**abortion reform bill 2017 survey**

This consultation aims to refine the bill before it is debated in Tynwald to represent a range of opinions from members of the Manx public and professional organisations.

The Bill aims to restate the law relating to abortion with amendments to update the Termination of Pregnancy Act 1995. Throughout 2016-17 this has been the subject of increasing public debate and media attention, with an online petition in favour of reform gaining 2,263 signatures in 2016.

Thank you for taking part.

**Introduction**

**1 What is your name?**

|  |
| --- |
| British Society of Abortion Care Providers (BSACP) |

**2 What is your email address?**

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

|  |
| --- |
| admin@bsacp.org.uk |

**3 What is your organisation?**

|  |
| --- |
| The British Society of Abortion Care providers (BSACP) is a professional Society representing staff who provide abortion care and others with a special interest including students and researchers. The aim of BSACP is to improve the standard of abortion care in the United Kingdom of Great Britain and Northern Ireland and its Crown Dependencies. |

**4 May we publish your response?**

|  |
| --- |
| Yes, you can publish my response in full. |

…

**7. Are you ordinarily resident in the Isle of Man?**

|  |
| --- |
| No |

…

Clause 6 of the Reform Bill - conditions of provision

**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 pregnant woman.

(3) During the period commencing with the beginning of 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 pregnant woman if the registered medical practitioner attending her is of the opinion, formed in good faith that one or more of subsections (4) to (8) applies in her case.

(4) This subsection applies if the continuation of the pregnancy would pose a risk of serious injury to the pregnant woman’s life or health.

(5) This subsection applies if there is a risk that the foetus is or will be affected by a physical or mental defect which —

(a) will have a seriously debilitating effect on the child; or

(b) will result in the death of the foetus in utero.

(6) This subsection applies if, according to the pregnant woman, the pregnancy resulted from rape, incest or other unlawful intercourse.

(7) This subsection applies if there are serious social grounds justifying the termination of the pregnancy, such as—

(a) the addiction of the pregnant woman or her partner to alcohol or controlled drugs;

(b) the death of the pregnant woman’s partner during the pregnancy;

(c) the imprisonment or detention of the pregnant woman or her partner —

(i) in an institution (within the meaning of the Custody Act 1995); or

(ii) in a place outside the Island serving a purpose similar to such an institution; or

(d) the homelessness of the pregnant woman or a substantial risk of her becoming homeless during the expected term of the pregnancy.

Here 'partner' means the pregnant woman’s spouse, civil partner or cohabitee.

(8) From the start of the 24th week of the gestation period abortion services may be provided upon the request by or on behalf of a pregnant woman if the registered medical practitioner attending her is of the opinion, formed in good faith that —

(a) the termination is necessary to prevent grave permanent 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 child would die before or during labour;

(d) there is a substantial risk that, were the child born alive —

(i) it would suffer early neonatal death by virtue of severe foetal abnormality; or

(ii) it would suffer mental or physical abnormalities that would result in a serious handicap.

(9) Before abortion services are provided to a pregnant woman who requests them she must be offered counselling, if it is practicable to do so without causing undue delay in the provision of those services.

(10) In determining whether the continuation of a pregnancy would involve a risk to the health of the pregnant woman such as is mentioned in subsection (4) or (8)(a) account may be taken of her actual or reasonably foreseeable environment.

(11) In this section 'counselling' means counselling provided by a person approved by the Department and in accordance with guidelines so approved.

Conditions of provision - on request up to 14 weeks

At present over 92% of terminations in England, Scotland and Wales are carried out by 13 weeks, and 81% are performed under 10 weeks.

The majority of these are done safely and cheaply using pills to induce an early miscarriage. In the Isle of Man abortion on request is not available.

Gestation period

**gestation period** means the period of pregnancy of a female calculated from the first day of the menstrual period which in relation to the pregnancy, is the last.

**9 Do you agree that a woman should have the choice to request an abortion up to 14 weeks?**

**Clause 6(2)**

During the first 14 weeks of the gestation period, abortion services may be provided upon request by or on behalf of a pregnant woman.

