Health and Community Services

Termination of pregnancy: proposed law changes

March 2025

Government of Jersey

Purpose of report

The Minister for Health and Social Services (the "Minister") intends to present an updated termination of pregnancy law to the States Assembly in December 2025. This report describes the proposed changes to the law.

The Minister is publishing this report so that **Jersey residents** may provide feedback on the proposed changes. This feedback will help inform the draft law presented to the Assembly. Feeback can be provided via the on-line form which is available at www.gov.je/consultations. The feedback period runs for 4 weeks from 17 March to 14 April 2025. This feedback process is in addition to the 14-week consultation previously undertaken from 20 July to 31 October 2023[1].

The Minister is not seeking feedback on the principle of whether termination should be permitted in Jersey. It is currently permitted in law in Jersey and will remain so.

Timeframe

The anticipated timetable is set out below. It may be subject to change if any stage of the law drafting process requires additional time.

Date	**Activity**
17 March – 14 April 2025	4-week public feedback on proposed changes to termination of pregnancy law
April 2025	Minister to review feedback and amend proposed changes as appropriate
End of April 2025	Minister formally issues the instructions to law drafting officers
November 2025	Undertake European Convention on Human Rights assessment and Children's Rights impact assessment.
December 2025	Lodge draft law
February 2026	Assembly debate draft law
March to October 2026	Implementation period: • service changes are enacted (as required) • Regulations debated by Assembly (as required)
November '26	Law brought into effect by an Appointed Day Act

[1] Termination of pregnancy in Jersey consultation feedback report

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Section 1 – Background to report

Background to report

1. In 2023 the former Minister for Health and Social Services (MHSS) committed to reviewing the Termination of Pregnancy (Jersey) 1997 Law ("the 1997 Law")[2] with the current Minister committing to continuation of this work.

2. An initial public and stakeholder consultation was conducted in 2023 to gather views on the current law and its provisions. A consultation feedback report was published in March 2024. The feedback report included an addendum produced by the Centre for Reproductive Research and Communication on women's lived experience of termination in Jersey. The findings of the consultation and addendum were used to inform further review of the law, alongside detailed discussions with some medical professionals with experience of termination services. Matters related to practices in other jurisdictions and the feasibility of service delivery have also been given detailed consideration.

3. In reviewing the circumstances in which termination continues to be lawful in Jersey, the Minister's objective is to bring forward legislation that takes account of advances in medical procedures and provides for the needs of women who have determined not to proceed with a pregnancy (regardless of why they have made this decision) whilst taking account of wider societal values.

4. The Minister is committed to:
   a. continuing to provide safe and accessible termination of pregnancy services in Jersey
   b. protecting the physical and mental health of a woman who is at risk as a result of their pregnancy
   c. protecting the wellbeing of women whose pregnancy is unplanned, and
   d. protecting a viable life (i.e. a foetus that, if born, would live) whilst balancing life viability against a woman's right to make decisions about her body, her health and her wellbeing.

5. In considering the potential conflicts between the rights and interests of unborn children and women, the Minister is mindful of the European Convention on Human Rights (ECHR). The Minister will continue to ensure any amendments to termination of pregnancy law in Jersey remains aligned to the European Court of Human Rights[3].

6. In December 2024, the States Assembly agreed an amendment to the Government Plan requiring the Minister to lodge an amended draft law by December 2025, enabling a debate to take place in early 2026[4].

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[2] Termination of Pregnancy (Jersey) Law 1997
[3] *VO v. FRANCE*.
[4] P-51-2024-Amd-(10).pdf

7. Given this timeframe, the Minister has determined that this report (which takes the form of law drafting instructions) should be published to enable public feedback for a four-week period. The Minister is publishing the report in recognition of the sensitivities around the issue of termination and the strongly held views on all sides of the debate. Publishing the report gives everyone an opportunity to input their views. The four-week consultation is shorter than most public consultations, but the Minister has determined that this is acceptable because it is a second phase consultation, with a 14-week consultation having been previously undertaken.

8. It will be for law drafting officers to determine whether to amend the existing 1997 Law to provide for the new legislative arrangements or to bring forward a new law, having repealed the 1997 Law.

Current provisions

9. The 1997 Law provides that termination is illegal in Jersey unless the termination accords with the circumstances set out in law. These circumstances are a combination of the grounds for the termination (i.e. the reason of the woman having a termination such as to save her life, foetal abnormality or distress) and how advanced the pregnancy is (i.e. the number of weeks of pregnancy).

10. The four circumstances in which termination is permitted in the 1997 Law are summarised below for ease of reference:

- Circumstance 1: the termination is carried out by a medical practitioner who is of the opinion the termination is immediately necessary to save the woman's life. The termination can be at any point in the pregnancy.

- Circumstance 2: two medical practitioners, having examined the woman, are of the opinion a termination is necessary to save the woman's life or prevent grave permanent injury to her physical or mental health. The termination can be at any point in the pregnancy.

- Circumstance 3: two medical practitioners, having examined the woman, are of the opinion that there is substantial risk that the baby, if born, would suffer serious abnormalities. The termination must be before the end of the 24th week of pregnancy.

- Circumstance 4: the pregnancy is causing the woman distress, and the woman has consulted with two medical practitioners (one of whom is authorised by the Minister to perform terminations). The termination must be before the end of the 12th week of pregnancy.

Terminology

11. The language associated with termination of pregnancy is emotive, with different groups of people arguing that different terms should be used. The following terms

have been used in this report, but it is for law drafting officers to determine the terminology used in the law:

Approved place: a termination may only be performed at an approved place. In Jersey, an approved place is:

- a place carried out by the Minister for the purpose of delivering health and care services (although this does not mean that terminations will be performed in all places carried out by the Minister), and
- a place approved by the Minister for the purposes of performing terminations.

Appropriate place: an appropriate place is a place in Jersey which the registered medical practitioner is satisfied is an appropriate place for the woman to self-administer the termination medicine that has been prescribed and provided to her for an early medical termination. This may be the woman's current place of residence in Jersey or another place in Jersey.

Performing a termination: means the actions taken to terminate a pregnancy**.** This may include a termination by surgical means or the prescribing and provision of termination medicine for supervised administration or self-administration.

A registered medical practitioner will 'perform' a termination when they prescribe the termination medicine, even when that medicine is to be self-administered by the woman at the agreed appropriate premises (and hence the pregnancy ends at the agreed premises and through the woman's act of self-administration).

Termination: Termination is the intentional termination (or ending) of pregnancy by any means. This is also called an abortion. The term 'termination' is used in this report to avoid conflation with the concept of spontaneous abortion which is the unexpected loss of pregnancy (also called miscarriage). For clarity, a termination does not include:

- any procedure intended to induce the birth of a live foetus believed to be viable; or
- any procedure to remove a dead foetus; or
- any contraceptive (a substance, device, or technique intended to prevent conception or implantation which includes the Morning After Pill which work by delaying or preventing the release of an egg from the ovaries but do not end a pregnancy that has already started).

A pregnancy can be terminated either through the taking of medicine / s (referred to as a medical termination in this report) or through surgery (referred to as a surgical termination in this report).

- Medical termination: Medical terminations usually involve taking two medicines. Common current practise is that the first medicine (mifepristone) terminates the pregnancy by blocking the hormones that allow the pregnancy to continue. The second medicine (misoprostol), which is taken between 24 and 48 hours after the first medicine, expels the terminated pregnancy. The medicines are often collectively referred to as the "abortion pill". In some cases, only one medicine is taken.

For the purpose of the amended law, where a course of termination medicine is taken, the date of termination is the date on which the medicine which ends the pregnancy is administered. Under current practices this is the first medicine in the course (i.e. mifepristone).

The current medical termination regime could be subject to change over time (for example, in future a medical termination could involve taking a different number of courses or combinations of medicines. America, for example, is currently reviewing the medicines used in light of evidence from emerging studies), hence in this report reference is made to medicine / s.

Law drafting officers should have regard to the possibility of changes to the medical regime in drafting the amended law.

- Surgical termination: There are two types of surgical termination; suction to remove the pregnancy through the vagina (this can be done between 7 to 14 weeks of pregnancy) or forceps to remove the pregnancy through the vagina (this can be done from around week 15). Before the operation, the woman will have one of the following: a local anaesthetic to numb the opening to the cervix, a general anaesthetic so that they sleep during the operation, or sedation medicine to keep the woman relaxed if they are awake.

Early medical termination: an early medical termination is a medical termination that takes place before the woman is 10 weeks pregnant (i.e. on or before 9 weeks and 6 days). Where two or more medicines are used the medicine that terminates the pregnancy (currently mifepristone) must be taken on or before the woman is 9 weeks and 6 days pregnant.

Registered medical practitioner: registered medical practitioner has the same meaning as in the Medical Practitioners (Registration) (Jersey) Law 1960 i.e. the person is a medical practitioner (Doctor or Consultant) who is registered with the Jersey Care Commission to work in Jersey.

Registered Nurse / midwife: a nurse or midwife registered to work in Jersey in accordance with the provision of the Health Care (Registration) (Jersey) Law 1995.

Approved place provider: the person or entity responsible for the approved place at which termination services are provided.

Termination services: the services provided to the woman to end the woman's pregnancy. This may include the prescribing and administration of termination medicine, surgical services and associated care. Termination services do not include **auxiliary termination services** such as counselling, advocacy or communications support service provided in connection with a termination.

Termination medicine: the medicine that brings about a medical termination. The medicine is often referred to as the "abortion pill".

Section 2 – Summary of provisions

12. This section of the report sets out a high-level description of proposed provisions of the amended law. It does not include any explanation of the provisions, as this detail is provided in Sections 3 to 14.

IMPORTANT NOTE: The amended law will set out the circumstances in which termination will be legal in **Jersey.**

It is important to recognise that whilst the amended law may permit something (for example, terminations on any grounds up to 21 weeks and 6 days) they can only be provided in Jersey if:

- health professionals are prepared to provide them. All health professionals will have a right to refuse to participate in terminations over any given gestation period except for where the termination is immediately necessary to save the woman's life.

- health professionals can safely provide them (i.e. they have the necessary training, facilities etc).

Jersey has a small health care workforce when compared to other jurisdictions. Given workforce constraints and the need to provide safe services, we know that we will not be able to provide terminations after 12 weeks and 6 days in Jersey at the point at which the amended law comes into force (except for some urgent medically recommended terminations, as is currently the case).

There will be a difference between what is permitted in law and what is provided in Jersey because we do not have the facilities and skills required to safely deliver later stage terminations in Jersey.

Where a service cannot be, or is not, provided in Jersey the Minister is under no obligation to pay, or make arrangements, for Jersey residents to access the service in another country (note: this will not apply to medically necessary terminations)

Where a Jersey resident travels to another country for a termination, that termination must be within the laws of that country, not Jersey.

13. The amended law will provide that termination of pregnancy ("termination") is legal in Jersey if the termination is in accordance with the provisions of the law.

<u>Access to termination</u>

14. Any woman in Jersey may have a termination in Jersey. This includes women under 18 years and women who are not ordinarily resident in Jersey.

15. The Minister must take reasonable steps to ensure that termination services (and associated counselling services) are provided in Jersey but, in doing so, it is

recognised that there may be circumstances where this is not possible, for example, if the Minister is unable to secure registered medical practitioners who are willing to perform terminations up to the gestation periods permitted in law.

