

9. To agree to amend the Law to make clear that health practitioners may not refuse to participate in care required to save the life or prevent serious injury to the physical or mental health of a woman.
10. To agree to create a power in the Law for the Committee *for* Health & Social Care to make regulations making further provision in relation to the circumstances in which the right of health practitioners to conscientiously object to the provision of care in relation to abortions may be exercised.
11. To agree to amend the requirement in the Law to notify the Medical Officer of Health of abortions to a requirement to so notify the Director of Public Health.
12. To direct the preparation of such legislation as may be necessary to give effect to the above decisions, including any necessary consequential, incidental or supplementary provision.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HEALTH & SOCIAL CARE

MODERNISATION OF THE ABORTION (GUERNSEY) LAW, 1997

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

2nd March, 2020

Dear Sir

1 Executive Summary

- 1.1 The Committee *for* Health & Social Care's ambition to provide good quality health and care services to all islanders is set out in the 'Partnership of Purpose' Policy Letter (Billet d'État XXIV of 2017¹), which was approved by the States of Deliberation in December 2017. This Policy Letter acknowledged, among other things, the importance of effective regulation to maintain the safety of services and of delivering fair access to care which values, respects and centres on the needs and wishes of the service user.
- 1.2 It is with these principles in mind that the Committee has taken seriously the concerns raised by some local practitioners regarding the impact of the Abortion (Guernsey) Law, 1997 (the 'Law') on their clinical practice. A subsequent review of the Law and a comparison of abortion legislation in comparable jurisdictions has highlighted various problems ranging from:
- i) abortion provision being more restrictive than other medical procedures and compared with other jurisdictions;
 - ii) a lack of legal clarity in some areas; and
 - iii) the criminalisation of women who procure, or attempt to procure, an abortion of their own pregnancy outside of the legal framework.
- 1.3 In addition, a number of minor modifications are required to reflect modern practice and to 'future proof' the Law.

¹ Committee *for* Health & Social Care - 'A Partnership of Purpose: Transforming Bailiwick Health and Care'- Billet d'État XXIV of 2017

- 1.4 Abortion is a regulated health procedure, with the circumstances in which it can occur prescribed in the Law. However, many of the legal conditions that must be met in order for a procedure to take place are now considered to be outdated and disparate with other areas of care within the health service.
- 1.5 The Committee has had robust but respectful debates on each of the areas for change set out in this Policy Letter and has taken into consideration the views of local health professionals and members of the public. Having further considered the available evidence and general feedback received, the Committee recommends that a number of amendments are made to the existing Law to address the issues that have been identified. Further information is provided in Section 5 of this Policy Letter.
- 1.6 It is recommended that the Law should be updated to remove the legal requirement for a woman to consult with two medical practitioners prior to being able to access the health care service that she needs. It is considered that the requirement to consult with a second medical practitioner before being referred to the Medical Specialist Group is an unnecessary step that may prevent a woman receiving the care she requires and may not be affordable for all.
- 1.7 It is also recommended that, based on the advice and evidence from the medical profession, the current gestational thresholds set out in section 3(1)(c) and (d) in which abortion procedures can take place are increased. Section 3(1)(c) refers to abortion procedures that can be undertaken when there is a diagnosis of fetal anomaly, whereas procedures that are certified under section 3(1)(d) are those that are performed to protect the health of the woman or her existing children.
- 1.8 The Law is currently insufficiently clear in some areas about actions that are permitted and those which are not, which, in some circumstances, creates significant uncertainty for clinicians and pregnant women. Therefore, it is recommended that the updated Law should provide suitable clarity to guide operational practice.
- 1.9 The Committee also recommends that any criminal offence relating to a woman who procures an abortion outside of the remit of the Law is removed from the legislation. For the avoidance of doubt, providing unregulated abortion services would remain illegal, but the women who use those services would not themselves be subject to criminal penalties. Nor would women who attempt to induce their own abortion be punished for it.
- 1.10 In order to reflect modern practice that enables early abortions to take place at home, it is proposed that the legal requirement for abortions to occur only at the Princess Elizabeth Hospital, should be removed from the Law and other health professionals who actively take part in abortion care should be recognised formally in the legislation. This reflects the fact that some medical (that is, non-

surgical) abortion procedures can be initiated by medication, administered by a qualified clinician, and then completed safely in the privacy of a woman's own home.

- 1.11 Conscientious objection refers to the right of health professionals to choose to opt out of providing abortion care because of personal beliefs. There is currently only one situation, where a pregnant woman's life is at risk, where no professional can refuse to provide care. The Committee wishes to make it clear, as it is in other jurisdictions, that the right to conscientious objection shall not extend to supportive care, which is needed to prevent serious injury to a woman's health, and which is not part of the abortion procedure itself. Where the right to conscientious objection does apply, the Committee considers that the Law must also include a duty to refer on to an equivalent practitioner without such an objection. The Committee recommends the creation of a suitable regulation-making power in the Law to enable further provision to be made in respect of conscientious objection, to ensure that there is clarity in this area.
- 1.12 In anticipation that the statutory office of Medical Officer of Health is to be discontinued in the future, as previously agreed by the States², the Committee recommends that routine notification of abortion is instead made to the Director of Public Health and that this be captured in the amended Law.
- 1.13 The Committee has consulted on the issues raised during the review of the Law with a wide range of qualified health professionals locally, who overwhelmingly support the recommendations set out in this Policy Letter.
- 1.14 The Committee has also engaged with members of the public, via small group consultation. Those who participated were generally surprised at the differences between the laws in Guernsey and England and the tiered system that they create in terms of access to care. It was felt that implementing the recommendations to modernise the Law is both important and worthwhile.
- 1.15 The existing abortion law applies only to Guernsey. It would be the Committee's intention, upon agreement to the recommended legislative changes set out in this Policy Letter, to consult with the States of Alderney and Chief Pleas in Sark as to whether the Law should have force in those jurisdictions.