Please select only one item

Yes ~~No~~

Conditions of provision - rape

Under **existing** Manx law, a woman who has been raped can only have an abortion if:

* she is **less than 12 weeks pregnant**
* has **reported the rape** to the police AND
* **signed an affadavit** or sworn an oath to prove the rape happened

In the proposed Bill, any victim of rape can request an abortion without being forced to report it, or become engaged in legal procedures which might delay the treatment.

**10 Do you agree that a woman who has become pregnant after being raped should have the choice to request an abortion without having to report the rape?**

**Clause 6 (6)**

This subsection applies if, according to the pregnant woman, the pregnancy resulted from rape, incest or other unlawful intercourse.

Please select only one item

Yes ~~No~~  ~~Don’t know~~

Please provide any further comments here

|  |
| --- |
| BSACP believes that the law should provide for abortion in the event of rape if a woman chooses not to continue with the resulting pregnancy. The current Manx requirement for a woman who has been sexually assaulted to go to the police is humiliating and in effect forces women not willing to share information with the police to follow other pathways that may be unsafe, inconvenient or costly.  Although more than 40 jurisdictions around the world have rape or incest grounds in their abortion laws, such grounds are rare in Western Europe. The law in England and Wales, Scotland, Jersey and Guernsey does not have a rape clause and yet women who have been sexually assaulted can access an abortion without hindrance. BSACP is of the view that a specific rape section in the law is not necessary and that women who have been sexually assaulted can request abortion up to 14 weeks or be considered at serious risk of injury to their mental health thereafter. |

Conditions of provision - fatal foetal abnormality

**Current** Manx law allows for termination in the case of **fatal foetal abnormality**.

It also allows for termination where the child, if born, would be **seriously handicapped**.

This currently has to be carried out **by the 24th week** of the pregnancy.

For medical reasons, most of the women affected are referred to a specialist foetal medical centre in the UK for advice and counselling.

The practice of referral to the UK would be continued under the new Bill. In practice, these matters would be an individual, confidential conversation between the woman and her doctor, not solely determined by law.

**11 Do you think that a woman should have the choice to request an abortion if it is detected that the foetus has a fatal abnormality, at any stage of the pregnancy including after 24 weeks?**

**Clause 6 (5)**

(5) This subsection applies if there is a risk that the foetus is or will be affected by a physical or mental defect which —

(a) will have a seriously debilitating effect on the child; or

(b) will result in the death of the foetus in utero.

Please select only one item

Yes ~~No Don’t know~~

Please provide comments

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| --- |
| BSACP notes that the term fatal fetal abnormality is not the terminology used in either the Termination of Pregnancy (Medical Defences) Act 1995 or the Abortion Law Reform Bill. We also note that it is a term commonly used in Northern Ireland. We consider it to be inaccurate and best not used.  We strongly support the proposal to allow abortion in cases of substantial risk of serious fetal abnormality and consider it best, as is proposed, that these abnormalities are not defined.  Many fetal abnormalities will be identified at the anomaly scan. There needs, however, to continue to be legal provision for women to be able to access abortion after this.  Even when tests are available earlier in pregnancy, some women do not present for antenatal care until late in their pregnancy, delaying the timing of diagnosis. There may also be technical issues with ultrasound scanning or the need for other test results to be available. |

Conditions of provision - exceptional circumstances

Existing abortion law in the Isle of Man **restricts any abortion over 24 weeks**.

In England, **only 2%** of abortions are carried out over 20 weeks and these are almost always due to several foetal abnormalities.

The Bill suggests that abortion services may be provided in **exceptional circumstances** after 24 weeks on specialist medical advice. These include risks to the life and health of the mother or child, including death in labour.