16. The Minister may, by Order, determine fees associated with the provision of termination services that are provided by the Minister, including exemptions from fees.

Termination up to 21 weeks and 6 days pregnant

17. A registered medical practitioner may perform a surgical termination or medical termination on a woman who is not more than 21 weeks and 6 days pregnant.

18. The registered medical practitioner must consult in-person with the woman prior to the registered medical practitioner performing the termination, but there is no requirement for:
    a. the woman to consult with any health care professional other than the registered medical practitioner performing the termination
    b. the registered medical practitioner to consult any other health care professional prior to performing the termination (although the registered medical practitioner may do so if they deem it necessary)
    c. the woman to cite grounds / provide justification for the termination. (i.e. the termination can be on any grounds; it does not need to relate to the woman's physical or mental health, in response to her economic or social circumstances or in response to foetal abnormalities).

19. 21 weeks and 6 days limit for a termination on any grounds is related to viability of life. International consensus is that a baby born prematurely before the end of the 22nd week of gestation will not live.

20. The termination must take place in an approved place. An approved place may or may not be a hospital.

Early medical termination (up to 9 weeks and 6 days pregnant)

21. A registered medical practitioner may perform an early medical termination on a woman who is no more than 9 weeks and 6 days pregnant.

22. A registered medical practitioner, registered nurse or registered midwife must consult in-person with the woman before an early medical termination takes place. This may be the registered medical practitioner performing the termination or another registered medical practitioner.

23. Performing an early medical termination means prescribing the termination medicine to the woman.

24. As with other termination up to 21 weeks and 6 days there is no requirement for further consultation or to cite grounds / provide justification for the termination.

25. The registered medical practitioner performing the termination must, prior to prescribing the termination medicine:
    a. be of the opinion that if the termination medicine is administered / self-administered in accordance with their instructions, the pregnancy will end on or before 9 weeks and 6 days, and
    b. be satisfied that:
        - the required consultation has taken place, and
        - the woman's current place of residence is in Jersey, and
    c. where the medicine is to be self-administered, be satisfied that the woman will, in accordance with the medical practitioner's instructions self-administer the termination medicine:
        - in an approved place, or
        - in an appropriate place. An appropriate place is a place in Jersey which the registered medical practitioner is satisfied is an appropriate place. This may be the woman's current place of residence in Jersey.

26. The Minister may, by Order, provide that professionals other than registered medical practitioners may perform early medical terminations through the prescribing of termination medicine and may also provide for the categories of professionals who may dispense termination medicines and / or the places where those termination medicines may be dispensed (for example; community pharmacists to support the provision of early medical terminations in the community).

<u>Termination at more than 21 weeks and 6 days pregnant (termination on specified grounds)</u>

27. A registered medical practitioner may perform a termination on a person who is more than 21 weeks and 6 days pregnant where the registered medical practitioner is of the opinion that one of the following criteria are met:
    a. the termination is necessary to save the life of the woman; or
    b. the termination is necessary to save another foetus; or
    c. the continuance of the pregnancy would involve significant risk of injury to the physical or mental health of the woman, or
    d. there is a case, or significant risk, of serious foetal anomalies associated with the pregnancy.

28. The registered medical practitioner must, prior to performing the termination, consult at least one other medical practitioner and that other medical practitioner must also be of the opinion that the criteria is met. The exception to this is, if consulting another medical practitioner would cause delay and the termination is immediately necessary to save the woman's life.

29. The registered medical practitioner may, in determining whether one of the criteria is met, consider the following matters:

    a. whether it is essential to perform a termination of an affected foetus in a multiple pregnancy at a gestation that does not risk severe prematurity and its attendant consequences for the surviving foetus(s)

b. whether there are serious foetal abnormalities that were not identifiable, diagnosed or fully evaluated before the pregnancy reached 21 weeks and 6 days or whether the foetus has been exposed to infective agents, chemicals or radiation which may damage or limit the gestation and development of the foetus

c. whether the woman has had difficulty accessing timely and necessary specialist services before the pregnancy reached 21 weeks and 6 days, including but not limited to the woman experiencing significant socio-economic disadvantage, cultural or language barriers

d. whether the woman has been denied agency over the decision to continue a pregnancy or not, including (but not limited to) circumstance such as the abuse of minors, or sexual and physical violence including rape, incest and sexual slavery

e. whether the abuse outlined in the paragraph above includes circumstances in which such abuse is not apparent, or the pregnancy is not diagnosed until an advanced gestational age

f. whether medical or psychiatric conditions may become apparent or deteriorate during the pregnancy to the point where they are a threat to the woman's life

g. whether the woman has a deteriorating maternal medical condition, or late diagnosis of a disease requiring treatment incompatible with an ongoing pregnancy (such as malignancies).

30. A termination at more than 21 weeks and 6 days pregnant that is performed in Jersey must be performed in a hospital, unless that termination is a medical emergency termination.

Medical emergency termination

31. Where a registered medical practitioner is of the opinion, formed in good faith, that a termination is immediately necessary to save the woman’s life, the requirements above do not apply (i.e. there is not a requirement to consult another medical practitioner or have regard to circumstances other than the requirement to save the woman’s life).

32. A medical emergency termination may be performed in the place where the woman is being provided care and treatment if that place is suitable for the safe provision of a termination.

Amending the gestational limit

33. The States may, by Regulations, lower or increase the gestational limit at which terminations are permitted if, for example, advances in medical technologies result in earlier viability of life (for example lowering from 21 weeks and 6 days to 20 weeks and six days).

34. The Minister may, by Order, change the gestational limit for an early medical termination (lower or raise) if deemed clinically appropriate. For example, advances in medical technologies may result in the introduction of termination medicines that can be safely taken at more than 10 weeks pregnancy without the need for clinical oversight.

Other requirements relating to termination

35. The woman must be provided information about access to counselling services prior to the termination being performed.

36. The woman may self-refer to a termination clinic. She does not need to be referred by her GP or another professional.

Consultation

37. The woman must have at least one in-person consultation with a registered medical practitioner (or in the case of an early medication termination with a registered nurse or registered midwife) but the law will not prevent the practitioner requiring the woman to have more than one consultation, where the practitioner determines it is clinically necessary, or necessary to the woman's wellbeing.

38. The Minister may, by Order, permit remote consultation for early medical termination (i.e. consultations by phone or video link) and / or permit the termination medicine to be posted to the woman's address in Jersey. The Minister may make an Order in extraordinary circumstances (for example, in the event of a pandemic restricting access to services).

39. The States may, by Regulations, permit remote consultation for early medical and / or permit termination medicine by post to woman's appropriate place address in Jersey if the Assembly determines it is appropriate to do so, for example, in response to increased societal acceptance.

Right to refuse to participate / protections for health care professionals

40. No person is under a duty to participate in the provision of a termination service. A person can refuse to participate on any grounds, including on the grounds of conscientious objection.

41. The right to refuse to participate does not include:
    a. refusing to provide or assist in the provision of usual care to a woman who is anticipating having a termination, having a termination or who has had a termination
    b. refusing to provide or assist in the provision of a termination that is immediately necessary to save the woman's life.

42. A person who exercises their right to refuse to participate must not suffer employment detriments as a consequence of:

a. exercising their right to refuse to participate in the provision of a termination service or
b. participating in the provision of a termination service.

43. Employment detriments include having employment terminated; being treated less favourably by their employer; being denied a contract of employment solely based on having exercised their right to refuse to participate or having participated in the provision of termination services.

Approved places

44. A termination that is performed in Jersey must be performed in an approved place. This includes early medical terminations as the termination medicine must be prescribed by a registered medical practitioner in the approved place.

45. All places operated by the Minister are automatically approved as places where terminations may be performed (although this does not mean that terminations will be performed in all places operated by the Minister), and other places may be approved by the Minister.

46. Where the Minister approves a place, the approval must specify whether it is approved for early medical terminations, medical terminations and / or surgical terminations.

47. The Minister must set out the standards which an approved place must operate to.

48. The States may by Regulations provide for matters related to
a. approval of the place to perform terminations
b. processes for withdrawal or suspension of approvals and appeals
c. conditions of approval and amending conditions of approval.

Safe Access Zones

49. A safe access zone is a designated area (or “zone”) around an approved place in which certain activities are banned, to protect people who are approaching, entering and leaving the approved place from intimidation, harassment, or obstruction.

50. The law will provide that a person commits an offence if they undertake an activity in a safe access zone that the States have, by Regulations, specified they should not undertake in a safe access zone.

51. The Regulations may provide for:
a. the description of the activities that are banned in a safe access zone (for example, obstruction, harassment)
b. the time period in which the activities are banned
c. matters related to the boundaries around an approved place that form a safe access zone (for example, no less than, or no more than 100 meters of the boundary of the approved place)

d. requirements on the Minister to consult before imposing a safe access zone around an approved place.

52. The Minister may, by Order, impose a safe access zone around an approved place, in accordance with the Regulations.

Reporting

53. Providers of termination services are required to notify the Medical Officer of Health that a termination has been undertaken.

54. The Minister may by Order provide for the notification requirements including:
    a. the timeframe in which the notification must be made
    b. the information contained within the notification.

55. The Medical Officer for Health must produce an annual report on termination of pregnancy in Jersey. This report must be published no later than 30 September of the preceding year.

Offences

56. A woman who:
    a. consents to a termination on themselves that they know or believe does not accord with the provisions of the law does not commit an offence
    b. assists in, performs or attempts to perform, a termination on themselves does not commit an offence even when that termination does not accord with the provisions of the law
    c. does not self-administer the termination medicine as instructed (including where they self-administer in a place other than as instructed or take the medicine at a different date) does not commit an offence.

57. A person commits an offence if they knowingly:
    a. perform or attempt to perform a termination on a woman which does not accord with the law. For example:
        - a person who is not a registered medical practitioner
        - a health care practitioner other than one permitted in law to perform terminations
        - a health care practitioner permitted to perform terminations but doing so in a way that does not accord with the law (a registered medical practitioner knowingly performing a termination at more than 9 weeks and 6 days)
    b. assist in the performance of a termination on a woman which does not accord with the law. For example: a health care practitioner assisting with a termination they know does not accord with the law
    c. persuade or cause a woman, or attempt to persuade or cause a woman, to have a termination which can include through the use of threat, force or coercion or through the procurement and supply of termination medicine.

58. Offences include where a woman, who has been lawfully prescribed termination medicine for the purposes of an early medical termination, provides or attempts to provide that medicine to another woman for the purpose of terminating the other woman's pregnancy or causing the other woman to terminate their pregnancy.

59. Offences do not include:
    a. a registered medical practitioner or other professional who, in their course of their profession and duties, provides advice or opinion about whether a termination is or may be advisable or necessary to save the woman's life, to save another foetus, to avoid significant risk of injury or where there is significant risk of serious foetal anomalies
    b. a person who undertakes an act which they reasonably believe accords with the provisions of the law (for example, a health and care practitioner acting in the course of their profession and duties assists in performing a termination which they believe accords with the law)
    c. a registered medical practitioner who performs a termination where the pregnancy is more advanced than permitted limits, but they were of the opinion, formed in good faith, that the pregnancy was not so advanced
    d. a registered medical practitioner who terminates a pregnancy, where they are of the opinion, formed in good faith, that the termination is immediately necessary to save the woman's life.

