

Scottish Government Abortion Law Reform

Offences and sanctions

The Christian Medical Fellowship (CMF) is a membership organisation representing over 4,500 Christian doctors, nurses and midwives across the UK and ROI. We have many members working in varied roles providing healthcare in Scotland.

We are grateful for the opportunity to contribute to the section on Offences and Sanctions.

Responding on behalf of CMF

Introduction

We note, in the terms of reference for the Expert Group, that Scottish Ministers made clear their view that *‘abortion services are first and foremost a healthcare matter, similar to other equivalent health services.’* We cannot accept this statement. It is a falsehood which seeks to obscure the clear and important difference between abortion and all other health services, namely, abortion’s sole intention being to end a human life. Given this intention it is right that offenses and sanctions continue within criminal law, and we strongly oppose any move to decriminalize abortion.

Abortion is unethical

From the time of the original Hippocratic Oath onwards, the practice of medicine has never included the notion of intentionally causing death. A physician’s duty is to protect and preserve the lives of his/her patients. An action whose sole intent is to end a life violates the most basic tenet of medical ethics. The whole point of an abortion is to end a life, (and in a brutal fashion). Abortion may take place in health care settings, but we cannot accept that it aligns with the necessary ethical standards to be considered a simple healthcare matter.

Abortion is blind to the human fetus

We stated our position in our last response to the Expert Group, on that occasion addressing the matter of Conscientious Objection. Our view is that in any pregnancy there are two lives to consider and that both those lives matter. The fundamental error that enables abortion to be practised is the failure to recognise and respect the human fetus as ‘one of us,’ someone as we each once were. The science is clear - at fertilization a new, distinct, living, human being comes into existence complete with all it needs to develop through the stages of human development to become a baby (and beyond through childhood and adolescence into adulthood). It simply requires a welcome in the womb – security, nutrition and care. Healthcare, rightly understood, equally values

the lives of women and their unborn children and pursues the wellbeing of both. When abortion is presented as simply a woman's healthcare right without due regulation in criminal law, her developing baby is not in view as a separate being. It is seen as simply part of the woman's body, despite being genetically different from, and anatomically separate from, its mother.

No Scottish statutory legislation has ever indicated that a human fetus is a non-person. Neither did the Scottish Government suggest such a thing in its Terms of Reference to the Expert Group. We hold that any report by the Expert Group must therefore show compassion and respect for both the mother and her unborn child. Failure to uphold the rights of both would be as irresponsible as it would be prejudicial.

Abortion is not healthcare

In all but a few situations, abortion meets none of the definitions of healthcare. It treats no disease process. It does not improve a disorder. It does not protect life and health from harm. It is the very antithesis of healthcare. It forcibly and intentionally ends a human life. Exceptions to the rule include those rare situations in which pregnancy leads to a life-threatening illness in the mother (for example, severe pre-eclampsia) that may necessitate the termination of the pregnancy to preserve the mother's life.

But in the overwhelming majority of cases, when a woman becomes pregnant, medically nothing has gone wrong. Indeed, something has gone right! Listen to a newly pregnant woman sharing the news she has longed to be able to share. Or witness the sorrow of another woman and her family at the news of her miscarriage. Those women know intuitively what is true biologically - that pregnancy is about a real person, not simply 'the products of conception.' Intentionally ending the life of a fetus is, and should remain, a criminal act.

Moreover, abortion carries significant potential harm for women. The evidence suggests that abortions increase the risk of preterm delivery in future pregnancies,¹ and the risk of aggravating underlying mental health disorders,² and may increase her risk of breast cancer if she has not yet had a full-term pregnancy.³ These risks, and the small risks of

¹ Hardy G, Benjamin A, Abenhaim HA. Effect of induced abortions on early preterm births and adverse perinatal outcomes. *J Obstet Gynaecol Can.* 2013 Feb;35(2):138-143. doi: 10.1016/S1701-2163(15)31018-5. PMID: 23470063.

² Reardon DC. The abortion and mental health controversy: A comprehensive literature review of common ground agreements, disagreements, actionable recommendations, and research opportunities. *SAGE Open Medicine.* 2018;6. doi:[10.1177/2050312118807624](https://doi.org/10.1177/2050312118807624)

³ **Abortion and breast cancer: a hard decision made harder** Davidson, Tim
The Lancet Oncology, Volume 2, Issue 12, 756 - 758

her dying from abortion-related complications, are even higher if the abortion is done in the second trimester and beyond.’⁴

In our view, only if the life of the mother is in danger as a result of her pregnancy should the life of the unborn child be sacrificed – a mercifully rare occurrence.

