



**Isle of Man**

*Ellan Vannin*

V07

# ABORTION REFORM BILL 2017



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## Explanatory Memorandum

1. This Bill is promoted by Dr. Allinson, MHK.
2. Part 1 (*clauses 1-3*) deals with introductory matters, *clause 1* giving the resulting Act its short title, *clause 2* providing for its commencement and *clause 3* defining terms used in the Bill.
3. Part 2 deals with the provision of abortion services.
4. *Clause 4* specifies the women to whom abortion services may be provided. Normally, these will be women ordinarily resident in the Island, although the Bill recognises that an emergency abortion may be provided in circumstances analogous to those which arose in *R. v. Bourne* [1939] 1 KB 687. That case recognised that an abortion was lawful in order to preserve the life of the mother, Such a provision is necessary in order to meet the Island's obligations under article 2 of the European Convention on Human Rights which guarantees the right to life.
5. *Clause 5* specifies where abortion services may be provided. Except where the services consist of advice about abortion, or of medicinal products to procure an abortion in the first trimester of pregnancy, they must be provided in an NHS hospital maintained by the Department or premises approved by it.
6. *Clause 6* specifies the conditions which must be satisfied before an abortion may take place.
7. *Clause 7* specifies who may provide abortion services.
8. *Clause 8* deals with the circumstances in which a healthcare professional may raise a conscientious objection to providing or participating in the provision of abortion services, and those where such a professional may not do so.
9. *Clause 9* deals with the requirement for informed consent either of the pregnant woman or of a person lawfully empowered to give consent on her behalf. This additional category of consent is required in the case of a woman who is under a legal disability or temporarily unable to make a decision (e.g. because she is in a coma) or that of a child who is not competent to give consent herself by reference to the tests set out in the decision in *Gillick .v West Norfolk and Wisbech Area Health Authority* [1986] AC 112.
10. *Clause 10* deals with the position of a healthcare professional undertaking the provision of abortion advice and *clause 11* with the provision of medicinal products to procure an abortion (for example Mifepristone and Misoprotol). That clause provide explicitly that a woman does not commit an offence by seeking such drugs for the purpose of procuring her own miscarriage.

11. *Clause 12* creates a new criminal offence, in place of that under section 71 of the Criminal Code 1872 to deal with “backstreet” abortions.
12. *Clause 13* imposes a duty on the Department to secure the provision to a woman who has had a termination under the Act of suitable and sufficient counselling and support. Counselling is to comply with the guidelines issued by the Department under clause 6 insofar as they are relevant in the particular circumstances.
13. *Clause 14* deals with the relationship of the provisions of Part 2 with other enactments.
14. *Clause 15* imposes a duty on the Department of Health and Social Care to make regulations in connection with the provision of abortion services.
15. *Clause 16* empowers the Department to make regulations and is in substantially the same terms as section 7 of the Termination of Pregnancy (Medical Defences) Act 1995.
16. *Part 3* comprises *clauses 17 and 18*. The former authorises the Department to incur expenditure in connection with the operation of the resulting Act, and the latter repeals provisions which are no longer necessary in the light of the provision which will be made by the Act if the Bill passes.
17. In the opinion of the member moving the Bill, Dr Allinson MHK, its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



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## ABORTION REFORM BILL 2017

A **BILL** to restate the law relating to abortion with amendments; and for connected purposes.

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### PART 1 – OPENING PROVISIONS

#### 1 Short title

The short title of this Act is the Abortion Reform Act 2017.

#### 2 Commencement

- (1) This Act comes into operation on such day or days as the Council of Ministers may by order appoint.
- (2) An order under subsection (1) may include such consequential, incidental, supplemental, transitional and transitory provision as the Council of Ministers considers appropriate.

