



## ABORTION REFORM ACT 2019

### DEPARTMENT OF HEALTH AND SOCIAL CARE DIRECTIONS

#### DISPOSAL OF A FOETUS FOLLOWING TERMINATION DIRECTIONS 2019

The Department of Health and Social Care issues the following directions under section 12(2) of the Abortion Reform Act 2019.

If approved by Tynwald, these directions come into operation on 24 May 2019<sup>1</sup>.

In these directions —

**“the Act”** means the Abortion Reform Act 2019;

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

**“provider”** means the Department or such other persons approved by the Department to provide abortion services in accordance with Part 2 of the Act;

**“sensitive incineration”** is to be construed in accordance with direction 9(3);

**“shared burial”** means the burial of a foetus alongside other foetus;

**“shared cremation”** means the cremation of a foetus alongside other foetus; and

**“still-birth”** has the meaning given in section 44 of the Civil Registration Act 1984.

#### 1. Application

- (1) These Directions set the minimum standards for the disposal, by a provider, of a foetus following the termination of a pregnancy in a clinical setting where a woman –
  - (a) expresses a wish for the provider to dispose of the foetus;
  - (b) does not wish to be involved in the decision regarding the disposal of the foetus; or

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<sup>1</sup> Tynwald approval is required by section 12(2) of the Abortion Reform Act 2019.

- (c) has been unable to express any wish as to the disposal of the foetus within the time period communicated to her.
- (2) For clarity, these Directions do not apply to the disposal of –
- (a) embryos less than 8 weeks old;
  - (b) still-births that occur otherwise than as a result of a termination of a pregnancy;
  - (c) pregnancy remains resulting from pregnancy loss;
  - (d) neo-natal deaths; or
  - (e) embryos created *in vitro* which are not subsequently implanted into a woman.

## **2. Policies and procedures**

A provider must issue policies and procedures regarding the disposal of a foetus following the termination of a pregnancy that meet the minimum standards provided for in these directions.

## **3. Communication**

- (1) When communicating with a woman as to the appropriate disposal of the foetus a provider must ensure that –
- (a) she is treated, at all times, with respect and sensitivity regardless of the circumstances of the termination;
  - (b) she is supported in an individual and sensitive manner to help her make a decision that is right for her; and
  - (c) her wishes are respected.
- (2) Where a woman –
- (a) is below 16 years of age; and
  - (b) in the opinion of the attending relevant professional or pharmacist, she does not have sufficient maturity and intelligence to understand the implications of any decision that she would otherwise make regarding the disposal of the foetus,

the attending medical practitioner may act on the opinion of her parent, guardian or another person acting *in loco parentis*.

- (3) Where a woman is unable to understand the implications of any decision that would otherwise be made regarding the disposal of the foetus due to a mental, medical or physical incapacity, the registered medical practitioner attending her may act on the opinion of her parent, guardian or other person lawfully empowered to act on her behalf.

#### **4. Information – general**

- (1) A provider must establish whether, and the extent to which, a woman wishes to be involved in the decision regarding the disposal of the foetus.
- (2) If a woman does not wish to be involved in the decision regarding the disposal of the foetus, or otherwise declines the offer of information, a provider must recognise and respect those wishes.
- (3) In circumstances where a woman does wish to be involved in the decision regarding the disposal of the foetus, to enable her to make an informed choice, a provider must ensure she is made aware that –
  - (a) there are options for disposal;
  - (b) information is available to her in an accessible form;
  - (c) she has the opportunity to discuss the options that are available; and
  - (d) all reasonable steps will be taken to ensure that, where possible, the foetus will be disposed of in accordance with her wishes.
- (4) Information provided to a woman in accordance with paragraph (3) must appropriately reflect the extent to which she wishes to be involved in the decision regarding disposal, and may include –
  - (a) the options that are available to her regarding the disposal of the foetus;
  - (b) the time period in which a decision must be made and what will happen if not;
  - (c) an explanation of how the foetus will be disposed of if the woman does not wish to make a decision; and
  - (d) contact details and any other necessary information to request a particular disposal option.

## 5. Options

- (1) A provider must, where possible, dispose of the foetus in accordance with the wishes of the woman.
- (2) In circumstances where a woman wishes to make her own arrangements for the disposal of the foetus, a provider must –
  - (a) recognise and respect those wishes;
  - (b) offer her advice and assistance; and
  - (c) store the foetus appropriately, ready for collection by her or her representative, within the time period communicated to her.

