

# STATES OF JERSEY



Jersey

## **DRAFT TERMINATION OF PREGNANCY (AMENDMENT No. 2) (JERSEY) LAW 202-**

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**Lodged au Greffe on 5th February 2021  
by Deputy L.M.C. Doublet of St. Saviour  
Earliest date for debate: 23rd March 2021**

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**STATES GREFFE**





Jersey

## **DRAFT TERMINATION OF PREGNANCY (AMENDMENT No. 2) (JERSEY) LAW 202-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, Deputy L.M.C. Doublet of St. Saviour has made the following statement –

In the view of Deputy L.M.C. Doublet of St. Saviour, the provisions of the Draft Termination of Pregnancy (Amendment No. 2) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy L.M.C Doublet of St. Saviour**

Dated: 4th February 2021

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### **Re-issue Note**

This Projet is re-issued to correct a typographical error in the above statement in the originally published Projet.



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## REPORT

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The draft [Termination of Pregnancy \(Jersey\) Law 1997](#), (the “Abortion Law”) as it stands, incorporates a mandatory waiting period of 7 days between two medical consultations. The Abortion Law is now over 20 years old and has remained virtually unchanged since it was enacted. The purpose of this Amendment is to remove the mandatory waiting period between two medical consultations and thus remove an unnecessary barrier to accessing safe and legal abortion care.

### Background

Jersey’s Abortion Law resulted from a proposition lodged in 1994 (P.30/1994<sup>1</sup>) and the Report to P.30/1994 refers, at point 63 to: “*a statutory requirement that the woman has two medical consultations and a counselling review over a period of not less than 7 days*”.

One of the Amendments (P.49/1994<sup>2</sup>) sought was to allow for: “*the termination of pregnancy to be made available after medical consultation without delay*”. The purpose behind this part of the amendment, as stated in the Report to P.49, was “*to ensure that there are no time delays or unnecessary obstacles once the agreed procedures have been followed. It would ensure that there is no seven day “cooling off period” in the legislation*”. Unfortunately, this amendment was withdrawn prior to the debate on P.30/1994 but it does demonstrate that this part of the legislation was controversial even in the mid-90s.

### Safe Abortions

WHO (World Health Organisation) Safe abortion: technical and policy guidance for health systems<sup>3</sup> states that: “*Mandatory waiting periods can have the effect of delaying care, which can jeopardise women’s ability to access safe and legal abortion services and demeans women as competent-decision makers*”. [Chapter 4 Legal and policy considerations 4.2.2.6 Waiting Periods].

Mandatory waiting periods act as a barrier in accessing abortion services. An article entitled “Waiting periods for Abortion” by the Guttmacher Institute<sup>4</sup> references various issues in relation to waiting periods including the lack of medical need for waiting periods, the fact that few other medical procedures require such waiting periods and that waiting periods can be detrimental to women’s mental health.

### The Statutory Gestational Limit

There is no exception in the Abortion Law for an abortion on request on Island once the statutory 12-week gestational period has been exceeded. If the first medical appointment takes place when the woman is 11 weeks pregnant and a 7-day waiting period is in place, then the woman will no longer have the option of having an abortion on Island. Furthermore, there is only one clinic and, dependent on how busy the clinic is or if bank holidays occur, there might be a wait for the second medical appointment.

*“Abortions are generally very safe and most women will not experience any problems. But like any medical treatment, there’s a small risk that something*

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<sup>1</sup> <https://catalogue.jerseyheritage.org/collection/Details/archive/110380758>

<sup>2</sup> <https://catalogue.jerseyheritage.org/collection/Details/archive/110381237>

<sup>3</sup> [https://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434\\_eng.pdf;jsessionid=49E79060146F553FB6331BF3F2D57963?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf;jsessionid=49E79060146F553FB6331BF3F2D57963?sequence=1)

<sup>4</sup> [Guttmacher Institute - Waiting periods for Abortion](#)

*could go wrong. The risk of complications increases the later in pregnancy an abortion is carried out.*" [<sup>5</sup>NHS UK].

This table shows how the likelihood of complications from identical treatment methods can be considerably increased in the space of one week.

