



Isle of Man

Ellan Vannin

AT 1 of 2019

ABORTION REFORM ACT 2019



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**Isle of Man***Ellan Vannin*

ABORTION REFORM ACT 2019

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AN ACT to restate the law relating to abortion with amendments; to make provision about access zones for premises where abortion services and related counselling are provided and for premises occupied by those providing such services and counselling; 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 – INTRODUCTORY

1 Short title

The short title of this Act is the Abortion Reform Act 2019.

2 Commencement

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

3 Interpretation

- (1) In this Act, —

“**abortion services**” means services (whether surgical or otherwise) whose purpose is to procure the termination of a woman’s pregnancy;

“**counselling**” means counselling which, —

- (a) if provided during a pregnancy, complies with guidelines under section 6(12) insofar as those guidelines are relevant in the particular case, and
- (b) if provided after a termination, in addition to complying with those guidelines insofar as they are relevant, includes specialist information about the after-effects of termination on the woman;

“the Department” means the Department of Health and Social Care;

“gestation period” means the period of pregnancy calculated –

- (a) in the case of a woman whose menstrual cycle is regular, from the first day of the menstrual period which, in relation to the pregnancy, is the last; and
- (b) in the case of a woman whose menstrual cycle is irregular or who suffers from menstrual disorder, in accordance with an ultrasound scan of the woman’s womb;

Example of a menstrual disorder for paragraph (b) of the definition: amenorrhoea.

“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;

“pharmacist” means a registered pharmacist within the meaning of the Pharmacy Order 2010¹;

“relevant product” means a medicinal product which is –

- (a) designed or intended to procure the termination of a woman’s pregnancy; and
- (b) prescribed for or supplied to her with a view to the termination of her pregnancy;

“relevant professional” means a person who, for the time being falls within paragraph (a) or (d) of the definition of “health care professional” in section 3 of the *Health Care Professionals Act 2014*;

“serious impairment” means a condition which –

- (a) would significantly reduce the length and quality of the child’s life;
- (b) would be permanent and irreversible; and

¹ S.I. 2010/231.

- (c) could not, in the view of the woman, after discussion with a relevant professional, be sufficiently ameliorated after the birth of the child by corrective surgery or the use of aids and adaptations;

“**serious social grounds**” means circumstances or conditions affecting the woman which are long-term and will have, or can reasonably be expected to have, a significant, adverse and enduring impact on her health;

“**specified**” means specified in regulations;

“**treatment**” means the process beginning with the consultation with the relevant professional or pharmacist which could lead to the termination and ending with the disposal of the products of conception;

“**woman**” means a person of any age who is or, as the case requires, has been pregnant.

Note: For the sake of clarity, it does not matter whether the person to whom abortion services are provided self-identifies as a woman, transgender, gender neutral, gender fluid or non-binary.

- (2) References in this Act to the termination of a woman’s pregnancy are references to its termination by artificial means (whether chemical or surgical) in circumstances where it is intended that a foetus will not be delivered alive (and references to “**termination**” are to be construed accordingly).
- (3) References in this Act to a fine of a stated level are references to the level of fine stated for the time being in the standard scale.

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 the provision of those services in an emergency, in the opinion formed in good faith, of the registered 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 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 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 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 the womb.
- (6) This subsection applies if, according to the woman, the pregnancy resulted from rape, incest or other unlawful intercourse.
- (7) This subsection applies if, according to the woman, there are serious social grounds justifying the termination of the pregnancy.
- (8) From the start of the 24th week of the gestation period abortion services may be provided upon request by or on behalf of a 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 serious impairment which is likely to limit both the length and quality of the child's life.
- (9) The Department must secure the provision of appropriate counselling and support for women seeking a termination under this Act.
- (10) Before abortion services are provided to a woman, she must be offered counselling if it is practicable to do so in all the circumstances without causing undue delay in the provision of those services.
- (11) In determining whether the continuation of a pregnancy would involve a risk to the health of the woman such as is mentioned in subsection (4) or (8)(a) account may be taken of her actual or reasonably foreseeable environment.
- (12) 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.
- (13) The Department may from time to time vary or replace guidelines issued under subsection (12).
- (14) Guidelines issued under subsection (12) 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 are willing to discuss with a pregnant woman, full and accurate information on the full range of available options in relation to the pregnancy;
 - (d) there is available to a pregnant woman information in writing from support groups and other organisations representing people with disabilities.

