HEAR SUBMISSION

To the Office of Clerk of Tynwald

Abortion Bill Public Consultation

HEAR HUMANITY & EQUALITY in ABORTION REFORM

For Reference – UK / IOM Law Relating to Abortion, and the Draft Abortion Bill:

Offences Against The Person Act 1861 (sections 58 & 59): http://bit.ly/OAPA1861Ab
Criminal Code 1872 (clauses 71 & 72): http://bit.ly/CC1872

Infant Life (Preservation) Act 1929: http://bit.ly/ILPA1929
Infanticide and Infant Life (Preservation) Act 1938: http://bit.ly/IILPA1938

Abortion Act 1967: http://bit.ly/AbA1967
Human Fertilisation and Embryology Act 1990 (section 37): http://bit.ly/HFEA1990s37
Termination of Pregnancy (Medical Defences) Act 1995: http://bit.ly/TPMDA1995

'Abortion Reform Bill 2017': http://bit.ly/AbDraft

9. Clause 6(2): Do you agree that a woman should have the choice to request an abortion up to 14 weeks?

No.

10. Clause 6(6): Do you agree that a woman who has become pregnant after being raped should have the choice to request an abortion without having to report the rape?

No.

Please provide any further comments here

We will comment firstly on the principle of abortion after sexual crime, and then the proposed amendation to current law.

A woman who finds herself pregnant having been subjected to the horror of a sexual crime needs every just assistance that society can provide. Nobody with any semblance of human empathy can fail to sympathise with someone in that terrible situation, or not want to give them the best and most compassionate care.

Also a survivor of this abuse however, is the unborn child conceived in such dreadful and barbaric circumstances. She is not a perpetrator of any crime, and it is no fault of that embryonic or foetal human being that they have been conceived in the context of an unspeakably wicked and abusive crime perpetrated against their mother. She also deserves the equal support and compassion of her fellow members of the human family.

This is why, in principle, we do not agree that abortion should ever be a legal response to a pregnancy that has occurred due to a violent offence. Abortion is always the killing of an unborn child, and therefore a violation of her right to life. As such, to kill a baby in the

womb due to the circumstances of their conception, whether at embryonic or foetal stages of her development, is an act of gross injustice. It punishes an innocent child for the evil actions of her father. There are people today who were conceived in rape, and who are alive in countries where abortion was illegal at the time that they came to be, which prevented their lives from being prematurely ended by abortion. Their stories, such as that of Rebecca Kiessling[1], are no less worthy of consideration.

Added to this, although to perform an abortion on a woman who has gone through the trauma of a sexual crime might be thought to relieve her of further consequences of that action, it might also however, deepen that trauma, or add new trauma to it[2]. This has been the experience of a number of women[3], and so no simplistic generalised assumptions can be made about the effects of an abortion on the survivor of sexual crime[4].

Whilst we understand then, that (and why) many believe abortion after a violent offence is a compassionate attempt to relieve suffering, we cannot agree with this viewpoint. It does not take into account the nature of the act of abortion, has a simplistic understanding of the consequences, and justifies the means by the ends, contrary to the nature of the most fundamental human right to life.

We recognise however, that the view of the right-to-life movement is not the majority view. Clause 5 of our current law, the Termination of Pregnancy (Medical Defences) Act 1995, already allows for abortion after sexual crime. That being the case, this is the context in which we must consider Question 10.

Clause 5 of the 1995 Act creates an exemption for prosecution under sections 71 or 72 of the Criminal Code 1872 when the pregnancy is under 12 weeks gestation. It also establishes a procedure for verifying abortion for sexual crime:

- The woman who is the survivor of such an offence must have reported the crime to the police as soon as was reasonable in all the circumstances.

- She must then provide to the hospital surgeon and independent medical practitioner (who must make a 'good faith' approval that the abortion take place) an affidavit of some other evidence taken under oath alleging that the pregnancy could be caused by sexual crime.
- These two doctors must finally agree in good faith that there are no medical indications which are inconsistent with the allegation that the pregnancy was caused by a sexual crime.

This procedure was put into the law in order that this section might not be abused by women seeking abortions whose individual circumstances did not meet the other provisions of the Act.

The draft Bill under consultation would remove this procedure entirely by repealing the 1995 Act, and replacing the provisions concerning sexual crime with clause 6(6), which would create an exemption from prosecution for doctors performing abortions up to 24 weeks if, "according to the pregnant woman, the pregnancy resulted from rape, incest or other unlawful intercourse".

This goes beyond simply allowing a woman to have an abortion "without having to report the rape", as Question 10 suggests, but would allow her to have an abortion on the grounds of having been subjected to a sexual crime up to 24 weeks, *without providing any evidence basis that a sexual crime took place*.

This would clearly allow for cases where a woman who wants to have an abortion on demand in the second trimester could simply present for it on the basis of that she had been subjected to a sexual crime, and be given it with no further questions asked. This, adding to the laxity of clauses 6(4) and 6(7) would contribute for the Bill's allowance for abortion on demand *de facto* up to 24 weeks.

If and whilst it is the consensus that the law provide an exemption from prosecution for abortions in the case of pregnancy after sexual crime, the current law is not only already sufficient to allow these to take place, but provides the safeguards that would prevent abuse of this provision. By removing the current law and replacing it with such easily abused statutes, exploitation of the law to allow abortion on demand would be easily enabled.

There appears to be no obvious gain to be made in taking such legislative action. If there are difficulties faced by women who need to gain an affidavit or report a sexual crime as the law requires, then this is a case for making police and other related services more efficient, not for removing sensible provisions that allow for evidence of sexual crime as a basis for an abortion. No clause like 6(6) should therefore be included in any reform of our abortion laws.

11. Clause 6(5): Do you think that a woman should have the choice to request an abortion if it is detected that the foetus has a fatal abnormality, at any stage of the pregnancy including after 24 weeks?

No.

Please provide comments

As disability activists from Britain have rightly recently stated[5], the use of terminology like 'abnormality' in this consultation question, and 'defect' in clause 6(5) of the draft Bill, is outdated, ableist, and offensive. Such language is indicative of the discriminatory nature of this provision. All laws that deliberately allow for unborn children to be destroyed are discriminatory, as they deny the fundamental right to life of the baby in the womb. Those that also target some babies in particular for destruction due to some characteristic that they possess, however, are even more pernicious.

