

POLICY NOTE

THE ABORTION (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 2021/457

The above instrument was made in exercise of the powers conferred by section 2(1)(b) of the Abortion Act 1967. The instrument is subject to negative procedure.

Summary Box

The Abortion (Scotland) Regulations 1991 (“the 1991 Regulations”) set out the arrangements under which a doctor (referred to in the legislation as a “registered medical practitioner”) who has terminated a pregnancy must give notice of the termination to the Chief Medical Officer (CMO). The Abortion (Scotland) Amendment Regulations 2021 (“the 2021 Regulations”) amend the 1991 Regulations to enable this notice to be given electronically and extend the deadline for giving notice. They also reduce the information which must be provided as part of the notification.

Policy Objectives

The Abortion Act 1967 (“the Act”) requires the Scottish Ministers to make regulations to require a doctor who has terminated a pregnancy to give notice of the termination (and to give such other information relating to the termination as the Ministers provide for in regulations) to the CMO. This is done under the 1991 Regulations.

The 2021 Regulations make the following changes to the 1991 Regulations from 1 May 2022:

- increases the deadline for giving notice of a termination from “within 7 days” of the termination to before the 15th of the month following the month in which the doctor terminated the pregnancy (for example an abortion taking place in April must be notified before 15th May);
- removes the restriction that notifications must only be sent either by post or delivered in a sealed envelope, so allowing notice to be given using electronic communication as an alternative to the existing options;
- removes schedule 2. The form contained in schedule 2 (commonly known as the ‘yellow form’) requires information to be provided including about the woman who has had a termination, the termination itself and the doctor who terminated the pregnancy;
- requires a simpler notification to be sent to the CMO containing only the name of the doctor who terminated the pregnancy and the name of the doctor’s employer (Health Board or private abortion provider).

The 2021 Regulations ensure that the CMO receives only the minimum data required to fulfil their role under the Act. The changes will enable the CMO to maintain an overview of the number of terminations taking place in Scotland. The changes also reflect technological advances and the fact that some doctors find it difficult to meet a 7 day notification deadline due to work pressures.

The 1991 Regulations permit the information provided in the notification forms to be shared by the CMO with Public Health Scotland (PHS), which uses the information contained in the forms to produce abortion statistics. As a result of the changes, abortion providers in Scotland will provide more detailed patient data directly to PHS using secure electronic means. The specific range of data to be provided to PHS in relation to each termination will be established separately by PHS. Asking abortion providers to submit this information directly to PHS via secure electronic means, rather than via the CMO on paper forms, will improve the security of patient data. This is in line with other health data which is already provided directly to PHS electronically.

Consultation

A public consultation on the proposed changes to the 1991 Regulations ran between 1 March 2021 and 30 April 2021. As well as being publically available, the consultation was circulated to the Scottish Abortion Care Providers group and NHS Boards, to the one private abortion provider in Scotland and to other stakeholders with an interest, such as Public Health Scotland, the Information Commissioner's Office and groups representing women. The consultation received 35 responses, of which 15 were from organisations and 20 were from individuals.

Overall, responses to the consultation supported the changes to the 1991 Regulations, with strong support for enabling electronic submission of notifications, permitting a period longer than seven days in which to provide notifications and enabling data to be provided directly to PHS. The consultation also asked whether there would be any impacts on the privacy of personal data about patients and staff; of the respondents who answered this questions, the great majority felt there would either be no impact or that it would have a positive impact on data privacy. A few respondents noted that appropriate arrangements would be needed to ensure data is transferred to PHS securely.

An analysis of the consultation responses, and the responses (where consent has been given to publish) can be found at: <https://consult.gov.scot/population-health/abortion-notifications-and-data/>. The 2021 Regulations reflect the support for the specific proposals shown in the consultation.

Impact Assessments

A data protection impact assessment has been completed on the 2021 Regulations. No other impacts have been identified.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and can be found at <https://www.gov.scot/isbn/9781802017281>. The impact of this policy on business is minimal as the changes are minor in terms of administration of notifications made to the CMO. There is only one private provider in Scotland which provides a very small number of terminations, currently fewer than 5 per year.

Scottish Government
Health Protection Division
December 2021