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 relevant product is registered with the General Medical Council, the Nursing and Midwifery Council or the General Pharmaceutical Council².
- (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 or 7 years' custody.

8 Conscientious objection

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

- (1) Subject to subsections (2) to (4), no relevant professional or pharmacist shall be under any legal duty, whether arising by contract or any statutory or other legal requirement, to participate in any treatment or counselling authorised by this Act if that person has a conscientious objection to participating in such treatment or counselling.
- (2) The Department must not terminate the employment of a person who refuses to participate in treatment or counselling authorised by this Act in reliance upon subsection (1).
- (3) In any legal proceedings, a statement in writing and on oath or affirmation by a person that he or she has a conscientious objection to participating in any treatment or counselling authorised under this Act is conclusive evidence of that objection.
- (4) Subsection (1) does not affect any duty to participate in a treatment which is necessary —
- (a) to save the life of a woman; or
 - (b) to prevent grave permanent injury to the health of a woman.
- (5) A relevant professional or pharmacist who has a conscientious objection referred to in subsection (1) must, —
- (a) without delay inform the woman who requests abortion services that she has a right to see another relevant professional or pharmacist (as the case requires); and
 - (b) ensure she has sufficient information to enable her to exercise the right mentioned in paragraph (a).
- (6) Any relevant professional or pharmacist whose failure to act in accordance with subsection (4) or (5) 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 or a level 5 fine.*

² SI 2010/300.

9 Informed consent a condition of provision of abortion services

- (1) Subject to subsections (2) to (4), 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 woman, —
 - (a) is below 16 years of age, and
 - (b) in the opinion of the relevant professional or pharmacist 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 woman, —
 - (a) obtains the consent of the parent or guardian of, or another person acting *in loco parentis* in relation to, the 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 woman.
- (4) Where the 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 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 (4) commits an offence.
Maximum penalty (on information) — a fine or 5 years' custody.

10 Providing advice about the termination of pregnancy

- (1) For clarity, a person does not commit an offence —
 - (a) by providing a woman with advice or information about the possibility of abortion (whether in the Island or outside it); or
 - (b) by referring the 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) During the first 14 weeks of the gestation period, a relevant professional or pharmacist may —
- (a) prescribe a relevant product for a woman, or
 - (b) supply a relevant product to a woman.
- (2) A person who prescribes a relevant product for, or supplies a relevant product to, a woman intending thereby to procure the termination of her pregnancy otherwise than in accordance with this Act commits an offence.

Maximum penalty (information) — a fine or 5 years’ custody.

12 Duties of medical professional following termination

1995/14/6(5)and drafting

- (1) Where a pregnancy is terminated in accordance with this Act, —
- (a) if the child is born alive, the relevant professional attending the woman is under a duty to take all reasonable steps to preserve the life of the child ; or
 - (b) if there is no live birth, the foetus must be disposed of, subject to subsections (2) and (3)—
 - (i) if possible, in accordance with the wishes of the woman; or
 - (ii) in the absence of any direction by the woman, in accordance with the normal practice of the hospital or other premises where the termination occurs.
- (2) The Department must issue directions as to the appropriate disposal of the foetus.

This subsection, and any directions under it, are subject to subsection (3).

Tynwald procedure for directions — approval required.

- (3) Neither the foetus nor any part of it or may be used or made available for any medical or other experiment or procedure or for any purpose of any description without the express written consent of the woman.
- (4) In a case falling within subsection (1)(a), the relevant professional attending the woman must, as soon as is reasonably practicable after the birth of the child , discuss with the woman the future medical care of the child, and have regard to her wishes in planning that care.

13 Termination of pregnancy on the grounds of the sex of the foetus

- (1) Nothing in section 6 or 11 is to be construed as permitting a pregnancy to be terminated on the grounds of the gender of the foetus.
- (2) For the sake of clarity, subsection (1) does not prevent the termination of a foetus of a particular gender if there are reasonable grounds to believe that the foetus will suffer from a genetic disorder which is more likely to occur in a foetus of one gender than the other.

Note: Subsection (1) precludes the termination of a foetus purely because of its gender. But subsection (2) makes it clear that if, for example, the family history indicates a predisposition to a genetic disorder particularly associated with one gender rather than the other, a termination of a foetus of that gender would not be precluded.