That said, clause 4 of our current law, the Termination of Pregnancy (Medical Defences) Act 1995, already allows for abortion in the case of life-limiting impairment. That being the case, this is the context in which we must consider Question 11.

Under current law, clauses 4(1)(i) and 4(1)(ii) of the 1995 Act provide exemptions for prosecution for doctors who perform abortions when the unborn child is "*unlikely to survive birth [or] unlikely to be capable of maintaining vital functions after birth*". Compared to this, clause 6(5)(a) in the draft Bill has nothing to do with life-limiting impairment, but allows abortion up to 24 weeks when a doctor believes that the unborn child possesses a disability that will have a "seriously debilitating effect" on the child. Only clause 6(5)(b) in particular refers to abortion for when an impairment "will result in the death of the foetus *in utero*", but like clause 6(5)(a) it only allows for abortion up to 24 weeks.

The question therefore appears to be asking whether this provision should be extended up to birth, as with clause 6(8)(d)(i), which also allows for abortion up to birth for life-limiting impairments (except during or after birth as opposed to in the womb).

It is difficult to see what difference this would make, compared to the current law. Abortion for life-limiting impairment is already allowed in the 1995 Act up to birth. In any case, we do not support this, and object not only to the discriminatory nature of this provision (as in the current 1995 Act), but the cruelty of allowing abortion at such a late stage of pregnancy, a process that is particularly brutal. We shall discuss this further in our answer to Question 12.

We can only imagine what it is like to have a child who possesses a life-limiting impairment. Surely no-one can fail to feel for those who go through such a heart-breaking experience of loss. Yet to justify killing a child, particularly at 24 weeks or pregnancy and above when their humanity is so obvious in the full formation of their little body, on the basis that she will die later anyway, is an argument for nothing less than child euthanasia.

We do not say that this is the intention of the doctors or parents who make such a decision to have such an abortion, but it is materially the nature of what is occurring.

The humane answer to the tragedy of life-limiting impairments is to provide perinatal hospice care, so that that child's life can end naturally in an atmosphere of love and compassion, with adequate pain relief, and so that those parents who go through the heartbreak of losing their baby can say goodbye to their child with all the benefits of modern medicine and care.

12. Clause 6(8): Do you think that there are any circumstances in which an abortion should be provided after the 24th week?

No.

Do you have any other views you would like to add about circumstances after the 24th week?

Whilst abortion at any point in pregnancy constitutes the killing of an unborn child, abortion after 24 weeks does so in a manner that is particularly barbaric. There can be no circumstances in which it is justifiable, either ethically or practically.

After 24 weeks, babies in the womb have reached the stage of 'viability'. That means that the unborn child can survive outside her mother's womb. To use any of the standard methods of abortion after this point therefore can never be described as necessary for some medical end, but always constitute the gratuitous killing of the unborn child as an end in itself, since early induction in which the baby will be born alive is always an option.

In later pregnancy there are two forms of abortion that may take place: 'Dilation and Evacuation' ('D&E'), and chemically-induced miscarriage (typically termed 'medical abortion')[6].

D&E is a major surgical abortion procedure carried out under general anaesthetic. It first requires dilation of the cervix. The surgeon then inserts forceps with sharp metal jaws up into the uterus, seizes a leg or other part of the baby's body, and, with a twisting motion, tears it out. Other parts of the developing unborn child are then grasped, twisted, and torn away. This pliers-like instrument is used because the bones of the fetus are calcified, as is the skull. The spine must be snapped, and the skull crushed to remove them. The nurse's job is to reassemble the body parts to be sure that all are removed. If not carefully removed, sharp edges of the bones may cause cervical laceration, and consequent bleeding would be profuse. After 18 weeks, in order to make dismembering the baby easier, D&E will often be preceded by feticide (we will discuss this below).

Chemically induced miscarriage (generally signified with the misnomer 'medical abortion', despite its lack of any medicinal effect) involves the taking of two different chemicals 36-48 hours apart at two different clinical visits.

In the first visit, a pregnant woman is administered an abortifacient (a drug that causes the miscarriage of a baby) called mifepristone. This blocks progesterone, the hormone produced in the ovaries that makes the endometrium (the lining of the womb) suitable for the unborn child to be 'gestated': given necessary nutrients from her mother from the maternal blood through the umbilical cord during the second or third trimesters. The blocking of progesterone causes the lining to break down, which breaks the baby's attachment to her mother, essentially starving (and later in the deprivation of oxygen, suffocating) her to death.

In the second visit, the woman is administered a prostaglandin (an artificial hormone that causes uterine contractions) called mifoprostol, to expel the broken down womb lining and the remains of her unborn child.

After 20 weeks, this is similar to a very late natural miscarriage or stillbirth. Prostaglandin is injected directly into the uterus, making it contract strongly (as in labour), with contractions lasting up to 6-12 hours. The woman remains awake during the procedure and is given painkillers to help control the pain if necessary. D&E may then be used to ensure all the remains of the baby are removed entirely.

After 18 weeks of pregnancy, both forms of late abortion procedure will most commonly be preceded by so-called 'feticide'. All abortions are 'feticidal' of course, in that they always involve the deliberate destruction of a human being at the fetal stage of her development. The procedure specifically termed 'feticide' in surgical parlance, however, is when the baby is killed prior to her body being delivered or removed from her mother's womb. This is accomplished by injecting a saline solution (potassium chloride – salt) into the child's heart, causing her to have a fatal heart attack.

This happens because potassium is a mineral that possesses an electric charge, and it disrupts the electrical conduction of heart muscle, preventing heart cells from preparing for their next contraction. This means that the baby's heart is forced to stop beating, causing her death.

In 2015, of the 1,284 abortions performed at 22 weeks and over, 44% were reported as preceded by a feticide and a further 52% were performed by a method whereby the fetal heart is stopped as part of the procedure. Only 4% of abortions at 22 weeks or beyond were confirmed as having no feticide[7]. In 2012, BPAS' Medical Director Patricia Lohr reported in Abortion Review[8] that:

'*At BPAS, we routinely perform intra-cardiac potassium chloride injections before D&E at 22+0 weeks and greater*'.