**12 Do you think that there are any circumstances in which an abortion should be provided after the 24th week?**

**Clause 6 (8)**

(1) From the start of the 24th week of the gestation period abortion services may be provided upon the request by or on behalf of a pregnant woman if the registered medical practitioner attending her is of the opinion, formed in good faith that —

(a) the termination is necessary to prevent grave permanent 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 child would die before or during labour;

(d) there is a substantial risk that, were the child born alive —

(i) it would suffer early neonatal death by virtue of severe foetal abnormality; or

(ii) it would suffer mental or physical abnormalities that would result in a serious handicap.

Please select only one item

Yes ~~No Don’t know~~

Do you have any other views you would like to add about circumstances after the 24th week?

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| --- |
| BSACP strongly supports the provisions for abortion outlined in draft clause 6(8), throughout a pregnancy, including after the 24th week.  We believe women should be able to access abortions in these circumstances. Very few women utilise these necessary provisions after 24 weeks.  Some of our members working in tertiary centres receive requests for abortion in women whose gestation is above 24 weeks and whose life is at risk including from suicidal thoughts; on rare occasions they authorise abortions in conjunction with a physician or psychiatrist. |

Provision of abortion advice and informed consent

Counselling can be an important part of the process for women in deciding to have an abortion and in the time afterwards.

It may be one of the hardest decisions a woman may have to make, and requires support and information. Whilst the 1995 Act mentions this, very few services have ever been provided in the Island by the NHS.

Related Information

**informed consent** means consent by a woman of her own free will after receiving information on the risks and benefits of termination of pregnancy.

**13 The Bill proposes that the NHS should routinely provide professional counselling to women at all or any stages of their pregnancy, to make the decision that is right for them about their pregnancy. How do you think this could best be provided?**

**Clause 6 (9 & 11)**

(9) Before abortion services are provided to a pregnant woman who requests them she must be offered counselling, if it is practicable to do so without causing undue delay in the provision of those services.

(11) In this section “counselling” means counselling provided by a person approved by the Department and in accordance with guidelines so approved.

Please select all that apply

|  |  |
| --- | --- |
| √ | Free NHS funded counselling before deciding to have an abortion |
| √ | Free NHS funded counselling after having an abortion |
| √ | Free NHS funded counselling at any time |
| √ | Free NHS funded counselling on-Island |
| √ | Free NHS funded face to face counselling |
| √ | Free NHS funded telephone counselling |
| √ | Information about accessing private counselling if preferred |

Are there any circumstances where funded off-Island counselling should be considered?

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| --- |
| BSACP supports the availability of timely, impartial and non-directive counselling for women and can foresee some circumstances, due to the close-knit community on the island, where a woman may wish to access counselling off-Island; counselling should be practicable without causing delay. This counselling could be in person or by telephone, according to a woman’s choice. Counselling, however, should never be compulsory.  As noted in proposed clause 6(9), counselling should be offered, if practicable, without causing undue delay in the provision of abortion services, or potentially precluding access to services due to time limits. Unreasonable delay which compromises the interest of the patient is contrary to good clinical practice.  We agree with the inclusion of clause 6(11) for counselling to be provided by a person approved by the Department and in accordance with guidelines. We would want reference to off-Island counselling provision to be included in these guidelines, to ensure that women are referred to providers of impartial information and counselling to women off-Island too; not to organisations that are strongly opposed to abortion and, in some cases, provide misinformation about clinical risks associated with abortion.  BSACP would also like to point out that in cases of wanted pregnancy and abortion being contemplated on maternal health/ fetal abnormality grounds, counselling should include information from specialist providers in the appropriate specialty e.g. physicians or paediatricians. |

Serious social grounds

No woman aspires to have an abortion. Life can be complicated and pregnancy can occur at a time of crisis. Women need to be supported to make deeply personal decisions that are right for them and their families. There can sometimes be serious social reasons why a woman may request a termination.

These may include:

* addictions
* homelessness or risk of homelessness
* imprisonment of the mother or partner
* death of a partner

**14 Do you believe that there are some social factors or situations when a woman should be able to choose to have an abortion?**

**Clause 6 (7)**

(1) This subsection applies if there are serious social grounds justifying the termination of the pregnancy, such as—

(a) the addiction of the pregnant woman or her partner to alcohol or controlled drugs;

(b) the death of the pregnant woman’s partner during the pregnancy;

(c) the imprisonment or detention of the pregnant woman or her partner —

(i) in an institution (within the meaning of the Custody Act 1995); or

(ii) in a place outside the Island serving a purpose similar to such an institution; or

(d) the homelessness of the pregnant woman or a substantial risk of her becoming homeless during the expected term of the pregnancy.