- (3) Where a woman –
  - (a) was provided with abortion services during the period commencing with the beginning of the 8<sup>th</sup> week and ending at the end of the 23<sup>rd</sup> week of gestation;
  - (b) wishes to be involved in the decision regarding the method of disposal of the foetus; and
  - (c) requires the provider to make the arrangements for the disposal of the foetus,

a provider must take all reasonable steps to ensure that the options listed in paragraph (4) are made available to her.

- (4) The options referred to in paragraph (3) are –
  - (a) shared cremation at a crematorium;
  - (b) shared burial at a cemetery; and
  - (c) sensitive incineration.
- (5) Where a woman –
  - (a) was provided with abortion services from the start of the 24<sup>th</sup> week of gestation;
  - (b) wishes to be involved in the decision regarding method of disposal of the foetus; and

(c) requires the provider to make the arrangements for the disposal of the foetus,

a provider must take all reasonable steps to ensure that the options listed in paragraph (6) are made available to her.

(6) The options referred to in paragraph (5) are –

(a) shared cremation at a crematorium; and

(b) shared burial at a cemetery.

(7) In the absence of any direction by a woman, as a minimum, a provider's standard procedure for the disposal of a foetus must be –

(a) sensitive incineration, where the provider provided abortion services to the woman during the period commencing with the beginning of the 8<sup>th</sup> week and ending at the end of the 23<sup>rd</sup> week of the gestation period; and

(b) shared cremation in a crematorium, where the provider provided abortion services to a woman from the beginning of the 24<sup>th</sup> week of the gestation period.

## **6. Authorisation**

In circumstances where the termination of a pregnancy occurs on a provider's premises and where a woman –

(a) authorises the provider to dispose of the foetus and indicates a preferred option as to disposal;

(b) decides to make her own arrangements for the disposal of the foetus;

(c) has not made a decision regarding the disposal of the foetus within the communicated time period; or

(d) has declined to be involved in the decision regarding the disposal of the foetus,

a provider must make a written record of that fact.

## **7. Shared Cremation**

- (1) A provider must take all reasonable steps to ensure that shared cremation in a crematorium is an option that is available to a woman for the disposal of the foetus.
- (2) If a provider is not able to access the services of a crematorium it must explain to the woman that it has not been able to do so and the reasons why.
- (3) Where a foetus is to be disposed of by shared cremation a provider must ensure that, as a minimum, the following requirements are satisfied –
  - (a) a woman must be made aware of the alternative options as to the disposal of the foetus, particularly the option of making private arrangements with a crematorium for the individual cremation of the foetus;
  - (b) the foetus must be in an individual sealed container;
  - (c) the individual sealed container must be labelled with a unique reference or case number; and
  - (d) each individual sealed container must be collected together into a larger sealed container.

## **8. Shared Burial**

- (1) A provider must take all reasonable steps to ensure that shared burial at a cemetery is an option that is available to a woman for the disposal of a foetus.
- (2) If a provider is not able to offer shared burial as an option it must explain to the woman that it will not be able to do so and the reasons why.
- (3) Where a foetus is to be disposed of by shared burial a provider must ensure that, as a minimum, the following standards are met –
  - (a) a woman must be made aware of the alternative options regarding the disposal of the foetus, in particular the option of making private arrangements for the individual burial of the foetus;
  - (b) a woman must be made aware that there will be no individual memorialisation provided to mark the location of the burial;
  - (c) the individual sealed coffin or container must be labelled with a unique reference or case number; and
  - (d) the individual sealed coffin or container must be collected together into a larger sealed container.

## **9. Sensitive incineration**

- (1) If a pregnancy is terminated during the period commencing with the beginning of the 8<sup>th</sup> week and ending at the end of the 23<sup>rd</sup> week of the gestation period, a provider must take all reasonable steps to ensure that sensitive incineration is an option that is available to a woman for the disposal of a foetus.
- (2) If a provider is unable to offer sensitive incineration as an option it must explain to the woman that it is not able to do so and the reasons why.
- (3) Where a foetus is to be disposed of by sensitive incineration a provider must ensure that, as a minimum, the following requirements are met –
  - (a) the foetus is disposed of as sensitively as possible;
  - (b) the process of sensitive incineration is separate from the process for the disposal of clinical waste; and
  - (c) the foetus is wrapped and placed in a suitable container prior to disposal.