The reasons for this procedure differ depending on context. As Lohr reported in a 2008 edition of Abortion Review[9]:

'*Feticide is recommended by the Royal College of Obstetricians and Gynaecologists for medical abortion at 22 weeks' gestation or greater to avoid the possibility of a live birth*'.

So, since abortion takes place to prevent a baby being born, the Royal College of Obstetricians and Gynaecologists (RCOG) in the UK counsels that feticide take place to ensure that a baby is not born alive accidentally after 22 weeks (when greater viability makes that possibility more and more likely)[10].

Lohr goes on to say that[11]:

'*Feticide is also used before D&E by some surgeons, though the true incidence of use is not known. The gestational age at which feticide is employed before D&E differs among practitioners, but it is typically reserved for terminations above 18 weeks' gestation. The softening of bone that occurs after fetal demise is proposed to reduce the amount of cervical dilation necessary and to make the procedure easier and faster, thus reducing the risk of complications*'.

In other words, whilst during the the standard D&E procedure, the baby may be killed by this process of gradual dismemberment alone, it is difficult to perform after 18 weeks gestational age due to the toughness of the baby's bones. Killing the baby beforehand causes her bodily tissues to soften, making dismembering her easier for the abortionist.

Such barbaric forms of abortion cannot be justified after 24 weeks, when the child could simply be induced early when necessary, and thereby born alive. That is why clause 3 of the Termination of Pregnancy (Medical Defences) Act 1995 established a duty to preserve the life of the child on the part of a surgeon performing the abortion, such that she must:

'*[P]erform the termination in such manner as is best calculated to preserve the life of the child; and… take such other action as is reasonable in all the circumstances to preserve the life of the child*'.

Moreover, clause 6(5) of the 1995 Act mandates that, after a termination of pregnancy has taken place:

'*[I]f 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*'.

The draft abortion Bill however, would remove these humane provisions entirely, allowing the barbaric practices that pertain in British medical practice to be carried over to the Island. This cannot be justified by reference to any civilised moral or ethical standard.

There are literally no circumstances where abortion after 24 weeks is practically necessary. It is not even necessitated by cases where the mother's life is in jeopardy: any later abortion procedure would be more complicated than simple induction. This being the case, the humane provisions in current law should be retained, and all abortions in the third trimester entirely prohibited.

14. Clause 6(7): Do you believe that there are some social factors or situations when a woman should be able to choose to have an abortion?

No.

15. Do you think that the cost of abortion services should be provided by the NHS as part of women's overall reproductive healthcare?

No.

Do you have any other views on funding? Add text here.

The preamble to this question given in the online consultation defines 'Health' as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". We note that this is taken from the Constitution of the World Health Organisation (WHO)[12].

To employ this definition within the context of this Consultation however, is both mistaken and misleading. This is because the WHO definition was devised *for the purposes of the WHO mission statement*, not to broaden the concept of medical care so as to include things like abortion. After all, the concept of 'Medicine' would become impossibly extensive if every facet of "social well-being" were included, as it would extend to sports, romantic relationships, and other areas frankly beyond the vocational and practical scope of medical professionals.

Rather, the WHO defined 'Health' in its Constitution so as to determine its own mission to deal with areas *beyond medical care* that nonetheless touch upon the general concept of human 'Health', including environmental issues such as climate change, infrastructural issues such as road safety, and agricultural issues such as food security.

Since the scope of this Consultation is limited to the idea of ordinary medical 'healthcare' however, a more pertinent definition of 'Health' is the everyday term as defined by the Oxford English Dictionary: "[t]he state of being free from illness or injury"[13]. Correspondingly, the definition of 'healthcare' is "[t]he organised provision of medical care to individuals or a community", with 'medical care' meaning "[t]he provision of what is necessary for a person's health and well-being by a doctor, nurse, or other healthcare professional".

Given this, it is easily apparent that abortion is not medicine, and not healthcare, for the simple reason that pregnancy is not a pathology. Pregnancy can become *pathologised* through conditions such as pre-eclampsia, or ectopic pregnancy, but in no such case would any of the procedures signified as 'abortion' and normalised in British abortion practice

(early or late 'medical' abortion; vacuum aspiration with curettage; dilation and evacuation; induction following feticide[14]) cure the pathology.

Excluding situations like ectopic pregnancy (where ethical alternatives of terminating pregnancy according to the principle of 'Double Effect' are possible), in cases where pregnancy needs to be terminated to save the mother's life, simple induction would take place. This is either ethically unproblematic after the point of viability, or in cases of 'pre-viable' induction it would simply not be counted as a form of abortion (as evidenced by the fact that pre-viable induction is able to take place in the Republic of Ireland, where abortion is almost entirely illegal). Abortion cannot therefore be referred to as 'medicine', or 'healthcare', by any meaningful definition.

Since abortion is not healthcare, but an elective procedure almost always for social or subjective reasons, this is one reason why it ought never to be provided or funded by the NHCS. Another reason for this is that it is wrong to make Manx citizens who object to abortion, especially given the elective nature of it, to pay for the abortions 'chosen' by others. Under the assumption of the legality of abortion, those who elect to terminate their unborn child should carry the cost of this themselves.

Those women in difficult unplanned pregnancies (those under pressure financially or relationally, or where taking care of their child would compromise their educational or professional situation) should be given all the help they need to take care of their baby. That the Treasury might be involved in paying for such assistance is ethically uncontroversial, and could not violate the conscience of any Manx taxpayer. It is also justifiable on the same grounds of social solidarity that we would justify welfare and nationalised healthcare. What cannot be justified, and should not be paid for by Manx taxpayers, if for any individual to electively engage in an act that destroys the life of the baby in the womb. To the extent that there is any legal abortion practice on the Isle of Man, it is unjust to make citizens who oppose abortion contribute to it through their taxes.

16. Clause 8: Do you believe that healthcare staff should be able to opt out of taking part in an abortion if they have conscientious objections?

Yes.

17. Should there be legal protection to prevent demonstrations or protests outside any facility which provides abortion advice or treatments on the Isle of Man?

