



Isle of Man

Ellan Vannin

ABORTION REFORM BILL 2018

ABORTION REFORM BILL 2018

Explanatory Memorandum

1. This Bill is promoted by Mr Henderson MLC, pursuant to leave granted by the Keys to Dr Allinson and following the passage of the Bill through that Branch.
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 Misoprostol).

11. *Clause 12* imposes duties once a termination has taken place. If a child is born alive as a result of a termination, after consultation with the woman, the medical professional must take all reasonable steps to preserve the life of the child. If no live birth results, clause 12(b) specifies how the foetus must be dealt with.
12. *Clause 13(1)* makes it clear that nothing in clause 6 or 11 renders lawful a termination on the grounds of the gender of the foetus. This is subject to a qualification in subsection (2) that subsection (1) does not preclude a termination in connection with a hereditary condition which affects one gender more than the other.
13. *Clause 14* creates a new criminal offence, in place of that under section 71 of the Criminal Code 1872 to deal with “backstreet” abortions.
14. *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.
15. *Clause 16* deals with the relationship of the provisions of Part 2 with other enactments.
16. *Clause 17* imposes a duty on the Department of Health and Social Care to make regulations in connection with the provision of abortion services and is similar to section 7 of the Termination of Pregnancy (Medical Defences) Act 1995, although it also includes provision for information to be supplied by a pharmacist who supplies a relevant product to a woman.
17. *Part 3 of the Bill comprises clauses 18 to 27.* These provisions deal with the creation of access zones around premises (such as hospitals and surgeries) where terminations take place or where counselling under the Bill is provided and around the homes of those who provide or participate in the provision of abortion services.
18. *Clause 18* provides for the interpretation of a series of terms used within Part 3.
19. *Clause 19* imposes a duty on the Department to create an access zone around any national health service hospital where terminations or counselling provided for under the Bill take place. It also requires the Department to do so in respect of other premises where terminations or counselling occur, if requested to do so by the person conducting the terminations or providing the counselling.
20. *Clause 20* imposes a similar duty to create access zones around doctors’ surgeries on request.
21. *Clause 21* imposes a similar duty to create an access zones around the homes of those providing abortion services or counselling.
22. *Clause 22* provides the maximum dimensions of access zones created under the earlier provisions of Part 3.

23. *Clauses 23 and 24* create offences in connection with access zones in order to protect the rights of those providing or accessing abortion services or counselling.
24. *Clause 25* empowers the Attorney General to seek injunctions in the High Court in relation to any breach of Part 3, regardless of whether the breach concerned constitutes an offence.
25. *Clause 26* deals with the giving of notices about the creation and extent of access zones.
26. *Clause 27* permits the Department to revoke orders and notices designating access zones.
27. *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.
28. In the opinion of the member moving the Bill, Mr Henderson MLC, its provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.



Ellan Vannin

ABORTION REFORM BILL 2018

Index

Section	Page
PART 1 – INTRODUCTORY	9
1 Short title.....	9
2 Commencement.....	9
3 Interpretation.....	9
PART 2 – PROVISION OF ABORTION SERVICES	11
4 Abortion services – to whom provided.....	11
5 Abortion services – where provided.....	11
6 Abortion services – conditions for provision.....	11
7 Persons authorized to provide abortion services.....	13
8 Conscientious objection.....	13
9 Informed consent a condition of provision of abortion services.....	14
10 Providing advice about the termination of pregnancy.....	15
11 Provision of medicinal products to procure abortion.....	15
12 Duty of medical professional following termination.....	16
13 Termination of pregnancy on the grounds of the sex of the foetus.....	16
14 Offence of procuring termination of a pregnancy.....	16
15 Post-termination counselling and support.....	17
16 Relationship with other provisions.....	17
17 Regulations.....	17
PART 3 – ACCESS ZONES FOR ABORTION SERVICES	18
18 Interpretation for this Part.....	18
19 Access zones – hospitals and other premises where terminations are performed or counselling is provided.....	19
20 Access zones – surgeries.....	19
21 Access zones – homes of persons providing abortion services or counselling.....	19
22 Access zones – maximum dimensions.....	20
23 Access zones – prohibited conduct.....	20
24 Access zones – other offences.....	21
25 Injunctions.....	21
26 Access zones – notices.....	22