Section 3 – Access to termination

This section of the report describes who may have a termination in Jersey

60. The amended law will provide that any woman may have a termination in Jersey providing the termination accords with the provisions of the law. This includes:
    a. women who are under 18 years of age
    b. women who are not ordinarily resident in Jersey or women who have only been resident for a limited period of time.

61. Whilst the amended law will permit any woman in Jersey to have a termination in Jersey, the law will not permit a registered medical practitioner in Jersey to prescribe termination medicine to a woman unless they reasonably believe that the woman will be in Jersey at the time the medicine that ends the pregnancy is administered or self-administered. It is not intended that Jersey becomes a jurisdiction that permits or facilitates terminations to take place in another jurisdiction.

62. The 1997 Law historically provided that a woman must be ordinarily resident in Jersey, or resident in Jersey for a 90-day period prior to having a termination in Jersey. But this provision was removed by decision of the States Assembly who recognised that residency requirements created particular difficulties for specific categories of women (for example, women in Jersey for the purposes of short-term work). There are *no* residency requirements to be written into the legislation.

<u>Duty to provide</u>

63. The amended law should provide that the Health Minister must take reasonable steps to ensure that termination services, and counselling services provided in connection with those termination services, are available in Jersey. This may include the Minister providing termination services and the associated counselling or making arrangements for other entities or persons to provide services.

64. The inclusion of this duty is to protect against any future Minister, who is opposed to termination on a matter of principle, not making provision for such services. A decision not to provide termination services or make arrangements for the provision of termination services should be a matter for the Assembly not a single Minister.

65. Whilst the law will include a duty to take reasonable steps to provide termination services this does not mean that the Minister must make provision for all forms of termination permitted under the amended law. The law will provide that the Minister may determine to provide a limited service in Jersey if the Minister reasonably believes that there are grounds to so do. For example, the service provided in Jersey may be limited to terminations up to 12 weeks and 6 days only (as per current provision) and / or medically necessary terminations only (as opposed to terminations for non-medical reasons) if, for example:
    a. the necessary health care workforce is not available: as set out in Section 8 all health professionals will have a right to refuse to participate in terminations / terminations over any given gestation period

b. health care professionals can only safely provide terminations up to a given gestations period and / or can only safely provide certain termination procedures in Jersey (i.e. services cannot be safely provided with the necessary training, facilities, capacity etc)
c. the Minister determines that the resources required to secure on-island provision of some types of terminations (for example, later stage surgical terminations) cannot be reasonably expended in light of other budget demands.

66. For the avoidance of doubt, where the service provided on-island is more restricted than that permitted in law, the law must provide that the Minister is under no obligation to pay, or make arrangements, for Jersey residents to access services in another jurisdiction.

67. The duty to take reasonable steps to provide termination services and counselling does not preclude the Minister charging a fee for termination services, including any associated counselling services, where those services are provided by the Minister (See Section 13). If a person or entity other than an officer of the Minister (for example, other than the Chief Officer of Health and Care Jersey) is an approved place provider, that person or entity will determine the fees that they charge.

68. The amended Law should be sufficiently flexible to enable the Minister to consider counselling services from another jurisdiction if there is not a Jersey solution (for example remote consultations, authorised digital platform or other example).

Section 4: Termination up to 21 weeks and 6 days pregnant

Grounds

69. The 1997 Law provides that the woman whose pregnancy is causing her distress may have a termination providing that termination is before the end of the 12th week of pregnancy, and it accords with all other requirements of the law.

70. Terminations on the grounds of distress account for most terminations in Jersey. Between 2012 and 2022 over 97% of terminations were on grounds of 'distress', 2% on the grounds of foetal abnormality and less than 1% were to save the woman's life or to prevent grave permanent injury to her physical or mental health.

71. The citing of grounds is opposed by the World Health Organisation who state that termination should be available without justification of need. Their research suggests that requiring individuals to justify their decision simply reinforces the stigma associated with termination[5], impinges on their autonomy and right to make decisions and creates unnecessary barrier to access. Furthermore, as set out in the 2024 consultation feedback report, almost three quarters (74%) of respondents stated termination should be available without justification of need (i.e. without the requirement to cite distress as a ground to have a termination).

72. The law should be amended to provide a registered medical practitioner may perform a termination on a woman who is no more than 21 weeks and 6 days pregnant, with no requirement for:
    a. the woman to cite distress as a reason for her termination or provide any other reason; or
    b. for the registered medical practitioner (or in the case an early medical termination, any nurse or midwife with whom the woman may consult to require or seek a reason or justification for the woman's decision to have a termination.

Consultation requirement

73. Article 3 of the 1997 Law provides for the requirement for consultation prior to having a termination before the end of the 12th week where the woman is in distress, but there is no risk to life or risk of injury. The woman must have two in-person consultations prior to having a termination; one with a registered medical practitioner (e.g. a GP) and one with an approved registered medical practitioner (i.e. a doctor approved by the Minister to undertake termination consultations), regardless of whether the procedure is medical or surgical. 'In-person' consultation means face-to-face as opposed to remote consultation via phone or video link.

74. The requirement to consult with more than one registered medical practitioner:
    a. creates the potential for delayed access to termination due to the logistics associated with arranging more than one consultation. Timely access to

[5] (Purcell, 2015).

termination is widely regarded as a marker of quality care[6][7] and any delay may also restrict access within permitted limits. This is particularly the case when accessing an early medical termination

b. imposes an additional financial burden on the woman, where the woman is required to pay for an additional GP appointment

c. places additional strain on limited medical resources.

75. The law should be amended to remove the requirement for a woman to consult more than one registered medical practitioner (or nurse or midwife in the case of an early medical termination) where the woman is no more than 21 weeks and 6 days pregnant.

Gestational limit

76. The 21 weeks and 6 days limit is guided by principles relating to viability of life as set out in the NOTE TO VIABILITY OF LIFE (below). The amended law should provide that the States may, by Regulation, amend the gestational limit if advances in medical technologies result in earlier viability of life (for example lowering from 21 weeks and 6 days to 20 weeks and 6 days).

77. Termination up to 21 weeks and 6 days may be a medical or surgical termination performed by a registered medical practitioner.

NOTE TO VIABILITY OF LIFE

Establishing gestational limits

a. The World Health Organisation recommends[8] that no jurisdiction should prohibit termination on gestational age limits, on the basis that doing so requires a woman who falls outside those limits to continue with an unwanted pregnancy (or seek an unsafe illegal termination) and that this has been shown to disproportionally effect certain groups of women including women with cognitive impairments, adolescents and younger women, women living further from clinics, women with lower educational attainment, women facing financial hardship and unemployed women.

b. The World Health Organisation notes, however, that despite their recommendation most jurisdictions do set gestational limits in law and those limits vary widely between different jurisdictions based on cultural, historical and social acceptance of termination.

c. In the cases of jurisdictions that permit termination on request (as distinct from only permitting termination on medical grounds or grounds such as rape) those gestational limits vary considerably:

[6] Access to abortion: what women want from abortion services - PubMed
[7] Abortion care: NICE guidelines
[8] WHO: Law & policy Recommendation 3: Gestational age limits (2.2.3) - Abortion care guideline

- some around the end of the 13th week or there abouts (as per the 1997 Law), or
- later in the pregnancy (i.e. around 20 to 24 weeks) and linked to viability of life i.e. the point in gestation at which a baby, if born, could survive outside the womb.

d. As set out above, the amended law will put termination up to 21 weeks and 6 days pregnancy on any grounds. The existing 12 weeks and 6 days limit is extended on the basis that it can be problematic for women who may not initially know they are pregnant (this may be due to irregular periods or contraceptive methods that stop or mask periods) or who require more time to decide whether to proceed with the pregnancy. We can evidence that the 12 weeks and 6 days limit is problematic for some Jersey residents as every year a small number travel to the UK[9] to have a termination where the gestational limit is 24 weeks. This is despite a UK termination costing a Jersey resident £480 - £1,510 (before travel and accommodation) as opposed to £185 in Jersey (or £511 if the woman has been in Jersey less than six months).

e. In extending the 12 weeks and 6 days pregnancy limit, the amended law provides a new gestational limit which is linked to viability of life.

<u>Viability of life</u>

f. Viability of life is not a straightforward concept. The point in gestation at which a baby, if born prematurely, could survive outside the womb is dependent on a range of factors in addition to gestational age. These include availability of care, birth weight, gender, underlying medical conditions or whether the pregnancy is a single or multiple pregnancy.

g. International consensus cites the end of the 22nd week as the “cut off” for viability of life (i.e. a baby that is born prematurely before the end of the 22nd week of gestation will not live) but this does not equate to life always being viable from the end of the 22nd week. Whilst advances in medical technology have made it possible for some babies to survive at, or around, 23 to 24 weeks gestation, it is the case that few severely premature babies survive without permanent, serious disability.

h. In England, Wales and Scotland the gestational limit is currently 23 weeks and 6 days for non-medically necessary terminations – a limit set in 1990 based on considerations related to viability of life. In 2005 it was argued that the 24-week limit should be reduced as life is potentially viable before 24 weeks, but the argument was rejected on the basis babies born before 24 weeks that do survive are severely disabled[10].

[9] In 2023 fewer than 5 abortions were performed in the UK for Jersy residences but since 2003 this number has fluctuated between 5 to 25 per year.
[10] https://www.bmj.com/content/suppl/2005/07/01/331.7507.DC1/Abortion.html

i. Jurisdictions that have gestational limits broadly linked to viability of life vary this gestational limit between the end of 20 weeks up to the beginning of 24 weeks:

d. Iceland – end of 22 weeks
e. New Zealand – end of 20 weeks
f. New South Wales, Australia – up to 22 weeks
g. South Australia – up to 22 weeks and 6 days
h. Victoria, Australia – up to 24 weeks
i. Singapore – up to 24 weeks
j. Netherlands – up to 24 weeks

j. The rational for those variations is not always evident but published materials indicate that jurisdictions consider multiple factors including healthcare professionals' willingness to perform terminations at the point at which life is viable, including social acceptance. Furthermore, in large dispersed and rural communities (such as Australia) consideration is also given to ease of access to termination and obstetrics services.

k. Jersey General Hospital does not currently provide the specialist procedure, which is recommended for termination of pregnancy from 21 weeks and 6 days gestation, in order to prevent a live birth. Women in Jersey who require a later stage termination are usually referred to the UK for this specialist procedure, with aftercare being provided by Jersey General Hospital.

l. Whilst the legally permitted timeframe for terminations will be extended in the amended law, terminations will only be able to take place in Jersey if professionals who practice in Jersey are willing to provide these terminations (See Section 8). If no health and care professionals are willing to do so, later stage terminations will not be provided in Jersey regardless of them being legally permissible.

<u>Signs of life</u>

m. There is a difference between signs of life and viability of life. There are some circumstances following a termination when a foetus may be born showing signs of life, such as a brief heartbeat. But this does not mean the foetus would then survive outside of the womb. Where there is a birth that shows signs of life (even when immediately proceeded by death) that death must be reported to the Viscount, and both a birth and death certificate are required.

