

Order of the Day

3. CONSIDERATION OF COUNCIL AMENDMENTS

3.1 Abortion Reform Bill 2018 – Council amendments agreed as amended

Dr Allinson to move.

The Speaker: Item 3, Consideration of Council Amendments. Again, I refer Hon. Members to the email I sent out last week about how we will deal with this procedurally, and I call on Dr Allinson to move.

445 **Dr Allinson:** Thank you, Mr Speaker.

Hon. Members, I am very proud to stand before you today and support the amendments tabled by the Legislative Council to the Abortion Reform Bill and the other three amendments before us. I am proud of the workings of Tynwald and grateful for the attention and consideration afforded to the Bill.

450 I am grateful to the Lord Bishop for his unique perspective regarding some of the moral and ethical issues which arose during those debates. Further witnesses were called to give evidence including a pharmacist, a paediatrician and a counsellor who has worked for abortion services.

I believe the amendments before us today enhance the Bill and the input from Her Majesty's Attorney General helps clarify and addresses some of specific concerns Members still had when this Hon. House completed the clauses stage.

455 But most of all I am proud of the women and men of this Island who have engaged in the debate around the Bill and supported its progress. When I was originally given leave to introduce this Private Member's Bill last January, there were some Members who questioned whether such reforms were necessary and suggested a Committee be set up to decide. Since then we have witnessed reform of abortion provisions in Scotland, a campaign for decriminalisation in England and Northern Ireland, and a referendum in the Irish Republic which has altered their constitution and will progressively reform the provision of reproductive healthcare in their country.

460 There are progressive campaigns to reform outdated and restrictive practices in Gibraltar and Malta; and whilst the Argentine Senate narrowly refused to back a popular Bill to allow legal and safe abortion up to 14 weeks, the issues of autonomy, consent and choice will continue to reverberate around the world as women insist that abortion is treated as an intrinsic part of basic healthcare and *not* as a criminal act.

I am proud that our parliamentary system gives somebody like me the ability to bring forward legislation on behalf of my constituents and for the benefit of my country. The right for any Member of Tynwald to bring a Private Member's Bill forward should be cherished and encouraged. It will never distract from the important Government business we are elected to oversee and scrutinise, but it does establish the clear and continuous link between the vote somebody casts in a general election and the laws which are written to govern them.

475 **(A Member:** Hear, hear.)

480 During our deliberations on this Bill there have been many changes and amendments. The Legislative Council have exercised their unique position and special skills to view the draft Bill as a whole with fresh eyes and independent scrutiny. Many of the amendments are technical in nature and aim to simplify the words used and reflect enhanced definitions which then no longer need to be repeated later in the text.

Other amendments seek to rid the Bill of ambiguities created by previous changes and I hope Hon. Members will allow me to detail some of the reasons and consequences for these. Amendment 3 further strengthens the role of counselling and informed consent prior to a termination; whilst amendment 5 redefines 'gestation period' to include the use of ultrasound scans where there is medical uncertainty. Her Majesty's Attorney General proposed amendment 5 which removes the World Health Organisation's definition of 'health' from the Bill. In his opinion, the extra definitions which were added as amendments by this Hon. House made this superfluous and its removal clarified the intent of the Bill. He also proposed amendments to the definition of 'relevant product' and there are further refinements to the definitions of the terms 'treatment' and 'serious impairment'.

I am grateful to Miss August-Hanson for her expansion on the definition of 'woman'. I am also grateful to Mrs Lord-Brennan for amendment 29 which reflects that services should be patient-centred and not overly bureaucratic. I am grateful to Howard Connell, one of our legislative drafters, for his work on the Bill; and to Mrs Sharpe who refined clause 12 to make the wording more elegant and provide clarity to a very complicated issue which might very rarely occur following a termination.

During our deliberations on access zones, the Hon. Member for Ayre and Michael, Mr Cannan expressed concern about the use of the word 'must' in relation to the establishment of such areas and I pledged to ask the Attorney General to liaise with the Ministry of Justice over this provision. Mr Cannan was concerned about the clause and the compatibility with the European Convention on Human Rights, in particular: article 9 which enshrines the freedom of thought, conscience and religion; article 10 which provides that everyone has the right to freedom of expression; and article 11 which provides that everyone has the right to freedom of peaceful assembly and to freedom of association with others. But these are qualified rights and they may be restricted in certain circumstances if necessary and for a legitimate aim. These important rights must be balanced with the right to respect for private and family life enshrined in article 8.