Even if the Scottish government wish to include a wider set of circumstances where the intentional killing of the fetus is permissible in law we argue strongly that these should be exceptions to a baseline understanding that, outside the named exceptions, it is a criminal act to intentionally kill a human being including in its fetal stage of development.

Abortion is a confused area of Scottish Law, needing clarity not obfuscation

In the terms of reference given to the Expert Group, Scottish Ministers have made clear their *‘wish to ensure that patients in Scotland can continue to access abortions and also that they would wish to ensure that abortion services are first and foremost a healthcare matter, similar to other equivalent health services.’*

In England and Wales, the law against abortion is statutory, being governed by the Offences Against the Person Act 1861 and Infant Life Preservation Act 1929, which act together to criminalise women who seek or attempt to terminate their own pregnancy. The 1967 Abortion Law does not confer upon women the ‘right to abortion.’ Rather, it confers upon qualified medical practitioners the right to perform terminations of pregnancy in particular circumstances, outside of which abortion remains criminal.

In Scotland, the law concerning abortion is not governed by statute but is a crime at common law. The fetus has long been seen, by Scottish people and in common law, as possessing moral status. Abortion has been understood as a matter of human rights, not simply a matter of healthcare. Until the 1967 Act, abortion was a crime at common law unless a single medical practitioner authorised a termination of pregnancy on the basis of their own medical and moral judgment, made in good faith. By the 1967 Act, Parliament essentially imposed a two-doctor requirement and a 24-week [previously 28-week] restriction on the availability of abortion in Scotland. But it did not decriminalise abortion.

To reduce abortion to only a healthcare matter, as stated in the terms of reference given to the Expert Group, in our view distorts the legal setting of abortion in Scotland. Reframing the issue as purely a healthcare matter ignores the moral status of the fetus and looks to be a legal sleight of hand aimed at decriminalising abortion.

⁴ [Complications and risks](#) | [Background information](#) | [Abortion](#) | [CKS](#) | [NICE](#)

We believe that the calibre of a society can be measured by the way in which it looks after its most vulnerable members: there are none more vulnerable than its unborn.

To decriminalise abortion would, in our view, serve to:

- increase the tendency to treat abortion as *ex post facto* contraception;
- strengthen the notion that a fetus has no intrinsic moral status, no right to life, and can be freely killed;
- deceive children into believing abortion is normal healthcare and does not involve killing;
- perpetuate the view that there is such a thing as a human life ‘not worth living,’ with the impact of that view on the lives of disabled people, and on care for the elderly frail, people with advanced dementia, progressive and incurable or terminal illnesses. It is a short step from decriminalising the death of an unwanted, unborn child to legalising the assisted death of someone whose life is thought by others to be overly burdensome or not worth living;
- ‘normalise’ abortion and, in turn, abortifacient contraception, experimentation on ‘spare’ embryos from IVF procedures, and the like. This would bring closer a widespread acceptance of pre-implantation embryo selection based on sex or other socially desirable characteristics, and the inevitable accompanying stigmatisation of genetically abnormal individuals. Once we lose sight of the humanness of the early embryo, denying it the respect it deserves as ‘one of us,’ then that which was unthinkable yesterday becomes common practice tomorrow. Children will increasingly be seen as commodities, expected to arrive on time and in peak condition or else be rejected and discarded.

For these reasons, we strongly urge the Expert Group not to recommend the decriminalising of abortion to Scottish Government ministers.

We ask that regulations be in place to ensure abortions are carried out only when they fall within legally agreed exceptions to a baseline legal prohibition on the killing of human fetuses and that regulations and monitoring ensure that the legal grounds for all abortions are recorded and accurate. We ask that regulations and monitoring also ensures accurate recording of the number of abortions carried out, whether in NHS or private facilities, the incidence of complications following abortions, including early medical abortions carried out at home, and the number of women requesting second, third or more abortions. It is essential for researchers to have access to such accurate data in order to safeguard women. It should be mandatory for all abortions to be recorded on personal medical records held by family doctors.

Those who act illegally to procure or perform abortions, we believe, should face legal sanctions in line with existing law, applied with due regard for extenuating circumstances.

