



**Isle of Man**

*Ellan Vannin*

**AT 14 of 1995**

**TERMINATION OF PREGNANCY  
(MEDICAL DEFENCES) ACT 1995**





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**Isle of Man***Ellan Vannin*

## TERMINATION OF PREGNANCY (MEDICAL DEFENCES) ACT 1995

<i>Received Royal Assent:</i>	<i>18 October 1995</i>
<i>Passed:</i>	<i>19 October 1995</i>
<i>Commenced:</i>	<i>19 January 1996</i>

AN ACT to provide statutory defences for medical practitioners who terminate pregnancies in certain circumstances; and for connected purposes.

### 1 Defence to charges under section 71 or 72 of the Criminal Code to preserve the life of the pregnant woman

Subject to section 5, a person shall not be guilty of an offence under section 71 or 72 of the *Criminal Code 1872* (offences relating to procuring a miscarriage) (in this Act referred to as “**the Criminal Code**”) when a pregnancy is terminated by a hospital surgeon if that surgeon and an independent medical practitioner are of the opinion, formed in good faith, that the termination of the pregnancy is necessary to preserve the life of the pregnant woman.

### 2 Preserving the life of the pregnant woman: examples

- (1) Without prejudice to the generality of section 1 of this Act or to the proviso to section 3 of the *Infanticide and Infant Life (Preservation) Act 1938* (in this Act referred to as “**the 1938 Act**”), if the hospital surgeon who terminates the pregnancy and the other medical practitioner are of the opinion, formed in good faith, that —
  - (a) the continuance of the pregnancy would involve a substantial risk (other than such risk as is normally associated with pregnancy and childbirth) to the life of the pregnant woman greater than if the pregnancy is terminated; or
  - (b) the termination is necessary to prevent grave permanent injury to —
    - (i) the physical health of the woman; or
    - (ii) the mental health of the woman,

the termination shall, for the purposes of those sections, be necessary to preserve the life of the pregnant woman.

- (2) In a case to which subsection (1)(b)(ii) applies, the other medical practitioner must be a consultant psychiatrist.

### **3 Duty to preserve life of child**

- (1) When, in accordance with sections 1 and 2 of this Act or in accordance with the proviso to section 3 of the 1938 Act, a hospital surgeon terminates a pregnancy which has exceeded 24 weeks, it shall be the duty of the surgeon —
  - (a) to perform the termination in such manner as is best calculated to preserve the life of the child; and
  - (b) to take such other action as is reasonable in all the circumstances to preserve the life of the child.
- (2) The duty imposed by subsection (1) shall be exercised in a manner which is consistent with, and shall not override, the duty of the surgeon to preserve the life of the woman.
- (3) The obligation to comply with the duty imposed by this section is a duty owed to the pregnant woman and the child (if born alive), and any breach of that duty is actionable accordingly, subject to the defences and other incidents applying to actions for breach of statutory duty.

### **4 Defences: viability or abnormality of foetus**

- (1) Subject to section 6, a person shall not be guilty of an offence under —
  - (a) section 71 or 72 of the Criminal Code; or
  - (b) section 3 of the 1938 Act,

when a pregnancy is terminated by a hospital surgeon if that surgeon and an independent medical practitioner are of the opinion, formed in good faith, that there is a substantial risk that if the child were to be born at full term it would suffer from such physical or mental abnormalities as to be —

- (i) unlikely to survive birth;
  - (ii) unlikely to be capable of maintaining vital functions after birth; or
  - (iii) seriously handicapped.
- (2) For the purposes of subsection (1)(iii), a serious handicap exists if, and only if, the hospital surgeon and the medical practitioner are of the opinion, formed in good faith, that the handicap is not capable of being cured or substantially relieved by treatment or the passage of time.

- (3) Subsection (1)(iii) shall not apply unless the hospital surgeon and the medical practitioner are of the opinion, formed in good faith, that the pregnancy has not exceeded 24 weeks.

## 5 Defence to charges under section 71 or 72 of the Criminal Code in cases of certain sexual crimes

- (1) Subject to section 6, a person shall not be guilty of an offence under section 71 or 72 of the Criminal Code when a pregnancy is terminated by a hospital surgeon if –
- (a) that surgeon and an independent medical practitioner are of the opinion, formed in good faith, that the pregnancy has lasted for less than 12 weeks; and
  - (b) the requirements of subsection (2) have been complied with.
- (2) The requirements referred to in subsection (1)(b) are that –
- (a) the pregnant woman has produced to the hospital surgeon and the medical practitioner an affidavit or other evidence taken under oath alleging that the pregnancy could be caused by rape, incest or indecent assault;
  - (b) the pregnant woman has made a complaint to the police about the alleged rape, incest or indecent assault as soon as was reasonable in all the circumstances; and
  - (c) the hospital surgeon and the medical practitioner are of the opinion, formed in good faith, that there are no medical indications which are inconsistent with the allegation that the pregnancy could be caused by rape, incest or indecent assault.
- (3) No evidence in respect of, or any matter connected with, the termination of a pregnancy in accordance with this section shall be admissible in any criminal proceedings relating to the alleged rape, incest or indecent assault except with the leave of the court.