Here 'partner' means the pregnant woman’s spouse, civil partner or cohabitee.

Please select only one item

No.

What factors or situations?

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| --- |
| BSACP believes that pregnant women themselves are the best judge of their circumstances. Creating certain ‘social’ categories could result in exclusion of cases that would otherwise be eligible. |

Overall reproductive healthcare

The Isle of Man provides **free access** to all forms of contraception and advice including the 'morning after pill'.

Despite taking all precautions some women become pregnant unintentionally.

The cost to the Isle of Man NHS of providing abortion pills is £10.17 per termination, which is relatively inexpensive when compared with the average cost of supplying other prescribed medicines (£11.54 per prescription).

Definition of 'health' in the Bill

**health** means a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

**15 Do you think that the cost of abortion services should be provided by the NHS as part of women's overall reproductive healthcare?**

Please select only one item

Yes ~~No~~

Do you have any other views on funding? Add text here.

|  |
| --- |
| BSACP believes abortion care should be treated as a medical issue and, as such, should be funded by the NHS. A woman’s choice must not depend on her ability to pay for abortion services. If the NHS does not pay, women would be discriminated against. |

Healthcare staff - conscientious objection

The proposed Bill aims to modernise the process for healthcare staff who do not wish to perform abortions and respect their views.

Clause 8 of the Reform Bill 8

**Conscientious objection**

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

(1) Subject to subsections (3) and (4), no health care professional shall be under any legal duty, whether arising by contract or any statutory or other legal requirement, to participate in any treatment authorised by this Act if the health care professional has a conscientious objection to participating in such treatment.

(2) In any legal proceedings the burden of proof of a person’s conscientious objection rests upon the person who claims to rely on it.

(3) Subsection (1) does not affect any duty to participate in a treatment which is necessary —

(a) to save the life of a pregnant woman; or

(b) to prevent grave permanent injury to the health of a pregnant woman.

(4) A health care professional who has a conscientious objection referred to in subsection (1) must inform the woman who requests abortion services of other health care professionals who may be in a position to terminate the pregnancy within a reasonable time.

(5) Any health care professional whose failure to act in accordance with subsection (4) results in injury or loss of life or both commits an offence.

*Maximum penalty (summary): a fine or 2 years’ custody.*

**16 Do you believe that healthcare staff should be able to opt out of taking part in an abortion if they have conscientious objections?**

Please select only one item

Yes ~~No~~

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Abortion services - buffer zones

In several countries legislation has been introduced to provide **buffer zones** around hospitals and clinics.

These ensure that anti-abortion protesters' free speech rights are not permitted to obstruct or harass women seeking access to reproductive healthcare services or of staff working there.

**17 Should there be legal protection to prevent demonstrations or protests outside any facility which provides abortion advice or treatments on the Isle of Man?**

Please select only one item

Yes ~~No~~

Please add any further information about your reasons here

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| --- |
| BSACP is concerned about the ongoing intimidation and harassment of patients and staff outside facilities providing abortion services in the UK. BSACP supports proposals to establish ‘buffer zones’ outside clinics providing these services - zones in which anti-abortion activity cannot take place. BSACP notes that such buffer zones have been incorporated into abortion laws in South Africa, the USA (Federal law and State-level in Colorado, Massachusetts and Montana), Canada (British Columbia) and Australia (Northern Territory, Tasmania and Victoria).  BSACP is aware of anti-abortion picketers harassing women in a variety of different ways, including filming individuals approaching clinics which provide abortion services and giving women unsolicited ‘advice’ which is contrary to that provided by doctors and grossly erroneous information about clinical risks, such as linking abortion with breast cancer. It is likely that this type of anti-abortion activity would happen on the Isle of Man should women be able to more readily access services on the island.  BSACP appreciates that there is a range of views on abortion, and that there must be opportunities for these diverse and strongly-held views to be heard. However, intimidating staff who are providing a necessary, lawful and Government-approved service, and approaching women accessing these services who may already feel vulnerable, are unacceptable ways to promote anti-abortion views.  This will be particularly important on the Isle of Man due to the close-knit community. Women’s privacy must be protected as much as possible when they access abortion services. |