No.

Please add any further information about your reasons here

The concept of 'buffer zones' (also known as 'exclusion zones') is that an area around a facility in which abortions are performed excludes all forms of demonstration or vigil, so as to stop obstruction or harassment of women going for abortions at that facility. No such zones have yet been set up in the British Isles. This is probably because laws already exist to prevent harassment, and where some pro-life campaigners have set up demonstrations or vigils outside abortion facilities, few arrests have taken place, and none have led to any convictions.

Similarly, Manx law already prohibits harassment under the Public Order Act 1998[15], and the Protection from Harassment Act 2000[16]. If someone were to harass a woman going for an abortion outside a facility in which abortions take place, then the Isle of Man Constabulary would be perfectly able to arrest the perpetrators of such harassment and along with the Prosecutions Division see to their being held criminally accountable.

There tend to be two kinds of demonstrations / vigils held in the UK:

- 40 Days for Life[17]: These involve Catholics praying silently or aloud across the street from an abortion facility, handing out leaflets, and offering help to women going for abortions.

- Abort67[18]: These involve demonstrators showing graphic pictures of aborted babies, so as to educate the public as to what abortion involves. They often where cameras on their bodies so as to document verbal or physical attacks on themselves.

These are, of course, a very different order. 40 Days for Life are simply offering information and help whilst praying (which they believe to an efficacious act for the good of those going into the facility), whereas Abort67 are engaging in direct public advocacy. Whether anyone agrees with these actions or not, neither is an attempt to directly harass women, and no organised harassment has yet taken place.

Despite some protestors being accused of recording women or obstructing their way, no prosecution has yet taken place. It is noteworthy that only one person has been attemptedly prosecuted from Abort67, Andrew Stephenson, and he was acquitted[19].

If no proven harassment has yet taken place in the UK then, it is reasonable to assume that it will be unlikely to happen on the Island. If it were, there appears no reason to think that the current laws against harassment cannot be used by the Isle of Man Constabulary and Chambers of the Attorney General to control such behaviour.

To create anticipatory legislation limiting freedoms of protest and speech before any need for such extraordinary limitations prove necessary would be illiberal and unjustifiable. Until current laws against harassment are shown to be insufficient to deal with any abuses, as they have not yet been either here or in the UK, the wiser course would be to leave the situation as it is and act judiciously if and when future issues arise.

18. Is there anything else you would like to tell us about the proposed legislation to reform abortion law in the Isle of Man?

Please add comments here

At the outset, we would like to point out the bias and the problematic limitations of this consultation. The introduction on the consultation page was anything but impartial, effectively making the case for the Bill without any attempt to also present objections.

The timing of this Consultation was also problematic. It was begun towards the beginning of August, when many people are off-Island, and may not have been promoted by news of its instigation when they returned. This allowed less time than might otherwise have been the case for those who may have wished to respond. It would have been more appropriate to begin the Consultation in June, at the beginning of July, or at the start of September.

Worse than this has been the fact that there was no obvious way for respondents to give their answer by mail, as opposed to online, which will have hampered those less able with computer technology or with limited access to the same.

We also object to the fact that respondents to this Consultation were not prompted to give their views on abortion on demand (Question 9), or conscientious objection (Question 16), whereas Questions 13 and 14 are framed so as to only ask those who answer affirmatively to the concept of counselling that involves referral for abortion or the idea of social grounds for abortion in law to expand upon their views.

Moreover, no prompt is given by the Consultation as to other important areas in the draft Bill, such as legal protections removed by clause 16, or parental rights undermined by clause 9.

Thankfully, however, this extra question allows for a fuller critique of the proposed draft Bill, and so due to the aforementioned deficits, we will raise the issues of abortion on demand, social grounds, conscientious objection, counselling for unplanned pregnancy, and the other relevant issues, here.

The proposed draft Bill is altogether unnecessary, inhumane, regressive, and counterproductive.

It is inhumane and regressive centrally because it formally legalises abortion on demand up to 24 weeks. This is due to clause 6(2), 6(4), and 6(7). The first legalises abortion on demand up to 14 weeks, whereas the latter two allow abortion on 'health' and 'social' grounds. 6(7) authorises abortion "if there are serious social grounds justifying the termination of the pregnancy", whereas 6(4) does so on the basis that "the continuation of the pregnancy would pose a risk of serious injury to the pregnant woman's life or health".

Both clauses are vaguely defined, and would enable exactly the same *de facto* situation of abortion on demand that the 'social clause' of the British Abortion Act 1967 has notoriously achieved for the last 50 years.

The full effects of such a situation are appalling. In recent weeks, the Stop Gendercide campaign, a coalition of women's groups in the UK that works against the misogyny of sex-selective abortion in Britain, have released a report[20] that points out that the effect of legalising abortion on demand on the Island would enable sex-selective abortion to take place. This would occur because with formal abortion on demand up to 14 weeks, abortion could occur for any reason. Moreover, with clauses 6(4) and 6(7) allowing abortion on demand *de facto*, nothing would stop those who wish to sex-select from inventing a 'mental health' or 'social' reason that would allow them to use these provisions as cover for their true intentions.

Due to these practical realities, even if (as the Bill's sponsor Dr. Alex Allinson MHK has promised[21]) there was an explicit ban on sex-selective abortion in the Bill, sex-selection would still be enabled.

This is particularly serious, as the Stop Gendercide campaigners point out that non-invasive prenatal technology (NIPT), which Health and Social Care Minister Kate Beecroft MHK announced will be extended to the Island along with the north-west of England imminently[22], now enables foetal sex to be detected from 7 weeks onward. Even with just the formal abortion on demand in clause 6(2) of the draft Bill, such a law would mean there would be a 7 week 'window' during which sex-selection could take place with impunity. No regulation or guidance from any medical body currently existing prevents this.

Another consequence of combining abortion on demand with the implementation of NIPT technology, would be the worsened 'screening out' of children with impairments such as Down's syndrome. The Don't Screen Us Out campaign, a group of campaigners for people with Down's syndrome and their families, has registered their concern twice with the Department of Health and Social Care about the effect of implementing the 'cell-free DNA' (cfDNA) form of NIPT, which was projected by the UK's National Screening Committee (UKNSC) to lead to an increase in the number of unborn children with Down's syndrome detected, and thus an increase in the number aborted (90% of babies with Down's syndrome detected in the UK are aborted), and the consequent and concurrent effect of more permissive abortion laws[23].