2 Strategic context

- 2.1 The 'Partnership of Purpose' Policy Letter (Billet d'État XXIV of 2017) acknowledges, among other things, the importance of effective regulation to maintain the safety of services and of delivering fair access to care which values,

² Committee *for* Health & Social Care – 'A Partnership of Purpose: Transforming Health and Care' - Billet d'État XXIV of 2017

respects and centres the needs and wishes of the service user.

- 2.2 The review of the Law, which was highlighted in the Committee's 'Health & Wellbeing' Policy Priority Area update to the States in June 2019³, considers the legislation in this context and aims to ensure that women who require access to abortion services are able to do so without undue restrictions.
- 2.3 The Partnership of Purpose sets out an ambitious programme to transform health and care services in the Bailiwick, based on the following aims:
- **Prevention:** supporting islanders to live healthier lives;
 - **User-centred care:** joined-up services, where people are valued, listened to, informed, respected and involved throughout their health and care journey;
 - **Fair access to care:** ensuring that low income is not a barrier to health, through proportionate funding processes based on identified needs;
 - **Proportionate governance:** ensuring clear boundaries exist between commissioning, provision and regulation;
 - **Direct access to services:** enabling people to self-refer to services where appropriate;
 - **Effective community care:** improving out-of-hospital services through the development of Community Hubs for health and wellbeing, supported by a Health and Care campus at the PEH site delivering integrated secondary care and a Satellite Campus in Alderney;
 - **Focus on quality:** measuring and monitoring the impact of interventions on health outcomes, patient safety and patient experience;
 - **A universal offering:** giving islanders clarity about the range of services they can expect to receive, and the criteria for accessing them;
 - **Partnership approach:** recognising the value of public, private and third sector organisations, and ensuring people can access the right provider; and
 - **Empowered providers and integrated teams:** supporting staff to work collaboratively across organisational boundaries, with a focus on outcomes.
- 2.4 With reference to the above, the proposals set out in this Policy Letter aim to ensure fair access to care which meets the needs of the service user. Some of the provisions of the existing Law are considered to be in conflict with the above, as set out in this Policy Letter.

3 Reproductive health in Guernsey

- 3.1 The World Health Organization (WHO) states '*reproductive health addresses the*

³ 'Policy & Resource Plan - 2018 Review and 2019 Update' – Billet d'État IX of 2019

*reproductive processes, functions and systems at all stages of life. Reproductive health, therefore, implies that people are able to have a responsible, satisfying and safe sex life and the capability to reproduce and the freedom to decide if, when and how often to do so.*⁴

- 3.2 Reproductive services in the Bailiwick help to achieve this for many through local services that are available through collaborative working delivered by Public Health Services, Primary and Secondary Care, and third sector agencies. Abortions form an important part of reproductive health services alongside the provision of information and education, contraceptive services and screening for sexually transmitted infections or disease and their treatment. In their entirety, these services work towards enabling women to exercise body autonomy and choose freely whether and when they wish to have a family.
- 3.3 In its efforts to focus on prevention services, the Committee is especially proud to have worked with the Committee *for* Employment & Social Security to introduce free contraception for under-21s in Guernsey and Alderney in 2018. This bespoke service for young people is complemented by Sexual Health and Relationship Education (SHARE) delivered by Specialist Nurses in schools. There are a small number of conceptions in girls aged under 16 and under 18 years annually, approximately half of which currently end in an abortion procedure. Although the service will need to be in place for some time before any sustained changes can be observed, it is hoped that the introduction of free contraception will support young people to choose a method of contraception that is suitable for them and will help to reduce the likelihood of an unwanted pregnancy.
- 3.4 Despite the importance of contraceptive services, there remains a need for safe, accessible abortion services. Contraception does not provide 100% efficacy in preventing conception; male and female sterilisations may fail; a fetus can develop a condition that is not compatible with life, and women can be victims of reproductive coercion and domestic violence where the continuation of pregnancy would unite them indefinitely with their abuser.
- 3.5 The abortion rate in Guernsey and Alderney for the most recent reporting period (2017-2018) shows an average of 10.7 procedures per 1,000 women and girls aged 15 to 44 years.⁵ The three-year rolling average rate has been largely stable since the 2008-2010⁶ reporting period and is consistently lower than both

⁴ http://origin.who.int/topics/reproductive_health/en/

⁵ Public Health Intelligence Unit, States of Guernsey. Guernsey Abortion Statistics Summary 2017-18. Guernsey

⁶ Public Health Services, States of Guernsey. Health Profile for Guernsey and Alderney 2013–2015. Guernsey

England and Wales (17.4 per 1,000 women and girls ages 15-44 years in 2018).⁷

- 3.6 However, evidence shows that abortions occur as frequently in the most legally-restricted countries as those with the least prohibitive measures. Legal restrictions therefore do not lower the number of abortion procedures performed, but rather increase the proportion of those that are performed unsafely⁸. It may be the case that due to the current restrictions on abortion provision in Guernsey, some women feel driven to access unsafe services such as buying abortifacients (abortion pills) online, although this cannot be quantified.
- 3.7 It is therefore considered important to ensure that the legal framework governing this procedure ensures that services are accessible, well-regulated and safe.