Any further comments

**18 Is there anything else you would like to tell us about the proposed legislation to reform abortion law in the Isle of Man?**

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| --- |
| BSACP welcomes the introduction of this Bill. BSACP is impressed with the thorough and insightful way that abortion law has been examined so far and that views have been sought from external sources. We hope that in the future Manx women will be able to access more readily confidential, safe and timely abortion services on the island itself.  In particular, BSACP welcomes the proposed removal of the restrictive and outdated conditions for first trimester abortions, that a pregnancy is terminated by a ‘hospital surgeon’ and another medical practitioner. BSACP considers that the requirement for two doctors to authorise abortions in the UK is causing significant logistical difficulties with service delivery and resultant delays for women throughout England, Wales and Scotland.  Clinical care, professional practice and societal attitudes have changed significantly since the enactment of the Termination of Pregnancy (Medical Defences) Act 1995 and the 1872 Criminal Code. In particular, medical abortion has been introduced and has now become firmly established in abortion services around the world. The Abortion Reform Bill 2017 reflects these important changes and will ensure that the Isle of Man’s abortion legislation is fit for purpose.  BSACP would like to comment further on several aspects of the Bill:  With respect to question 9 of the consultation, BSACP believes that in the first trimester of pregnancy, abortion should be available on the same basis of consent as other treatments, without the need for a woman to meet specified criteria for an abortion. BSACP notes that clause 6(2) sets a limit of 14 weeks on abortion ‘on request’. We suggest consideration is given to making this gestational limit higher, so that women who find out that they are pregnant or get delayed into the second trimester are not disadvantaged. Please see: *Ingham R, Lee E, Clements SJ, Stone N. Reasons for second trimester abortions in England and Wales. Reproductive Health Matters 2008; 16: S18-29.*  BSACP is concerned about the wording in clauses 6(2) and 6(3) relating to an abortion being requested ‘on behalf of a pregnant woman’. We see cases of coercion e.g. by partners or parents of young people and would not want a law that appears to condone this.  Traditionally, abortion laws have restricted those permitted to conduct abortions to doctors. BSACP strongly approves of the expanded authorisations in the Bill. No doubt there is awareness of the *RCN v DHSS* ruling of 1981 which has allowed nurses to play an integral role in delivering abortion care in the UK. Indeed, nowadays gynaecology nurses do suction evacuation of the uterus for miscarriages which is in effect the same procedure as a surgical abortion. Please see: *Sheldon S, Fletcher J. Vacuum aspiration for induced abortion could be safely and legally performed by nurses and midwives. Journal of Family Planning and Reproductive Health Care 2017 doi: 10.1136/jfprhc-2016-101542.* We fully support clause 7(1)(b) allowing nurses and midwives to performs surgical and medical abortions. However, the Bill suggests that nurses and midwives can only supply the relevant medicinal products; in order to fulfil their provider functions fully they would also need to be permitted to prescribe these products.  BSACP does not support the continuation of the restriction to Manx residents at clause 4(a). This requirement is one that is used in Jersey law, but not in Guernsey and nowhere else in the UK.  BSACP does not support the proposed way of treating those with mental incapacity mentioned in clause 9(3)(a). We do not believe that third parties should have the power to give consent; we suggest that only a court should have this power.  The proposed changes in the Abortion Reform Bill would help ensure women seeking abortion are not exposed to delays, and consequently to later, costlier and higher risk procedures; and potentially ensure that women do not feel that they have to resort to unlawfully self-administering an abortion or even seek a clandestine abortion.  We note in the overview for the consultation that ten packages of abortifacients were intercepted by the Isle of Man Post Office last year. The Isle of Man may, as in the UK, be experiencing an increase in women seeking to unlawfully self-administer medical abortions. Abortifacients are readily available from overseas organisations which assist women (some of which also provide an initial medical assessment and advice for women taking the drugs) and other online pharmacies.  