IMPORTANT NOTE

Whilst the amended law will allow termination on any grounds up to 21 weeks and 6 days (which is beyond the end of the 12-week limit as currently set out in law) terminations may only be provided in Jersey up to this point if:

- health professionals are prepared to provide them. All health professionals will have a right to refuse to participate in terminations over any given gestation period except for where the termination is immediately necessary to save the woman's life

- health professionals can safely provide them (i.e. they have the necessary training, facilities etc)

Jersey has a small health care workforce when compared to other jurisdictions. Given workforce constraints and the need to provide safe services, we know that we will not be able to provide terminations after 12 weeks and 6 days in Jersey at the point at which the amended law comes into force (except for some urgent medically recommended terminations, as is currently the case).

There will be a difference between what is permitted in law and what is provided in Jersey because we do not have the facilities and skills required to safely deliver later stage terminations in Jersey.

There will be a gap between what is permitted in law and the services that can be safely provided in Jersey but amending the law allows Jersey to start developing plans for an extended service.

Where a service cannot be, or is not provided in Jersey the Minister is under no obligation to pay, or make arrangements, for Jersey residents to access the service in another country (note: this will not apply to medically necessary terminations)

Where a Jersey resident travels to another country for a termination, that termination must comply with the laws of that country, not Jersey.

Section 5: Termination at more than 21 weeks and 6 days pregnant

78. The amended law will provide for terminations beyond 21 weeks and 6 days in limited prescribed circumstances.

79. Those prescribed circumstances, to be set out in the amended law are, that a registered medical practitioner may perform a termination if the woman is more than 21 weeks and 6 days pregnant and the registered medical practitioner considers that at least one of the following three criteria are met:
    a. the termination is necessary to save the life of the woman or save another foetus; or
    b. the continuance of the pregnancy would involve significant risk of injury to the physical or mental health of the woman, or
    c. there is a case, or significant risk, of serious foetal anomalies associated with the pregnancy.

80. The registered medical practitioner may consider that more than one criterion are met.

81. The 1997 Law currently provides for termination after 21 weeks and 6 days where:
    a. termination is immediately necessary to save the life of the woman, at any point in the pregnancy (Article 2(1))
    b. termination will prevent grave, permanent injury to the woman's physical or mental health. The amended law will replace 'grave and permanent injury with 'significant risk of injury' as it is recognised that an injury may be long-standing for many years, and have a serious impact, without being permanent, at any point in the pregnancy (Article 2 (2) (a))
    c. there is substantial risk that the child, if born, would suffer from physical or mental abnormalities as to be seriously handicapped (Article 2 (2) (b)), at up to 24 weeks pregnant
    d. where the woman is carrying more than one foetus in the event of foetal abnormality or risk to the life of the woman (Article 8). It does not explicitly provide for termination where there is risk to the life of another foetus, hence the addition set out in the paragraph above.

82. The amended law will provide that the registered medical practitioner must, prior to performing the termination, consult at least one other medical practitioner and that other medical practitioner must also consider that one of the three criteria are met:
    a. the termination is necessary to save the life of the woman or save another foetus; or
    b. the continuance of the pregnancy would involve significant risk of injury to the physical or mental health of the woman; or
    c. there is a case, or significant risk, of serious foetal anomalies associated with the pregnancy.

83. The medical practitioner may, like the registered medical practitioner, consider that more than one criterion is met but both must consider that at least one of the same

one criterion is met. (For example: registered medical practitioner may consider that criteria b) and c) are met and the medical practitioner may consider that c) is met but be unable to provide professional opinion as to whether b) is also met because it is outside their field of expertise. As both consider criteria c to be met, the registered medical practitioner may proceed to provide the termination.

84. The medical practitioner / s with whom the registered medical practitioner consults prior to performing the termination must be a medical practitioner / s who the registered medical practitioner determines has the appropriate professional knowledge, experience and qualifications to consult, depending on the woman's circumstances. For example, they may consult:
    a. an obstetrics and gynaecology practitioner
    b. a practitioner in paediatrics where the termination relates to foetal abnormalities
    c. a practitioner in an area of medicine relevant to any medical condition of the woman
    d. a practitioner in mental health or psychiatry where the termination relates to the mental health of the woman.

85. The medical practitioner with whom the registered medical practitioner consults may be a medical practitioner who is not registered to work in Jersey (for example, they could be a UK based specialist) but they must be registered to work as a medical practitioner in the jurisdiction in which they work. (It is for this reason that they are referred to as medical practitioner in this report, as opposed to a registered medical practitioner which denotes registration in Jersey).

86. The 1997 Law currently provides that two approved registered medical practitioners must have examined the woman. One of the approved registered medical practitioners must practise in obstetrics and gynaecology and the other must practice:
    a. in an area of medicine relevant to any medical condition of the woman, where the termination relates to the life or health of the woman, or
    b. in paediatrics where the termination relates to foetal abnormalities.

87. The UK Act, which provides that two practitioners must be of the opinion that the termination is necessary, does not specify that an examination is required to form that opinion nor do the laws in Australia and New Zealand (which provide for consultation with at least one other medical practitioner per the proposed amendments).

88. The amended law should similarly remove the examination requirement thereby providing for remote consultation with a specialist in another jurisdiction which will reduce risks associated with the potential delayed care.

89. In removing an explicit examination requirement nothing precludes the registered medical practitioner performing the termination, or the medical practitioner with whom they consult, from deciding that they need to examine the woman in order to determine, whether in their opinion, the termination meets the prescribed circumstances (i.e. examination is a matter for clinical judgment).

90. In determining whether to perform the termination the registered medical practitioner, in addition to having consulted at least one other medical practitioner, may have regard to the following matters:

a. whether it is essential to perform a termination of an affected foetus in a multiple pregnancy at a gestation that does not risk severe prematurity and its attendant consequences for the surviving foetus / s

b. whether there are serious foetal abnormalities that were not identifiable, diagnosed or fully evaluated before the pregnancy reached 21 weeks and 6 days or whether the foetus has been exposed to infective agents, chemicals or radiation which may damage or limit the gestation and development of the foetus

c. whether the woman has had difficulty accessing timely and necessary specialist services before the pregnancy reached 21 weeks and 6 days, including but not limited to the woman experiencing significant socio-economic disadvantage, cultural or language barriers

d. whether the woman has been denied agency over the decision to continue a pregnancy or not, including (but not limited to) circumstance such as the abuse of minors, or sexual and physical violence including rape, incest and sexual slavery

e. whether the abuse outlined in the paragraph above includes circumstances in which such abuse is not apparent, or the pregnancy is not diagnosed until an advanced gestational age

f. whether medical or psychiatric conditions may become apparent or deteriorate during the pregnancy to the point where they are a threat to the woman's life

g. whether the woman has a deteriorating maternal medical condition, or late diagnosis of a disease requiring treatment incompatible with an ongoing pregnancy (such as malignancies).

91. The above matters, which are based on provisions in law in South Australia[11], work to help ensure a balance between protecting a woman whose physical and mental health is at risk as a result of her pregnancy, or whose pregnancy is unplanned and who is vulnerable or at risk of harm and ending a viable pregnancy.

Removal of 24-week limit

92. The 1997 Law as currently drafted (Articles 2 (2) (b)) provides terminations which accord with the prescribed circumstances described above may only be carried out before the end of 24 weeks pregnancy. But the amended law will remove this limit and provide that terminations which accord with the conditions set out above can take place at any point in the pregnancy.

[11] Termination of Pregnancy Act 2021

93. The removal of the 24-week limit accords with legislation in the UK, Australia and New Zealand.

94. The removal of the current 24 week limit accords with findings set out in the 2024 consultation feedback report, which sets out that over 50% of respondents thought that limits should not apply if there was a risk of grave permanent injury to a woman's physical or mental health (69%) or a risk of foetal abnormality (54%) or where the pregnancy results from rape (52%) or incest (53%).

Place of termination at more than 21 weeks and 6 days pregnant

95. The amended law must provide that a termination where the woman is more than 21 weeks and 6 days pregnant must be performed:
    a. in Jersey in a hospital carried out by the Minister, or a hospital that is not carried out by the Minister but is approved by the Minister for terminations
    b. in a hospital or clinic in other jurisdictions, in which terminations may be performed in accordance with the laws and requirements of that jurisdiction, and to which the woman has been referred by medical practitioners and / or officers acting on behalf of the Minister.

96. The above requirements are to provide a safeguard against the performance of later terminations in places or in circumstances which are not under the control of the Minister.

Medical emergency termination

97. In the case of a medical emergency where a registered medical practitioner is of the opinion, formed in good faith, that a termination is immediately necessary to save the woman's life, the requirements above do not apply (i.e. there is no requirement to consult another registered medical practitioner or have regard to circumstances other than the requirement to save the woman's life).

98. This accords with existing provisions of Article 2 (1) of the 1997 Law and with the 2024 consultation feedback report, which sets out that more than half of respondents thought that gestational limits should not apply if there was a risk to the life of the woman (74% of respondents).

IMPORTANT NOTE

Whilst the amended law will allow terminations, in prescribed circumstances, at any stage of gestation (as per the current law) Jersey can only provide such termination on-island if:

- health professionals are prepared to provide them. All health professionals will have a right to refuse to participate in terminations over any given gestation period except for where the termination is immediately necessary to save the woman's life)

- health professionals can safely provide them (i.e. they have the necessary training, facilities etc)

This means there may be a gap between what is allowed in law and what services are provided in Jersey, with women having to be referred to the UK for late-stage terminations as it currently the case.

Amending the law (including the introduction of factors to be considered in determining if a woman meets the criteria for a late-stage termination) 'future proofs' Jersey in the event that we can provide more specialist, late-stage terminations on-island in the future.

Section 6: Early medical termination

Background

99. As set out in Section 4 a termination, for which there is no requirement to cite grounds, may be:
    a. a medical or surgical termination performed by a registered medical practitioner or
    b. an early medical termination.

100. Early medical terminations are widely regarded as clinically safe and effective and, as such, some jurisdictions provide for less stringent legislative controls on access to facilitate uptake of terminations in the early weeks of pregnancy.

101. In March 2022 the UK's 1967 Act was amended on a permanent basis to provide that women in England and Wales can have an early medical termination (up to 9 weeks and 6 days pregnant) at home without the need to attend a termination clinic or hospital. The changes to the 1967 Act have allowed for 'telemedicine' termination services (i.e. the remote diagnosis and treatment of patients) and permit the following practice:
    a. the woman seeking an early medical termination has one consultation with a registered medical practitioner, a registered nurse or a registered midwife which may be in-person or telephone or video consultation (where it is a remote consultation it will not involve ultrasound but may involve ultrasound in an in-person consultation)
    b. during the consultation, the registered medical practitioner, registered nurse or registered midwife undertakes a medical assessment to determine if a medical termination is suitable for the woman
    c. if a medical termination is deemed suitable and safe, the medicine is sent by post for the woman to take at home
    d. the medicine is only available from an NHS hospital or approved termination clinic; a GP cannot prescribe the medicine for collection at a pharmacy and the medicine cannot be purchased online.