27 Revocation and variation of orders and notices about access zones 22

PART 4 – CLOSING PROVISIONS **22**

28 Expenditure..... 22

29 Repeals..... 22





Ellan Vannin

ABORTION REFORM BILL 2018

1 **A BILL** to restate the law relating to abortion with amendments; to make
 2 provision about access zones for premises where abortion services and related
 3 counselling are provided and for premises occupied by those providing such
 4 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:—

5 **PART 1 – INTRODUCTORY**

6 **1 Short title**

7 The short title of this Act is the Abortion Reform Act 2018.

8 **2 Commencement**

9 (1) This Act comes into operation on such day or days as the Council of
 10 Ministers may by order appoint.

11 (2) An order under subsection (1) may include such consequential,
 12 incidental, supplemental, transitional and transitory provision as the
 13 Council of Ministers considers appropriate.

14 **3 Interpretation**

15 (1) In this Act—

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

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

19 “**gestation period**” means the period of pregnancy of a female calculated from
 20 the first day of the menstrual period which in relation to the pregnancy,
 21 is the last;

22 “**health**” means a state of complete physical, mental and social well-being and
 23 not merely the absence of disease or infirmity;

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

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

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

9 “**pharmacist**” means is registered pharmacist within the meaning of the
10 Pharmacy Order 2010¹;

11 “**relevant product**” has the meaning given by section 11(1);

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

15 “**serious impairment**” means a condition which —

- 16 (a) would significantly reduce the length or quality of the child’s life;
17 (b) would be permanent and irreversible; and
18 (c) could not, in the view of the woman, after discussion with a
19 relevant professional, be sufficiently ameliorated after the birth of
20 the child by corrective surgery or the use of aids and adaptations;

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

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

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

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

30 (2) References in this Act to the termination of a woman’s pregnancy are
31 references to its termination by artificial means (whether chemical or
32 surgical) in circumstances where it is intended that a foetus will not be
33 delivered alive (and references to “**termination**” are to be construed
34 accordingly).

35 (3) References in this Act to a fine of a specified level are references to the
36 level of fine specified for the time being on the standard scale.

¹ S.I. 2010/231.

1 **PART 2 – PROVISION OF ABORTION SERVICES**

2 **4 Abortion services – to whom provided**

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

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

8 **5 Abortion services – where provided**

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

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

20 **6 Abortion services – conditions for provision**

- 21 (1) Abortion services may be provided only if such of the conditions in this
- 22 section as are relevant in the particular case are satisfied.
- 23 (2) During the first 14 weeks of the gestation period, abortion services may
- 24 be provided upon request by or on behalf of a pregnant woman.
- 25 (3) During the period commencing with the beginning of the 15th week and
- 26 ending at the end of the 23rd week of the gestation period, such services
- 27 may be provided, upon request by or on behalf of a pregnant woman if
- 28 the registered medical practitioner attending her is of the opinion,
- 29 formed in good faith that one or more of subsections (4) to (7) applies in
- 30 her case.
- 31 (4) This subsection applies if the continuation of the pregnancy would pose
- 32 a substantial risk of serious injury to the pregnant woman's life or health.
- 33 (5) This subsection applies if there is a substantial risk that the foetus is or
- 34 will be affected by a significant physical or mental impairment which –
- 35 (a) will have a seriously debilitating effect on the child; or
- 36 (b) will result in the death of the foetus *in utero*.