## **10. Timescales**

- (1) A provider must communicate to a woman a time period for a decision on the method of disposal of the foetus to be made, being a minimum of 6 weeks from the date of termination of the pregnancy.
- (2) If, within the time period, a woman communicates to the provider that it is her wish –
  - (a) for the provider to dispose of the foetus, the provider must retain the foetus for a minimum of 7 days after that, to allow for any change of mind; or
  - (b) to make her own arrangements for the disposal of the foetus, a provider must store the foetus for a minimum of 6 weeks from the date that the woman communicated her decision, to allow the woman appropriate time to make those arrangements.
- (3) Where, within the time period communicated to her, a woman has not–
  - (a) made a decision regarding the disposal of the foetus; or
  - (b) in circumstances where she has decided to make her own arrangements for the disposal of the foetus, collected the foetus,

a provider, as a matter of good practice, may proceed to make the arrangements for the disposal of the foetus.

## **11. Confidentiality**

When communicating with any third party regarding the disposal of a foetus, a provider –

- (a) must only identify the foetus with a unique reference number or case number; and
- (b) must not share any of the woman's personal details except with her express written consent.

## **12. Audit**

- (1) In circumstances where a provider disposed of a foetus, it must, as a minimum, make a record of –
  - (a) the woman's relevant information;
  - (b) the method by which the foetus was disposed of;
  - (c) the particulars of the crematorium, cemetery or location of the incinerator where the foetus was disposed of; and
  - (d) the time and date of disposal.
- (2) In circumstances where a woman made private arrangements, a provider must, as a minimum, make a record of –
  - (a) the woman's relevant information;
  - (b) the details of the person that collected the foetus; and
  - (c) the date and time of collection.
- (3) A provider must maintain the record for a minimum of 50 years from the date of disposal or collection.

### **ISSUED:**

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Department of Health and Social Care

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Date

### ***Explanatory Note***

*(This note is not part of the Directions)*

These Directions are made under section 12 (duties of medical professional following termination) of the Abortion Reform Act 2019 ("the Act").

These Directions apply to persons providing abortion services, setting the minimum standards for the disposal of a foetus following the termination of a pregnancy in a clinical setting where a woman –

- (a) expresses a wish for the provider to dispose of the foetus;
- (b) does not wish to be involved in the decision regarding the disposal of the foetus; or
- (c) has been unable to express any wish as to the disposal of the foetus within the time period communicated to her (being a minimum of 6 weeks from the date of termination of the pregnancy).

Direction 2 (policies and procedures) requires a provider of abortion services to issue policies and procedures that, as a minimum, meet the standards as to the appropriate disposal of a foetus, provided for in the Directions.

Direction 3 (communication) makes provision regarding how a provider must communicate with a woman; particularly it must ensure that she is treated, at all times, with respect and sensitivity, regardless of the circumstances of the termination.

Direction 4 (information – general) requires a provider of abortion services to establish whether, and the extent to which, a woman wishes to be involved in the decision regarding the disposal of the foetus. In circumstances where she does not wish to be involved, or otherwise declines the offer of information, that decision must be respected. Where a woman does wish to be involved a provider must take all reasonable steps to ensure that, where possible, the foetus is disposed of in accordance with her wishes.

Direction 5 (options) makes provision regarding the circumstances where a woman wishes to make her own arrangements for the disposal of the foetus; where a woman requires the provider to make the arrangements and wishes to be involved in the decision; and what a provider's minimum standard procedure would be in the absence of any direction from the woman.

Direction 6 (authorisation) requires a provider to make a written record of the decision that a woman has made or that a decision was not made in the time period communicated to her, as to disposal, where this was the case.

Direction 7 (shared cremation) provides the minimum standards that must be met by a provider where a foetus is to be cremated alongside other foetus. Direction 8 (shared burial)

makes provision in respect of the minimum standards that must be met where a foetus is to be buried alongside other foetus. Direction 9 (sensitive incineration) sets the minimum standards that must be met where a provider is to dispose of a foetus by sensitive incineration.

Direction 10 (timescales) makes provision regarding the minimum amount of time that a woman must be allowed to make a decision. Direction 10(2) states that where a woman makes a decision requiring the provider to dispose of the foetus, the provider must retain the foetus for a minimum of 7 days to allow for any change of mind. Where a woman, within the time period specified advises a provider that she wishes to make her own arrangements, the provider must store the foetus for a minimum of 6 weeks from that date to allow her appropriate time to make those arrangements.

Direction 11 (confidentiality) requires a provider when communicating with any third party to identify the foetus with a unique reference number and not to share any of the woman's personal details unless she has expressly, and in writing, consented to it.

Direction 12 (audit) makes provision as to record keeping requirements and how long such records must be maintained by a provider.