	Up to 9 weeks	9-10 weeks
Take 1st medication (mifepristone)	In clinic, by mouth	In clinic, by mouth
Take 2nd medication (misoprostol)	1-2 days interval in the vagina or between cheek and gum	1-2 days interval in the vagina or between cheek and gum
Complete abortion	97 in 100	93 in 100
<b>Potential risks</b>		
Continuing pregnancy	1 in 100	3 in 100
Retained pregnancy tissue	2 in 100	3 in 100
Needing surgical treatment to complete abortion	3 in 100	7 in 100
<b>Side effects</b>		
Nausea	29 in 100	50 in 100
Vomiting	9 in 100	46 in 100
Diarrhoea	5 in 100	17 in 100
Warmth/chills	15 in 100	33 in 100
Headache	18 in 100	18 in 100
Dizziness	9 in 100	7 in 100
Follow-up	Self assessment with pregnancy test in 2 weeks or In-clinic ultrasound scan in 1-2 weeks	In-clinic ultrasound scan in 1-2 weeks

Figure 1: Taken from the British Pregnancy Advisory Service website<sup>6</sup>

The option of a medical abortion may also be replaced by a surgical abortion if the pregnancy is beyond a certain stage. For example, medical abortions are only available up to 9 weeks of pregnancy (10 weeks during the Covid crisis) (Coronavirus (COVID-19) infection and abortion care<sup>7</sup>). Adding the 7-day wait at the key time of the 9<sup>th</sup>/10<sup>th</sup> week of pregnancy, could force a woman to endure a surgical procedure completely unnecessarily.

### Off-Island Travel

After the 12-week period is exceeded, the only option available to a pregnant woman wanting to have an abortion is to travel off-Island, usually to the UK. Not only will this incur significant financial cost (which in some cases may not be achievable) but it is

<sup>5</sup> <https://www.nhs.uk/conditions/abortion/risks/>

<sup>6</sup> <https://www.bpas.org/abortion-care/abortion-treatments/the-abortion-pill/abortion-pill-up-to-10-weeks/>

<sup>7</sup> <https://www.rcog.org.uk/globalassets/documents/guidelines/2020-07-31-coronavirus-covid-19-infection-and-abortion-care.pdf>

likely to cause additional stress and hardship given that the medical procedure will be carried out away from home, family and friends. This factor is especially pressing given the current limitations on travel etc due to the pandemic.

### **Cost**

As noted above, after the 12-week period is exceeded, a woman must travel off-Island to obtain an abortion. The cost therefore substantially increases from the fee of £185 on Island<sup>8</sup>. Not only would the cost of travel and accommodation be incurred but the cost of abortion in the UK, which would not be covered by the NHS, is substantially higher, (around £450-£700 depending on which clinic is accessed).<sup>9</sup><sup>10</sup>

### **Comparative Jurisdictions**

The Isle of Man Abortion Reform Act 2019<sup>11</sup> (the “Act”) came into force on 24th May 2019 and replaced the previous outdated legislation. Abortion services may now be provided during the first 14 weeks of the gestation, upon request by or on behalf of a woman.

The States of Deliberation in Guernsey have recently decided to modernise the Abortion (Guernsey) Law 1997<sup>12</sup> (“the Law”). The reforms to the Law include allowing one doctor to sign off an abortion and thereby not requiring a time period between two consultations.

Previous legislation resulted in many Manx and Guernsey women travelling to the UK for private abortions due to the restricted access to abortions. The Guernsey legislation changes have been highly commended by experts in this area.<sup>13</sup>

### **Conclusion**

It is clear that this would not be included in legislation were we debating it for the first time in Jersey today. A mandatory waiting period could result in women undergoing surgical procedures or having to travel off-Island unnecessarily. Approving this amendment would remove this requirement, in line with international medical best practice.

### **Financial and manpower implications**

There are no additional financial and manpower implications arising from this proposition.