- 1 (6) This subsection applies if, according to the pregnant woman, the
2 pregnancy resulted from rape, incest or other unlawful intercourse.
- 3 (7) This subsection applies if, according to the pregnant woman, there are
4 serious social grounds justifying the termination of the pregnancy.
- 5 (8) From the start of the 24th week of the gestation period abortion services
6 may be provided upon the request by or on behalf of a pregnant woman
7 if the registered medical practitioner attending her is of the opinion,
8 formed in good faith, and after taking such specialist medical advice as
9 appears to the practitioner to be appropriate, that —
- 10 (a) the termination is necessary to prevent grave long-term injury to
11 her health;
- 12 (b) the continuance of the pregnancy would involve risk to her life,
13 greater than if the pregnancy were terminated;
- 14 (c) there is a substantial risk that because of its physical or mental
15 condition the foetus would die before or during labour;
- 16 (d) there is a substantial risk that, were the child born alive—
- 17 (i) the child would die shortly after birth because of severe
18 foetal developmental impairment; or
- 19 (ii) the child would suffer a serious impairment which is likely
20 to limit both the length and quality of the child’s life.
- 21 (9) The Department must secure the provision of appropriate counselling
22 and support for women seeking a termination under this Act.
- 23 (10) Before abortion services are provided to a pregnant woman, she must be
24 offered counselling if it is practicable to do so in all the circumstances
25 without causing undue delay in the provision of those services.
- 26 (11) In determining whether the continuation of a pregnancy would involve a
27 risk to the health of the pregnant woman such as is mentioned in
28 subsection (4) or (8)(a) account may be taken of her actual or reasonably
29 foreseeable environment.
- 30 (12) The Department must issue guidelines about counselling for the
31 purposes of this section, and in the other provisions of this section
32 “counselling” means counselling provided by a person approved by the
33 Department in accordance with the guidelines.
- 34 (13) The Department may from time to time vary or replace guidelines issued
35 under subsection (12).
- 36 (14) Guidelines issued under subsection (12) must be framed so as to secure
37 that—
- 38 (a) counselling is balanced, impartial and non-judgmental;
- 39 (b) in the case of a prenatal diagnosis of foetal developmental
40 impairment, counselling includes information about the
41 possibility of continuing the pregnancy to term;

- 1 (c) counsellors have available to them, and are willing to discuss with
 2 a pregnant woman, full and accurate information on the full range
 3 of available options in relation to the pregnancy;
- 4 (d) there is available to a pregnant woman information in writing
 5 from support groups and other organisations representing people
 6 with disabilities.

7 **Persons authorized to provide abortion services**

- 8 (1) A person may participate in the provision of abortion services if, but only
 9 if, that person is authorised by the Department, possesses the
 10 appropriate skill in relation to the gestation period; and —
- 11 (a) in the case of a medical practitioner, he or she holds a current
 12 licence to practise issued by the General Medical Council and is
 13 on the list maintained by the Department under section 4 of the
 14 *National Health Service Act 2001*;
- 15 (b) in the case of a nurse or a midwife, is registered by the Nursing
 16 and Midwifery Council;
- 17 (c) in the case of a person supplying a medicinal product to cause the
 18 termination of a pregnancy, is registered with the General
 19 Medical Council, the Nursing and Midwifery Council or the
 20 General Pharmaceutical Council².
- 21 (2) A person who participates in the provision of abortion services otherwise
 22 than in accordance with subsection (1) commits an offence.
- 23 *Maximum penalty (on information) for subsection (2) — fine or 7 years'*
 24 *custody.*

25 **8 Conscientious objection**

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

- 27 (1) Subject to subsections (2) to (4), no relevant professional or pharmacist
 28 shall be under any legal duty, whether arising by contract or any
 29 statutory or other legal requirement, to participate in any treatment or
 30 counselling authorised by this Act if that person has a conscientious
 31 objection to participating in such treatment or counselling.
- 32 (2) The Department must not terminate the employment of a person who
 33 refuses to participate in treatment or counselling authorised by this Act
 34 in reliance upon subsection (1).
- 35 (3) In any legal proceedings, a statement in writing and on oath or
 36 affirmation by a person that he or she has a conscientious objection to
 37 participating in any treatment or counselling authorised under this Act is
 38 conclusive evidence of that objection.

² SI 2010/300.