14 Offence of procuring termination of a pregnancy

- (1) A person who, by any means, intentionally procures the termination of a woman's pregnancy, 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 the person proves that the act which caused the termination was done in good faith and for the purpose only of —
 - (a) saving the woman's life; or
 - (b) avoiding grave permanent injury to the woman's health.
- (3) For the sake of clarity, nothing in subsection (1) obliges a relevant professional or pharmacist treating a woman to notify a constable that the woman has taken a relevant product with a view to terminating her pregnancy.

15 Post-termination counselling and support

- (1) The Department must secure the availability, 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) In discharging its functions under subsection (1), the Department must have regard to the fact that a woman may need counselling and support some time after the termination as well as in its immediate aftermath.

- (3) A person providing abortion services must make available, to any woman who requests it, information about the availability of counselling and support.

16 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 woman with a view to procuring the termination of her pregnancy,

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

17 Regulations

(1) The Department must make regulations —

- (a) requiring any registered medical practitioner or other relevant professional or pharmacist, —
 - (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 terminationas may be specified;
- (b) requiring any relevant professional or pharmacist who supplies a person with a relevant product, otherwise than in fulfilment of a prescription issued by another person —
 - (i) to record the reasons for the supply and the circumstances; and
 - (ii) to give notice of the supply and such other information relating to it, as may be specified;
- (c) requiring a relevant professional or pharmacist under a duty to comply with paragraph (a) or (b), except in a case where section 9(2) or (4) (women under disabilities) applies, to record that, to the best of the knowledge and belief of the relevant professional or pharmacist, —
 - (i) the termination does not contravene section 13; and
 - (ii) the woman freely consents to the termination of her pregnancy and has not been coerced into so doing; and
- (d) for prohibiting the disclosure, except to such persons or for such purposes as may be so specified, 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) 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) — level 5 fine.

PART 3 — ACCESS ZONES FOR ABORTION SERVICES

18 Interpretation for this Part

RSBC³/1996/1/1 (part) and drafting

In this Part, —

“**access zone**” means an access zone established under section 19, 20 or 21;

“**counselling**” has the same meaning as in section 6;

“**highway**” means a highway, carriageway, footpath or footway for the purposes of the *Highways Act 1986*;

“**patient**” means a person (“**P**”) who is in an access zone in the course of seeking, or using, abortion services or seeking or receiving counselling, and includes any other person, except a person providing such services, or counselling who is accompanying P for the purpose of giving P emotional support;

“**pavement interference**” means the activity of a person on a public highway who seeks, by any means, including in particular oral, pictorial or written means, to, —

- (a) advise or persuade a patient to refrain from availing herself of abortion services or receiving counselling;
- (b) dissuade a person providing abortion services or counselling from doing so; or
- (c) inform a patient about issues related to abortion services;

“**protest**” includes the carrying out of any act of disapproval with respect to issues related to abortion services, by any means including, in particular, oral, pictorial or written means; and

“**provide**” includes facilitate.

³ I.e. the Revised Statutes of British Columbia.

19 Access zones — hospitals and other premises where terminations are performed or counselling is provided

RSBC1996/1/5

- (1) For the purpose of facilitating access to abortion services, the Department may by order establish an access zone for any national health service hospital in which abortion services may be provided under Part 2.

Tynwald procedure, — approval required.

- (2) If requested to do so by a person performing terminations or providing counselling at any premises, the Department may by notice establish an access zone for the premises.
- (3) An access zone established under subsection (1) or (2) includes the land on which the hospital or other premises stand and any public highway within the area designated by the order or notice.

20 Access zones — surgeries

RSBC/1996/1/7 (adapted)

- (1) If requested to do so by the registered medical practitioner whose surgery it is, the Department may by notice establish an access zone around the surgery of a medical practitioner providing abortion services.
- (2) An access zone established under subsection (1) includes the land on which the surgery is situate and any public highway within the area designated in the notice.

21 Access zones — homes of persons providing abortion services or counselling

RSBC/1996/1/6 (adapted)

- (1) If requested to do so by a relevant professional or pharmacist providing abortion services or a person providing counselling the Department may by notice establish an access zone around the home of the person making the request.
- (2) An access zone established under subsection (1) includes the land comprising the home of the person making the request and any public highway within the area designated in the notice.

