion provision?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding abortion provision?

We support these two recommendations (numbers 7 and 8) as they support our published position that there should be access to safe care and that abortion should be governed by regulatory not criminal law.

Certification

The relevant sections within the report on this topic are on pages 60-64 and 82-83.

Q. What are your views on the Expert Group's assessment of the current law regarding abortion certification?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding abortion certification?

We support these three recommendations (numbers 9-11) as they support our published position that there should be a right to choose, access to safe care, and that abortion should be governed by regulatory not criminal law.

Place

The relevant sections within the report on this topic are on pages 65-67 and 83-84.

Q. What are your views on the Expert Group's assessment of the current law regarding where abortions can be provided?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding where abortions can be provided?

We support these two recommendations (numbers 12 and 13) as they support our published position that there should be access to safe care. We can see that there is scope to at least stipulate the characteristics of the place wherein an abortion may take place (e.g. "a safe, hygienic environment") if not the precise physical location (e.g. "an abortion clinic"). But this seems to us to be unnecessarily restrictive, particularly should an emergency abortion be required which had to happen at short notice "in situ"). Further, if abortions are only to be conducted by "an NHS provider or a private provider registered with Healthcare Improvement Scotland" it is likely that the abortion would take place in a place appropriate to the circumstances.

Counselling

The relevant sections within the report on this topic are on pages 74-77 and 84-85.

Q. What are your views on the Expert Group's assessment of the current approach regarding counselling for women accessing abortion?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding counselling?

This concerns recommendations numbers 14 and 15.

There would be a practical matter to do with resources should counselling be made mandatory. It is not the case that resources follow legal provisions. In our experience, they frequently do not, even if they should. And they should if new law has any chance of being complied with. Some of the financial memoranda accompanying Scottish Bills in the Scottish Parliament that we have seen over the years may charitably be described as "optimistic." Including such a provision without any hope of resourcing it would risk making a mockery of it.

If mandatory counselling were to be put in place it would need to be specifically and additionally resourced and not simply added to the list of things that existing budgets, calculated without the inclusion of such costs, were intended to pay for.

There is also a risk that mandatory counselling could be perceived as equivalent to "conversion therapy" with the underlying intention being to talk a person out of getting an abortion. If such a provision was included in legislation, this risk should be mitigated by the language in the legislation upon drafting, which would require very careful consideration.

So, the rationale for this recommendation - not to make counselling mandatory but rather to provide clinical guidance on the matter - as presented in the EGR (section 6.5) seems reasonable to us. But that said, we do not require to take anything other than a neutral position in response to this question.

Mandatory Waiting Periods

The relevant sections within the report on this topic are on pages 77-79 and 85.

Q. What are your views on the Expert Group's assessment of the current approach regarding mandatory waiting periods?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendation regarding mandatory waiting periods?

We support reaccommodation number 16 that mandatory waiting periods should not be included in abortion legislation.

There is no reasonable basis for the imposition of mandatory waiting periods that we can see, and they inevitably fall foul of the accusation that they are intended to encourage people not to get an abortion in a way that would be particularly incoherent when placed in the context of (1) the support provided to those contemplating having an abortion under the current arrangements, and (2) of the other provisions recommended by the Expert Group.

Conscientious Objection

The relevant sections within the report on this topic are on pages 67-72 and 85-56.

Q. What are your views on the Expert Group's assessment of the current law regarding conscientious objection?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding conscientious objection?

We support these this two-part recommendation (number 17) as it supports our published position on all four counts: that there should be a right to choose, access to safe care, the right to conscientious objection except in an emergency, and that abortion should be governed by regulatory not criminal law.

Data and Reporting

The relevant sections within the report on this topic are on pages 72-3 and 86-87.

Q. What are your views on the Expert Group's assessment of the current law regarding reporting and notification of abortions?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding reporting and notification of abortions?

We support these three recommendations, numbers 18 to 20.