Hitherto, such informal eugenics has not been a reality on the Island, but abortion on demand (since this effectively means abortion for any reason) up to 24 weeks would enable it, as indeed could the worsening of the disability discrimination in the law.

As disability rights campaign group We're All Equal have helpfully pointed out[24]: uniquely, physical and mental impairments (termed "seriously handicapped") are the only

characteristic, generally protected by equality legislation, that may be legally used as a ground for abortion in the current 1995 law, in clause 4(1)(iii). This clause at least goes on to require that "the handicap is not capable of being cured or substantially relieved by treatment or the passage of time" in clause 4(2), and sets an upper limit of 24 weeks in clause 4(3). This is one key reason why informal eugenics has existed in the UK, but as far as can be seen, not on the Island.

The draft Bill, however, would allow abortion *up to birth* on the grounds of physical and mental impairments (it offensively repeats the 1995 language of 'serious handicap') lin clause 6(8)(d)(iii). The effect of this sub-section is repeated in clause 6(5)(a), which allows abortion up to 24 weeks for when an impairment would "have a seriously debilitating effect on the child". Since the Bill, like the Abortion Act 1967 in the UK, does not define what "serious handicap" means, or "seriously debilitating", it allows for abortion for any impairment at all, which is the situation in British law and medical practice. Routinely, the law in England, Scotland, and Wales allows for abortion even for minor impairments that can be fixed. Babies with minor cosmetic impairments such as club foot and cleft palate are routinely aborted, including 205 and 157 respectively between 2006-2010[25].

Since the draft Bill repeals the 1995 Act entirely in clause 16(c) and replaces it with the contents of the draft Bill itself, this also means that the requirement that the physical or mental impairment "is not capable of being cured or substantially relieved by treatment or the passage of time" will also be removed. Again, this would introduce the situation in Britain, with the exact same discriminatory language and effect.

The draft Bill would then worsen the disability discrimination in the law, introducing abortion for disability (even normalising informally eugenic abortion) up to birth, on top of allowing sex-selective abortion up to 24 weeks. Further, given the observably negative effects that have occurred in Britain due to their system of *de facto* abortion on demand, we can also expect the same effects to be introduced to the Island:

- 550 babies destroyed every day as around 200,000 abortions take place every year in England, Wales, and Scotland altogether[26]. On the Isle of Man, this would mean around 250 abortions every year, compared to the under 10 that take place currently, plus the 88 that occurred last year.
- 75,000 repeat abortions annually[27]. In England and Wales in 2012 alone:
- More than 4,500 women had had at least four abortions
    - 1,334 were on at least their fifth abortion
    - 33 women had nine or more abortions.
- Women further suffering due to abortion[28], such as:
    - The cover-up of the sexual abuse of 13-year old Ashli Blake[29], and her suicide in 2014.
    - The suicide of young Mum Jade Rees in 2015[30], after her sorrow of the abortion of her baby daughter.
    - The suicide of artist Emma Beck in 2007[31] after the abortion of her twin girls.
    - The death of 32-year old Irish mother Aisha Chathira[32] in 2012 from a heart attack in a taxi caused by extensive internal blood loss after an abortion in a Marie Stopes International (MSI) clinic in London, which led to the Judge-ordered investigation of that facility[33].
    - The recent scandal[30] involving abuses in further MSI clinics according to a UK Clinical Care Commission (CQC) report[34], which included abortion on a woman with learning impairments without her informed consent. Our laws have meant no MSI clinics on the Island.

It was precisely this sort of situation that Tynwald sought to avoid when framing the Termination of Pregnancy (Medical Defences) Act 1995, and it succeeded in so doing. The draft Bill would undo this important work, and coarsen our medical system with the appalling consequences of such permissive legislation.

These facts alone would be enough to show the inhumane, regressive, and counterproductive nature of the draft Bill. Three other elements however, show this to be true and are worthy of critique.

The draft Bill would repeal all current criminal penalties for abortion, before reintroducing one of them in the draft Bill itself. Clauses 71 and 72 of the Criminal Code 1872 would be repealed by clause 16(a), and clause 72 effectively reinstated as clause 11 of the Bill. The implications of the *Bourne* judgement in 1938, which already formed a defence for doctors who perform in abortions in Manx law, are then included as clause 11(2).

Not only is this reformulation of current law utterly unnecessary, it is negative insofar as it removes any possibility of criminal sanction against a woman who self-aborts illegally. A prosecution of a woman for such a crime rarely if ever takes place, but the law serves a purpose across the British Isles. The analogous provision in the England, Wales, and Northern Ireland for clause 71 of the Criminal Code, is section 58 of the Offences Against The Person Act 1861[35]. This section criminalises self-abortion, and has justly been used to sanction women who have engaged in serious acts.

In 2015, a woman in County Durham called Natalie Towers self-performed an abortion at 32-34 weeks (beyond the 24 week 'upper limit' in England), by taking prostaglandins (contraction-inducing drugs) in order to miscarry her unborn son, who consequently died of oxygen starvation. She gave birth to her dead child in a toilet, and then called 999 to report her miscarriage. The medical staff who arrived on the tried desperately to save him, and posthumously named him 'Luke'[36].

It being determined that she had caused this herself, the judge at her trial (who is not 'pro-life', referring in his judgement to "unborn foetuses" and inaccurately talked about her offence "extinguishing life about to begin"), found her guilty of self-administering drugs with the intent to procure a miscarriage, and sentenced her to two-and-a-half years in prison for her crime. The Daily Telegraph reported[37] the words of Judge Jay as:

'"The case has nothing to do with the general immorality or otherwise of the termination of unborn foetuses. The law in this country is quite clear, you must have been fully aware no doubt in line with your internet searches, it was open to you to seek termination at any stage before 24 weeks gestation". The judge said her baby at 32-34 weeks would have had a "very good chance of survival, but had no chance once you administered this drug". He said the offence was so serious that immediate custody was required.'