To justify any restrictions on fundamental human rights, it needs to be clearly established that there is a pressing social need and that a fair balance has been struck between the demands of the general community and the requirements of the protection of an individual's rights. In setting that balance, the use of the word 'must' imposes an imperative obligation on the Department to make an order. But the word 'may' clearly gives the Department the space to consider the facts of each individual case and to decide on the balance of probabilities whether or not the establishment of the access zone is justifiable interference. In this way, amendments 56 to 60 make it implicit that this consideration of balancing the fundamental rights of a protester and a woman accessing abortion services are made. They strengthen the Bill by ensuring that the European Convention has been respected in each and every case. This will not just protect any decision made by the Department against vexatious legal challenge, but ensure that women accessing a hospital or clinic are not subjected to harassment or intimidation.

We have come a long way since last January. I have learnt so much in the long process of drafting and refining legislation, but have always been supported by the majority of people from all backgrounds and faiths who appreciate law reform is vital for our society. This Bill ceased to be *my* Private Member's Bill months ago: it is now *our* Bill, a piece of law crafted by all Members of Tynwald which I believe we can justly be proud of.

Mr Speaker, I beg to move that this Hon. Court does concur with the Council in their amendments.

The Speaker: I call on the Hon. Member for Douglas East, Miss Bettison.

Miss Bettison: Thank you, Mr Speaker.

I am incredibly proud to be able to second the Council amendments as laid on the Order Paper before us today. Up to three years ago I naively assumed that if I ever needed an abortion, for whatever reason, it would be available to me safely through the healthcare services of our

535 Island. How wrong I was. I am delighted that a group of calm, but capable and determined campaigners brought this to the attention of the media, the politicians and the then candidates and our community on the Isle of Man. Many people expressed shock, similar to that that I had felt, that laws still existed prohibiting access to safe reproductive healthcare for women.

540 Since then, there has been an incredibly detailed conversation among many parts of our community about how the law should look. I believe that Dr Allinson has taken the spirit of that conversation to provide a Bill that provides safe, effective abortion services to our Island while putting the necessary safeguards in place to prevent it from being used inappropriately. It has been a privilege to support him in this process.

I have also witnessed the excellent scrutiny applied by the Legislative Council Members, from those with years of experience to those for whom this was their first piece of legislation. (A Member: Hear, hear.) The amendments are sensible and ensure that this Abortion Bill is one that other countries, where discussions on this topic are still in their infancy, will look to as an example of excellent legislation. I am confident the DHSC will move swiftly to ensure prompt implementation and remove the necessity for our women to take risks with their health just to access healthcare services.

550 I beg to second.

The Speaker: Thank you.

I call on the Hon. Member for Douglas East, Mr Robertshaw, to move your amendments.

555 **Mr Robertshaw:** Thank you, Mr Speaker, and with your permission I will take both amendments 3A and 8A together with your approval, sir. (The Speaker: Yes.)

560 Can I begin by first of all thanking the hon. mover for indicating his support for these two amendments which are simply further refinements of the amendments brought before us today from LegCo? Can I also, Mr Speaker, thank the mover for his endless courtesy and patience throughout this whole and protracted period? We have not always come at this from the same position but at least I am proud of the way he has conducted himself and I think it is an example to all in terms of how we deal with legislation.

Mr Speaker, turning to amendment 3A, I retain the full integrity of amendment 3 to clause 3 that LegCo have put forward and which in my amendment is detailed at (a), but adds at (b) the following wording:

... if provided after 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;

565 Post-termination counselling is covered in clause 15. There were some significant changes to clause 15 during the debate in LegCo and I welcome the fact that clause 15(2) now says, and I quote:

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.

570 I am, however, concerned that LegCo amendment 3, as it stands, only defines counselling as that which complies with the guidelines issued under clause 6(12). And I should add that the only part of the clause 6(14) conditions which would be relevant to post-abortion counselling is:

... counselling is balanced, impartial and non-judgmental;

575 My amendment 3A would extend the definition of counselling and therefore ensure that counselling given under clause 15 would need to meet the guidelines but also include specialist information about the after-effects of termination on the woman. This is important because the counsellor must have specialist expertise and familiarity with post-abortion scenarios rather than being a general counsellor. This specialist expertise is because the counsellor will, with the

woman, identify post-abortion issues and then counsel, signpost or refer onwards if, and as, needed.