- 1 (4) Subsection (1) does not affect any duty to participate in a treatment
2 which is necessary —
- 3 (a) to save the life of a pregnant woman; or
4 (b) to prevent grave permanent injury to the health of a pregnant
5 woman.
- 6 (5) A relevant professional or pharmacist who has a conscientious objection
7 referred to in subsection (1) must—
- 8 (a) inform the pregnant woman who requests abortion services that
9 she has a right to see another relevant professional or pharmacist
10 (as the case requires); and
- 11 (b) ensure she has sufficient information to enable her to exercise the
12 right mentioned in paragraph (a).
- 13 (6) Any relevant professional or pharmacist whose failure to act in
14 accordance with subsection (4) or (5) results in the woman suffering
15 injury or the loss of her life (or both) commits an offence.
- 16 *Maximum penalty —*
- 17 (a) *(on information): a fine or 2 years' custody; or*
18 (b) *(summary) 12 months' custody or a level 5 fine.*

19 **9 Informed consent a condition of provision of abortion services**

- 20 (1) Subject to subsections (2) and (3), a person must not provide or assist in
21 the provision of abortion services to a woman unless the woman has
22 given her informed consent.
- 23 (2) Where the pregnant woman—
- 24 (a) is below 16 years of age, and
25 (b) in the opinion of the relevant professional or pharmacist
26 attending her, she does not have sufficient maturity and
27 intelligence to understand the nature and implications of the
28 proposed treatment,
- 29 abortion services must not be provided unless subsection (3) is satisfied.
- 30 (3) This subsection is satisfied if, but only if the medical practitioner
31 attending the pregnant woman—
- 32 (a) obtains the consent of the parent or guardian of, or another person
33 acting *in loco parentis* in relation to, the pregnant woman; and
- 34 (b) is satisfied that the decision to consent to the termination of the
35 pregnancy is being taken in good faith and in the best interests of
36 the pregnant woman.
- 37 (4) Where the pregnant woman is unable to give informed consent due to a
38 mental, medical or physical incapacity, the registered medical

- 1 practitioner attending her must not provide abortion services unless the
2 practitioner —
- 3 (a) obtains the consent of the parent or guardian of the pregnant
4 woman, or another person lawfully empowered to give consent
5 on her behalf; or
- 6 (b) is of the view, formed in good faith, that because of the urgency of
7 the situation and the likely delay in obtaining such consent, it is
8 necessary, in order to protect the health or life of the woman, to
9 proceed without such consent.
- 10 (5) A person who contravenes subsection (1), (2) or (3) commits an offence.
11 *Maximum penalty (on information) — a fine or 5 years' custody.*

12 **10 Providing advice about the termination of pregnancy**

- 13 (1) For clarity, a person does not commit an offence —
- 14 (a) by providing a pregnant woman with advice or information about
15 the possibility of abortion (whether in the Island or outside it); or
- 16 (b) by referring the pregnant woman to another person (whether in
17 the Island or outside it) for further advice or treatment which may
18 result in a termination.
- 19 (2) In subsection (1) “advice” includes advice provided by means of
20 electronic communications (within the meaning of the *Electronic*
21 *Transactions Act 2000*).

22 **11 Provision of medicinal products to procure abortion**

- 23 (1) For the purposes of this section a “relevant product” is a medicinal
24 product which is —
- 25 (a) designed or intended to procure the termination of a woman’s
26 pregnancy; and
- 27 (b) prescribed for or supplied to her with a view to the termination of
28 her pregnancy.
- 29 (2) During the first 14 weeks of the gestation period, a registered medical
30 practitioner, midwife, nurse or pharmacist may —
- 31 (a) prescribe a relevant product for a pregnant woman, or
32 (b) supply a relevant product to a pregnant woman.
- 33 (3) A person who prescribes a relevant product for, or supplies a relevant
34 product to, a pregnant woman intending thereby to procure the
35 termination of her pregnancy otherwise than in accordance with this Act
36 commits an offence.
37 *Maximum penalty (information) — a fine or 5 years' custody.*

12 Duty of medical professional following termination

1995/14/6(5)

Where a pregnancy is terminated in accordance with this Act —

- (a) if the child is born alive, the medical practitioner, midwife or nurse attending the woman is under a duty, after discussion with the woman, 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 —
 - (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 facility where the termination occurs,

but neither the foetus nor any part of it 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.

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 he or she proves that the act which caused the termination was done in good faith and for the purpose only of —

- 1 (a) saving the woman's life; or
- 2 (b) avoiding grave permanent injury to the woman's health.
- 3 (3) For the sake of clarity, nothing in subsection (1) obliges a relevant
- 4 professional or pharmacist treating a pregnant woman to notify a
- 5 constable that the woman has taken a relevant product with a view to
- 6 terminating her pregnancy.

