

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4571 of 25 April, 2019

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B. 17/19

## BILL

FOR

AN ACT to amend and clarify the law relating to termination of pregnancy by registered medical practitioners and for connected purposes.

ENACTED by the Legislature of Gibraltar.

### Title.

1. This Act may be cited as the Crimes (Amendment) Act 2019.

### Commencement.

2. This Act comes into operation on the day of publication.

### Additional Sections on Child Destruction & Abortion.

3. The Crimes Act 2011 is amended by inserting the following new sections 163A to 163E after existing section 163 as follows-

#### **“Medical termination of pregnancy.**

163A.(1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion and child destruction in sections 161 to 163 hereof when a pregnancy is terminated by a registered medical practitioner employed by the Gibraltar Health Authority if two registered medical practitioners employed by the Gibraltar Health Authority are of the opinion, formed in good faith—

- (a) that 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 woman; or
- (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or

- (c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
- (d) that there is a substantial risk that the child is suffering from a fatal foetal abnormality.

(2) In determining whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in paragraph (a) or (b) of subsection (1) of this section, account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(3) Except as provided by subsection (5) of this section, any treatment for the termination of pregnancy must be carried out in a hospital approved for such purposes, whether in or outside of Gibraltar by the Minister for Health.

(4) The power under subsection (3) of this section to approve a place includes power, in relation to treatment consisting primarily in the use of such medicines as may be specified in the approval and carried out in such manner as may be so specified, to approve a class of places.

(5) Subsection (3) of this section, and so much of subsection (1) as relates to the opinion of two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

**Notification.**

163B.(1) The Minister of Health shall have power to make regulations to provide-

- (a) for requiring any such opinion as is referred to in section 163A to be certified by the practitioners or practitioner concerned in such form and at such time as may be prescribed by the regulations, and for requiring the preservation and disposal of certificates made for the purposes of the regulations;
- (b) for requiring any registered medical practitioner who terminates a pregnancy to give notice of the termination and such other information relating to the termination as may be so prescribed;
- (c) for prohibiting the disclosure, except to such persons or for such purposes as may be so prescribed, of notices given or information furnished pursuant to the regulations.

(2) The information furnished in pursuance of regulations made by virtue of paragraph (b) of subsection (1) of this section shall be notified solely to the Director of Public Health.

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of regulations under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Conscientious objection to participation in treatment.**

163C.(1) Subject to subsection (2) of this section, no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by section 163A to which he has a conscientious objection:

Provided that in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

(2) Nothing in subsection (1) of this section shall affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

**Supplementary provisions.**

163D. For the purposes of the law relating to abortion, anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorised by section 163A and, in the case of a woman carrying more than one foetus, anything done with intent to procure her miscarriage of any foetus is authorised by that section if—

- (a) the ground for termination of the pregnancy specified in subsection (1)(d) of that section applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus; or
- (b) any of the other grounds for termination of the pregnancy specified in that section applies.

**Interpretation.**

163E. In this Act, the following expressions shall have the meaning hereby assigned to it—

“the law relating to abortion” means sections 161 to 163 of this Act and any rule of law relating to the procurement of abortion;

“Gibraltar Health Authority” means the Gibraltar Health Authority established by section 3 of the Medical (Gibraltar Health Authority) Act, 1987.”.

## **EXPLANATORY MEMORANDUM**

This Bill arises from a finding in the Supreme Court of the United Kingdom on the legality of the law on abortion in Northern Ireland, which is materially similar to the law in Gibraltar. In that case, the majority of the Court decided that the current law in Northern Ireland is disproportionate and incompatible with Article 8 of the European Convention of Human Rights. Article 8 of the European Convention is similar to Section 7 of the Gibraltar Constitution Order 2006.

This Act will, therefore, amend the Crimes Act 2011 to allow terminations of pregnancies in certain defined circumstances.

Relevant provisions of the United Kingdom Abortion Act 1967 are transposed into Section 163 of the Crimes Act 2011 for this purpose.

The period of weeks in which abortions can be carried out are to be limited to twelve.

The places in which abortions can be carried out are limited to those which are authorised by the Minister for Health. These can include places outside of Gibraltar.

Medical practitioners who certify an abortion is legal must be employed by the Gibraltar Health Authority.

The circumstances in which an abortion can be carried out are also limited.

The first limited instances in which an abortion would be legal are related to the health of the pregnant woman in cases when the continuation of the pregnancy would involve risk, greater than if the pregnancy were terminated, of risk to the life or of grave injury to the physical or mental health of the pregnant woman.

The second set of limited instances in which an abortion would be legal are related to the health of the foetus in cases where the child is suffering from a fatal foetal abnormality.

The Bill also provides for information to be provided to the Director of Public Health in respect of abortions carried out and for conscientious objectors, in certain circumstances, not to have to participate in the carrying out of any terminations.

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