



Reproductive Health Law and Policy Advisory Group

Report

Knowledge Exchange on Abortion Law Reform: The Isle of Man

July 2017

Introduction

The Reproductive Health Law and Policy Advisory Group is a joint initiative between Queen's University Belfast School of Law, Ulster University School of Criminology, Politics and Social Policy and Manchester Metropolitan University. Its founding members are Dr Fiona Bloomer (UU), Dr Kathryn McNeilly (QUB) and Dr Claire Pierson (MMU), all of whom have extensive research backgrounds in the area of law and policy pertaining to issues of reproductive health. The Advisory Group was established in early 2016 to provide expertise and knowledge on policy and legal matters related to reproductive health; to facilitate discussions and knowledge transfer between academics, policy and law makers, health professionals and stakeholder groups; to provide advice on legal and policy reform.

In March 2017 the group undertook a 3-day knowledge exchange visit to the Isle of Man. This was a unique opportunity to engage with politicians, healthcare professionals and activists. The aim of the visit was to share our experiences of examining abortion law reform in Northern Ireland and to learn about the Isle of Man's current law reform proposals.

The report that follows is a summary of our findings both from desk based research and discussions with key stakeholders in the Isle of Man. The report sets out the current law in the Isle of Man, then provides demographic statistics on those travelling for abortion from the Isle of Man and then moves on to consider issues with the current law in practice and proposals for reform.

1. Isle of Man Abortion Law Overview

The Isle of Man is a self-governing crown dependency with a population of 83,314 people as per the 2016 census. 27,938 reside in the island's capital, Douglas and 9,273 in the adjoining village of Onchan. The population declined by 1.4% from the 2011 census. By country of birth, those born in the Isle of Man were the largest group (49.8%), while those born in the United Kingdom were the next largest group at 42.2%. 8.3% were born elsewhere in the world, with 2.4% coming from EU countries (other than the UK and Ireland). The Isle of Man is not a member of the European Union. The island is a low-tax economy with offshore banking, manufacturing, and tourism forming key sectors of the economy.

Legal Framework on the Island

Most laws in Isle of Man similar to the UK. The Queen is head of state (Lord of Mann). Law is made at Tynwald (Isle of Man Parliament). The IOM has a Tri-cameral parliamentary system with an elected House of Keys and a second chamber with Members of the Legislative Council (MLCs) proposed and elected by Members of the House of Keys. Most of the 24 MHKs stand as independents. Tynwald has two elements, the House of Keys (elected representatives) and the Legislative Council (indirectly elected and ex-officio members). A Bishop holds an unelected seat in the government. The executive branch of government is the Council of Ministers, composed of members of Tynwald. The Council is similar to a cabinet and comprises all the

Ministers. After election, the Chief Minister is elected by Tynwald and he/she appoints the Ministers to Council. The Chief Minister is Howard Quayle MHK.

The UK retains power to legislate for the island, however UK legislation does not by default extend to the Isle of Man. In most cases legislation will be specifically applied to the island by an Order in Council with consent and approval of Tynwald. Acts of Parliament are adopted by the Isle of Man for practical reasons to avoid unnecessary duplication of legislation. There is historic debate over the relationship between statutes of Tynwald and Acts of Parliament, the prevailing approach taken is that both are of equal standing.

The Judicial Committee of the Privy Council is the highest court of appeal in the Isle of Man. The local appellate court is Staff of Government division which has only two judges. UK court judgments have persuasive, but not binding, effect in the Isle of Man.

The UK Human Rights Act 1998 does not apply to the Isle of Man. However, Tynwald passed the Human Rights Act 2001 (came into force 2006) which is similar in many respects to the 1998 Act. The island has also ratified six of the nine core International Human Rights Treaties, including CEDAW, CAT, CCPR and CESCR. The UK is responsible for the international relations of the Isle of Man.

Law on Abortion

Key legislation: Termination of Pregnancy (Medical Defences) Act 1995

This legislation provides a defence against prosecution under the Criminal Code 1972 for medical practitioners who provide abortion in the outlined circumstances which are:

1. Terminations without time limit:

Lawful termination can be carried out where the surgeon who will terminate the pregnancy and an independent medical practitioner (consultant psychiatrist where there is a risk to mental health) agree that:

- Continuation of pregnancy involves substantial risk to the woman's life (greater than termination); or
- The termination is necessary to prevent grave permanent injury to the physical or mental health of the woman; or
- The termination is necessary to preserve the life of the woman.

If the pregnancy is beyond 24 weeks, there is a requirement that the surgeon undertake the procedure in the manner most likely to preserve foetal life.

