

FIRST SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4598 of 25 July , 2019



I ASSENT,
EDWARD DAVIS,
GOVERNOR.
23rd July, 2019.



GIBRALTAR

No. 19 of 2019

AN ACT to amend and clarify the law relating to termination of pregnancy by registered medical practitioners and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Crimes (Amendment) Act 2019.

Commencement.

2.(1) Subject to subsection (2), this Act shall come into force on the day appointed by the Minister by notice in the Gazette which shall be no later than 28 days after a referendum (the “Referendum”) is held, in accordance with the Referendum Act 2015, on whether or not the provisions of this Act should come into force.

(2) This Act shall not come into force if the result of the Referendum is that the number of votes against the coming into force of this Act is higher than the number of votes in favour of the coming into force of this Act.

Additional Sections on Child Destruction & Abortion.

3. The Crimes Act 2011 is amended by inserting the following new sections 163A to 163E after existing section 163 as follows-

“Medical termination of pregnancy.

163A.(1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion and child destruction in sections 161 to 163 hereof when a pregnancy is terminated by a registered medical practitioner employed by the Gibraltar Health Authority if two registered medical practitioners employed by the Gibraltar Health Authority are of the opinion, formed in good faith-

- (a) that the pregnancy has not exceeded its twelfth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman; or
- (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman; or
- (c) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, greater than if the pregnancy were terminated; or
- (d) that there is a substantial risk that the foetus is suffering from a fatal foetal abnormality.

(2) In determining whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in paragraph (a) or (b) of subsection (1) of this section, account may be taken of the pregnant woman’s actual or reasonably foreseeable environment.

(3) Except as provided by subsection (5) of this section, any treatment for the termination of pregnancy must be carried out in a hospital approved for such purposes by the Minister for Health.

(4) The power under subsection (3) of this section to approve a place includes power, in relation to treatment consisting primarily in the use of such medicines as may be specified in the approval and carried out in such manner as may be so specified, to approve a class of places.

(5) Subsection (3) of this section, and so much of subsection (1) as relates to the opinion of two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he 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 or mental health of the pregnant woman.

Notification.

163B.(1) The Minister of Health shall have power to make regulations to provide-

- (a) for requiring any such opinion as is referred to in section 163A to be certified by the practitioners or practitioner concerned in such form and at such time as may be prescribed by the regulations, and for requiring the preservation and disposal of certificates made for the purposes of the regulations;
- (b) for requiring any registered medical practitioner who terminates a pregnancy to give notice of the termination and such other information relating to the termination as may be so prescribed;
- (c) for prohibiting the disclosure, except to such persons or for such purposes as may be so prescribed, of notices given or information furnished pursuant to the regulations.

(2) The information furnished in pursuance of regulations made by virtue of paragraph (b) of subsection (1) of this section shall be notified solely to the Director of Public Health.

(3) Any person who wilfully contravenes or wilfully fails to comply with the requirements of regulations under subsection (1) of this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Conscientious objection to participation in treatment.

163C.(1) Subject to subsection (2) of this section, 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 section 163A 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.

(2) Nothing in subsection (1) of this section shall affect any duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

Supplementary provisions.

163D. For the purposes of the law relating to abortion, anything done with intent to procure a woman's miscarriage (or, in the case of a woman carrying more than one foetus, her miscarriage of any foetus) is unlawfully done unless authorised by section 163A and, in the case of a woman carrying more than one foetus, anything done with intent to procure her miscarriage of any foetus is authorised by that section if—

- (a) the ground for termination of the pregnancy specified in subsection (1)(d) of that section applies in relation to any foetus and the thing is done for the purpose of procuring the miscarriage of that foetus; or
- (b) any of the other grounds for termination of the pregnancy specified in that section applies.

Interpretation.

163E. In this Act, the following expressions shall have the meaning hereby assigned to it—

“the law relating to abortion” means sections 161 to 163 of this Act and any rule of law relating to the procurement of abortion;

“Gibraltar Health Authority” means the Gibraltar Health Authority established by section 3 of the Medical (Gibraltar Health Authority) Act, 1987.”.

Passed by the Gibraltar Parliament on the 12th day of July, 2019.

P E MARTINEZ,
Clerk to the Parliament.