7 **15 Post-termination counselling and support**

- 8 (1) The Department must secure the availability, to any woman who has
- 9 undergone a termination of a pregnancy in accordance with this Act, of
- 10 suitable and sufficient post-termination counselling and support.
- 11 (2) Counselling under this section must comply with guidelines under
- 12 section 6(12) insofar as those guidelines are relevant.

13 **16 Relationship with other provisions**

14 A person who —

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

19 in accordance with this Part does not commit an offence under the *Infanticide*

20 *and Infant Life (Preservation) Act 1938*.

21 **17 Regulations**

- 22 (1) The Department must make regulations —
- 23 (a) requiring any registered medical practitioner or other relevant
- 24 professional to record the reasons for the termination and its
- 25 circumstances (including which of subsections (4) to (8) of section
- 26 6 apply); and
- 27 (ii) to give notice of the termination and such other
- 28 information relating to the termination
- 29 as may be specified;
- 30 (b) requiring any relevant professional or pharmacist who supplies a
- 31 person with a relevant product, otherwise than in fulfilment of a
- 32 prescription issued by another person—
- 33 (i) to record the reasons for the supply and the circumstances;
- 34 and
- 35 (ii) to give notice of the supply and such other information
- 36 relating to it, as may be specified;

- 1 (c) requiring a relevant professional under a duty to comply with
 2 paragraph (a) or (b), except in a case where section 9(2) or (4)
 3 (women under disabilities) applies, to record that, to the best of
 4 the relevant professional's knowledge and belief, the woman
 5 freely consents to the termination of her pregnancy and has not
 6 been coerced into so doing; and
- 7 (d) for prohibiting the disclosure, except to such persons or for such
 8 purposes as may be so specified, of notices given or information
 9 furnished in accordance with the regulations.

10 *Tynwald procedure — approval required.*

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

16 *Maximum penalty (summary) — level 5 fine.*

17 PART 3 — ACCESS ZONES FOR ABORTION SERVICES

18 18 Interpretation for this Part

19 RSBC³/1996/1/1 (part) and drafting

20 In this Part—

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

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

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

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

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

- 33 (a) advise or persuade a patient to refrain from availing herself of
 34 abortion services or receiving counselling;
- 35 (b) dissuade a person providing abortion services or counselling from
 36 doing so; or

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



- 1 (c) inform a patient about issues related to abortion services;
- 2 “**protest**” includes the carrying out of any act of disapproval with respect to
- 3 issues related to abortion services, by any means including, in particular,
- 4 oral, pictorial or written means; and
- 5 “**provide**” includes facilitate.

6 **19 Access zones — hospitals and other premises where terminations are**

7 **performed or counselling is provided**

8 RSBC1996/1/5

- 9 (1) For the purpose of facilitating access to abortion services, the Department
- 10 must by order establish an access zone for any national health service
- 11 hospital in which abortion services may be provided under Part 2.
- 12 *Tynwald procedure — approval required.*
- 13 (2) If requested to do so by a person performing terminations or providing
- 14 counselling at any premises, the Department must by notice establish an
- 15 access zone for the premises.
- 16 (3) An access zone established under subsection (1) or (2) includes the land
- 17 on which the hospital or other premises stand and any public highway
- 18 within the area designated by the order or notice.

19 **20 Access zones — surgeries**

20 RSBC/1996/1/7 (adapted)

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

27 **21 Access zones — homes of persons providing abortion services or**

28 **counselling**

29 RSBC/1996/1/6 (adapted)

- 30 (1) If requested to do so by a medical practitioner, midwife, nurse or
- 31 pharmacist providing abortion services or a person providing
- 32 counselling the Department must by notice establish an access zone
- 33 around the home of the person making the request.
- 34 (2) An access zone established under subsection (1) includes the land
- 35 comprising the home of the person making the request and any public
- 36 highway within the area designated in the notice.