102. The changes to the UK Act to allow for telemedicine were initially introduced in March 2020 on temporary basis, to limit the transmission of COVID-19 by limiting footfall into clinics and hospitals. Prior to the pandemic, UK Government policy was that only the second medicine for early medical abortion could be taken at home with women attending a termination clinic / hospital to take the first medicine. The taking of the first medicine at the hospital with the second medicine being taken at home accords with current practice in Jersey.

103. Studies[12] have found that, when comparing the telemedicine service model (remote consultation) to the traditional service model (in-person consultation with an ultrasound) the telemedicine model has reduced waiting times for access to a termination by an average of four days, with more terminations being provided at less

[12] CBP-9496.pdf

than six weeks' gestation. In addition, studies indicate that treatment success, serious adverse events and the number of ectopic pregnancies does not differ between the telemedicine service model and the traditional service model. It should be noted, however, that the number of women subject to police investigations in England and Wales on suspicion of illegally terminating their pregnancy or attempting to do so, has increased since the introduction of remote telemedicine termination services.

Amended law

104. The amended law will provide that, where the woman is up to 9 weeks and 6 days pregnant a registered medical practitioner, may perform an early medical termination, where the following conditions are met:
    a. the woman has had at least one in-person consultation with a registered medical practitioner, a registered nurse or a registered midwife, (whether or not (if they are a registered medical practitioner) they are the same registered medical practitioner who is performing the termination), and
    b. the registered medical practitioner, performing the termination is of the opinion, formed in good faith, that:
        - the pregnancy to be terminated (which is the pregnancy that was the subject of the consultation) will not exceed 9 weeks and 6 days at the time when the medicine is administered or self-administered in accordance with the instructions of the registered medical practitioner who is performing the termination (or in the case of a course of medicine, when the medicine that ends the pregnancy is administered) i.e. that the pregnancy will be terminated on or before 9 weeks and 6 days, and
        - that medical termination is an appropriate treatment for the woman based on clinical guidelines
        - where the termination medicine is to be self-administered by the woman, it will be administered in accordance with the registered medical practitioner instructions, and
        - the woman's current place of residence is in Jersey and the woman will be in Jersey when the medicine/s are administered or self-administered. The requirement for the woman's current place of residence to be in Jersey, and for them to take the medicine in Jersey, is to ensure more ready provision of follow up care and treatment if required, and to prevent termination medicine being provided to women in other jurisdictions due to associated risks relating to an absence of ability to provide follow up care.

Early medical termination consultation requirements

105. The amended law will provide that:
    a. only one consultation is required prior to the registered medical practitioner performing the termination ('performing' in respect of an early medical termination means the prescribing and providing / dispensing of the termination medicine), as opposed to the two consultations that are currently required under the 1997 Law

b. that the one consultation must be in-person (i.e. unlike the UK it cannot be by telephone or by video call unless there is more than one consultation and at least one is in-person).
c. the one consultation can be with a registered medical practitioner (whether that is the same person performing the termination or not), a registered nurse or a registered midwife.

106. It is anticipated that the consultation will usually be undertaken in the approved place, but the law should not prevent the consultation from being in another place, for example in the woman's place of residence if they are unable to attend a clinic.

107. It should be noted that respondents to the 2024 consultation were almost evenly split between whether the consultation for early medical termination should be by phone / video link (47%) as per the UK or in-person (50%), with the preference for in-person consultation rising to almost three quarters (74%) amongst people with professional experience of termination services.

108. Some professionals with experience of termination services express concerns about remote consultation, as opposed to in-person consultation, because of the possibility that the woman's pregnancy may be more advanced than the woman realises or that the woman may be deliberately concealing the advancement of her pregnancy. Remote consultation does not readily support accurate determination of advancement of pregnancy, and it may be more difficult for the professional to spot other potential risks, for example, coercion.

109. In England and Wales, there has been a significant increase in the numbers of women subject to police investigations for illegally terminating their pregnancy or attempting to do so. This increase is attributed, in part, to remote consultation. Given that the amended law will not criminalise women whose termination does not accord with the provision of the law (unlike the UK law) it is proposed that in-person consultation is required as a sensible and proportionate safeguard to counterbalance the absence of the deterrent affect associated with criminal offences (See Section: 12 Offences).

110. In the UK, where a woman has had a remote consultation, the termination medicine may be sent to her by post / courier by the approved place provider. This in part overcomes some of the practical difficulties that can be associated with access to termination services in rural areas or larger jurisdictions where women do not live in close proximately to the approved place provider. Such access problems are not a feature of Jersey. For this reason, and because the in-person consultation requirement necessitates that the woman attends the approved place in any event, the amended law will not provide for termination medicine to be sent by post / courier.

<u>Appropriate place / instructions</u>

111. The amended law will provide that whilst an early medical termination is 'performed' in an approved place (i.e. the registered medical practitioner prescribes the termination

medicine from an approved place) the dispensed medicine may, in accordance with the registered medical practitioner's instructions:

a. be administered / self-administered in an approved place or
b. self-administered by the woman
    - in an approved place, or
    - an appropriate place (which may be the woman's home).

112. It is recognised that allowing early medical terminations at home (or another appropriate place) can provide multiple benefits to the woman including:
    a. greater privacy, in addition to better control over timing (providing the medicine is taken in accordance with the instructed timeframe)
    b. better access to emotional and practical support from family and friends, including support to manage the discomfort and side effects / potential side effects of termination medicines (pain, bleeding, potential nausea and vomiting)
    c. reduces logistical and / or financial barriers associated with multiple visits to an approved place
    d. removes anxiety about bleeding in public / whilst travelling.

113. Allowing for self-administration by the woman at home was supported by 74% of the 2024 consultation respondents if, prior to self-administration at home, the woman had had a least one in-person consultation before being prescribed the termination medicine, as is proposed (74% approval, dropped to 36% if there was no in-person consultation).

114. The requirement for administration / self-administration in an approved place or an appropriate place that is not the woman's home is to provide for cases where the registered medical practitioner has concerns about the woman self-administering at home (for example, concerns about her health or wellbeing or other potential concerns related to coercion or possible onwards supply of the medicine).

115. An appropriate place is a place in Jersey which the registered medical practitioner is satisfied is an appropriate place in which the woman may self-administer the termination medicine. This may be the woman's current place of residence in Jersey or could, for example, be another person's home (for example, with a friend or parent of the woman) or a place of safety. The amended law should allow for an appropriate place, other than the woman's home, as the woman may:
    a. be at risk of partner violence
    b. be living in a multi-occupancy property where the medicine may not be secure, or the woman may not be able to securely self-administer the termination medicine.

116. The purpose for establishing an appropriate place is to provide additional oversight of the medical procedure in case of an emergency or other side effect of the treatment requiring the woman to receive additional support.

117. Where the medicine is a course of medicines, the registered medical practitioner, will instruct which course is taken in which place (for example, the registered medical practitioner may instruct that the medicine that ends the pregnancy must be

administered in the approved place, with other medicines taken in an appropriate place).

118. The registered medical practitioner must have undertaken all necessary checks for them to be satisfied the woman will take the medication as prescribed. If the woman does not follow the instructions, neither the registered medical practitioner nor woman will be guilty of an offence.

Remote early medical termination provisions

119. Whilst remote consultation (with provision of termination medicine by post / courier) will not be permitted on the face of the law, the amended law should provide that the Minister may, by Order:
    a. allow for early medical termination consultations to be undertaken by phone or video link, and / or permit
    b. the termination medicine to be posted or couriered to the woman's address in Jersey.

120. The Minister may make such an Order when the Minister determines that circumstances necessitate the making of an Order to allow continued safe access to termination services (for example, in the event of a pandemic restricting access to services).

121. In making the Order the Minister must specify the associated timeframe that the Order is in effect (this being the timeframe associated with the circumstances that necessitate its making) or must rescind the Order when the Minister is satisfied that the circumstances no longer apply.

122. The States may, by Regulations, permit remote consultation for early medical termination and / or permit termination medicine by post / courier if the Assembly determines it is appropriate to do so, for example, in response to increased societal acceptance.

Other professionals

123. The amended law will provide that only registered medical practitioners may perform an early medical termination, but the pre-termination consultation may be with a registered medical practitioner (whether or not they are the registered medical practitioner who is performing the termination), a registered nurse or a registered midwife. This accords with the provisions of the UK Act.

124. Some other jurisdictions, such as New Zealand and Australia, provide for other healthcare professionals to perform early medical terminations such as independent nurse prescribers and independent midwife prescribers. Allowing for a broader range of professionals to perform early medical termination provides multiple benefits, for example:
    a. it allows health care professionals to practice at the top of their professional competencies which is good for professional development and staff retention

b. it allows a jurisdiction to make the most effective use of their professional workforce by using the time of a registered medical practitioner to undertake a task that could be safely and effectively delivered by another qualified professional.

125. Consideration was given to amending the law to provide that independent nurse prescribers (including those who are midwives) could perform termination as this accords with the Minister's commitment to removing legislative barriers that prevent or hinder health care professionals practicing at the top of their professional competencies, however, making such provisions requires detailed consideration of matters related to medicine management, professional training and professional indemnity.

126. As such, the amended law will not provide that independent nurse prescribers (and / or other independent prescribers) may perform terminations but it will provide that the Minister may, by Order:

a. amend the categories of health care professionals who may perform early medical terminations and, or:
b. provide for the categories of professionals who may dispense termination medicines and / or the places where those termination medicines may be dispensed (for example, community pharmacists).

127. The amended law should provide that, prior to making an Order, the Minister must consult the Medical Officer for Health, the relevant UK professional registration body (for example, the Nursing and Midwifery Councils) and the relevant Jersey Head of Profession (for example, the Chief Nurse).

128. The Order making power must allow for the Minister to make consequential amendments to all relevant provisions of the amended law as required.

Section 7: Other provisions relating to terminations

Amending limits for terminations

129. The law should provide a regulation making power by which the States may lower or increase the gestational limit.

130. There is precedent for a lowering of gestational limits. The UK limit was set as 28 weeks in 1967 but reduced to 24 weeks in 1990 in response to changes in neonatal intensive care.

131. If the States wishes to introduce a limit at which terminations on specified grounds are permitted (as distinct from being permitted at any point in the pregnancy) the States would need to consider risks related to the mental and physical health of the woman and / or the baby, if born.

Amending the limits for early medical termination

132. The amended law should provide that the Minister may, by Order, change the gestational limit for an early medical termination (lower or raise) if deemed clinically appropriate. For example, advances in medical technologies may result in the introduction of termination medicines that can be safely taken at more than 10 weeks pregnancy without the need for clinical oversight, or conversely it may be determined that clinical oversight is required before 9 weeks and 6 days. Prior to making an Order the Minister must consult the Medical Officer for Health and any other person who the Minister deems it appropriate to consult.

133. The Order making power does not allow the Minister to extend the early medical termination limit beyond the gestational limit for termination on any grounds.

Amending the specified grounds for a termination after 21 weeks and 6 days

134. The law should provide a regulation making power by which the States may amend the specified grounds on which terminations at more than 21 weeks and 6 days are permitted.

Establishing gestational age / weeks of pregnancy

135. Article 1(4) of the 1997 Law provides that the advancement of a pregnancy (i.e. how many weeks / days pregnant a woman is) is calculated from the beginning of the woman's last menstrual period.