4 The Abortion (Guernsey) Law, 1997 (the 'Law')

- 4.1 As above, abortion is a carefully regulated and circumscribed, but wholly necessary, part of the range of reproductive health services provided in Guernsey. The variety of reasons why a woman may feel unable to continue with a pregnancy are broad and the decision as to whether to have an abortion or not is often a deeply personal judgment, far better made by the pregnant woman herself than by the State or others.
- 4.2 Section 3(1) of the Law provides that abortion is legal only if, in the circumstances set out in paragraph 4.3 -
- a) *the termination is immediately necessary to save the life of the pregnant woman; or*
 - b) *the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or*
 - c) *the pregnancy has not exceeded its twenty-fourth week and that, at the time of the diagnosis, there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped; or*
 - d) *the pregnancy has not exceeded its twelfth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant*

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808556/Abortion_Statistics__England_and_Wales_2018__1_.pdf

⁸ Ganatra, B; Gerds, C; Rossier, C et al (2017). Global, regional, and subregional classification of abortions by safety, 2010-2014: estimates from a Bayesian hierarchical model. *The Lancet*. 390 (10110), p2372-2381.

woman or any existing children of her family.

- 4.3 Two recognised medical practitioners⁹ must confirm that the circumstances of the woman seeking an abortion satisfy one of these four categories. The procedure must be carried out by a recognised medical practitioner and it must take place at the Princess Elizabeth Hospital or another approved location. The Law gives all practitioners the right of conscientious objection, where they can refuse to provide care based on personal reasons.
- 4.4 In all other instances, carrying out an abortion is illegal and is punishable upon conviction by up to life imprisonment, including if a woman should attempt to perform an abortion on herself. The supply of substances or instruments for use in an abortion outside of the four categories described above is punishable by up to three years in prison.

5 Current issues with the Law

- 5.1 The Committee has been made aware of various problems relating to the existing Law ranging from: i) abortion provision being more restrictive than other medical procedures and compared with other jurisdictions, ii) a lack of legal clarity in some areas, and iii) the criminalisation of women who procure, or attempt to procure, an abortion outside of the legal framework. A number of minor modifications are also required to reflect modern practice and to 'future-proof' the Law.
- 5.2 These issues will be discussed in this Section of the Policy Letter, along with the Committee's recommendations for change.

i) Restrictions on abortion provision

a) The requirement for two medical practitioners to certify abortions

- 5.3 In all of the prescribed circumstances set out in (a) to (d) above, a woman who wishes to end her pregnancy must first consult with two medical practitioners who will assess her circumstances and approve her request under one of the four categories in section 3(1) of the Law, prior to referring her to a third medical practitioner – a gynaecologist employed by the Medical Specialist Group.
- 5.4 When the Abortion Act 1967 (the 'Abortion Act') was enacted in England, Scotland and Wales, it was believed that the requirement for two medical practitioners to certify abortions was to provide a safeguard to both women and

⁹ "recognised medical practitioner" means a recognised medical practitioner within the meaning of The Doctors, Dentists and Pharmacists Ordinance, 1987.

healthcare professionals, ensuring procedures were performed safely and within the scope of the law.

- 5.5 There are calls from health bodies, such as the British Medical Association (BMA), to remove this requirement from abortion laws because it is operationally unnecessary and out of step with all other medical and surgical procedures. No other procedure, regardless of the complexity or extent of the treatment, requires consultation with two separate medical practitioners before a referral can even take place. Furthermore, the legal necessity to do this incurs an additional cost, over and above that required for referral to other secondary care services. This may not be achievable for some women in our community and therefore presents a direct financial barrier to accessing care.
- 5.6 The WHO highlights that *'whether abortion is legally restricted or not, the likelihood that a woman will have an abortion for an unintended pregnancy is about the same.'*¹⁰ It identifies that practices such as requiring third party authorisation from one of more medical professional or hospital committee serves no purpose other than compelling a woman to seek an unsafe abortion, defined as *'a procedure for terminating an unintended pregnancy carried out either by persons lacking the necessary skills or in an environment that does not confirm to minimal medical standards, or both.'*
- 5.7 Furthermore, the UK House of Commons Science and Technology Committee has deduced that certification from two doctors does not provide any meaningful safeguard or other useful purpose but actually causes unnecessary delays in access to care and therefore recommends removing this requirement¹¹.
- 5.8 Abortion falls within the medical speciality of Obstetrics and Gynaecology. The Royal College of Obstetricians and Gynaecologists (RCOG) believes that *'the current need for two doctors' signatures to certify that a woman is approved to undergo an abortion is anachronistic. There are no other situations where either competent men or women require permission from two third parties to make a personal healthcare decision. Individual doctors are able to provide the assessment in the same way as when they treat their patients without the need to consult another doctor.'*¹²
- 5.9 Doctors assess the suitability of a patient to a procedure or treatment on a daily basis and take into consideration relevant family and medical history, current

¹⁰ World Health Organization (2015). Safe abortion: Technical & policy guidance for health systems. WHO: Geneva.

¹¹

<https://publications.parliament.uk/pa/cm200607/cmselect/cmsctech/1045/1045i.pdf>

¹² <https://www.theguardian.com/world/2017/oct/05/make-access-to-abortion-easier-uks-top-obstetrician-demands>

circumstances and symptoms, appropriateness or eligibility to treatment and possible outcomes. This continual assessment is required to complete a variety of tasks, such as the prescribing of a medication, to complex major surgeries such as a heart bypass or organ transplantation. As is the case with any treatment or procedure, doctors provide patients with all of the necessary information to enable them to make an informed decision to ensure the promotion of their health and wellbeing. It is therefore considered illogical and unjust to apply different access and assessment criteria for a woman to access an abortion procedure compared with all other medical or surgical treatments.