We agree with the EGR reasoning supports the recommendations that:

- The requirement to notify the Chief Medical Officer of an abortion is “anachronistic and serves no clinical purpose” (section 6.11.7).
- The requirement to collect data would be for “understanding trends in service delivery and for monitoring and demonstrating the need for and effectiveness of abortion care in Scotland” and we are comfortable that “what data are to be collected should be in guidelines, not primary legislation.”

Adults with Incapacity, Young People and Brain Stem Dead Patients

The relevant sections within the report on these topics are on pages 79-80 and 87-88.

Q. What are your views on the Expert Group's assessment of the current law regarding adults with incapacity, young people and brain stem dead patients?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding adults with incapacity, young people and brain stem dead patients?

We can see the value in recommendations 21 to 25. But they concern matters that are insufficiently within RCN's compass for us to take a position on them at this stage, with one exception. It seems to us that recommendation 24* is self-evidently useful, irrespective of the extent to which any of the other recommendations in this section are taken up, and so we support it, as it supports access to safe care.

* "The Mental Welfare Commission should ensure there are clearer pathways and guidance in future for helping ensure swift processes and support for AWI where an abortion is being considered."

Positive Duty to Provide

The relevant sections within the report on this topic are on pages 80-81 and 89.

Q. What are your views on the Expert Group's assessment of the current approach regarding positive duties to provide abortion care?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding a positive duty to provide abortion care?

We support recommendation 26 that there should be “a duty to provide abortion services –or a ‘right to abortion’ –with said duty being on Scottish Ministers and Health Boards” as it supports the right to choose and access to safe care.

The EGR notes “While abortion up to 24 weeks is legally permitted under the current legal framework, there is no routine access to care beyond 20 weeks within Scotland, except for cases of foetal anomaly, and most patients seeking abortion at later gestations under Ground C or D* are currently referred to services in England.”

[*provisions to do with risk of injury]

This is jaw-dropping. We understand that in any jurisdiction there may be practical difficulties in arranging certain health care provision in some localities. But it is quite remarkable for there to be no provision of the type described in the entire country of Scotland, with a population of 5.4 million people, and after circa. 20 years of an administration which wishes to change Scotland's relationship with England in ways which make continued reliance on services in England at best “risk-posing.” Scotland should not continue in this vein.

Offences

Criminal offences for women acting with regard to their own pregnancies

The relevant sections within the report on this topic are on pages 97-99 and 105-106.

Q. What are your views on the Expert Group's assessment of the current law regarding women acting with regard to their own pregnancies?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendation regarding criminal offences for women acting with regards to their own pregnancies?

We support recommendation 27 that "There should be no offences for anyone ending their own pregnancy and any common law offences should be repealed" as this supports our position on right to choose, and that abortion should be governed by regulatory not criminal law.

Concealment of Birth

The relevant sections within the report on this topic are on pages 99-100 and 107.

Q. What are your views on the Expert Group's assessment of the current law regarding concealment of birth?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendation regarding concealment of birth?

We support recommendation 28 that "The Concealment of Birth (Scotland) Act 1809 should be repealed, and the crime of concealment should be repealed" as this supports our position that abortion should be governed by regulatory not criminal law.

Offences for providers (registered healthcare practitioners)

The relevant sections within the report on this topic are on pages 100-102 and 107-108.

Q. What are your views on the Expert Group's assessment of the current law regarding healthcare providers who provide an abortion out with the terms of the legal framework for abortion?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding offences for healthcare providers?

We support recommendation 29 that "The common law offences for registered healthcare professionals who provide an abortion(s) outwith the terms of abortion legislation should be repealed."

This recommendation, when taken together with recommendation 27 and 28, would address the fact that it is a great deal harder for the lay person to access and to understand common law offences and elderly statutes than it is for them to access and to understand statutory offences in relatively youthful law. The proposed repeal of the common law offences described and their replacement with statutory offences will bring helpful accessibility and clarity to the law for those healthcare professionals who may be affected by it.