## 6 Provisions supplementary to sections 1 to 5

- (1) Sections 1 to 5 shall apply only where –
- (a) the pregnant woman is ordinarily resident in the Island; and
  - (b) the pregnancy is terminated in a national health hospital.
- (2) In sections 1, 4 and 5, “**independent medical practitioner**” means a medical practitioner who –
- (a) is not employed on the staff of, or otherwise contracted to provide medical services in, a national health hospital in a post or office which is junior to the hospital surgeon who terminates the pregnancy; or

- (b) is not a partner or employee of the hospital surgeon who terminates the pregnancy; or
  - (c) is not a member or employee of a group practice of which the hospital surgeon who terminates the pregnancy is a member or employee; or
  - (d) during the 6 months preceding the termination, has not acted as locum tenens for the hospital surgeon who terminates the pregnancy; or
  - (e) during the 6 months preceding the termination, has not been engaged to assist the hospital surgeon in the course of a private medical practice.
- (3) Subsection (1), and so much of sections 1 and 2 as relate to the opinion of two medical practitioners, shall not apply to the termination of a pregnancy by a medical practitioner in a case where the practitioner 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 health of the pregnant woman.
- (4) In the case of a woman carrying more than one foetus, the defences provided under sections 1 to 5 apply if —
- (a) the ground for termination of the pregnancy specified in section 4 applies in relation to any foetus and the action is taken for the purpose of procuring the miscarriage of that foetus, or
  - (b) any of the other grounds for termination of the pregnancy specified in those sections applies.
- (5) Where a pregnancy is terminated in accordance with this Act —
- (a) if the child is born alive, the hospital surgeon shall be under a duty to take all reasonable steps to preserve the life of the child; or
  - (b) if there is no live birth, the foetus shall be disposed of —
    - (i) in accordance with the wishes of the pregnant woman; or
    - (ii) in the absence of any direction by the pregnant woman, in accordance with the normal practice of the hospital,

but the foetus or any part of the foetus shall not be used or made available for any medical or other experiment or procedure or for any purpose whatsoever without the express written consent of the mother.

## 7 Regulations

- (1) The Department shall, after consulting such persons and bodies as it thinks appropriate, make regulations as to the provision by the Department of —
- (a) balanced and impartial counselling services for any pregnant woman who has to consider the termination of her pregnancy;



- (b) facilities, staff or funds for such service; and
  - (c) training and information for persons engaged for the purposes of such service.
- (2) The Department may make regulations to provide —
- (a) for requiring any such notice, opinion or affidavit as is referred to in this Act to contain such information and to be in such form as may be prescribed by the regulations;
  - (b) for requiring any such evidence on oath as is referred to in this Act to include such information as may be prescribed by the regulations;
  - (c) for requiring the preservation and disposal of such documents as are made for the purposes of this Act or the regulations;
  - (d) for requiring any medical practitioner who terminates a pregnancy to give notice of the termination and to furnish such documents and information relating to the termination as may be so prescribed;
  - (e) for prohibiting the disclosure, except to such persons or for such purposes as may be so prescribed, of any document or information furnished pursuant to this Act or to regulations.
- (3) The documents and information furnished in pursuance of regulations made under subsection (2)(d) shall be notified solely to the director of public health.<sup>1</sup>
- (4) Any person who intentionally contravenes or intentionally fails to comply with the requirements of regulations under subsection (2) shall be liable on summary conviction to a fine not exceeding £5,000.
- (5) Regulations under this section shall be laid before Tynwald.

## 8 Interpretation

- (1) In this Act —

“**the 1938 Act**” has the meaning given by section 2(1);

“**consultant**” means a medical practitioner who is employed or engaged as a consultant at a hospital provided by the Department under section 28 of the *National Health Service Act 2001*;<sup>2</sup>

“**the Criminal Code**” has the meaning given by section 1;

“**the Department**” means the Department of Health;<sup>3</sup>

“**hospital surgeon**” means —

- (i) a consultant in obstetrics and gynaecology;
- (ii) a consultant in surgery;

- (iii) a surgeon employed on the staff of a national health hospital; or
- (iv) any other medical practitioner who is recognised by the Department as being suitably qualified and who has been nominated in writing by the Department as a medical practitioner authorised to undertake the termination of pregnancies at a national health hospital;

“**medical practitioner**” means a registered medical practitioner;

“**national health hospital**” means a hospital vested in the Department for the purposes of the *National Health Service Act 2001*.<sup>4</sup>

- (2) Nothing in this Act shall be construed as imposing any duty on any person to participate in any treatment authorised by this Act to which that person has a conscientious objection and the Department shall not —
  - (a) terminate the employment of any persons so refusing; or
  - (b) refuse to employ persons on the sole ground that they refuse, or might refuse to participate in any treatment authorised under this Act.
- (3) For the avoidance of doubt, it is declared that it is not an offence under the law of the Island for a medical practitioner or any other person to advise a pregnant woman in respect of any service relating to the termination of pregnancy which is available in any place outside the Island.

## 9 Financial provision

Any expenses of the Department which are attributable to this Act shall be paid out of monies provided by Tynwald.

## 10 Short title and commencement

- (1) This Act may be cited as the Termination of Pregnancy (Medical Defences) Act 1995.
- (2) This Act shall come into force on the expiration of the period of three months beginning with the date on which it is passed.

**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 (3) amended by Public Health (Amendment) Act 2000 s 12.

<sup>2</sup> Definition of “consultant” substituted by National Health Act 2001 Sch 4.

<sup>3</sup> Definition of “the Department” amended by SD155/10 Sch 4.

<sup>4</sup> Definition of “national health hospital” amended by National Health Service Act 2001 Sch 4.