- 5.10 The National Institute for Health and Care Excellence (NICE) published comprehensive guidance on abortion care in September 2019, making recommendations for commissioners and providers of abortion services. One of the key recommendations contained within the guidance is to allow women to self-refer to abortion services¹³. The Isle of Man has enacted progressive abortion legislation (Abortion Reform Act 2019, the 'Isle of Man Act') that enables a woman to end her pregnancy without the need to consult with any medical practitioner up until 14 weeks of gestation, instead accessing medication directly from her pharmacist. Beyond this time, consultation is only required with one doctor, as is the case with any other secondary care service.
- 5.11 Whilst the Committee is not presently suggesting to reproduce the Isle of Man approach at this time, it considers that there is no evidence to support the continuation of the practice that requires consultation and permission from two medical practitioners before a referral can be made to secondary care. This strongly conflicts with the principles of user-centred and fair access to care.
- 5.12 Abortions under the provision of section 3(1)(a) of the Law, are those where a procedure is required immediately to save the life of a woman. The Committee considers it especially inappropriate that a medical practitioner should be legally required to seek a second opinion before referring a woman for emergency treatment.
- 5.13 The Committee recommends that the Law is amended so that women are only required to consult with one medical practitioner should they wish to have an abortion (Proposition 2).

b) Gestational thresholds

- 5.14 As described above, abortions can take place legally in Guernsey when the circumstances of the woman who wishes to end her pregnancy satisfy one of the categories set out in section 3(1) of the Law. Under sections 3(1)(c) and (d), pregnancy must not have exceeded a prescribed gestation period, as described

¹³ <https://www.nice.org.uk/guidance/ng140/chapter/Recommendations>

below.

Section 3(1)(c)

- 5.15 Procedures that are prescribed under section 3(1)(c) refer to those where a fetal anomaly has been diagnosed. This includes syndromes that are not compatible with life, where, in the absence of access to abortion, a woman would be forced to bring a pregnancy to term and give birth, knowing that the child would not survive. This is an extremely cruel and traumatic alternative. It also includes syndromes that are life-limiting, where a child may be in need of constant medical intervention; which may lead the woman or family to consider whether they are practically, financially or emotionally able to raise a child in those circumstances, or how it would affect their ability to care for existing children.
- 5.16 Section 3(1)(c) abortions are only legal in Guernsey when the gestation of the pregnancy has not exceeded 24 weeks, a threshold which does not exist in England, Wales, Scotland or the Isle of Man. This poses a number of practical issues locally.
- 5.17 The recognition of fetal anomalies relies on antenatal screening programmes, using both maternal serum screening (i.e. blood tests) and ultrasound scanning. Structural abnormalities are usually detected during a routine ultrasound scan that takes place between 18-20 weeks gestation, where the detection rate of significant abnormalities is only around 50%. Confirmation of suspected malformations will be made during further especially arranged scans at 22 weeks gestation and the complex testing needed to assist with a diagnosis and prognosis inevitably requires laboratory analysis, the results of which may take days or weeks to become available. This scenario creates time restraints and unnecessary additional difficulty in decision making that is unfairly led by legal requirements rather than health and wellbeing considerations for the woman. There are also some situations whereby the prognosis of certain abnormalities does not become clear until after 24 weeks of pregnancy¹⁴.
- 5.18 For example, ventriculomegaly is characterised by dilation of the fetal cerebral ventricles and while in its mildest form can be benign, it can also be associated with genetic, structural and neurocognitive disorders leading to severe impairment.¹⁵ The prognosis for mild ventriculomegaly poses uncertain significance at 24 weeks, with a true prognosis becoming clearer at a later

¹⁴ <https://www.rcog.org.uk/globalassets/documents/news/position-statements/rcog-new-legal-framework-for-abortion-services-northern-ireland.pdf>

¹⁵ Fox, N; Monteagudo, A; Kuller, J; Craigo, S and Norton, M (2018). Mild fetal ventriculomegaly: diagnosis, evaluation, and management. *American Journal of Obstetrics and Gynecology*. 219 (1), pB2-B9

gestational age¹⁶.

- 5.19 While local doctors estimate that a situation such as this occurs approximately once every eight years, in practice it means that clinicians and women are currently placed under undue pressure and anguish to advise and make decisions to ensure compliance with the Law, without all of the necessary information to make an informed decision in what is already a significant and very sad situation.

Section 3(1)(d)

- 5.20 Procedures that are certified under section 3(1)(d) of the Law are performed when there is a risk to a pregnant woman's health, or that of any of her existing children, as long as the pregnancy has not exceeded 12 weeks of gestation. This upper gestational limit is inconsistent with the Abortion Act and the recently enacted legislation in the Isle of Man, which allow abortion in these circumstances up to 24 weeks of gestation.
- 5.21 In England, Scotland and Wales, where the threshold for procedures certified under this category has been 24 weeks of gestation since 1991, the proportion of procedures performed at 12 weeks of gestation or earlier has remained broadly similar since 2008. Over 90% of abortions are performed before the twelfth week of pregnancy is reached. While it is expected that an increase in the gestational threshold locally would produce similar data, it is considered that the current restrictions that are in place are likely to have a detrimental impact on the most vulnerable and disadvantaged women in Guernsey.
- 5.22 There is often a presumption that the timing of an abortion is always within the control of a woman and that later abortions could be avoided, but there are many reasons, in addition to the current legal barriers, that can prevent women from accessing abortion services early on. A sudden change in circumstances, such as the death of a family member or relationship breakdown, may influence a woman's decision as to whether she can continue with a pregnancy, even if the pregnancy had been planned.
- 5.23 Poor health, whether through sudden onset, gradual deterioration or an exacerbation of symptoms due to pregnancy may also influence a woman's decision as to whether she can continue with her pregnancy or not. These changes in health condition will not always be immediately apparent.
- 5.24 Experience in England and Wales suggests that one in every four women experience domestic abuse during their lifetime¹⁷ and are more likely to have an

¹⁶ NHS Mid Cheshire Hospitals (2018). *Guide to fetal ventriculomegaly. Important information for patients.*

¹⁷ <https://www.nhs.uk/conditions/pregnancy-and-baby/domestic-abuse-pregnant/>

unwanted pregnancy due to sexual violence, disapproval of contraceptive use by their partner or inability to negotiate condom use for fear of violence¹⁸. Locally, Law Enforcement has seen an increase in the number of victims willing to come forward in recent years resulting in rising numbers of complex domestic abuse cases.¹⁹ Violent relationships are marked by coercion and the controlling behaviour of partners, making attendance at appointments without detection difficult, even without urgent time restrictions.