#### 3 Interpretation

In this Act—

- “**abortion services**” means services (whether surgical or otherwise) whose purpose is to procure the miscarriage of a pregnant woman;
- “**the Department**” means the Department of Health and Social Care;
- “**gestation period**” means the period of pregnancy of a female calculated from the first day of the menstrual period which in relation to the pregnancy, is the last;
- “**health**” means a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity;
- “**health care professional**” has the meaning given in section 3 of the *Health Care Professionals Act 2014*, and “**registered**” in relation to such a professional is to be construed in accordance with that section;

“**informed consent**” means consent by a woman of her own free will after receiving information on the risks and benefits of termination of pregnancy;

“**Isle of Man National Health and Care Service**” has the meaning given by section 4 of the *National Health and Care Service Act 2016*;

“**national health service hospital**” means a hospital provided by the Department for the purposes of the Isle of Man National Health and Care Service;

“**treatment**” begins with the administration of a drug or the start of a surgical procedure and ends with the expulsion of the products of conception from the womb.

“**woman**” means a person of any age who is pregnant;

## PART 2 — PROVISION OF ABORTION SERVICES

### 4 Abortion services — to whom provided

Abortion services shall be provided under this Part only to a woman —

- (a) who is ordinarily resident on the Island; or
- (b) who requires their provision in an emergency, in the opinion formed in good faith, of the medical practitioner treating her.

### 5 Abortion services — where provided

Subs(1): drafting; subs (2) reflects P1967/87/1(3A).

- (1) Abortion services may be provided under this Part only—
  - (a) under the Isle of Man National Health and Care Service (see the *National Health and Care Service Act 2016*); and
  - (b) in a national health service hospital or in other premises approved for the purpose by the Department.
- (2) An approval under subsection (1)(b) may contain such conditions and exceptions as the Department thinks fit.
- (3) Despite subsection (1), services may be provided under section 10 or 11 in such manner, by such persons and in such places as may be approved by the Department.

### 6 Abortion services – conditions for provision

- (1) Abortion services may be provided only if such of the conditions in this section as are relevant in the particular case are satisfied.
- (2) During the first 14 weeks of the gestation period, abortion services may be provided upon request by or on behalf of a pregnant woman.



- (3) During the period commencing with the beginning of the 15th week and ending at the end of the 23rd week of the gestation period, such services may be provided, upon request by or on behalf of a pregnant woman if the registered medical practitioner attending her is of the opinion, formed in good faith that one or more of subsections (4) to (7) applies in her case.
- (4) This subsection applies if the continuation of the pregnancy would pose a substantial risk of serious injury to the pregnant woman's life or health.
- (5) This subsection applies if there is a substantial risk that the foetus is or will be affected by a significant physical or mental impairment which —
  - (a) will have a seriously debilitating effect on the child; or
  - (b) will result in the death of the foetus *in utero*.
- (6) This subsection applies if, according to the pregnant woman, the pregnancy resulted from rape, incest or other unlawful intercourse.
- (7) This subsection applies if there are serious social grounds justifying the termination of the pregnancy.
- (8) From the start of the 24<sup>th</sup> week of the gestation period abortion services may be provided upon the request by or on behalf of a pregnant woman if the registered medical practitioner attending her is of the opinion, formed in good faith, and after taking such specialist medical advice as appears to the practitioner to be appropriate, that —
  - (a) the termination is necessary to prevent grave long-term injury to her health;
  - (b) the continuance of the pregnancy would involve risk to her life, greater than if the pregnancy were terminated;
  - (c) there is a substantial risk that because of its physical or mental condition the foetus would die before or during labour;
  - (d) there is a substantial risk that, were the child born alive—
    - (i) the child would die shortly after birth because of severe foetal developmental impairment; or
    - (ii) the child would suffer a significant impairment which is likely to limit either the length or quality of the child's life.
- (9) Before abortion services are provided to a pregnant woman, she must be offered counselling if it is practicable to do so in all the circumstances and without causing undue delay in the provision of those services.
- (10) In determining whether the continuation of a pregnancy would involve a risk to the health of the pregnant woman such as is mentioned in subsection (4) or (8)(a) account may be taken of her actual or reasonably foreseeable environment.
- (11) The Department must issue guidelines about counselling for the purposes of this section, and in the other provisions of this section

“counselling” means counselling provided by a person approved by the Department in accordance with the guidelines.

