

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

THE ABORTION (GUERNSEY) (AMENDMENT) LAW, 2021

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Abortion (Guernsey) (Amendment) Law, 2021", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This proposition has 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.

EXPLANATORY MEMORANDUM

This Law amends the Abortion (Guernsey) Law, 1997 ("the principal Law").

Section 2 of this Law amends section 1 of the principal Law to abolish the offence of a woman procuring her own miscarriage.

Section 3 of this Law amends section 2 of the principal Law to ensure that the offence of supplying or procuring any thing intending it to be unlawfully used to procure a miscarriage only applies where it involves the intended miscarriage of another person (not the person who supplied or procured the thing).

Section 4 of this Law amends section 3 of the principal Law to extend the categories of persons who might lawfully terminate a pregnancy to registered nurses and midwives ("authorised persons") in addition to registered medical practitioners. It also replaces the requirement for certification by two medical practitioners with certification by a single medical practitioner. It removes the requirement that the pregnancy must not exceed its twenty fourth week, in order for termination on grounds that there is a substantial risk of significant physical or mental impairment that would be seriously debilitating to the child (the terminology relating to 'handicapped' has been updated). It also extends from 12 to 24 weeks the pregnancy period within which termination can be carried out on grounds of risk of injury to the physical or mental health of the pregnant woman or existing children of her family. Finally, it removes the requirement for medical abortions to take place only at Princess Elizabeth Hospital.

Section 5 of this Law amends section 4 of the principal Law to reflect the amendments allowing authorised persons to carry out terminations, and to require notice of terminations to be given to the Director of Public Health (instead of the Medical Officer of Health).

Section 6 of this Law amends section 5 of the principal Law to restrict and regulate the right to conscientious objection in relation to participating in treatment resulting in termination. It provides that this right does not override any duty to participate in treatment necessary to prevent serious injury to the physical or mental health of the pregnant woman (in addition to any duty to save the life of the woman concerned). It also requires the person exercising the right to make any necessary arrangements to allow someone else without a conscientious objection to participate in the treatment or, in appropriate cases, inform the woman concerned that she has a right to see another person who is authorised to participate in the treatment and has no conscientious objection. Finally, it authorises the Committee for Health & Social Care to make regulations to further restrict or impose conditions on the right to conscientious objection.

Section 7 of this Law amends section 6 of the principal Law to reflect the abolition of the offence of self-procuring a miscarriage.

Section 8 of this Law inserts the definition of "authorised persons" in section 8 of the principal Law.

This Law will come into force on a date to be specified by regulations made by the Committee for Health & Social Care.

PROJET DE LOI

ENTITLED

The Abortion (Guernsey) (Amendment) Law, 2021

THE STATES, in pursuance of their Resolution of the 24th June, 2020^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Amendments to the 1997 Law.

1. The Abortion (Guernsey) Law, 1997^b ("the principal Law") is amended as follows.

2. In section 1 of the principal Law –

(a) repeal paragraph (a), and

(b) in paragraph (b), immediately after "of any", insert "other person, being a".

^a Article V of Billet d'État No. XIII of 2020.

^b Ordres en Conseil Vol. XXXVII, p. 72; amended by Ordinance No. XXXIII of 2003 and No. IX of 2016.

3. In section 2 of the principal Law, immediately after "of any", insert "other person, being a".

4. In section 3 of the principal Law –

(a) in subsection (1) –

(i) For the words beginning with "Subject to" and ending with "practitioners are", substitute "An authorised person shall not be guilty of an offence under section 1 or 2 where the authorised person terminates a pregnancy in any case where a recognised medical practitioner is",

(ii) for paragraph (c), substitute the following paragraph –

"(c) that, at the time of the diagnosis, there is a substantial risk that if the child were born it would suffer from a significant physical or mental impairment that would have a seriously debilitating effect on the child, or", and

(iii) in paragraph (d), for "twelfth", substitute "twenty-fourth",

(b) for subsections (2) and (3), substitute the following subsection–

"(2) For the purposes of subsection (1)(d), whether or not a pregnancy has exceeded its twenty-fourth week is to be determined and calculated in accordance with any guidance published by the Committee in any manner it considers appropriate for this purpose."

5. In section 4 of the principal Law –

(a) in subsection (1), for "A recognised medical practitioner", substitute "An authorised person",

(b) in subsection (2) –

(i) in paragraph (a), for "practitioners", substitute "practitioner",

(ii) in paragraph (c), for "recognised medical practitioner", substitute "authorised person",
and

(c) in subsection (3), for "Medical Officer of Health", substitute "Director of Public Health".

6. In section 5 of the principal Law –

(a) in subsection (1) –

(i) for "the provisions of subsection (3)" substitute "subsections (3) and (3A) and any regulations made under subsection (5)",

(ii) immediately after "treatment", insert "of a woman",

(b) in subsection (3), for "to save the life of a pregnant woman.", substitute –

" –

(a) to save the life of the woman concerned, or

(b) to prevent serious injury to the physical or mental health of the woman concerned.",

(c) immediately after subsection (3), insert the following subsection –

"(3A) Subsection (1) does not apply unless the person who has a conscientious objection, without delay –

(a) in any case where the woman concerned has requested the person to participate in the treatment –

(i) informs that woman that she has a right to see another person who is lawfully authorised to participate in the treatment and does not have a conscientious objection, and

(ii) ensures that that woman has sufficient information to enable her to exercise

the right mentioned in subparagraph
(i), and

(b) in any other case, makes any arrangements necessary to allow another person, who is lawfully authorised to participate in the treatment and does not have a conscientious objection, to participate in the treatment in place of the person who has a conscientious objection.", and

(d) immediately after subsection (4), insert the following subsections –

"(5) The Committee may by regulations –

(a) designate or limit the persons who may exercise the right to conscientious objection specified in subsection (1),

(b) impose any condition or requirement for the exercise of that right, and

(c) otherwise limit or restrict the exercise of the right in any manner that it thinks fit.

(6) In this section, for the avoidance of doubt, a reference to participation in any treatment includes a reference to provision of the treatment."

7. In section 6 of the Principal Law –

- (a) immediately after "anything done", insert "by a person", and
- (b) for "a woman", substitute "another person, being a woman,".

8. In section 8 of the principal Law, insert the following definition immediately before the definition of "the Committee" –

""authorised person" means –

- (a) a recognised medical practitioner, or
- (b) a person who is registered as a nurse or midwife in the register maintained by the Committee under section 3 of the Registered Health Professionals Ordinance, 2006,".

Extent.

9. This Law shall extend to the Islands of Guernsey, Herm and Jethou.

Citation.

10. This Law may be cited as the Abortion (Guernsey) (Amendment) Law, 2021.

Commencement.

11. This Law shall come into force on a date to be specified by regulations made by the Committee for Health & Social Care; and regulations may provide for different provisions of the Law to come into force on different dates.