This is an example of moderate justice being applied to a callous and horrifying crime against an unborn child, by the use of a clause 71 analogue in criminal justice, and it is difficult to see how anyone would object to the possibility of such justice being applied.

All that such laws give, however, is the possibility of criminal sanctions being applied. They do not require them. In 2016, a conviction was brought in the Northern Irish courts against woman who, when she was 10-12 weeks pregnant, bought mifepristone and mifoprostol – abortifacients – over the internet and induced a miscarriage, also killing her unborn son[38]. This, like Natalie Towers, was a conviction under section 58 of the Offences Against The Person Act 1861, the analogue of clause 71 of the Criminal Code 1872.

After the woman pleaded guilty, Justice McFarland at Belfast Crown Court gave her a three month prison sentence, but even this was suspended over two years. Which is to say, as long as she does not try to commit the same crime within that time of probation, she will not have to serve the time in prison. This was an unsurprisingly merciful ruling, given that the woman is reportedly now the mother of a young child, and "trying to put her life back together".

Yet it might also not have been, when we consider the testimony of the witnesses in the case, her then housemates. According to the account they gave to the BBC[39], they reported the crime to the police after finding the body of the woman's baby son inside a

black bag in a household bin, discarded as if he were garbage. As one of them related:

'"*I was putting rubbish out in the bin and realised that must be it", she said. "We saw the wee baby and I was like 'oh my word'. You would never want to see it in your life. It was a full wee proper baby… About a week went by, the guilt of a baby in the bin was eating us up*".'

The same woman gave a fuller description in an interview with the Belfast Telegraph[40]:

'"*A bit later I was going to put rubbish out in the bin and there was the bag. When my other housemate came home on the Sunday we went and looked in the bag in the bin. There was the baby on a towel. I didn't expect the baby to be so fully formed. The court was told she was 10 to 12 weeks pregnant when she obtained the tablets, but he seemed older. He had fingers, little toes. Even now I just have a picture in my mind of it. Its wee foot was perfect. Even now I feel sick. It has done so much damage to me mentally. It is something I can't get out of my head. On bin collection day I couldn't bring myself to put the bin out for collection. I didn't want to throw a baby away. I didn't know what to do*".'

This same testimony goes on to explain why the court was told that the two housemates were "taken aback by the seemingly blasé attitude" that the woman displayed in her actions:

'"*She called the baby 'the pest' and kept saying she just wanted rid of it. She said: 'I don't want this inside me'… This is about her attitude. It was as if she was getting rid of a piece of clothing", she stated. "There was absolutely no remorse. Even the way she was up and away out and doing her own thing a day after the abortion, while me and our other house-mate just walked around in shock. She wasn't forced into anything*".'

Such careless callousness must have been especially horrifying for one housemate in particular, a 38-year old woman, who had actually suffered a miscarriage before the incident, and "offered to be legal guardian to the teenager's child if she still did not want

the baby after giving birth". Again, as she relates in the Belfast Telegraph interview:

'"*I really tried to help her. I talked through a number of options but she just didn't want to know" said the Belfast woman… We tried to help her. She was given lots of different options. We even tried to talk to her family to get them to help her, but we didn't know them and she wouldn't give us their contact details. People are saying we contacted police out of malice. That's not true", she added.*'

What we see in these accounts then, is a callous and cruel action on behalf of the pregnant woman towards her unborn child, even whilst offered as much help as those around her could give her. In general circumstances, her being sentenced as Natalie Towers was, would have been just. Yet we also see the pragmatic mercy shown by the courts due to the fact that she had since had a child, who needed her.

As with the UK law, all that clause 71 does is allow for the flexibility of the law to be applied: strict justice where necessary, and compassionate mercy where that would otherwise be more appropriate. By removing this statute, the draft Bill would void that flexibility entirely, and no possibility for justice would be possible prior to at least 28 week, when the crime of 'child destruction' under the Infanticide and Infant (Preservation) Act 1938 would come into effect. Little disincentive would also exist for women who choose to use potentially dangerous drugs outside of the confines of the law, which is another important effect of clause 71. Such a move would therefore undermine not only protections for unborn children, but the safety of pregnant women as well.

At best then, clauses 16(a) and 11 simply unnecessarily reformulate existing law, and at worse clause 16(a) on its own undermines important legal protections. If simplification of the law were all that was wanted, clauses 71 and 72 could be repealed if, and only if, the provisions of the Infanticide and Infant Life (Preservation) Act 1938 were extended to all of pregnancy, rather than only the third trimester as in current law.

Not only does the Bill undermine legal protections for those principally affected by abortion, it would undermine conscience protections for medical professionals. When the Termination of Pregnancy (Medical Defences) Act 1995 was passed, it included clause 8(2), which states that:

'*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'.

This effectively copied the language used in section 4 of the British Abortion Act 1967, which states that[41]:

'*... 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 this Act 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'.

There are subtle differences. Clause 8(2) of the 1995 Act does not put the burden of proof of conscientious objection on the person being asked to participate in the treatment authorised by the Act, whereas the 1967 Act does. The 1995 Act also provided employment protections for such people, whereas the 1967 Act did not. Nonetheless, both provisions form a right concern for freedom of conscience more widely reflected in wider UK and European law.

In British legislation, section 38(1) in the Human Fertilisation and Embryology Act 1990[42] (which governs embryo-destructive research and practice) states that, "No person

who has a conscientious objection to participating in any activity governed by this Act shall be under any duty, however arising, to do so". The Equality Act 2010[43] also guarantees not only religious beliefs but philosophical beliefs as 'protected characteristics'. Employees may be protected against direct and indirect belief discrimination, harassment and victimisation because of their beliefs, including ethical ones on the dignity and rights of unborn human life. Our own Equality Act 2017[44] transposes the same protections into Manx law.

Additionally, Article 9 of the European Convention of Human Rights states that[45]:

"*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance*".

This right of course extends to people's professional lives, and the European Court of Human Rights has upheld conscience rights on the basis of Article 9, such as in the case of *Bayatyan v. Armenia* (2011)[46]. A year earlier, the ECHR-associated Parliamentary Assembly of the Council of Europe adopted Resolution 1763[47] affirming the right of conscientious objection for medical professionals. This Resolution states that:

"*[N]o person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion*".