- (12) The Department may from time to time vary or replace guidelines issued under subsection (11).
- (13) Guidelines issued under subsection (11) must be framed so as to secure that—
  - (a) counselling is balanced, impartial and non-judgmental;
  - (b) in the case of a prenatal diagnosis of foetal developmental impairment, counselling includes information about the possibility of continuing the pregnancy to term;
  - (c) counsellors have available to them, and can discuss with a pregnant woman, full and accurate information on the full range of available options in relation to the pregnancy;
  - (d) a pregnant woman is provided with information in writing from support groups and other organisations representing disabled people.

## **7 Persons authorized to provide abortion services**

- (1) A person may participate in the provision of abortion services if, but only if, that person is authorised by the Department, possesses the appropriate skill in relation to the gestation period; and—
  - (a) in the case of a medical practitioner, he or she holds a current licence to practise issued by the General Medical Council and is on the list maintained by the Department under section 4 of the National Health Service Act 2001;
  - (b) in the case of a nurse or a midwife, is registered by the Nursing and Midwifery Council;
  - (c) in the case of a person supplying a medicinal product to cause the termination of a pregnancy, is registered with the General Medical Council, the Nursing and Midwifery Council or the General Pharmaceutical Council<sup>1</sup>.
- (2) A person who participates in the provision of abortion services otherwise than in accordance with subsection (1) commits an offence.

*Maximum penalty (on information) for subsection (2) — fine and 7 years' custody.*

## **8 Conscientious objection**

P1967/87/4(1) and (2)

- (1) Subject to subsections (3) and (4), no health care professional shall be under any legal duty, whether arising by contract or any statutory or

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<sup>1</sup> SI 2010/300.

other legal requirement, to participate in any treatment authorised by this Act if the health care professional has a conscientious objection to participating in such treatment.

- (2) In any legal proceedings the burden of proof of a person's conscientious objection rests upon the person who claims to rely on it.
- (3) Subsection (1) does not affect any duty to participate in a treatment which is necessary —
  - (a) to save the life of a pregnant woman; or
  - (b) to prevent grave permanent injury to the health of a pregnant woman.
- (4) A health care professional who has a conscientious objection referred to in subsection (1) must—
  - (a) inform the pregnant woman who requests abortion services that she has a right to see another healthcare professional; and
  - (b) ensure she has sufficient information to enable her to exercise the right mentioned in paragraph (a).
- (5) Any health care professional whose failure to act in accordance with subsection (3) or (4) results in the woman suffering injury or the loss of her life (or both) commits an offence.

*Maximum penalty —*

- (a) *(on information): a fine or 2 years' custody; or*
- (b) *(summary) 12 months' custody, a fine not exceeding level 5 or both.*

## **9 Informed consent a condition of provision of abortion services**

- (1) Subject to subsections (2) and (3), a person must not provide or assist in the provision of abortion services to a woman unless the woman has given her informed consent.
- (2) Where the pregnant woman—
  - (a) is below 16 years of age, and
  - (b) in the opinion of the registered medical practitioner attending her she does not have sufficient maturity and intelligence to understand the nature and implications of the proposed treatment,

abortion services must not be provided unless subsection (3) is satisfied.
- (3) This subsection is satisfied if, but only if the medical practitioner attending the pregnant woman—
  - (a) obtains the consent of the parent or guardian of, or another person acting *in loco parentis* in relation to, the pregnant woman; and

- (b) is satisfied that the decision to consent to the termination of the pregnancy is being taken in good faith and in the best interests of the pregnant woman.
- (4) Where the pregnant woman is unable to give informed consent due to a mental, medical or physical incapacity, the registered medical practitioner attending her must not provide abortion services unless the practitioner —
  - (a) obtains the consent of the parent or guardian of the pregnant woman, or another person lawfully empowered to give consent on her behalf; or
  - (b) is of the view, formed in good faith, that because of the urgency of the situation and the likely delay in obtaining such consent, it is necessary, in order to protect the health or life of the woman, to proceed without such consent.
- (5) A person who contravenes subsection (1), (2) or (3) commits an offence.  
*Maximum penalty (on information) — a fine or 5 years' custody.*

## 10 Healthcare professional providing abortion advice

- (1) For clarity, a registered medical practitioner, nurse, midwife or pharmacist or other healthcare professional does not commit an offence —
  - (a) by providing a pregnant woman with advice or information about the possibility of abortion (whether in the Island or outside it); or
  - (b) by referring the pregnant woman to another person (whether in the Island or outside it) for further advice or treatment which may result in a termination.
- (2) In subsection (1) “advice” includes advice provided by means of electronic communications (within the meaning of the *Electronic Transactions Act 2000*).