As noted in Northern Ireland’s Department of Health, Social Services and Public Safety’s (DHSSPS) recent guidance, ‘There is no guarantee that drugs supplied by these websites are what they are purported to be, and there is no effective medical supervision of any woman who decides to use them’ (DHSSPS (2016) *Guidance for health and social care professionals on termination of pregnancy in Northern Ireland*, section 6.6).  We note with serious concern the health risks and economic, social and logistical challenges Manx women who wish to end their pregnancy currently face. We hope that if the Abortion Reform Bill is enacted, Manx women will no longer be faced with these risks and challenges. Dr Alex Allinson outlined examples of these in the House of Keys earlier this year:  ‘A private termination can cost between £500 and £1,700. However, the costs of the procedure are compounded by the price of ferry crossings or flights off the Island. Sometimes it can cost several hundred pounds to fly to the UK at short notice or bad weather can make any travel impossible. Having to choose between paying your rent, clothing your children or feeding yourself, rather than paying for a private termination in another country cannot be a civilised and just situation for women and their families to face in the 21st Century.’ (*House of Keys Hansard*, 24 January 2017, 1367-1373 [www.tynwald.org.im/business/hansard/20002020/k170124.pdf](http://www.tynwald.org.im/business/hansard/20002020/k170124.pdf))  BSACP would point out the vital need for confidentiality which could be challenging on the island. Women exposed to the risk of domestic violence or honour crime might be better off going to the mainland. In our reply to question 15 we would add that the NHS should pay for those women who were considered at risk if they stayed on the island.  During the introduction of the Bill earlier this year, the need for safeguards was rightly raised. We support the safeguards that have been put forward in the draft Bill, including clause 12 ‘Offence of procuring termination of a pregnancy’ to deal with ‘backstreet’ abortions.  We would welcome clarification, however, about whether this clause would apply to a woman self-administering her own abortion. We believe that women who self-administer abortion should not be subject to criminal sanctions. Women should feel able to seek appropriate medical care should they encounter potentially life-threatening complications, for example severe haemorrhage, following a self-administered abortion without concern for, or being deterred by, the threat of criminal sanctions.  BSACP supports the right of healthcare professionals to have a conscientious objection to participating in termination of pregnancy, except where an abortion is necessary to save the life of a pregnant woman or prevent grave permanent injury. BSACP notes that conscientious objection is a fundamental human right: freedom of thought, conscience and religion (Article 9 of the European Convention on Human Rights).  We believe healthcare professionals with a conscientious objection should not be marginalised. BSACP disapproves of any instances of harassment or discrimination of clinicians on the basis of their views, either way, on abortion.  Nevertheless, staff working in clinical areas in which abortions are taking place should support the general care of women undergoing abortion; conscientious objection clauses should not absolve them from doing this.  BSACP believes that a clinician’s conscientious objection must be made clear to the patient as soon as possible, and patients must be able to see another doctor as appropriate who does not have a conscientious objection. Referral in these circumstances need not always be a formal procedure. However, it is not sufficient to simply tell the patient to seek an opinion elsewhere. All this is laid down in General Medical Council and Nursing and Midwifery Council guidance.  BSACP does not feel that the right of staff to conscientious objection necessarily needs to be incorporated into abortion law. It is already covered by the Human Rights Act 1998. But, if a conscientious objection clause is kept, the duty on healthcare professionals to assist women in an emergency should perhaps be emphasised more. The reference in clause 8(5) to subsection (4) could usefully be amended to state ‘subsections (3) and (4)’, to make it plain that healthcare professionals commit an offence if they refuse to participate in treatment required to save life or prevent grave permanent injury. |