Whilst this was a resolution with no legally-binding authority, it reaffirmed the standard understanding of freedom of conscience for medical professionals in countries that are members of the Council of Europe (this is not an EU body), including the UK.

We can see them that a concern for freedom of conscience is part of British and Manx law, and is reflected also more broadly on the Continent. The breadth of the applicability of these provisions has been steadily narrowed over time however, such that they may no

longer protect nurses, midwives, and ancillary staff from secondary involvement in abortion. Particularly, in the *Doogan* case[48], the word 'participate' used in both provisions was construed by the Supreme Court in such a narrow sense, that section 4 now only effectively protects doctors from having to directly perform abortions. Those who do not wish to be morally compromised by having to take an enabling and supporting role in abortion, are no longer supported by current legislation.

In 2016, an *ad hoc* Parliamentary inquiry[49] specifically into freedom of conscience in British provision found that the consequence of this in the U.K. is that those who have an ethical objection to abortion are being effectively discriminated against in any hope of a career in obstetrics and gynaecology, or have been effectively forced out of professions associated with childbirth altogether.

In an associated area, more recent guidance issued by the General Pharmaceutical Council[50] has cast doubt on the rights of pharmaceutical professionals to conscientiously abstain from providing drugs that are 'contragestive' (that cause a conceived embryo from implanting in the womb, an action ethically equivalent to abortion). There are only potential recourses in law for pharmacists with moral objections, but no explicit statutory protection.

Given these developments, reform of the 1995 conscience clause can be seen to be necessary, so that the conscience rights of medical professionals, rooted in the protected characteristics of religion and philosophical belief, are properly protected. Given that the draft Bill under consultation would aim to repeal and replace the 1995 Act entirely, a key question is whether the new conscience provision provided in the draft Bill would achieve this strengthening of conscience rights. The answer is that it would not, but would instead make the situation worse.

Clause 8 of the draft Bill forms a conscience clause that is closer to the construction of the British 1967 Act, not only putting the burden of proof of conscientious objection on the

person so objecting in clause 8(2), but formally removing the employment protections hitherto included in the 1995 provisions. Worse, clause 8(4) mandates that medical practitioners be forced to refer to other practitioners, which involves them in 'material cooperation' in the process to which they object, putting them in a position that compromises their personal ethics.

This is a move in the wrong direction. It would copy the British statutory construction, and in doing so enable all the problems associated with it due to recent jurisprudence. It would even go beyond the problems of the British legislation by mandating referral.

A better move would be to retain the current 1995 conscience clause, but replace the word 'treatment' (which as already noted has been restrictively interpreted by the UK Supreme Court) with the language used in the Human Fertilisation and Embryology Act 1990: 'activity'. This would obviate the problems of the British-style construction in the current draft Bill, solidify conscience rights, and act in keeping with the principles of the incoming Equality Act 2017.

Another set of rights that the draft Bill would otherwise institutionalise the undermining of, are parental rights. The draft Bill establishes in clause 9(2)(b) that parental consent for an abortion on a girl under 16 need only be given an abortion if the doctor has determined that the girl does not have "sufficient maturity and intelligence to understand the nature and implications of the proposed treatment". This institutes 'Gillick Competency' for abortion, which means that parents need not, if a doctor deems so, by either informed or play their proper parental role when their child experiences pregnancy. This is quite wrong, as it removes vital parental protections for young girls, who might otherwise be subject to undue pressure (undetectable by the doctor) by a boyfriend, other peers, or other family members. Parents themselves might pressure a young girl into an abortion, but they cannot coerce it to take place if the girl does not want to do so. Parental consent at least allows good parenting to shield a child from external coercion, or even in extreme cases,

sexual abuse, which abortion can easily hide. A confirmation of parental consent as a total necessity should therefore be confirmed by the removal of clause 9(2)(b).

Finally, we have not answered Question 13, as it did not allow for a dissent from the idea of counselling for abortion. We would like to state here however, our support for free NHS-funded counselling at any time for women who need help both during and after pregnancy. Counselling could cover how to look after a child with physical and mental impairments, for how best to receive financial and personal support, and any other area needed for a pregnant woman and her unborn child to flourish.

Additionally, we would like to see an online government platform for parents on the Island, where they can locate all information which will assist them in carrying their baby to term and supporting them during pregnancy and thereafter. This could include full information and easy sign-posting to the following areas:

- Grants/ government assistance
- Pregnancy crisis centres and contact details
- Adoption / fostering information
- Support available whilst at university / school
- Information about physical and mental impairments
- A 'pregnancy plan module': an online step-by-step planning tool for pregnant mothers that helps build pregnancy plan and identify support services needed throughout the process (e.g. http://www.which.co.uk/birth-choice/find-and-compare).

This could be combined with leaflets and posters in medical facilities and sexual health clinics across the Island, which could as best as possible collate all possible assistance to be produced by the Government.

In conclusion, the draft Bill can be seen then as clearly inhumane, regressive (that is, the opposite and antithesis of 'progressive'), and counter-productive. It would remove

important and salutary aspects of current abortion law, worsen currently discriminatory and negative elements of current law, and introduce bad new elements. There are no positive elements within it that to which we can point.

It is also unnecessary because, on the assumption that abortion should be legal, we already have a working abortion law. Where reforms are needed to our abortion law, Tynwald would better be served by looking at the current Termination of Pregnancy (Medical Defences) Act 1995 and making changes to that, rather than adopting this comprehensively unhelpful and negative draft Bill, of which we can only recommend the rejection altogether.