136. The UK Act does not state on the face of the Act how advancement of pregnancy is calculated but associated guidance makes it clear that it is calculated from the first day of last menstrual period or based on an ultrasound scan. Similarly, legislation in other jurisdictions does not, on the face of the law, state how advancement of pregnancy is calculated.

137. Article 1 (4) should be removed as it will be for the registered medical practitioner (or in the case of an early medical termination, a registered medical practitioner, registered nurse or a registered midwife) to determine how to calculate the advancement of pregnancy and for the medical practitioner to be confident in the accuracy of that age. It may be that the registered medical practitioner, registered nurse or registered midwife calculates from the date which the woman states was the first day of her last menstrual period or they may determine it should be calculated / confirmed by ultrasound.

Sexual selection

138. The 1997 Law, which has a gestational limit of end of the 12th week of pregnancy, is silent on termination for the purposes of sexual selection (the intentional aborting of a foetus of a certain gender). Extending the gestational limit to 21 weeks and 6 days, at which point in pregnancy the sex of the foetus can be readily known, creates potential opportunity for women to choose a termination on the grounds of sexual selection.

139. Consideration has been given to introducing a ban on termination on the grounds of sexual selection as this accords with the 2024 consultation feedback report, which found that only 21% of consultation respondents agreed that termination should be permitted on the grounds of sexual selection, dropping as low as 16% amongst people with professional experience.

140. Banning termination on the grounds of sexual selection is complex as there are circumstances where termination of a foetus of a specific sex may be medically recommended due to the possibility of a sex-linked medical condition in the foetus.

141. It is for this reason that terminations based on sexual selection are not banned on the face of the law in the UK or other jurisdictions including Canada, Australia and New Zealand. Attempts to introduce a sexual selection ban in 2021 in New South Wales were rejected on the basis that, there may be circumstances were sexual selection termination is appropriate. Jurisdictions where sexual selection terminations are banned on the face of the law include jurisdictions where there has been a considered attempt by legislatures to tackle long held cultural attitudes that favour male children, for example, India.

142. The amended law will not, therefore, prohibit termination on the grounds of sexual selection but the amended law will provide that the Minister may bring forward guidance if the Minister deems it necessary to do so. The Minister would require an approved place provider to comply with any such guidance as a condition of approval.

Self-referral

143. The amended law must provide that the provider of an approved place may not, as a condition of providing that service, require a woman to be referred to that provider by another health and care provider (i.e. a woman must be able to self-refer to a termination service without the need for referral from her GP). The law must, however,

not preclude the possibility of referral by a GP or other health care provider where the woman has sought their advice or counsel in advance.

Counselling

144. The amended law will provide that, except for when a termination is performed in an emergency, the woman must be provided information about access to counselling during her in-person consultation with the registered medical practitioner prior to the termination being performed (or in the case of an early medical termination her in-person consultation with the registered medical practitioner, registered nurse or registered midwife).

145. Furthermore, it is anticipated that the Minister will bring forward guidelines as to the provision of counselling information to the woman prior to her in-person termination consultation. For example, information on how to access counselling may be done at the point at which the woman makes initial contact with the termination service provider (whether via the phone, email or on-line).

146. Whilst the amended law places a duty on the Minister to take reasonable steps to ensure that counselling services provided in connection with termination services are available in Jersey (see Section 3), it will not be mandatory for a woman to undergo counselling, unlike in some European countries.

147. As per Article 10 (1) (d) of the 1997 Law, the amended law will provide that the Minister may by Order provide for matters related to any counselling service provided to persons considering having a termination, having a termination or having had a termination. This
    a. may include matters related to standards, access and availability, fees, and the qualifications of permitted providers
    b. must not include the power for the Minister to require directive counselling. Directive counselling would include counselling that is deliberately intended to influence a woman's decision-making by persuading them to have a termination or dissuade them from having a termination (as is a legal requirement in Germany and Hungary).

148. The amended law should provide that the Minister may, as a condition of approving a place, require the provider of the approved place to make arrangements for the provision of, or access to counselling services (see Section 9).

Section 8: Healthcare professionals and right to refuse to participate

Healthcare professionals who may perform terminations

149. The 1997 Law provides that a termination (which is not immediately necessary to save the woman's life) may only be performed by an authorised approved registered medical practitioner:
    a. an approved registered medical practitioner is a registered medical practitioner approved by the Minister for purposes related to the law (i.e. providing a second opinion on the necessity for the termination)
    b. an authorised approved registered medical practitioner is an approved registered medical practitioner who is authorised by the Minister to carry out terminations.

150. The requirement for a registered medical practitioner to be approved and / or authorised for the performance of terminations is out of step with:
    a. termination legislation in many other jurisdictions (including the UK, New Zealand and Australia) whose laws simply set out the classes of health care professionals who can perform terminations (i.e. doctors and / or nurse) without any associated approval or authorisation requirement
    b. the provision of other medical procedures in Jersey. The Minister does not approve the registered medical practitioners who undertake more serious and complex medical procedures; this is a matter for professional practice standards and training.

151. The 1997 Law will be amended to remove the requirement for the Minister:
    a. to approve a registered medical practitioner (Article 6 (1))
    b. to authorise an approved registered medical practitioner to carry out terminations (Article 6 (2)) and
    c. to keep a list of approved and / or authorised approved medical practitioners (Article 6 (3)).

152. The amended law will provide that a termination can be performed by a registered medical practitioner with no requirement for authorisation or approval of individual practitioners by the Minister.

153. A registered medical practitioner has the same meaning as in the Medical Practitioners (Registration) (Jersey) Law 1960 - i.e. they are a medical practitioner (a Doctor or Consultant) who is registered with the Jersey Care Commission to work in Jersey.

Right to refuse to participate

Direct / indirect participation in termination of pregnancy

154. Article 5 of the 1997 Law provides that no person is under a duty to participate in the provision of termination if they have a conscientious objection to termination (except

for where a termination is required to save the woman's life or prevent grave permanent injury).

155. Article 5 of the 1997 Law is based on Article 4 of the UK Abortion Act 1967. In 2014 the Scottish Supreme Court ruled that Article 4 of the 1967 Act referred only to direct participation in a termination and did not extend to indirect participation. Participation in termination of pregnancy means "actually taking part" or performing the tasks involved in the course of treatment which would broadly include the administration of drugs to induce labour (thereby terminating the pregnancy) and the associated medical and nursing care but would not include, for example, the ordinary nursing or pastoral care of a patient or the associated administrative tasks or the hospital managers who determine how the service is organised.[13]

156. Applying the ruling of the Scottish Supreme Court means that Article 5 of the 1997 law provides that a person, who consciously objects, is not under a duty to directly participate in the termination of a pregnancy, but this does not extend to indirect participation.

157. Consideration has been given as to whether Article 5 should be amended to include reference to direct participation to provide certainty but, taking into account the decision of the Health and Social Services Scrutiny Panel to amend[14] P18/2024 to remove the proposed inclusion of a 'direct participation' clarification in assisted dying proposals, it has been decided not to bring forward such an amendment.

Right to refuse to participate

158. Article 5 of the 1997 Law as drafted only extends to conscientious objection to termination – which is a decision not to participate in terminations for reasons of conscience such as moral, ethical or religious beliefs.

159. The provisions should be amended to provide that no person is under a duty to participate in the provision of a termination service or an auxiliary termination service for any reason. A person could, for example, refuse to participate because of concern about the potential emotional impact on themselves of participating in the service, or for practical or business reasons (for example, concern that their participation may create concerns amongst other patients) or on moral, ethical or religious grounds.

160. Extending the provision beyond conscientious objection to a wider right to refuse to participate reflects the intended provisions of the forthcoming assisted dying law[15].

Limitations on right to refuse

161. The right to refuse can be the right to refuse to participate in:

[13] Greater Glasgow Health Board (Appellant) v Doogan and another (Respondents) (Scotland) - UK Supreme Court
[14] States Assembly | P.18/2024 Amd.
[15] Assisted Dying: Law drafting instructions

a. all terminations, or
b. terminations beyond a gestational period (for example, a professional can choose to perform terminations up to 12 weeks, but not beyond 12 weeks), or
c. terminations except those which relate to certain grounds (for example, a professional can choose to perform terminations where the pregnancy arose from rape or incest, or where there is a risk to the physical health of the woman but may refuse to perform terminations on other grounds).

162. Given that the law provides that a woman is not required to cite a reason for having a termination, the professional must inform the woman (and their employer where relevant) of the limits of their participation and must provide the woman information on how to access other termination services.

163. The right to refuse to participate does not extend to any health and care professional's duty to:

a. participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a woman
b. provide the usual nursing, medical, personal care or ancillary care to a woman that has requested a termination or has had a termination.

Guidance

164. Article 5 of the 1997 Law should be amended to provide that the Minister may make arrangements for the development and publication of *Right to Refuse & Conscientious Objection Guidance*. The primary purpose of which would be to provide guidance to professionals who choose not to participate in the provision of a termination service or an auxiliary termination service.

165. Any such guidance:
a. would be non-statutory
b. must have regard to all relevant codes of practice / standards on matters related to conscientious objection or related matters that are issued by professional regulatory bodies and apply to some categories of health and care professionals (for example, professionals registered with the GMC and NMC)

166. The amended law should provide that the Minister may consult any person who the Minister deems relevant to the development of such guidance.

167. It is envisaged that Guidance would:
a. set out information related to the right to refuse including the duties, activities for actions to which it does (because they constitute direct participation) or does not apply (because they do not constitute direct participation)
b. guide people who are exercising their right to refuse in their decisions on how to interact with women who want information about having a termination / are considering having a termination / have had a termination.

Protections for health care professionals

168. The proposed forthcoming assisted dying law[16] will provide specific protections, in relation to employment, for professionals who:
    a. exercise their right to refuse to participate, or
    b. participate.

169. The 1997 Law should be amended to also provide such protections.

Note: the term 'employment' below also refers to a 'contract of service' or equivalent.

Protections for professionals who refuse to participate

170. The amended law should provide that a person who exercises their right to refuse to participate in the provision of a termination service or an auxiliary termination service must not, as a consequence of exercising that right:
    a. have their employment terminated; or
    b. be treated less favourably by their employer in the course of that employment (for example, they should not be overlooked for promotion or training opportunities; required to move role or position in their organisation
    c. be subject to hostile behaviours; excluded from meetings, projects etc; be denied any benefits of employment to accrue to other employees undertaking the same work – salary, benefit, accommodation etc), or
    d. be denied a contract of employment solely on the basis grounds that they have exercised their right to refuse / anticipate exercising their right to refuse.

(Sub-paras a – d above are the 'employment detriments')

171. The professional referred to in the above paragraph is a professional:
    a. who has a right to refuse to participate on the basis that any such participation would be direct participation, as distinct from indirect participation
    b. who is not required 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 woman. This is because the right to refuse to participate does not extend to the duty of a professional to participate in such necessary treatment.

172. The protections above do not apply where a professional has accepted a contract of employment where it is a condition of employment that they perform terminations (or participate in the provision of a termination service or an auxiliary termination service) unless it is a condition of employment that they are only required to perform terminations that are acceptable to them (whether on grounds or gestation period).

173. This does not mean that participation needs to be set out in the contract for employment – it would be sufficient for it to be stated in written documentation (for example; listed in a job description or job advert or a description of the services to be provided by the employer).

