



ABORTION REFORM BILL 2018

EXPLANATORY NOTES

These notes are circulated for the information of Members of the Legislative Council with the approval of the member in charge of the Bill, Mr Bill Henderson.

Introduction

1. These explanatory notes relate to the Abortion Reform Bill 2018. They have been prepared by Dr Allinson in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

Summary and background

3. On 24th January 2017 after a debate in the House of Keys Dr Allinson was given leave to introduce a Private Member's Bill to restate, with amendments, the law relating to abortion; and for connected purposes. A draft bill was put out for public consultation over the summer of 2017 and initiated a national debate about the access to abortion services on the Isle of Man. Changes were made to the draft and a further consultation involving the groups and professional bodies who had previously contributed was carried out in December 2017.
4. The Bill repeals sections 71 and 72 of *the Criminal Code 1872* and thus decriminalises abortion which is performed in accordance with the new provisions (although it creates a separate offence to target any future attempt to develop "back street" abortion services). It also repeals section 4 of the *Infanticide and Infant Life Preservation Act 1938* and the *Termination of Pregnancy (Medical Defences) Act 1995*. It then constructs a framework for the provision of abortion services on the Isle of Man as a part of reproductive healthcare and a legal framework to guide healthcare professionals and protect the public.

Clauses of the Bill

5. **Clause 1** gives the Act resulting from the Bill its short title.

6. **Clause 2** provides that the resulting Act comes into operation on a day or days appointed by order made by the Council of Ministers. It permits that order to contain such transitional, incidental and transitory provisions as may be considered appropriate.
7. **Clause 3** defines terms used in the Bill including the definition of "health" as agreed by the World Health Organisation. Additional definitions of "serious social grounds", "serious impairment" and "relevant professional" were added as amendments and now form part of the Bill.
8. **Clause 4** specifies the women to whom abortion services may be provided. Normally, these will only be women ordinarily resident in the Island and eligible for care under the *National Health and Care Service Act 2016*. The Bill recognises that an emergency abortion may be provided in circumstances where it is essential to preserve the life of the pregnant woman. Such a provision is necessary in order to meet the Island's obligations under article 2 of the European Convention on Human Rights (to protect the woman's right to life).
9. **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. This clause prohibits the establishment of private services without express Departmental approval.
10. **Clause 6** specifies the conditions which must be satisfied before an abortion may take place. The three trimesters of a pregnancy are treated differently to reflect the ethical and moral issues which arise as the foetus develops and the medical and surgical procedures necessary to provide an abortion at the different stages of pregnancy.
 - (a) Subsection (2) allows for abortion on request of the pregnant woman up to 14 weeks gestation. According to the latest statistics from England and Wales 92% of abortions there were carried out at under 13 weeks gestation.
 - (b) Subsections (4) to (7) allow the provision of an abortion from the beginning of the 15th week and ending at the end of the 23rd week of the gestation period. These conditions include: risk to the pregnant woman's life or health, substantial risk of the foetus having a serious developmental anomaly or fatal foetal anomaly, cases where the pregnancy was a result of rape, and where there are serious social grounds to justify the abortion. Late terminations (after 20 weeks gestation) are rare and latest figures from England and Wales show that they only account for 2% of all terminations. These are usually only done in a specialist unit and not at Nobles hospital.

(c) Subsection (8) details the exceptional reasons for a late termination after 24 weeks gestation. In practice, these would be carried out only in a specialist foetal medicine unit in the UK following a tertiary referral in order to guarantee expert assessment and advice. The exceptional reasons in this section include: risk to the life of the pregnant woman or risk of grave long-term injury to her health, substantial risk that the foetus would die before or during labour, and that if born the child would die shortly after birth or have such significant impairments that would limit either the length or quality of the child's life. According to the latest statistics from England and Wales only 0.1% of abortions there were carried out at over 24 weeks gestation. Late terminations carry substantial risks to the pregnant woman and require specialist counselling, support and techniques. For this reason they are usually only carried out in a specialist centre.

(d) Subsection (9) places a duty on the Department to provide appropriate counselling and support to a pregnant woman seeking a termination and subsection (10) specifies that before abortion services are provided, the pregnant woman must be offered counselling if it is practicable to do so but without causing undue delay to the provision of those services.

(e) Subsection (11) specifies that the assessment of the pregnant woman's health must take into account her actual or reasonably foreseeable environment.