### **Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers’ Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

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<sup>8</sup> The cost of terminations in Jersey is £185 for women having the procedure under ‘Section D’ of the Termination of Pregnancy (Jersey) Law 1997. This cost is the same for medical and surgical procedures. However, if women are under the age of 18 or in full time education there is no charge. If women undergo terminations for severe fetal abnormalities or maternal medical conditions, there is no charge to the woman.

<sup>9</sup> [https://www.bpas.ie/prices/?\\_ga=2.76529749.1144164105.1612434901-707167513.1611235624](https://www.bpas.ie/prices/?_ga=2.76529749.1144164105.1612434901-707167513.1611235624)

<sup>10</sup> <https://www.msichoice.org.uk/abortion-services/nhs-funded-and-private-abortions/>

<sup>11</sup> [https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2019/2019-0001/AbortionReformAct2019.pdf?zoom\\_highlight=abortion#search=%22abortion%22](https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2019/2019-0001/AbortionReformAct2019.pdf?zoom_highlight=abortion#search=%22abortion%22)

<sup>12</sup> [https://www.gov.gg/CHttpHandler.ashx?id=123692&p=0\ois\sojdata\SGR\Members'Resources\2\\_Enquiries\Doublet\Enquiry\\_3\\_\(28.05.20\)\Research\Abortion\\_laws\\_-\\_comparative\\_jurisdictions\Modernisation\\_of\\_Guernsey\\_legislation.pdf](https://www.gov.gg/CHttpHandler.ashx?id=123692&p=0\ois\sojdata\SGR\Members'Resources\2_Enquiries\Doublet\Enquiry_3_(28.05.20)\Research\Abortion_laws_-_comparative_jurisdictions\Modernisation_of_Guernsey_legislation.pdf)

<sup>13</sup> <https://www.bpas.org/media/3354/guernsey-abortion-modernisation-bpas-response.pdf>

**APPENDIX TO REPORT****Human Rights Notes on the Draft Termination of Pregnancy  
(Amendment No. 2) (Jersey) Law 202-**

These Notes have been prepared in respect of the Draft Termination of Pregnancy (Amendment No. 2) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

**These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.**

The most relevant convention right is Article 2 of the ECHR. Article 2(1) states:

*“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”*

Article 2 is silent as to the temporal limitations of the right to life and does not define “everyone” whose “life” is protected. However, In *Vo v. France* (Application No 53924/00), the Grand Chamber of the European Court of Human Rights reviewed its previous decisions in relation to abortion and held that:

*“the unborn child is not regarded as a “person” directly protected by Article 2 of the Convention and that if the unborn do have a “right” to “life”, it is implicitly limited by the mother’s rights and interests.” (para. 80).*

The Court in *Vo* went on to hold that in the absence of any European consensus on the scientific and legal definition of the beginning of life, that it is within the margin of appreciation that States enjoy to determine the extent of protection accorded to the right to life for an embryo or foetus under national law.

It follows that this proposition concerning the procedure pursuant to which an abortion can take place gives rise to no issues of compatibility with Article 2 of the ECHR.



**EXPLANATORY NOTE**

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The draft Termination of Pregnancy (Amendment No. 2) (Jersey) Law 202-, if passed, would amend Article 3 (requirement for consultation) of the Termination of Pregnancy (Jersey) Law 1997 in order to remove the 7 day minimum waiting period between the first and second medical consultations for a pregnant woman seeking a termination. *Article 2* gives the title by which this Law may be cited and brings it into force 7 days after its registration by the Royal Court.





Jersey

## **DRAFT TERMINATION OF PREGNANCY (AMENDMENT No. 2) (JERSEY) LAW 202-**

**A LAW** to amend the Termination of Pregnancy (Jersey) Law 1997.

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

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### **1 Article 3 (requirement for consultation) of the Termination of Pregnancy (Jersey) Law 1997 amended**

In Article 3(3) of the Termination of Pregnancy (Jersey) Law 1997<sup>1</sup>, “, not less than 7 days after that consultation,” is deleted.

### **2 Citation and commencement**

This Law may be cited as the Termination of Pregnancy (Amendment No. 2) (Jersey) Law 202- and comes into force 7 days after it is registered.

## ENDNOTES

### Table of Endnote References

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*1* *chapter 20.925*