[16] Assisted Dying: Law drafting instructions

174. The provisions above do not apply retrospectively (i.e. if a professional is already employed in a position that requires them to provide terminations, but they have historically been able to choose the conditions under which they perform terminations, they will maintain that ability to choose).

Protections for professionals who participate in provision of a termination service or an auxiliary termination service

175. The law should also be amended to provide that a professional who undertakes any of the functions below (or anticipates so doing), must not, as a consequence of so doing suffer the employment detriments set out below. Those functions are:
    a. performs a termination or participates in performing a termination
    b. participates in provision of a termination service or an auxiliary termination service
    c. participates (whether directly or indirectly) in processes related to the approval, inspection, or oversight of an approved place or any associated reporting functions.

176. The employment detriments are that the professional should not:
    a. have their employment terminated, or
    b. be treated less favourably by their employer in the course of that employment (for example, they should not be overlooked for promotion or training opportunities; required to move role or position in their organisation; be subject to hostile behaviours; excluded from meetings, projects etc; be denied any benefits of employment to accrue to other employees undertaking the same work – salary, benefit, accommodation etc), or
    c. be denied a contract of employment solely on the basis that they have participated in the functions set out above.

177. Participation in a termination service or an auxiliary termination service does not include participation in a service or organisation that lobbies or campaigns for or against termination (unless the service or organisation is an approved place provider)

178. Law drafting officers are asked to consider whether the proposed protections would best be provided through the amended termination of pregnancy law, or whether they should be given effect through consequential amendments to the Employment (Jersey) Law 2003.

Section 9: Approved place

Background

179. The 1997 Law provides that terminations must be performed in an approved place, which may only be:
    a. a hospital maintained by the States or
    b. an institution registered for terminations under the Nursing Homes (Jersey) Law 1994.

180. The UK 1967 Act similarly provides that terminations must take place in hospital, in a place approved for terminations by the Secretary of State or, in the case of an early medical termination at the woman's home.

181. Whilst the 1997 Law provides for terminations in approved places other than Jersey General Hospital, in practice, there are no other places approved for terminations. Whilst Jersey General Hospital may have sufficient capacity to meet demand, it is a single point of provision that drives women into a hospital setting even though their healthcare needs could, in many cases, be met in other more appropriate settings (for example, in a health clinic such as Le Bas Centre or a GPs surgery).

Place of termination

182. The amended law will provide that a termination that is performed **in Jersey** must be performed in an approved place, except where the termination is immediately necessary to save the woman's life. In these circumstances the termination may be performed in the place where the person is being cared for / treated (this will most generally be in a hospital carried out by the Minister, which is an approved place, but there are circumstances were this is not the case).The amended law will also provide that surgical terminations must take place in a hospital, which is an approved place, but it will be a clinical decision as to whether that is a surgical theatre or treatment room[17].

183. An approved place in Jersey is:
    a. a hospital or any other place carried out by the Minister for the purpose of delivering health and care services (although this does not mean that terminations will be performed in all places operated by the Minister)
    b. any other place approved by the Minister for the purposes of performing terminations.

[17] The clinical processes associated with surgical terminations have evolved and may now include use of local anaesthesia and moderation sedation rather than general anaesthesia, which can allow for provision in suitable treatment rooms rather than surgical theatres. This helps to reduce use of critical staff and infrastructure. Furthermore, it can provide for better outcomes as the person does not need to fast before treatment and will benefit from faster recovery times.

184. Early medical terminations are performed in an approved place because the medicine is prescribed from the approved place, even if the medicine that ends the pregnancy is self-administered in an appropriate place. In the UK the 1967 Act provides that the registered medical practitioner prescribing the termination medicine may do so from their own home, rather than from a hospital or approved place. Similar provisions for prescribing from the medical practitioner's own home are not to be made in the amended law as it is not clear as to benefits provided.

185. Places carried out by the Minister, for the purpose of delivering health and care services, are automatically approved as places for termination as existing clinical governance arrangements will ensure that the places carried out by the Minister would only be used for the performance of terminations if the place was an appropriate place for the performing of terminations.

186. An approved place in Jersey is a place in which terminations are performed. It does not include places from which only auxiliary termination services are provided, although auxiliary termination services may be provided from an approved place alongside termination services.

Approval process and requirements

187. The amended law will provide that the Minister may, in accordance with Regulations to be made by the States:
    a. approve a place for the performance of terminations
    b. withdraw approval or suspend approval
    c. impose conditions of approval and amend conditions of approval.

188. The States may by Regulations provide for:
    a. the approved place application process and requirements
        - the information to be provided as part of the application and/ or the form of the application
        - the requirements to be approved to act as a provider or manager of a termination service including in relation to being a fit person
        - any associated processing timeframes
        - any application fees (which may include initial application, renewal of application and / or compliance inspection fees)
        - the period of approval and any renewal requirements (for example; 5-year approval, with subsequent 5-year renewal periods)
        - requirements to provide a statement of service i.e. the nature of the service to be delivered (for example, early medical termination only) and the specifics of the service users (for example, if the service is only to be provided to under 21s)
        - the persons and entities to be consulted by the Minister as part of the application determination process
        - any requirements on the Minister to provide a notice of approval to an approved applicant and the information provided on that notice (Note: the law will not require the provider to display the notice of approval in the

approved place, in order to ensure to avoid potential distress / conflict where the provider also provides other services from the same place (e.g. a GP surgery)

b. matters related to conditions of approval. For example, the Regulations may provide that:

- the Minister, in approving a place for the provision of termination service may place conditions on that approval. Conditions can include:
  - restrictions on the type of termination that may be performed at the approved place (for example: medical and / or surgical and / or early medical termination only)
  - requirements related to the skills, qualifications or training of the persons performing terminations at that appropriate place
  - restrictions on the type or numbers of service users
  - requirements on the provider with regard to make arrangements for the provision of, or access to counselling services by clients
  - requirements on the provider to notify the Minister of any change in ownership of the approved place
  - any other restrictions or conditions that the Minister may deem appropriate
  - reporting arrangements, in addition to the reporting requirements set out on the face of the law
- the Minister may amend conditions imposed (whether to remove conditions, vary conditions, require additional conditions) and may do so during the period of approval.

c. matters related to any declaration of compliance that must be made by the approved place provider as a condition of approval by the Minister (i.e. a declaration to comply with conditions of approval and / or relevant standards or guidance that may be brought forward by the Minister, for example: guidance related to termination for sexual selection)

d. processes related to the withdrawal of approval and suspension of approval. For example, the Regulations may provide that:
- the Minister must withdraw approval if the Minister reasonably believes that the provider has failed to comply with conditions of approval including compliance with published standards and any statement of service that may have been provided
- the Minister may suspend approval whilst the Minister investigates whether there are grounds to withdraw approval.

e. matters related to appeals and the appeals process. For example, the Regulations may provide:
- that the approved place provider may appeal a decision of the Minister not to grant approval; to apply conditions of approval; to suspend approval; to withdraw approval

- any associated grounds and process for appeal.

f. requirements on the Minister to publish a list of approved places. For example, the Regulations may provide that:
   - the Minister must make arrangements to maintain a list of all approved places and the conditions associated with the approvals, and / or
   - the Minister must publish the name and address of all approved places but will not publish other details associated with the approval (for example, details of any conditions applied / the name of the approved place provider or the registered medical practitioners providing termination services from that place). This is to help protect any individual persons from potential action by anti-abortion campaigners.

g. matters related to inspection of approved places, including matters related to improvement notices. For example, the Regulations may provide:
   - that the Minister must make arrangements for conducting inspections of approved places
   - any powers of inspection that the States deem necessary (for example: power of entry; powers to examine the state and management of the premises and / or the treatment of women receiving care at the approved place; powers to inspect and take copies of any documents or other records including computers and other items, including powers to seize and remove from the premises)
   - matters related to the provision of inspection reports to the Minister and / or the provider of the approved place
   - powers to impose improvement notices in response to inspection findings

h. matters relating to the use of information by the Minister in connection with any of the Minister's functions in relation to the Minister determining an application, inspecting an approved premises, granting, suspending or withdrawing approval of places. Those matters will mirror Part 6 of the Regulation of Care (Jersey) Law 2014[18]. This may include:
   - the creation of an offence as per Article 31 (2) of the Regulation of Care Law where a person (being the Minister or a person acting on behalf of the Minister) knowingly or recklessly discloses personal confidential information that relates to an individual
   - defences against any such offence.

189. **Note on matters relating to regulation of termination services**

a. The Nursing Homes (Jersey) Law 1994 currently make provision for the registration of places where terminations are performed, including conditions of registration, in the event that places, other than the hospital, are approved by the Minister for provision of terminations. As matters stand termination services in Jersey are

[18] Regulation of Care (Jersey) Law 2014

currently only performed as part of the Minister's hospital service provision, so there is not requirement to rely on the Nursing Homes provisions.

b. It is intended that the Nursing Homes Law will be repealed (subject to Assembly approval) in early 2026 as part of the proposed new Regulations under the Regulation of Care Law 2014, which will provide for the Jersey Care Commission to regulate hospital and ambulance services.

c. Assuming that the Nursing Homes Law is repealed before the amended Termination of Pregnancy Law comes into force, this is not problematic with regard to existing termination services provided in the hospital, as they will be caught by the Regulations that extend the Jersey Care Commission's reach to the hospital.

d. In the event that a decision is taken in future that places that are approved for the provision of termination services should be registered and regulated by the Jersey Care Commission the following actions will be taken:

- Regulations providing for the Jersey Care Commission to regulate termination services will be brought forward under the Regulation of Care Law, and
- those Regulations will consequentially amend the 1997 Law (as amended) so as to remove the requirement for the Minister to approve places for termination to avoid the "double regulation".

Section 10: Safe Access Zones

190. A safe access zone is a designated area (or “zone”) around an approved place, in which certain activities are prohibited. The purpose is to protect people who are approaching, entering and leaving the approved place from intimidation, harassment, or obstruction. This includes people providing or having a termination in addition to others in the approved place (for example, administrative and facilities staff; family and friends of service users).

191. The 1997 Law makes no reference to safe access zones. However, 80% of respondents to the 2024 consultation thought safe access zones should be introduced in Jersey, as per UK, Australia, New Zealand, Canada and the US. Safe access zones are also proposed in the forthcoming assisted dying law.

192. In the UK, Australia and New Zealand a safe access zone is typically an area with the vicinity of 150m around an approved place. The size of the zone varies between different States in Canada and the US.

193. The amended law should provide that a person commits an offence if they undertake an activity in a safe access zone that the States has, by Regulations, specified they should not undertake in a safe access zone.

194. The Regulations that the States may make, may provide for:
    a. the description of the activities that are banned in a safe access zone (for example, obstruction, harassment)
    b. the description of activities that may not be banned in a safe access zone (for example, silent individual prayer)
    c. the time period in which the activities are banned
    d. matters related to the boundaries around an approved place that form a safe access zone. Such matters could include, for example:
        - the maximum or minimum boundaries (e.g.: no less than, or no more than 100 meters of the boundary of the approved place)
        - the treatment of public spaces, as opposed to private space that may fall within the boundaries
    e. requirements on the Minister to consult before imposing a safe access zone around an approved place. This may include persons with whom the Minister must consult and / or the period of consultation.