## 11 Provision of medicinal products to procure abortion

- (1) For the purposes of this section a “relevant product” is a medicinal product which is —
  - (a) designed or intended to procure a woman’s miscarriage; and
  - (b) prescribed for or supplied to her with a view to her miscarrying otherwise than in a national health service hospital. (“a relevant product”).
- (2) During the first 24 weeks of the gestation period, a registered medical practitioner, midwife, nurse or pharmacist may —
  - (a) prescribe a relevant product for a pregnant woman, or
  - (b) supply a relevant product to a pregnant woman.

- (3) A person who prescribes a relevant product for, or supplies a relevant product to, a pregnant woman intending thereby to procure her miscarriage otherwise than —
- (a) in a national health service hospital; or
  - (b) in compliance with this section;
- commits an offence.
- Maximum penalty (information) — a fine or 5 years' custody.*
- (4) For the sake of clarity, a pregnant woman does not commit an offence (under this or any other Act)—
- (a) by soliciting or inciting another person to prescribe a relevant product for her, or to supply a relevant product to her, in order to procure her miscarriage; or
  - (b) taking a relevant product in order to do so.

## **12 Offence of procuring termination of a pregnancy**

- (1) A person who, by any means, intentionally procures the miscarriage of a woman, otherwise than in accordance with this Part, commits an offence.
- But this subsection —
- (a) is subject to subsection (2); and
  - (b) does not apply if the conduct constitutes an offence under subsection 11(3).
- Maximum penalty (on information) — a fine or 14 years' custody.*
- (2) A person is not guilty of an offence under subsection (1) if he or she proves that the act which caused the miscarriage was done in good faith for the purpose only of preserving the health or life of the woman.

## **13 Post-termination counselling**

- (1) The Department must secure the provision, to any woman who has undergone a termination of a pregnancy in accordance with this Act, of suitable and sufficient post-termination counselling and support.
- (2) Counselling under this section must comply with guidelines under section 6(11) insofar as that subsection is relevant.

## **14 Relationship with other provisions**

A person who —

- (a) participates in the termination of a pregnancy, or
- (b) prescribes a relevant product for, or supplies such a product to, a pregnant woman with a view to procuring her miscarriage,

in accordance with this Part does not commit an offence under the *Infanticide and Infant Life (Preservation) Act 1938*.

## 15 Regulations

- (1) The Department must make regulations —
  - (a) requiring any registered medical practitioner or other healthcare professional who terminates a pregnancy —
    - (i) to record the reasons for the termination and its circumstances (including which of subsections (4) to (8) of section 6 apply); and
    - (ii) to give notice of the termination and such other information relating to the termination as may be prescribed;
  - (b) for prohibiting the disclosure, except to such persons or for such purposes as may be so prescribed, of notices given or information furnished in accordance with the regulations.

*Tynwald procedure — approval required.*

- (2) The information furnished in accordance with regulations made by virtue of subsection (1)(b) is to be notified solely to the Director of Public Health.
- (3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of regulations under subsection (1) commits an offence.

*Maximum penalty (summary) — £5,000.*

## PART 3 – CLOSING PROVISIONS

### 16 Expenditure

Any expenses of the Department which are attributable to this Act shall be paid out of monies provided by Tynwald.

### 17 Repeals

The following are repealed—

- (a) sections 71 and 72 of the *Criminal Code 1872* (and the cross-heading preceding section 71);
- (b) in section 4 of the *Infanticide and Infant Life Preservation Act 1938*—
  - (i) in subsection (1) the words “or for an offence under section 71 of the Criminal Code 1872” and “, or of an offence under the said section 71”; and
  - (ii) subsection (2);

- (c) the *Termination of Pregnancy (Medical Defences) Act 1995*; and
- (d) in the Schedule to the *National Health and Care Service Act 2016*, the entries relating to provisions of the *Termination of Pregnancy (Medical Defences) Act 1995*.