22 Access zones — maximum dimensions

Drafting

- (1) An access zone established under section 19, 20 or 21 includes, —
 - (a) the land on which the hospital, surgery, home or other premises stand; and
 - (b) the land comprised in any public highway within such distance of the boundary of the land referred to in paragraph (a), not

exceeding 100m, as the order or notice (as the case requires) creating the access zone may specify.

- (2) The Department may by order amend the maximum distance referred to in subsection (1)(b).

Tynwald procedure for an order under subsection (2) – approval required.

23 Access zones – prohibited conduct

RSBC/1996/1/2

- (1) While in an access zone a person, after having been warned not do so by a constable, must not, –
- (a) engage in pavement interference;
 - (b) protest about abortion services or counselling with the intention of dissuading anyone from providing, or a patient from using, abortion services or receiving counselling;
 - (c) observe, continuously or repeatedly, any premises –
 - (i) in or from which abortion services are provided, or
 - (ii) where counselling is provided,
 for the purpose of dissuading anyone from providing, or a patient from using, abortion services or receiving counselling;
 - (d) place himself or herself close to, and importune, –
 - (i) a person providing abortion services or counselling for the purpose of dissuading that person from doing so; or
 - (ii) a patient for the purpose of dissuading the patient from using abortion services or receiving counselling;
 - (e) harass or intimidate, –
 - (i) a person providing abortion services or counselling for the purpose of dissuading that person from doing so; or
 - (ii) a patient for the purpose of dissuading the patient from using abortion services or receiving counselling.
- (2) A person who contravenes subsection (1) commits an offence.
Maximum penalty (summary) – 12 months' custody or a level 5 fine.
- (3) For clarity, nothing in subsection (1) prevents a constable from performing the constable's duties as such.
- (4) In a prosecution under subsection (1)(a) it is a defence for the accused to show that he or she was, –
- (a) a person providing abortion services or counselling; or
 - (b) a patient seeking or receiving such services or counselling.

24 Access zones — other offences

RSBC/1996/1/2-4 and drafting (subs (4)).

- (1) Having been warned not to do so by a constable, a person must not photograph, film, videotape, sketch or in any other way graphically record a person providing abortion services or a patient while the person providing those services, or the patient (as the case requires) is in an access zone, for the purpose of dissuading any person from providing or using abortion services.
- (2) Having been warned not to do so by a constable, a person must not do any of the following for the purpose of dissuading another from providing abortion services, or dissuading a woman from availing herself of those services, —
 - (a) repeatedly approach, accompany or follow the other person, or a person known to the other person; or
 - (b) engage in threatening conduct directed at the other person or a person known to the other person.
- (3) Having been warned not to do so by a constable, a person must not, for the purpose of dissuading a provider of abortion services from providing abortion services, repeatedly communicate by letter, telephone, facsimile or other specified means with a person who is in an access zone without that person's consent.

Tynwald procedure for regulations under this subsection — approval required.

- (4) A person who contravenes any provision of subsections (1) to (3) commits an offence.

Maximum penalty (summary) — 12 months' custody or a level 5 fine.

25 Injunctions

RSBC/1996/1/10 (adapted)

- (1) On application by the Attorney General, the High Court may grant an injunction to restrain a person from contravening a provision of this Part.
- (2) A contravention may be restrained under subsection (1) whether or not it constitutes an offence under this Part, or constitutes, —
 - (a) incitement of,
 - (b) procurement of,
 - (c) aiding or abetting, or
 - (d) a conspiracy to commit,an offence under this Part.

26 Access zones — notices

The Department must, by means of notices and such other methods of communication (including electronic communications within the meaning of the *Electronic Transactions Act 2000*) as it considers necessary, draw the attention of the public of the existence and extent of access zones created by this Part.

27 Revocation and variation of orders and notices about access zones

- (1) If it appears to the Department that an access zone established under this Part is no longer necessary, or that its extent ought to be varied, it may vary or revoke the order or notice establishing the access zone by a further order or notice (as the circumstances of the case require).
- (2) Before exercising the power conferred by subsection (1), the Department must, if it is practicable to do so, consult the person at whose request the access zone was established.
- (3) Section 26 applies to the revocation or variation of an order or notice by virtue of subsection (1) as it applies to the establishment of an access zone.

Tynwald procedure for an order under subsection (1) – approval required.

PART 4 – CLOSING PROVISIONS**28 Expenditure**

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

29 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*.

Published by Authority