- 5.25 Presently, if a woman has decided that she wants to end her pregnancy and her circumstances meet the clinical criteria for an abortion (i.e. there are concerns for her health) but she has needed more time to access the care that she needs or to reach her decision and her pregnancy has subsequently passed 12 weeks, she can have an abortion in the UK if she is able to make such arrangements for herself and pay for this treatment privately. It is likely that this option would not be financially possible for many and so a two tier system based on ability to pay is currently in operation.
- 5.26 The British Pregnancy Advisory Service (BPAS) is a charity that provides abortion care as part of a woman-centred service that advocates for reproductive choice and autonomy. BPAS operates from more than 70 healthcare clinics across England, Scotland and Wales and is commissioned by the National Health Service (NHS) to provide specialist abortion advice and treatment. Nearly all of their service users have their care paid for by the NHS, but they also offer a private service.
- 5.27 Figure 1 below shows the cost of abortion procedures that are available in England on a private basis to Guernsey residents. A small discount is provided by BPAS in recognition that local women will also be required to pay for travel and accommodation expenses in addition to the procedure cost.

Figure 1: Cost of abortion procedures provided by the British Pregnancy Advisory Service

	Cost		
	UK residents*	UK residents who choose private care	Guernsey residents
Medical abortion procedures			
up to 10 weeks	£0	£480	£450
11-24 weeks	£0	£1510	£1410
Surgical abortion procedures			
up to 14 weeks	£0	£680	£450

¹⁸ www.who.int/reproductivehealth/publications/violence/9789241564625

¹⁹ www.guernsey.police.uk/annualreports

14-18 weeks	£0	£900	£670
19-24 weeks	£0	£1510	£1410

*cost met by the NHS

- 5.28 The current gestational threshold in the Law not only increases the vulnerability of already disadvantaged women in the community and complicates decision making but again presents disparity in service provision for service users in Guernsey compared with those in England, Scotland, Wales and the Isle of Man. The current situation is not aligned with the principles of the Partnership of Purpose for transforming health and care; in particular, ensuring, among other things, that low income is not a barrier to health and that access to services is fair.
- 5.29 The Committee therefore recommends that, consistent with the position in England with whom Health & Social Care shares clinical pathways, there is: (i) no upper limit on the gestation at which a pregnancy can be ended when a significant fetal abnormality is detected under section 3(1)(c) of the Law (Proposition 3); and (ii) that the current threshold for abortions under section 3(1)(d) of the Law is increased to 24 weeks gestation (Proposition 4).

Calculation of gestational age

- 5.30 Gestational age refers to a measurement, in weeks and days, to describe the stage that a pregnancy has reached. It is calculated via detailed anatomical measurements taken during an ultrasound scan (sonography) examination.
- 5.31 The Law does not currently prescribe how gestational age is calculated. However, on the basis that two of the abortion categories in section 3(1) of the Law refer to gestational thresholds within which a procedure can take place, the Committee considers that there should be greater clarity in this respect. As the method of calculating gestational age is a technical matter, it would be the Committee's intention to address this by the issue of appropriate professional practice guidance, which can be updated from time to time as appropriate (Proposition 5). It may be appropriate to amend the Law to provide expressly for the issue of such guidance.
- ii) The criminalisation of women who procure, or attempt to procure, an abortion in relation to their own pregnancy**
- 5.32 This Policy Letter and the changes it recommends will ensure that women are able to access regulated, safe abortion services. The changes also endeavour to improve equality of access. The Committee does however recognise that, in rare cases, a woman may not be able to access these services for a range of logistical, economic and social reasons and may seek to perform an abortion on herself, for

example, by purchasing medication online. This is currently an offence in the existing Law and a woman is liable to up to life imprisonment upon conviction.

- 5.33 The Committee is acutely aware that the criminal sanctions that surround the procedure may indeed prevent some women from accessing services in the first place and believes that any decision to self-induce an abortion outside of the safety of Health & Social Care services will be made by a woman who may already find herself in a desperate situation, for whom criminalisation would only further adversely affect wellbeing. While the criminal sanction remains in the Law there is also a risk that a woman who experiences complications from the use of abortifacients, now widely available online, may not seek timely emergency medical care.
- 5.34 The decriminalisation of women in respect of abortion is strongly supported by the BMA,²⁰ the RCOG,²¹ the Royal College of Midwives (RCM)²² and the Royal College of Nursing (RCN),²³ amongst others, and their recommendations have been recognised in the Republic of Ireland whereby offences for procuring an abortion outside the provisions contained within the Health (Regulation of Termination of Pregnancy) Act 2018 (the 'Irish Act') do not extend to a pregnant woman in respect of her own pregnancy.
- 5.35 The Committee hopes that the changes recommended within this Policy Letter will make it even less likely that a woman living locally would feel that her only available option is to attempt to end her own pregnancy in such a manner. However, following the advice of the above professional bodies and the example of the Irish Act, the Committee considers it appropriate to repeal section 1(a) of the Law so that in the few instances where they do, they are not criminalised. It is possible that there are extant, archaic provisions on the statute book which are of a similar effect to section 1(a), and if any such are identified in the course of preparing the amendments they too should be repealed (Proposition 1).

iii) **Modifications to reflect modern practice and 'future-proof' the Law**

a) **Location of abortion services**

- 5.36 Section 3(2) of the Law provides that –

Any treatment for the termination of pregnancy must be carried out in the

²⁰ British Medical Association (2019). *The removal of criminal sanction for abortion: BMA Position Paper*. London: BMA.