Recommendations 30 and 31 would appear to accord with our position. The former removes criminal offences and so supports abortion being governed by civil (including regulatory) law rather than criminal law. The latter supports that too as well as supporting the right to choose and access to safe care.

In the case of recommendation 30, for a registered nurse to provide an abortion outwith the terms of the legislation may very well be a breach of their professional regulatory requirements as encapsulated by the NMC code and related provisions.

We understand that there is a live debate on what the existing law does and does not permit. See for example this article

<https://srh.bmj.com/content/familyplanning/43/4/260.full.pdf>

But that aside, there is at least the potential for a registered nurse to be struck off if the law was found not to operate in their favour in a particular case. And in any case, we believe that the punitive measures available via the professional regulatory system are preferable to the introduction of a new offence. In our view this would be sufficient, including in order to safeguard the public.

And as the EGR alludes to, existing offences in legislation (or at common law) are likely to be sufficient. If prosecution was deemed necessary, it could be brought by the Procurator Fiscal on an existing legal basis.

That being the case, and also acknowledging the proposed offence in recommendation 32, we do not see the point of option 30 (2), apart from perhaps “political signalling” by the Scottish Government, which is very definitely not what the law should be used for. We therefore prefer option 30 (1) (“existing law around healthcare, including the registration and regulation of healthcare professionals, is sufficient to appropriately enforce the law”).

[*the options appear as (a) and (b) on page 108 but as 30 (1) and (2) on page 116. We are using the latter referencing].

Offences for abortions provided by someone who is not a registered Healthcare Professional

The relevant sections within the report on this topic are on page 109.

Q. What are your views on the Expert Group's assessment of the current law regarding abortions provided by someone who is not a registered healthcare professional?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding abortions provided by a person who is not a registered healthcare professional?

We support recommendations 32 and 33 as they support access to safe care but with sensible considerations to be made prior to the establishment of any *new* offence. We do not consider that supporting the existence of an offence for "Any person who is not a 'healthcare professional'... providing abortion services" is in contradiction to our position that abortion should be governed by regulatory rather than criminal law because, by definition, regulatory law does not apply to the unregulated.

Procuring abortion through securing abortion through, force, or fraud

The relevant sections within the report on this topic are on pages 102-104 and 109-111.

Q. What are your views on the Expert Group's assessment of the current law regarding the procurement of abortion through fear, force or fraud?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding the procurement of abortion through fear, force or fraud?

Concerning recommendations 34 and 35, we are bound to agree that abortion should never be procured through fear, force, or fraud. But we would strongly argue that for any "healthcare professional" proof that they had followed the "robust procedure" proposed (the existence of which would be the responsibility of their employer, or equivalent, depending on the precise nature of the healthcare professional's circumstances) would have to be sufficient at law to protect them (i.e. to be a "complete defence") against an accusation that they had failed to detect fear, force, or fraud or had been complicit in the procurement of abortion through fear, force or fraud.

We do not support an arrangement whereby it is left to individual healthcare professionals to decide to work out how to "detect" fear, force or fraud on a case-by-case basis or where a so-called "robust procedure" allows individual healthcare professionals so much latitude in terms of "detection" that they open themselves up to accusations of negligence (or similar delicts), or to being charged with a criminal offence of any kind.

Offences relating to ending a pregnancy without consent

The relevant sections within the report on this topic are on pages 111-112.

Q. What are your views on the Expert Group's assessment of the current law regarding ending a pregnancy without consent?

No comment.

Q. What are your views on the range and quality of evidence considered by the Expert Group?

(When answering this question, you may also highlight any matters relevant to this topic that were not considered by the Expert Group and which, in your view, should have been covered.)

No comment.

Q. What are your views on the Expert Group's analysis of that evidence?

No comment.

Q. What are your views on the Expert Group's recommendations regarding offences relating to ending a pregnancy without consent?

We support recommendation 36 as this supports the right to choose and access to safe care.

Other

If you have any further comments on the current law relating to abortion, or views you wish to share on any future legal framework, please provide comments here:

We have no other comments.