2. Terminations up to 24 weeks:

Lawful termination may be carried out where the medical practitioners consider that there is substantial risk that the foetus will either not survive birth, will die shortly afterwards or will be seriously handicapped (definition of these terms has not been tested in court).

3. Terminations up to 12 weeks:

Lawful termination may be carried out in relation to pregnancies which result from rape, incest or sexual assault. In order for such to take place, in addition to assessment by two medical practitioners, the pregnant woman is required to provide an affidavit attesting to the cause of pregnancy and must have made a complaint to the police.

These provisions mean that the Isle of Man has a less restrictive legal framework than Ireland, Northern Ireland or Gibraltar but is more restrictive than Jersey, Guernsey or England, Scotland and Wales .

Sentence: Abortion is punishable with a sentence of up to two years imprisonment under the Criminal Code 1972. No prosecutions have been made to date. However, the Post Office has recently highlighted the interception of a small number of shipments of drugs to induce medical abortion which have been sent to individuals in the Isle of Man from online pharmaceutical suppliers.

2. Abortion Statistics

Under the current law fewer than 10 terminations happen each year on the island, with the majority of these happening on the grounds of foetal anomaly. Either the law prohibits them, or women are advised that it would be easier to access the procedure privately. As a result, an estimated 100 women a year seek private abortions in Britain. Others may seek abortion in England but not use Isle of Man addresses.

Year	Number of Women
2011	96
2012	98
2013	90
2014	90
2015	105

Table 1: Number of abortions to women with Isle of Man postcodes carried out in England and Wales, 2011-2015

The demographics of women accessing abortion in England and Wales from the Isle of Man are as follows:

Age	2015	2014	2013	2012	2011
Under 20	15 (14%)	12 (13%)	16 (18%)	17 (17%)	14 (15%)
20 to 24	36 (35%)	25 (28%)	25 (28%)	23 (24%)	35 (36%)

25 to 29	20 (19%)	21 (23%)	20 (22%)	22 (23%)	21 (22%)
30 to 34	18 (17%)	18 (20%)	12 (13%)	20 (20%)	13 (13.5%)
35 and over	16 (15%)	14 (16%)	17 (19%)	16 (16%)	13 (13.5%)

Table 2: Age profile of women with Isle of Man postcodes with abortions carried out in England and Wales, 2011-2015

Marital status	2015	2014	2013	2012	2011
Single with partner	51 (49%)	54 (60%)	56 (62%)	59 (60%)	46 (48%)
Single no partner	19 (18%)	13 (14%)	18 (20%)	28 (29%)	27 (28%)
Married	14 (13%)	14 (16%)	13 (14%)	8 (8%)	13 (14%)
Unknown/Other	21 (20%)	9 (10%)	3 (4%)	3 (3%)	10 (10%)

Table 3: Marital status of women with Isle of Man postcodes with abortions carried out in England and Wales, 2011-2015

Gestation (weeks)	2015	2014	2013	2012	2011
9 and under	82 (78%)	74 (82%)	64 (72%)	70 (71%)	67 (70%)
10-12	16 (15%)	12 (13%)	13 (14%)	20 (21%)	19 (20%)
13 and over	7 (7%)	4 (5%)	13 (14%)	8 (8%)	10 (10%)

Table 4: Gestation of pregnancy

Previous births	2015	2014	2013	2012	2011
0	57 (54%)	46 (51%)	43 (48%)	51 (52%)	46 (48%)
1+	48 (46%)	44 (49%)	47 (52%)	47 (48%)	50 (52%)

Table 5: Previous births

Method	2015	2014	2013	2012	2011
Surgical	88 (84%)	71 (79%)	73 (81%)	83 (85%)	85 (88%)
Other	17 (16%)	19 (21%)	17 (19%)	15 (15%)	11 (12%)

Table 6: Abortion method

Most Manx women requiring a termination have a surgical abortion (84 per cent in 2015 vs 50 per cent for British women), which reflects the fact that Manx women tend to have their procedure later for financial and logistical reasons or choose surgical abortion as it has less chance of failing than medical abortion.

The Isle of Man post office has noted an increasing number of imported abortion pills, some of which have been seized at customs, indicating that like Northern Ireland and the Republic of Ireland an increasing number of women are attempting to access the cheaper option of the abortion pill rather than travelling.

3. Abortion Law in Practice

The above statistics show that the majority of women wishing to access abortion on the Isle of Man cannot do so through the NHS. It is clear that in practice there are issues accessing abortion through the current law.