²¹ <https://www.rcog.org.uk/en/news/rcog-backs-decriminalisation-of-abortion/>

²² <https://www.rcm.org.uk/media/2296/abortion-statement.pdf>

²³ The Royal College of Nursing. *Decriminalisation of Termination of Pregnancy. Position Statement*. 2018.

Princess Elizabeth Hospital (or such other place as the States may by Ordinance specify) or in a place approved for the purposes of this section by the Committee.

- 5.37 The Law is more than 20 years old and when enacted, reflected practice at the time which was for abortion procedures to be performed surgically under a general anaesthetic. While the Princess Elizabeth Hospital remains the only appropriate location for a surgical procedure, most abortions are now performed medically due to the decreased risks to the woman involved with this method. The medical procedure to end a pregnancy involves the administration of two medicines 36-48 hours apart and it has been common and best practice for some time for service users to remain at their place of residence between these doses of medication. The Committee believes that upon strict reading, it could be interpreted that Health & Social Care is in breach of the Law and that given changing practice, it is appropriate for the Law to be updated.
- 5.38 In some areas in the United Kingdom, the expulsion of the products of conception can take place at home if the woman so wishes and the standardisation of this practice is now recommended by NICE²⁴ for early medical abortion procedures performed prior to ten weeks of gestation. While there may be some operational practicalities to consider prior to this happening in Guernsey, such as making arrangements to provide support by telephone if required, this area of modern practice reinforces the need to amend the Law regarding the location of where abortion procedures may occur. Provision to have an abortion in hospital, as is the case currently, will continue to be available should this option be preferred.
- 5.39 As it is not operationally practicable to provide a modern service to Bailiwick residents that currently functions within the scope of the Law, the Committee recommends that the primary legislation is amended to remove the requirement for medical abortions to take place only at the Princess Elizabeth Hospital. This will allow women to return to their place of residence for all or part of their procedure if they choose (Proposition 7). Procedures that are performed surgically will continue to be conducted at the Princess Elizabeth Hospital.

b) Professionals who can perform abortion procedures

- 5.40 The Law cites '*recognised medical practitioners*' only as the personnel who are able to perform abortion services in Guernsey. The Committee appreciates the invaluable role that nursing, midwifery and other care staff also provide in abortion services locally, including being involved in the procedure itself.
- 5.41 Nursing and theatre staff at the Princess Elizabeth Hospital assist doctors during

²⁴ <https://www.nice.org.uk/guidance/ng140/chapter/Recommendations#service-organisation>

surgical abortion procedures and both registered nurses and midwives administer medication for medical abortions. This is considered best practice and has been in operation locally and in other jurisdictions for many years.

- 5.42 The Committee is therefore in agreement that the Law should be updated to reflect modern practice, i.e. that it is nurses and midwives who administer medication and who are indeed largely the primary carers for women accessing this service. It recommends that the Law should be amended to include registered nurses and registered midwives as professionals who can perform abortions (Proposition 6).

c) Conscientious objection

- 5.43 Conscientious objection refers to the right of an individual to refuse participation in abortion services because they hold a personal objection to the procedure. It is a right that is protected in section 5(1) of the Law, which provides that –

Subject to the provisions of subsection (3), no person shall be under any duty, whether arising by contract or by statutory or other legal requirement, to participate in any treatment authorised by this Law to which he has a conscientious objection.

- 5.44 The Law states that individuals cannot refuse to participate in treatment which is necessary to save the life of a pregnant woman. This exemption is consistent with equivalent abortion legislation in Jersey, England, Wales, Scotland, the Isle of Man and the Republic of Ireland. However, the Guernsey Law currently falls short of all of the equivalent legislation in these jurisdictions, which also include a further exemption specifying that the right to refuse care does not affect any duty to participate in any aspect of care or treatment which is necessary to prevent serious injury to the physical or mental health of a pregnant woman.
- 5.45 The absence of the second exemption locally has contributed to an accepted practice whereby some practitioners choose to refuse to participate in the basic nursing care of women who attend the Princess Elizabeth Hospital for an abortion procedure, such as not answering patient call bells or providing pain relief. This situation accentuates the stigma that surrounds abortion, places unnecessary strain on other member of staff on duty and is problematic in the planning and organisation of admissions.
- 5.46 With regard to professional union bodies, the right to refuse participation in care is respected by the BMA, the RCM and the RCN but all three organisations make clear to their members that this only extends to direct participation in the abortion procedure itself.
- 5.47 In its position Statement, the RCM advises that abortion services are within the

scope of midwifery practice and that the right to opt out of participation in care *'should only apply to direct involvement in the procedure of terminating pregnancy.'*²⁵ The RCN advises that care cannot be refused to a woman who is about to or has already undergone a procedure to end their pregnancy.

5.48 In response to a proposed Private Member's Bill²⁶ introduced in the UK House of Lords, which would have widened the duties for which a practitioner could refuse, the BMA advised in its Parliamentary brief, *'The BMA is seriously concerned by the scope of activities to which this right would apply, as it goes far beyond the direct participation in treatment (which is the normal and natural meaning of 'participate', as interpreted by the courts)' and 'the potential ramifications of this on patient care are extremely worrying, as such a scenario could have a serious adverse health consequence for women wishing to access these services.'*²⁷ The 2017-2019 session of Parliament prorogued and the Bill made no further progress.

5.49 The Committee considers that it is fair and proportionate to align the Law locally with Jersey, England, Wales and Scotland, the Isle of Man and the Republic of Ireland by the inclusion of the second exemption to conscientious objection. Specifically, the Isle of Man Act provides the following -

Conscientious objection does not affect any duty to participate in a treatment which is necessary — (a) to save the life of a woman; or (b) to prevent grave permanent injury to the health of a woman.