580 Mr Speaker, I fully appreciate that there may only be a few women each year who will feel the need to access services under clause 15, but it seems to me that there should be as much care about the counselling that is provided *after* an abortion as before. Indeed LegCo's amendment to clause 15(2) makes clear this this need for counselling may appear at some later time after an abortion, as well as immediately afterwards.

585 We need to provide counsellors who can offer that support and I cannot imagine that Hon. Members would not want this to be the same standard and with similar guidelines as counselling provided before an abortion.

Mr Speaker, I now wish to turn to amendment 8A. During the debates earlier this year I raised a number of concerns about the impact of the Bill on freedom of conscience. I welcome the amendment by Legislative Council for a revised definition of 'treatment' set out in clause 3 by amendment 8, so that 'treatment', and I quote:

... means the process beginning with the consultation with the relevant professional or pharmacist leading to the termination and ending with the disposal of the products of conception.

590 My one and only hesitation about this definition is this: that if a consultation with a relevant professional or pharmacist did not result in a termination because, for example, a woman changed her mind or did not fit the criteria in clause 6, technically – and this is very much a technical point only – this might not be constructed as treatment and therefore would not be covered by the right to conscientious objection in clause 8 on conscientious objection. Therefore
595 my amendment 8A to amendment 8 would address that concern with a slight change of wording which I hope Members will feel able to support. For the word 'leading' on the second line of the amendment I am proposing that the wording should say, 'which could lead'.

Mr Speaker, I hope these amendments will receive the support of the House and I beg to move both amendments 3A and 8A in my name, sir.

Amendment 3A to clause 3

Page 9, after line 17 insert—

“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;’.

Amendment 8A to Council amendment of definition of ‘treatment’

For ‘leading’ in the second line, substitute ‘which could lead’.

600 **The Speaker:** I call on the Hon. Member for Douglas South, Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

I beg to second both of the amendments made by my colleague, Mr Robertshaw.

605 **The Speaker:** I call on the Hon. Member for Middle, Mr Quayle.

Mr Quayle: Thank you, Mr Speaker.

610 This Bill now makes it plain that abortion on the basis of sex is not legal, apart from in relation to sex-linked diseases. However, there is no comparable requirement asking a medical practitioner or pharmacist to record that they have assessed to the best of their ability that an

abortion is not being sought for illegal sex-selective purposes. And I have to apologise for my 'Sir Humphrey' comment now, but my amendment to the amendment therefore of 55 – 55A – requires a medical practitioner or pharmacist to record that they have assessed to the best of their ability that an abortion is not being sought for illegal sex-selective purposes.

615 Mr Speaker, before I move my amendment to the amendment, 55A, I would also like to echo the sentiments expressed by my colleague, the Hon. Member for Douglas East, Mr Robertshaw in the honourable way that Hon. Member, Dr Allinson has handled taking this Bill forward. It is hard work. The amount of hard work – as someone who has moved a number of Bills – that goes into this behind the scenes is phenomenal and this has been an exceptionally difficult Bill to take
620 forward. I just want to echo those sentiments and thank him for his hard work and dignity in dealing with an awful lot of comment.

I therefore beg to move the amendment 55A, standing in my name.

Amendment 55A to Council amendment to clause 17

After 'pharmacist' add—

'—

(i) the termination does not contravene section 13; and

*(ii)'.
'*

The Speaker: I call on the Hon. Member for Glenfaba and Peel, Mr Boot.

625 **Mr Boot:** I beg to second.

The Speaker: Hon. Member for Michael, Mr Cannan.

Mr Cannan: Thank you, Mr Speaker.

630 I do feel that I must rise to address the amendments that are set out at clauses 19, 20 and 21. And I do want to actually thank the hon. mover for his gracious remarks this morning regarding the 'must/may' issue. I do hate to say that I told you so, but I told you so! (*Laughter*)

635 What I would say, because I think that in the spirit of this it is not the time or place to score points, but I do want to say to the Hon. House that even under great pressure we must always consider the principles that we stand up for, and we should not abandon core principles expressed in human rights legislation, and we must pay due respect to those in this and other legislation that comes before us, irrespective of the pressures and heat of the moment that may arise.