Endnotes

[1] *Experience: I was conceived by rape*, Rebecca Kiessling, Guardian, 02/03/12: http://bit.ly/2fmJvMZ

[2] See the experience of 'Tammy' that 'the abortion was worse than the rape', here: http://bit.ly/2xCLqaP

[3] The difficult but important stories of many such women are collated on Rebecca Kiessling's website, here: http://bit.ly/1MWfDk9

[4] A variety of experiences are reported by the survivors of sexual crime, whether they have had an abortion or not: http://dailym.ai/2h5KAZC

[5] *PRESS RELEASE: 'We're All Equal' calls on Manx public to stand up for equality and reject disability discrimination up to birth in proposed Bill*, We're All Equal: http://bit.ly/2x60DA2

[6] For descriptions of abortion procedures derived from the UK NHS, abortion providers, and a leading obstetric textbook, see the HEAR website: http://hearcampaign.im/what-is-abortion/

[7] Abortion Statistics, England and Wales, 2015: http://bit.ly/2x3LAVV0

[8] *Clinical Update: Feticide*, Patricia A. Lohr (Medical Director, BPAS), Abortion Review, 19/01/12: http://bit.ly/2wtyH5s

[9] *Q&A: Late abortion*, Patricia Lohr, Abortion Review, 12/06/08: http://bit.ly/2jvDOky

[10] *The Care of Women Requesting Induced Abortion: Evidence-based Clinical Guideline Number* 7, Royal College of Obstetricians and Gynaecologists (RCOG), pp. 57-58: http://bit.ly/2x5H0Ig

[11] *Op. cit*, Lohr, *Q&A: Late abortion*: http://bit.ly/2jvDOky

[12] *Constitution of WHO: principles*, World Health Organisation (WHO): http://bit.ly/2x4IFMG1

[13] 'Health', Oxford English Dictionary: http://bit.ly/2wt5fg3

[14] Again, for descriptions of all these procedures derived from the UK NHS, abortion providers, and a leading obstetric textbook, see the HEAR website: http://hearcampaign.im/what-is-abortion/

[15] Public Order Act 1998: http://bit.ly/POA1998

[16] Protection From Harassment Act 2000: http://bit.ly/PFHA2000

[17] 40 Days For Life London: https://40daysforlife.com/local-campaigns/london/

[18] Abort67: http://abort67.co.uk/

[19] Anti-abortion protesters cleared over foetus posters, BBC News, 17/09/12: http://bbc.in/2wt5QOP

[20] *Analysis of the Abortion Reform Bill 2017 (Isle of Man)*, Stop Gendercide, August 2017: http://bit.ly/2wtfiRW

[21] *I will take concerns on board*, Adrian Darbyshire, IOM Today, 31/08/17: http://bit.ly/2x5artQ

[22] *Island to offer new prenatal Down's test*, Manx Radio, 15/11/16: http://bit.ly/2x0mxoM

[23] See *Press Release: Isle Of Man Government Should Revoke Decision To Roll-Out New Down's Syndrome Prenatal Test Without Consultation And Ethical Review* (http://bit.ly/2y9ZS7y); *Press Release: Down's Syndrome Advocacy Group Fear Introduction Of Abortion Up To Birth For Disabilities On Isle Of Man Could Lead To More Children With Down's Syndrome Being Screened Out By Termination* (http://bit.ly/2y9ZS7y).

[24] Op. cit, *'We're All Equal' calls on Manx public to stand up for equality and reject disability discrimination up to birth in proposed Bill*: http://bit.ly/2x60DA2

[25] *Cleft lip abortions '10 times as common as reported'*, Stephen Adams, Daily Telegraph,

03/02/13: http://bit.ly/2cGGbcX

[26] *Op. cit*, Abortion Statistics, England and Wales, 2015: http://bit.ly/2x3LAVV0

[27] *Ibid*.

[28] 'Silent No More', Personal Abortion Stories: http://bit.ly/2wdSZ7G

[29] *Man who was 17 when he started dating his 13-year-old girlfriend is jailed for four years for child sex abuse after she killed herself following an abortion*, Jennifer Smith, Daily Mail, 09/03/16: http://dailym.ai/2weG2dI

[30] *Mother took her own life just weeks after having an abortion*, Toby Mayjes, Metro, 04/04/16: http://bit.ly/2x5Qu64

[31] *Artist hanged herself after aborting her twins*, Daily Telegraph, 22/02/08: http://bit.ly/2x5Uaov

[32] *Trio charged with manslaughter of woman who died following abortion in Ealing*, Ramzy Alwakeel, Evening Standard, 05/06/15: http://bit.ly/2fn3Jq5

[33] *Judge demands review into Ealing abortion clinic death case*, BBC News, 30/06/16: http://bbc.in/2h5Buw1

[34] *PRESS RELEASE: HEAR Expresses Renewed Concern After Damning UK CQC Report on Abuses in Marie Stopes Abortion Facilities*, HEAR Campaign: http://bit.ly/2h8Yo3s

[35] *Marie Stopes International: Quality Report, Care Quality Commission*, 08/08/16: http://bit.ly/2yaSAAg

[36] *Woman who took poison to terminate pregnancy jailed*, Daily Telegraph, 17/12/15: http://bit.ly/1KUdaZP

[37] *Ibid*.

[38] *Abortion pills: Housemate speaks of guilt over 'baby in bin'*, BBC News, 06/04/16: http://bbc.in/2wcHlKx

[39] *Ibid*.

[40] *Why we reported abortion pills girl to Northern Ireland police*, Deborah McAleese, Belfast Telegraph, 06/04/16: http://bit.ly/2xoKfLy

[41] Section 4, Abortion Act 1967: http://bit.ly/AbA1967s4

[42] Section 38, Human Fertilisation and Embryology Act 1990: http://bit.ly/HFEA1990s38

[43] Section 10, Equality Act 2010: http://bit.ly/EA2010s10

[44] Equality Act 2017: http://bit.ly/EA2017IOM

[45] Article 9, European Convention on Human Rights (ECHR): http://bit.ly/ECHRA9

[46] *Bayatyan v. Armenia* (2011): http://bit.ly/2l7PJ8q

[47] Resolution 1763, Council of Europe: http://bit.ly/2m2vDMc

[48] *Greater Glasgow Health Board v Doogan & Anor* (2014): http://bit.ly/1qZyC5P

[49] *A Report into Freedom of Conscience in Abortion Provision*, APPPLG, July 2016: http://bit.ly/2wdL6zl

[50] *GPhC Council agrees new wording in Standard 1 of new standards for pharmacy professionals following consultation on religion, personal values and beliefs*, General Pharmaceutical Council (GPhC), 10/04/17: http://bit.ly/2x5y5GB