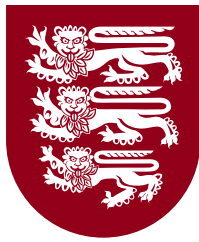


STATES OF JERSEY



Jersey

DRAFT TERMINATION OF PREGNANCY (JERSEY) AMENDMENT LAW 202-

**Lodged au Greffe on 6th November 2024
by the Minister for Health and Social Services
Earliest date for debate: 21st January 2025**

STATES GREFFE



Jersey

DRAFT TERMINATION OF PREGNANCY (JERSEY) AMENDMENT LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Assistant Minister for Health and Social Services has made the following statement –

In the view of the Assistant Minister for Health and Social Services, the provisions of the Draft Termination of Pregnancy (Jersey) Amendment Law 202- are compatible with the Convention Rights.

Signed: **Deputy A. Howell of St. John, St. Lawrence and Trinity**
Assistant Minister for Health and Social Services

Dated: 1st November 2024

REPORT

Introduction

The [Termination of Pregnancy \(Jersey\) Law 1997](#) (the “1997 Law”) is amended to remove the current residency requirements set out in that Law.

Adopting the amendments will allow a person who is not resident in Jersey, to access a termination in Jersey, providing that is in accordance with all other provisions of the law and the Health and Community Services Department’s charging policy.

Background

The 1997 Law currently imposes minimum residency requirements. It states that, in order to have termination in Jersey, a person must either:

- be ordinarily resident in Jersey, or
- have been resident in Jersey for 90 days immediately preceding that day on which the procedure takes place.

The Law also provides that the upper gestation period for termination on the grounds of distress is the end of the 12th week of pregnancy, which is equivalent to 84 days. The 90-day qualifying period for a non-ordinarily resident woman, combined with the 84-day upper limit means that a woman who is pregnant on arrival in Jersey or shortly after arrival is unable to access a termination in Jersey.

This is known to create hardship for women who are in Jersey for the purposes of work but who ordinarily live elsewhere and are, therefore, potentially vulnerable or isolated (for example, women in Jersey on six-month work permits or women who are in Jersey for an extended period whilst caring for a relative).

Protection against health tourism

The removal of the current residency requirements makes it theoretically possible for a woman to come to Jersey solely for the purposes of having a termination in Jersey (for example, if there were restrictions in her usual place of residence). Whilst this is a theoretical possibility, there will be very limited instances of people travelling to Jersey for a termination, having come via the UK or France where terminations are available at a later gestation period.

The theoretical risk of health tourism is, in any event, addressed via a proposed amendment to Article 3 of the Law which requires the person to be present in Jersey during the two legally mandated pre-procedure consultation.

In addition, the HCS Departmental charging policy sets out the termination of pregnancy is a paid-for service (except for where an exemption applies) with a higher fee charged for non-resident women which acts to discourage health tourism.

The current fees are:

£185 for someone who is entitled to health care in Jersey, with the following being exempt from charges:

- under 18
- full time student that meets the definition for the student healthcare service ¹
- on income support
- where pregnancy is a result of rape or incest, without the need to provide evidence
- where fees have been waived upon outcome of an appeals process

£511 for someone who is not entitled to health care in Jersey.

Further amendments

The proposed amendment works to address, in the short-term, a restriction in law which creates significant hardship for some groups of women.

It is envisaged that more extensive changes to the law will be brought forward in 2025 / 2026, pending further development and public consultation.

Financial and staffing implications

It is anticipated that the removal of the existing residency requirement would only result in a small increase in the number of women accessing terminations in Jersey. Those women will be paying to access the termination of pregnancy service and, therefore, the financial and staffing implications are limited.

Children's Rights Impact Assessment

A Children's Rights Impact Assessment (CRIA) was undertaken and found no negative new impact from this amendment. There was potential benefit for a child that may need to access the service. They would no longer have to travel to the UK if they hadn't met the residency requirement. The CRIA to this proposition is available to read on the States Assembly website.

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.

¹ **Student Healthcare Service**

The Government and local GPs have worked together to create the Student Healthcare Service. The service ensures face to face appointments with a doctor or nurse in General Practice are free for full time students aged eighteen or above who are studying at any Jersey school or college or are studying full-time* in a recognised university or college in the UK or abroad. Students at Jersey schools or Highlands College, excluding Beaulieu, and students studying outside Jersey who are supported by Student Finance will be automatically enrolled for the service.

* Definition aligns with that of the UK.

- Minimum 15 hours taught course per week
- An institution able to award a degree level award or similar / affiliated with such an institution

APPENDIX TO REPORT**Human Rights Notes on the draft Termination of Pregnancy (Jersey) Amendment Law 202-**

These notes have been prepared in respect of the draft Termination of Pregnancy (Jersey) Amendment 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, in the form reviewed by them, 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 draft Law, if passed, would remove the residency requirements for accessing a termination of pregnancy by removing the requirement for a person to be ordinarily resident in the island or resident for 90 days immediately before the date on which the termination is carried out. It would introduce a requirement for the person to be present in the island when the required medical consultations take place and when the termination is carried out.

Article 2 of the ECHR 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 termination of pregnancy 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 a termination of pregnancy can take place gives rise to no issues of compatibility with Article 2 of the ECHR.

EXPLANATORY NOTE

This Law, if adopted, will amend the Termination of Pregnancy (Jersey) Law 1997 (the “principal Law”) by removing a requirement that a person seeking a termination must be resident in Jersey.

Article 1 states that this Law amends the principal Law.

Article 2 amends Article 2(2)(c) of the principal Law, which allows a termination to be carried out before the end of the 12th week of pregnancy if certain conditions are met, including that the person seeking the termination is ordinarily resident in Jersey or has been resident in Jersey for 90 days immediately before the date on which the termination is carried out. The amendment removes that condition.

Article 3 inserts a new Article 3(3A) into the principal Law. Article 3 of the principal Law sets out consultation requirements that must be complied with to satisfy 1 of the conditions for a termination under Article 2(2)(c). New paragraph (3A) requires the person seeking the termination to be present in Jersey for the consultations required by Article 3 of the principal Law.

Article 4 gives the name of this Law and states that it comes into force 7 days after it is registered.



Jersey

DRAFT TERMINATION OF PREGNANCY (JERSEY) AMENDMENT LAW 202-

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Jersey

DRAFT TERMINATION OF PREGNANCY (JERSEY) AMENDMENT LAW 202-

A **LAW** to amend the [Termination of Pregnancy \(Jersey\) Law 1997](#).

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His 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 His Most Excellent Majesty in Council, have adopted the following Law –

1 [Termination of Pregnancy \(Jersey\) Law 1997](#) amended

This Law amends the [Termination of Pregnancy \(Jersey\) Law 1997](#).

2 **Article 2 (circumstances in which termination is not to be unlawful) amended**

Article 2(2)(c)(iii) is deleted.

3 **Article 3 (requirement for consultation) amended**

After Article 3(3), there is inserted –

(3A) The requirements of this Article are not met unless the pregnant woman is in Jersey for the first and second consultations.

4 **Citation and commencement**

This Law may be cited as the Termination of Pregnancy (Jersey) Amendment Law 202- and comes into force 7 days after it is registered.