1 **22 Access zones — maximum dimensions**

2 Drafting

- 3 (1) An access zone established under section 19, 20 or 21 includes—
- 4 (a) the land on which the hospital, surgery, home or other premises
- 5 stand; and
- 6 (b) the land comprised in any public highway within such distance of
- 7 the boundary of the land referred to in paragraph (a), not
- 8 exceeding 100m, as the order or notice (as the case requires)
- 9 creating the access zone may specify.
- 10 (2) The Department may by order amend the maximum distance referred to
- 11 in subsection (1)(b).

12 *Tynwald procedure for an order under subsection (2) — approval required.*

13 **23 Access zones — prohibited conduct**

14 RSBC/1996/1/2

- 15 (1) While in an access zone a person, after being been warned not do so by a
- 16 constable, must not—
- 17 (a) engage in pavement interference;
- 18 (b) protest about abortion services or counselling with the intention
- 19 of dissuading anyone from providing, or a patient from using,
- 20 abortion services or receiving counselling;
- 21 (c) observe, continuously or repeatedly, any premises —
- 22 (i) in or from which abortion services are provided, or
- 23 (ii) where counselling is provided,
- 24 for the purpose of dissuading anyone from providing, or a patient
- 25 from using, abortion services or receiving counselling;
- 26 (d) place himself or herself close to, and importune—
- 27 (i) a person providing abortion services or counselling for the
- 28 purpose of dissuading that person from doing so; or
- 29 (ii) a patient for the purpose of dissuading the patient from
- 30 using abortion services or receiving counselling;
- 31 (e) harass or intimidate—
- 32 (i) a person providing abortion services or counselling for the
- 33 purpose of dissuading that person from doing so; or
- 34 (ii) a patient for the purpose of dissuading the patient from
- 35 using abortion services or receiving counselling.
- 36 (2) A person who contravenes subsection (1) commits an offence.
- 37 *Maximum penalty (summary) — 12 months' custody or a level 5 fine.*
- 38 (3) For clarity, nothing in subsection (1) prevents a constable from
- 39 performing the constable's duties as such.

- 1 (4) In a prosecution under subsection (1)(a) it is a defence for the accused to
2 show that he or she was—
3 (a) a person providing abortion services or counselling; or
4 (b) a patient seeking or receiving such services or counselling.

5 **24 Access zones — other offences**

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

- 7 (1) Having been warned not to do so by a constable, a person must not
8 photograph, film, videotape, sketch or in any other way graphically
9 record a person providing abortion services or a patient while the person
10 providing those services, or the patient (as the case requires) is in an
11 access zone, for the purpose of dissuading any person from providing or
12 using abortion services.
- 13 (2) Having been warned not to do so by a constable, a person must not do
14 any of the following for the purpose of dissuading another from
15 providing abortion services, or dissuading a woman from availing
16 herself of those services—
17 (a) repeatedly approach, accompany or follow the other person, or a
18 person known to the other person;
19 (b) continuously or repeatedly observe—
20 (i) a person providing abortion services;
21 (ii) a patient; or
22 (iii) a building in or from which abortion services are provided;
23 (c) place himself or herself close to, and to importune, a person
24 providing abortion services or a patient; or
25 (d) engage in threatening conduct directed at the other person or a
26 person known to the other person.
- 27 (3) Having been warned not to do so by a constable, a person must not, for
28 the purpose of dissuading a provider of abortion services from providing
29 abortion services, repeatedly communicate by letter, telephone or
30 facsimile with a person who is in an access zone without that person's
31 consent.
- 32 (4) A person who contravenes any provision of subsections (1) to (3)
33 commits an offence.

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

35 **25 Injunctions**

36 RSBC/1996/1/10 (adapted)

- 37 (1) On application by the Attorney General, the High Court may grant an
38 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*—

- 1 (i) in subsection (1) the words “or for an offence under section
2 71 of the Criminal Code 1872” and “, or of an offence under
3 the said section 71”; and
- 4 (ii) subsection (2);
- 5 (c) the *Termination of Pregnancy (Medical Defences) Act 1995*; and
- 6 (d) in the Schedule to the *National Health and Care Service Act 2016*, the
7 entries relating to provisions of the *Termination of Pregnancy*
8 *(Medical Defences) Act 1995*.

IN THE COUNCIL

ABORTION REFORM BILL 2018

A **BILL** 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.

Brought from the Keys on 8 May 2018.

MR HENDERSON

MAY 2018