640 I do have just a couple of points for the Hon. Member for Ramsey, Mr Hooper, who said to me that it cannot be a serious amendment when I brought it to the House. I can assure the Hon. Member it was a *very* serious amendment and I do not joke in bringing such amendments forward. The Hon. Member also pointed out that we needed 11 pages of legislation that they have in the UK Act – well, I hope that we do not need 11 pages of legislation, but if we do I hope he has got his pen ready.

645 But I too want to pay tribute particularly to the mover of the Bill because I do think he has conducted this debate in a very measured and calm manner and I think that they were, to an extent, exemplified in the way he conducted his remarks this morning. So I thank him for that and give this Bill my support.

650 **The Speaker:** If no other Member wishes to speak, I will give the right of reply first to Mr Quayle in terms of your amendment, sir, if you wish to reply?

Mr Quayle: No, I have nothing further to add, thank you.

655 **The Speaker:** Mr Robertshaw?

Mr Robertshaw: No, Mr Speaker, I do not.

The Speaker: In which case, Dr Allinson to reply to the motion.

660 **Dr Allinson:** Thank you, Mr Speaker.

I would like to thank the Hon. Member, Mr Cannan, for his comments. I completely agree with him that we need to have respect for human rights legislation, but that legislation can be complex at times and I agree with him that he was right. But as I said, during our debate, what I wanted to do was to take that away and give the Attorney General some time to look at that and consult with the Ministry of Justice in the United Kingdom. What we have actually seen with Sajid Javid's decision not to go for automatic exclusion zones in the United Kingdom, again was for that reason of respecting the human rights convention because we have to show that consideration has been given to balancing those rights.

670 I would like to thank all the Hon. Members for their input today and throughout all the stages of this Bill, and particularly to Mr Robertshaw and the Chief Minister for being very open in sharing their amendments that we have considered today.

I would also like to personally thank the Hon. Member for Douglas East, Miss Bettison, for seconding this motion and for her support and wise counsel over the last two years. Last night there was a meeting in Douglas to find ways of increasing the participation of women in the democratic process and I know that several Hon. Members attended and shared ideas aimed at encouraging more women to stand for office, to identify the barriers to participation and publicise the potential benefits to Tynwald and Government of having a more diverse and inclusive membership. And I think if this House is to retain the respect and trust of the electorate it must reflect our society as well as remaining democratically accountable to it.

680 It is my hope that by tackling subjects such as abortion rights, equality, equal pay for equal work, sexual violence and educational opportunities Tynwald can continue to evolve and mature. The issues we tackle here have to be relevant to the community we serve and our deliberations and decisions should always have a real positive impact. Abortion Law reform is not purely a feminist issue. In this very Chamber on Monday 18th July 2016, Junior Tynwald debated the motion that the current abortion laws were outdated and needed to be reviewed. They voted in favour. Now, two years later, you have the chance to support all these amendments and allow this Bill to progress.

690 But legislation alone is not enough. The principles of autonomy, consent and choice enshrined in this Bill when passed, will have to be implemented by the Department of Health and Social Care. Services will have to be organised and planned to provide clear access to abortion care. The challenge will then pass to the staff of the NHS to create a truly patient-centred system which makes these words reality and these aspirations real.

695 Hon. Members, I beg to move these amendments and ask that they are accepted in full and we will move forward together to meet further challenges, seek further opportunities and fulfil the promises we made to ourselves and others to make a real difference while we have the privilege of being in office.

Thank you, Mr Speaker.

700 **The Speaker:** Now, Hon. Members, as per the email that I sent out outlining how this will be dealt with, the motion is that the amendments made by the Legislative Council be agreed so that there are three amendments and we will deal with those first.

Firstly, dealing with amendment 3A in the name of Mr Robertshaw, the motion is that they stand part of the amendments to the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

705 Amendment 8A in the name of Mr Robertshaw, that they stand part of the amendments to the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

And amendment 55A in the name of Mr Quayle: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

710 I therefore put to the House that the Council amendments, as amended, be concurred with by this House. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Those three amendments will then return to the Legislative Council and, subject to their approval, will mean that the Bill will then be able to go forward to Tynwald for signature.

Hon. Members, that completes the business before the House of Keys this morning and we stand adjourned until ten o'clock on 6th November in our own Chamber.

The House adjourned at 10.48 a.m.