5.50 The subtle difference is the reference to a woman, rather than a 'pregnant' woman, and ensures that should complications occur following the expulsion of the products of conception, clinicians would not be exempted from providing life-saving treatment when the woman is no longer pregnant.

5.51 The Committee therefore recommends that a second exemption to the right to conscientiously object should be included in the Law as set out above, and that both exemptions to conscientious objection should refer to a woman, rather than a 'pregnant' woman (Proposition 9).

Scope of conscientious objection

5.52 Limits to the scope of conscientious objection were clarified by the UK's Supreme Court in 2014 where it upheld an appeal against a court ruling in Scotland which

²⁵ <https://www.rcm.org.uk/media/2296/abortion-statement.pdf>

²⁶ <https://services.parliament.uk/Bills/2017-19/conscientiousobjectionmedicalactivities.html>

²⁷ British Medical Association (2018). Parliamentary Brief: Conscientious Objection (Medical Activities) Bill. BMA.

would have enabled healthcare staff to refuse to carry out care duties which were far removed from abortion procedures. The Supreme Court ruled that *'it is unlikely that, in enacting the conscience clause, Parliament had in mind the host of ancillary, administrative and managerial tasks that might be associated with those acts. Parliament will not have had in mind the hospital managers who decided to offer an abortion service, the administrators who decided how best that service can be organised within the hospital, the caterers who provide the patients with food, and the cleaners who provide them with a safe and hygienic environment.'*²⁸

5.53 It is clear that a balance needs to be found that both respects the personal beliefs of those who wish to conscientiously object, without adversely or unreasonably affecting service provision and the experience of service users who attend the hospital for a medical procedure, for which they should not feel stigmatised.

5.54 The Committee recommends the creation of a suitable regulation-making power in the Law to enable further provision to be made in respect of conscientious objection, to ensure that there is clarity in this regard (Proposition 10). Having considered the ruling of the Supreme Court referred to above, and the recommendations made to their members by the RCM, RCN and the BMA, the Committee is of the view that the right to conscientious objection should only apply to direct participation in the abortion procedure itself; the precise scope of that obligation would be made clear in the regulations.

d) Obligation for onward referral

5.55 In order not to deny service users access to appropriate care and treatment and to maintain good practice standards, in the case of conscientious objection, prompt onward referral should occur to another practitioner who does not hold the same objection.

5.56 The General Medical Council (GMC) protects patients and improves practice as the regulatory body for Medical Practitioners. It advises Medical Practitioners that in the event of conscientious objection, onward referral to another clinician must occur. It states to its registrants *"If it's not practical for a patient to arrange to see another doctor, you must make sure that arrangements are made – without delay – for another suitably qualified colleague to advise, treat or refer the patient. You must bear in mind the patient's vulnerability and act promptly to make sure they are not denied appropriate treatment or services."*²⁹

5.57 The Nursing and Midwifery Council (NMC) is the professional regulator of nurses

²⁸ <https://www.supremecourt.uk/cases/docs/uksc-2013-0124-judgment.pdf>

²⁹ <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/personal-beliefs-and-medical-practice/personal-beliefs-and-medical-practice>

and midwives and works to ensure that these professionals have the knowledge and skills to deliver consistent, quality care that ensures the safety of service users. The NMC cites the Supreme Court judgement, referenced in paragraph 5.52 above, to guide its registrants on the matter of conscientious objection. The NMC Code, to which members must adhere to maintain their registration, states that those who choose to exercise their right to opt out of providing care must *'arrange for a suitably qualified colleague to take over responsibility for that person's care.'*³⁰

- 5.58 To strengthen this position, the Republic of Ireland and Isle of Man Acts oblige those clinicians who hold a personal objection to providing abortion care to refer patients to another clinician to administer their care.
- 5.59 The Committee therefore recommends that in order to provide seamless access to care and to mitigate against any delays in it being provided, the Law should oblige those who refuse care to refer their patient to another clinician without such an objection (Proposition 8).

e) Future-proofing the Law

- 5.60 Currently, notification of abortions must be made solely to the Medical Officer of Health (MOH) within 21 days of a procedure. The States agreed to disband the statutory office of MOH in December 2017³¹ as it is agreed that the functions that are attached to it are now best served between relevant subject experts, namely the Office of Environmental Health & Pollution Regulation, the Director of Public Health and the Medical Director.
- 5.61 While competing priorities have meant that a full review of legislation that currently administers the functions of the MOH has not yet been completed, in order to avoid duplication of effort at a later time, the Committee wishes to amend the abortion notification process now so that notification of such procedures is made to the Director of Public Health (Proposition 11).

6 Outcomes

- 6.1 The abortion rate for Guernsey and Alderney is lower than in England and Wales. Should it be the case that the lower rate is, in part, due to the current legal restrictions, it is acknowledged that the recommended changes to the Law may result in an increase in the number of abortions that take place.

³⁰ <https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf>

³¹ Committee *for Health & Social Care* – 'A Partnership of Purpose: Transforming Health and Care' - Billet d'État XXIV of 2017

6.2 Doctors agree that procedures should ideally occur as early as possible and the very large majority do. 91% of abortions in England and Wales in 2018 were carried out before 12 weeks gestation.

6.3 In England and Wales, across all abortion categories in 2018:

- 80% of procedures were performed before the tenth week of pregnancy;
- 11% took place between 10-12 weeks of gestation;
- 7% occurred between 13-19 weeks; and
- fewer than 2% occurred beyond the twentieth week of pregnancy.