(f) Subsections (12) to (14) specify who can provide counselling, the guidance to be issued by the Department and that it be balanced, impartial and non-judgmental. Pregnant women should be offered full and accurate information on the full range of available options including continuance of the pregnancy. In cases of a prenatal diagnosis of foetal developmental anomaly specific information from relevant support groups and other organisations representing disabled people should be offered. Abortion should never be presented as a default proposal.

11. **Clause 7** specifies who may provide abortion services and ensures that they are authorised by the Department, suitably qualified, skilled and registered with the appropriate professional organisation. Any person who contravenes this section commits an offence.
12. **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 exceptional occasions where they may not do so. The section has been approved by the General Medical Council who regulate all medical practitioners on the Isle of Man and the Royal College of Midwives. Failure to act in accordance with subsection (4) or (5) constitutes an offence.

13. **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. Contravention of subsection (1), (2) or (3) constitutes an offence.
14. **Clause 10** deals with the position of a healthcare professional undertaking the provision of abortion advice or referring her to another service. It also facilitates the possible future use of electronic means of providing advice which may be relevant for specialist counselling from off the Island. The clause makes it clear that the professional does not commit an offence by providing such advice.
15. **Clause 11** deals with the provision of medicinal products to procure an abortion (for example Mifepristone and Misoprostol). In England and Wales during 2016, 62% of all abortions were carried out medically and the rate in Scotland was 82.9%. Medical terminations are safer than those using surgical methods and the necessary medication can be taken at home.
16. **Clause 12** was inserted as an amendment and deals with the extremely unlikely event that a child was born alive during a termination. In these exceptional circumstances guidance from the Royal College of Obstetricians and Gynaecologists clearly states that *"the child should receive the neonatal support and intensive care that is in the child's best interest and the condition managed within published guidance for neonatal practice. A foetus born alive with abnormalities incompatible with life should be managed to maintain comfort and dignity during terminal care"*. The RCOG advises that for abortions for foetal anomaly after 22 weeks, feticide should normally be offered as an option to the pregnant woman.
<https://www.rcog.org.uk/en/guidelines-research-services/guidelines/termination-of-pregnancy-for-fetal-abnormality-in-england-scotland-and-wales/>
17. **Clause 13** deals with the possible risk of sex selection abortion. This amendment was inserted to explicitly not permit such terminations except if there were very specific medical grounds related to the possibility of sex-linked genetic conditions.
18. **Clause 14** creates a new criminal offence to deal with unauthorised or "backstreet" abortions. An amendment was inserted to ensure that health care professionals were under no legal obligation to report a patient who had procured their own miscarriage outside of the new legislation. This was designed to try and ensure that a woman could

access health services without the fear that any disclosure could lead to a conviction.

19. **Clause 15** 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.
20. **Clause 16** deals with the relationship of the provisions of Part 2 with other enactments.
21. **Clause 17** imposes a duty on the Department of Health and Social Care to make regulations in connection with the provision of abortion services. It also mandates the Director of Public Health to keep confidential information on abortion services provided on the Island.
22. **Part 3** was an amendment inserted into the initial Bill to provide for the creation of "access zones" to prevent any demonstration against abortion harassing or intimidate a woman trying to access those services.
23. **Clause 18** defines the terms used in the Bill including "highway" and "patient interference".
24. **Clause 19** places a duty on the Department to establish an access zone around any NHS hospital. If requested, the Department must also establish an access zone around any other premises where terminations are carried out or abortion counselling provided.
25. **Clause 20** places a duty on the Department to establish an access zone if requested around a GP Surgery.
26. **Clause 21** places a duty on the Department to establish an access zone if requested around the home of a person providing abortion services or counselling such as a medical practitioner, midwife, nurse or pharmacist.
27. **Clause 22** stipulates the maximum dimensions of the access zone.
28. **Clause 23** lists the conduct which is prohibited within an established access zone.
29. **Clause 24** details other offences a person may commit if they continue to do so after being warned not to by a constable. These include filming people accessing services or going to work in an access zone and other behaviours which may be intimidating or lead to harassment.

30. **Clause 25** empowers the Attorney General to seek injunctions in the High Court in relation to any breach of Part 3.
31. **Clause 26** places a duty on the Department to draw the attention of the public to the existence and extent of any access zones created.
32. **Clause 27** allows the Department to revoke any established access zones if they are no longer required or requested.
33. **Part 4** comprises *clauses 28 and 29*. 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.
34. The Bill involves an increase in expenditure. The consent of the Treasury for the introduction of the Bill has been obtained under section 10 of the Treasury Act 1985.