



**Isle of Man**

*Ellan Vannin*

**AT 3 of 1938**

**THE INFANTICIDE AND INFANT LIFE  
(PRESERVATION) ACT 1938**





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## THE INFANTICIDE AND INFANT LIFE (PRESERVATION) ACT 1938

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**Isle of Man***Ellan Vannin*

## THE INFANTICIDE AND INFANT LIFE (PRESERVATION) ACT 1938

<i>Received Royal Assent:</i>	<i>1 April 1938</i>
<i>Passed:</i>	<i>3 May 1938</i>
<i>Commenced:</i>	<i>3 May 1938</i>

AN ACT to amend the law with regard to the destruction of children at or before birth.

**GENERAL NOTE:** References to penal servitude are to be construed in accordance with the *Custody Act 1995* Sch 3 para 1.

### 1 Short title

This Act may be cited as 'The Infanticide and Infant Life (Preservation) Act, 1938'.

### 2 Conviction for infanticide in certain cases

- (1) Where a woman by any wilful act or omission causes the death of her newly born child, but at the time of the act or omission she had not fully recovered from the effect of giving birth to such child, and by reason thereof the balance of her mind was then disturbed, she shall, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, be guilty of felony, to wit infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of such child.
- (2) Where upon the trial of a woman for the murder of her newly born child, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission she had not fully recovered from the effect of giving birth to such child, and that by reason thereof the balance of her mind was then disturbed, the jury may, notwithstanding that the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide.

- (3) Nothing in this Act shall affect the power of the jury upon an information for the murder of a newly born child to return a verdict of manslaughter, or a verdict of guilty but insane, or a verdict of concealment of birth, in pursuance of section 73 of the *Criminal Code, 1872*.
- (4) The said section 73 shall apply in the case of the acquittal of a woman upon information for infanticide as it applies upon the acquittal of a woman for murder, and upon the trial of any person over the age of sixteen for infanticide it shall be lawful for the jury, if they are satisfied that the accused is guilty of an offence under section 1 of the *Children and Young Persons Act 1966* to find the accused guilty of such an offence, and in that case that section shall apply accordingly.<sup>1</sup>

### **3 Punishment for child destruction**

- (1) Subject as hereinafter in this sub-section provided, any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, shall be guilty of felony, to wit, of child destruction, and shall be liable on conviction thereof on information to penal servitude for life:

Provided that no person shall be found guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

- (2) For the purposes of this Act, evidence that a woman had at any material time been pregnant for a period of twenty-eight weeks or more shall be prima facie proof that she was at that time pregnant of a child capable of being born alive.

### **4 Prosecution of offences**

- (1) Where upon the trial of any person for the murder or manslaughter of any child, or for infanticide, or for an offence under section 71 of the *Criminal Code, 1872*, the jury are of opinion that the person charged is not guilty of murder, manslaughter or infanticide, or of an offence under the said section 71 as the case may be, but that he is shewn by the evidence to be guilty of the felony of child destruction, the jury may find him guilty of that felony and thereupon the person convicted shall be liable to be punished as if he had been convicted upon an information for child destruction.
- (2) Where upon the trial of any person for the felony of child destruction the jury are of opinion that the person charged is not guilty of that felony, but that he is shewn by the evidence to be guilty of an offence under the said section 71 of the *Criminal Code, 1872*, the jury may find him guilty of that offence, and thereupon the person convicted shall be liable to be

punished as if he had been convicted upon an information under that section.

- (3) Section 73 of the *Criminal Code, 1872*, shall apply in the case of an acquittal of a person on an information for child destruction as it applies to the acquittal of a person on an information for murder or infanticide.

## **5 Commencement of Act**

This Act shall come into operation when the Royal Assent thereto has been by the Governor announced to Tynwald and a certificate thereof has been signed by the Governor and the Speaker of the House of Keys.



**ENDNOTES****Table of Legislation History**

<b>Legislation</b>	<b>Year and No</b>	<b>Commencement</b>

**Table of Renumbered Provisions**

<b>Original</b>	<b>Current</b>

**Table of Endnote References**

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<sup>1</sup> Subs (4) amended by Children and Young Persons Act 2001 Sch 12.