6.4 Similarly, in Guernsey, most procedures are performed under 10 weeks of gestation as set out in Figure 2 below.

Figure 2: Guernsey abortions by gestation period, 2009-18³²

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Under 10 weeks	83%	79%	80%	85%	83%	87%	88%	75%	77%	78%
10 to 12 weeks	15%	20%	15%	12%	13%	11%	10%	16%	19%	19%
13 weeks +	2%	1%	5%	4%	4%	2%	2%	10%	4%	4%

6.5 It is difficult to predict at what stage any additional procedures may occur, because it is dependent on which barrier or circumstance prevented access to abortion care in the first place. It is reasonable to assume that an increase in the gestational threshold in which abortions can be performed under section (3)(1)(d) of the Law may result in a small number of abortions being performed at a later gestation, as is the case in England and Wales where 6.3% of procedures are undertaken in this category between 13-19 weeks and 1.2% beyond the twentieth week of pregnancy.

6.6 However, the removal of financial barriers or the requirement to attend the Princess Elizabeth Hospital, which for some women poses a risk to anonymity, may show an increase in the total number of early abortions or a proportion of procedures that are currently performed between 10-12 weeks being performed at an earlier stage.

6.7 It also cannot be known how many women might decide to continue with a pregnancy if they had longer to consider their choice.

³² Public Health Intelligence Unit, States of Guernsey. Guernsey Abortion Statistics Summary 2017-18. 2020.

7 Resource Implications

- 7.1 It is very difficult to forecast, with any degree of accuracy, the financial impact of the proposed legislative changes recommended in this Policy Letter. This is because the cost of any increase in the total number of procedures may be offset by removing the requirement for all abortions to occur at the Princess Elizabeth Hospital. The medication for early medical abortions is suitable for home administration prior to 10 weeks gestation, a stage at which the majority of abortions in Guernsey currently occur. Data from England and Wales suggests that this will not change as a result of the legislative changes recommended in this Policy Letter. Allowing women, if they wish, to return home following the administration of their medication is likely to have the effect of reducing the clinical workload of nursing staff and the number of hospital admissions.
- 7.2 This may, however, be counter-balanced by the requirement to fund any additional procedures at a later gestational age for abortions performed under section (3)(1)(d) that would take place off Island.
- 7.3 Further savings will also be realised by the Committee *for* Employment & Social Security, in terms of a reduced number of Health Benefit grants provided to subsidise GP appointments in Primary Care, if the requirement to consult with two Medical Practitioners is removed.
- 7.4 The Committee anticipates that it will not require additional resources or an increase in revenue funding as a result of the recommended changes to the Law.

8 Consultation and Engagement

- 8.1 The Committee has consulted with local clinicians across a wide range of professions, employed by Health & Social Care, Primary Care and the Medical Specialist Group, who engage with current and potential service users as part of their professional scope of practice.
- 8.2 Further consultation has taken place with those clinicians directly involved in abortion procedures to inform the development of the Policy Letter. All of the recommendations for change made by the Committee have the support, by a large majority, of local clinicians.
- 8.3 The Committee has also conducted engagement with members of the public, via small group consultation. Those who participated were generally surprised at the differences between the laws in Guernsey and England and the tiered system that they create in terms of access to care. It was felt that implementing the recommendations to modernise the Law is both important and worthwhile.

- 8.4 A public engagement event is planned during March 2020 with Professor Dame Lesley Regan, the immediate past President of the Royal College of Obstetricians and Gynaecologists, attending as an expert guest speaker.

9 Alderney and Sark

- 9.1 The Law currently extends to Guernsey, Herm and Jethou only. It is the Committee's intention to correspond with the States of Alderney and the Chief Pleas in Sark, in due course, during the drafting of any legislative change, to seek their views regarding the implementation of a Bailiwick-wide abortion law.

10 Conclusion

- 10.1 The recommendations within this Policy Letter underline the Committee's commitment to providing health and care services that are easily accessed and focused on those who need them.
- 10.2 One of the important principles of the Partnership of Purpose, among others, is to ensure that there is fair access to care across the community and that financial barriers that prohibit Islanders from receiving care are removed.
- 10.3 The Committee acknowledges that effective regulation is required to maintain the safety of services but cannot support legal requirements that are not supported by a scientific evidence base and that force some local clinicians, in certain circumstances, to adapt their practice according to law rather than by their medical expertise.

11 Compliance with Rule 4

- 11.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 11.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 11.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Committee is unanimously supportive of the value of a debate regarding the proposals being submitted to the States for consideration, but also agrees that it is for Members themselves to vote on each Proposition according to their conscience.
- 11.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee *for* Health & Social Care to protect, promote and improve the health and wellbeing of individuals and the community.

11.5 Also in accordance with Rule 4(5), the Committee *for* Health & Social Care has consulted with a wide range of stakeholder groups, including clinicians from the medical practice groups in the Island and the Medical Specialist Group.

Yours faithfully

H J R Soulsby
President

R H Tooley
Vice-President

E A McSwiggan
R G Prow
D A Tindall

R H Allsopp, OBE
Non-States Member

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HEALTH & SOCIAL CARE

MODERNISATION OF THE ABORTION (GUERNSEY) LAW, 1997

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port

2nd March, 2020

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee for Health & Social Care (CfHSC) requests that the propositions dated 2nd March, 2020 be considered at the States' meeting to be held on 22nd April, 2020.

This request is made on the basis that the CfHSC has arranged for a subject expert, Professor Dame Lesley Regan, immediate past president of The Royal College of Obstetricians & Gynaecologists, to attend the island to support an engagement event for members of the public on 11th March, 2020.

Consideration of this matter in the States will be held on 22nd April, 2020.

Yours faithfully,

H J R Soulsby
President

R H Tooley
Vice President

E A McSwiggan
R G Prow
D A Tindall

R H Allsopp
Non-States Member(s)