- Access to abortion is limited, evidenced both by women travelling to England and increased importing of abortion pills.
- The Family Planning website for the Isle of Man makes no reference to abortion, therefore women may not be aware of their options for legal abortion on the island.
- Abortion law on the Isle of Man does contain a clause for abortion in cases of sexual crime - these have to be reported to the police, an affidavit signed and then the doctor has to still “believe “ that the woman is not lying. It has been reported anecdotally that women are regularly referred to psychiatrists rather than the police, indicating that the law is being circumvented in practice. In the case of abortion for mental health reasons one of the 2 doctors to sanction the termination must be a consultant Psychiatrist
- Abortion provision provided for in Britain is not funded by the NHS. This is despite the fact that other healthcare provision provided in GB for Isle of Man citizens is funded by the Department of Health and Social care e.g. cancer treatment, antenatal care.
- Issue of timeliness – there are lengthy waiting times to see a consultant, and a limited number of specialised medical professionals on the island.
- For those accessing abortion for cases of foetal anomaly, there is no designated pathway for the return of foetal remains.
- GPs on the Isle of Man are registered with the General Medical Council (GMC) who confirm that doctors are required to provide advice on accessing a termination or refer

the patient to another doctor who will – or face sanctions. Anecdotally, it is apparent that some GPs are not following GMC guidance.

4. Abortion Law Reform

Abortion law was reviewed in 2005 (undertaken by the Department of Health and Social Care Termination of Pregnancy Policy Sub-committee) but it did not deliver any definite proposals. In January 2017, Dr Alex Allinson (a practising GP and Member of the House of Keys) was given leave to introduce a Private Members Bill to reform the current position (in line with England and Wales). Only three MHKs voted against this – the Minister for Health and Social Care Kate Beecroft, Infrastructure Minister Ray Harmer and Douglas East MHK Chris Robertshaw. Mrs Beecroft said any legislation should be based on evidence and the view in her department was that ‘the evidence does not come down clearly on either side’. There appears to be sufficient support for legal reform from politicians that the Private Members Bill may pass.

Dr Allinson’s proposed bill would see abortion on request up to 14 weeks and terminations available up to 24 weeks if there are serious health concerns, serious social grounds or severe foetal abnormalities. Public consultation will begin in 2017 on the draft bill. A small number of healthcare professionals have written an open letter stating their opposition to legal reform on abortion.

The proposed legal reform derived from the view that the current law has been amended until it has become regressive and unwieldy. Dr Allinson states that ‘in most cases, abortion is legal in name only. But many women don’t know this until they arrive at the GP surgery to try to book their procedure. Even in cases where a woman does meet the conditions for an on-island termination, GPs have to jump through hoops and call in favours to make it happen.’ Therefore a key issue for the Isle of Man is that abortion is ‘legal but difficult’.

Activism both for and against legal reform is ongoing. One pro-choice group, Campaign for Abortion Law Modernisation (CALM) was formed in 2016 and the island has one anti-choice group Humanity and Equality in Abortion Reform (HEAR), also formed in 2016 Both have sought to engage public debate through public meetings and the local media.

Related to the issue of abortion is that of sex and relationship education. Stakeholders indicated that there were concerns over the quality of sex and relationship education in schools. It was noted too that some sex and relationship education was being delivered by a faith based organisation with little known about the content of this particular programme. It was noted that links between public health and education could be strengthened to improve this.

5. Comparisons with Northern Ireland

RHLPAG's work to date has examined legal reform on abortion within the Northern Ireland context. Similarities between the Isle of Man and Northern Ireland were found by the research team but it also clear the societal context on the Isle of Man differs significantly from Northern Ireland.

- When access to abortion cannot be found within the state, women are forced to travel or access the abortion pill online, incurring all costs.
- Unlike Northern Ireland, there appears to be little appetite to prosecute women for using the abortion pill.
- Northern Irish law does not contain a clause for abortion in cases of sexual crime. The judicial review in 2015 found that this lack of provision contravened human rights obligations and as such Northern Ireland has a duty to legislate. Consultation was brought on introducing a clause similar to the Isle of Man, however, it is clear that in practice sexual crime clauses do not work and in the more politically contentious climates such as Northern Ireland this may be even more difficult.
- Political opinions on the Isle of Man appear less entrenched or conservative than Northern Ireland and political debate puts forward less extreme views and statements. Consequently, legal reform may incur less opposition.
- Pathways for the return of foetal remains have not been developed, similar to the Northern Ireland context.
- Demographics of women travelling are similar to the Northern Ireland context, with the majority of women being between 20-30 years old and obtaining their abortion at under 9 weeks gestation.
- Sexual health and relationship education, like Northern Ireland, is in part delivered by religious organisations.