195. The amended law should further provide that the Minister may, by Order, impose a safe access zone around a named approved place (for example, around Jersey General Hospital) in accordance with the Regulations. In making that Order the Minister must:
    a. specify the boundaries of the safe access zone, which must accord with the Regulations
    b. specify the time period in which the activities are bound, which must accord with the Regulations.

196. Note: Safe Access Zones may only be introduced in relation to an approved place in Jersey. This does not extend to places from which only auxiliary termination services are provided (e.g.: counselling services). This is because, such places could generally provide multiple services to multiple different groups of people (e.g.: people accessing grief counselling or talking therapies) and, as such, are unlikely to be directly targeted. Safe Access Zones can impinge on the liberties of people who wish to protest and, as such, the power to introduce should be restricted to highly sensitive places wherever possible.

Prohibited acts in a safe access zone

197. Examples of acts which may be prohibited by Regulation of the States include:
    a. obstructing (i.e. putting obstacles in the way) or impeding (i.e. blocking a person) a person from accessing, or providing, any part of the termination of pregnancy process, where it is legitimate for that person to access or provide that part of the service
    b. causing harassment, alarm or distress to a person who is accessing any part of the termination of pregnancy process (for example, a person who is attending a consultation) or is providing any part of the termination of pregnancy process (for example, the assessing registered medical practitioner providing that consultation)
    c. influencing a woman's decision to have a termination of pregnancy
    d. protests and demonstrations: including displaying signs, chanting or otherwise conveying messages relating to termination with the intent of deferring access or providing services. This includes passive or silent protests
    e. recording or photographing; capturing images or videos of individuals entering or leaving the premises without express written permission from the Minister
    f. any other requirement to prevent patients or health care providers safely accessing the approved place.

Section 11: Reporting

Notification to the Medical Officer of Health (MoH)

198. The amended law will provide that:
    a. the registered medical practitioner must make arrangements to notify the Medical Officer for Health that a termination has been undertaken, and that notification may be made in the prescribed manner.
    b. the Minister must prescribe by Order the notification requirements including:
        - the timeframe in which the notification must be made
        - the information contained within the notification

199. Article 10 (1) (g) of the 1997 Law currently provides that the Minister may by Order make provision for such notification, but the amended Law will make an explicit requirement for such notification.

200. Prior to making the Order, the Minister must consult the following persons about the information contained in the notification form:
    a. the Medical Officer for Health in order that the Medical Officer for Health may produce an annual report on terminations (See Section 11)
    b. any person/s who the Minister determines is responsible for monitoring the safety, efficiency and effectiveness of termination services provided in Jersey, (for example, the Medical Director, Department Chief Officer, Chair of the Jersey Care Commission).

201. The law will provide that the Minister may not, by Order, require a medical practitioner to provide, as part of the notification process, any information that would identify the person who has had the termination (As per Article 10 (2) of the 1997 Law). This provision should not, however, prevent a medical practitioner or the provider of the termination service from providing such information to the Medical Officer for Health, or the Minister as may be required in relation to other purposes (for example, investigation of a serious incident, or in accordance with Regulations brought forward relating to approved place approval and inspection processes) and in accordance with data protection requirements.

202. It is anticipated that the Order will set out that the notification of performance of a termination must include the following information:
    a. the name of the registered medical practitioner who performed the termination
    b. the name of the registered medical practitioner (or, in the case of an early medical termination, the name of the registered nurse or registered midwife) with whom the person consulted
    c. the name of the hospital or approved place in which the termination was provided, or in the case of an early medical termination, a description of the place where the woman was instructed to self-administer the termination medicines (for example; at current place of residence in Jersey / at another person's place of residence / at a location provided by third party such as a women's refuge). The address of the place where the woman was instructed to

self-administer is not provided as this is information that potentially allows for identification of the woman

d. details in respect of the woman including:
    - the woman's date of birth or age at time or termination
    - the woman's ethnicity
    - the number of previous pregnancies the woman has had
    - the number of previous terminations the woman has had if known; and
    - details of the woman's residency including whether the woman is ordinary resident in Jersey and, if so the Parish in which she is resident OR whether the woman is visiting Jersey or is temporarily resident in Jersey and, if so her place of ordinary residence
e. the type of contraception the woman states was used at the time of conception (if any)
f. whether the woman states they took the morning after pill
g. the type of contraception provided / prescribed to the woman (if any) by the registered medical practitioner providing the termination
h. details in respect of the termination procedure including:
    - the type of procedure (early medical / medical / surgical)
    - the date that the surgical abortion was performed or the date the medicine was administered or the date the medicine was prescribed for the purpose of self-administration
    - estimated duration of the woman's pregnancy at the time of termination
    - the grounds for the termination where that grounds are known (this will include all terminations at more than 21 weeks and 6 days and may include terminations up to and including 21 week and 6 days where there are medical reasons for the termination
    - details of the method of diagnostics used to establish matters related to the medical conditions of the woman and / or foetus where relevant
    - details of any complications occurring before discharge or reported as occurring in the case of an early medical termination at home or in an appropriate place.

Annual reporting

203. The amended law will provide that the Medical Officer for Health must produce an annual report on termination of pregnancy in Jersey and must publish that report no later than the 1 September of the following year unless the Minister gives written notice of a different publication date.

204. The Law will not prescribe what is included within the annual report. This is because, the MoH in producing the report may determine that some information should not be included on the basis that the publication of small numbers may result in the identification of individual women.

205. The purpose of the annual report is to ensure transparency and to support the identification of any trends or potential issues. For example, potentially identify groups

of women with similar demographics who may have a greater incidence of terminations.

Section 12: Offences and penalties

Background

206. The 1997 Law provides that a person does not commit an offence if a termination is in accordance with the provisions of the law (i.e. it is an offence if the termination does not accord with the provisions of the Law and the persons committing the offence could be both the woman and the person performing the termination).

207. The criminalisation of women who have had a termination that does not accord with the law (as distinct from criminalising people who perform or procure a termination that does not accord with the law) is a criminal offence in England and Wales, and in Scotland via common law, but not in Northern Island, New Zealand or Australia. The criminalisation of women, in relation to offences related to termination, is highly controversial.

208. The 2024 consultation feedback report notes that only one fifth (20%) of respondents stated the woman should be liable for prosecution if they had a termination that did not accord with the provisions of the law, compared to over one third (39%) who stated that the person performing the termination should be liable, and 40% who stated that no-one should be liable as termination should not be a criminal issue.

209. Over recent years there has been a significant increase in the numbers of women subject to police investigations in England and Wales for illegally terminating their pregnancy or attempting to do so, which has given rise to concerns about that associated traumatising effect, particularly given that very few investigations lead to conviction (4 convictions in the previous 20 years).

210. In January 2024 the UK's Royal College of Obstetricians and Gynaecologists (RCOG) issued new guidance to medical professionals urging them not to report women to the police if they suspected they may have illegally ended their pregnancies due to concerns about the traumatising effect, and in June 2024 MPs were due to consider the Criminal Justice Bill which included an amendment to protect women from prosecution for having a termination that does not accord with the law. However, due to parliamentary process that amendment was not considered.

211. The amended law will provide that offences related to terminations that do not accord with the law will not apply to the woman (the exception being where the woman is performing an act related to another woman). Offences will only apply to persons performing a termination or procuring a termination for someone else.

212. The increase in police investigations in England and Wales is driven in part because of concerns about the availability of early medical terminations at home, with no in-person consultation requirement, which gives increased opportunity for a woman to knowingly provide false information about the advancement of their pregnancy. Recognising these concerns, the amended 1997 Law will provide that at least one in-person consultation is required prior to the termination taking place.

Offences

213. The amended law will provide that a woman who:
    a. consents to a termination on themselves that they know or believe does not accord with the provisions of the law does not commit an offence
    b. assists in, performs or attempts to perform, a termination on themselves does not commit an offence even when that termination does not accord with the provisions of the law
    c. does not self-administer the termination medicine as instructed (including where they self-administer in a place other than the approved place as instructed) does not commit an offence.

214. A person commits an offence if they knowingly
    a. perform or attempt to perform a termination on a woman which does not accord with the law. For example:
        - a relative of the woman
        - a health care practitioner other than one permitted in law to perform terminations
        - a health care practitioner permitted to perform terminations but doing so in a way that does not accord with the law (for example: a registered medical practitioner knowingly performing a termination at more than 9 weeks and 6 days).
    b. assist in the performance of a termination on a woman which does not accord with the law. For example: a health care practitioner assisting with a termination they know does not accord with the law
    c. persuade or cause a woman, or attempt to persuade or cause a woman, to have a termination which can include using threat, force or coercion or through the procurement and supply of termination medicine.

215. Offences include where a woman who has been lawfully prescribed termination medicine for the purposes of an early medical termination provides or attempts to provide that termination medicine to a woman for the purpose of terminating the other woman's pregnancy or causing the other woman to terminate their pregnancy.

216. Offences do not include:
    a. a registered medical practitioner or other professional who, in the course of their profession and duties, provides advice or opinion about whether a termination is or may be advisable or necessary to save the woman's life, to save another foetus, to avoid significant risk of injury or where there is significant risk of serious foetal anomalies
    b. person who undertakes an act which they reasonably believe accords with the provisions of the law (for example; a health and care practitioner acting in the course of their profession and duties assists in performing a termination which they believe accords with the law)
    c. registered medical practitioner who performs a termination where the pregnancy is more advanced than permitted limits, but they were of the opinion, formed in good faith, that the pregnancy was not so advanced

d. where a registered medical practitioner terminates a pregnancy, where they are of the opinion, formed in good faith, that the termination is immediately necessary to save the woman's life.

217. Furthermore, as set out in Section 10, it is an offence for a person to commit an act in a safe access zone which is prohibited, by Regulations, within a safe access zone.

218. Legal advice will be sought on the penalties associated with offences.

Section 13: Fees and resource implications

219. The cost to the public of providing the Government of Jersey's termination service is offset by fees that are currently paid by women who have a termination which is not medically required or recommended.

220. The current fees, which have not been subject to increase since 2012 are:
    a. £185 for a woman who is qualified for free HCJ non-emergency care.
    b. £511 for a woman who is not qualified for free HCJ non-emergency care

221. The following groups of women are exempt from paying fees:
    a. under 18 years old, or
    b. a full-time student who is eligible under the student healthcare service[2], or
    c. a household in receipt of income support, or
    d. where the pregnancy is a result of rape or incest (the woman may self-declare without the need to provide evidence of rape or incest).

222. Payment requirements vary between jurisdictions:
    a. in the UK terminations are free to women who are entitled to free NHS care
    b. in New Zealand terminations are free to residents and citizens (although prescription charges apply and ultrasound charges if required)
    c. in some Australian States terminations are free, but payment of around £400 is required in other States
    d. in Germany terminations cost around £170 to £470
    e. in France terminations are free to citizens.

223. It is intended that terminations that are delivered by the Minister will remain a paid-for service. But the power to set and amend fees will be provided for in law, as opposed to fees being provided for by Ministerial policy, as is currently the case. Providing for fees and charges in law ensures greater transparency and allows that the Assembly Scrutiny may call in an Order for debate in the event of concerns about disproportionately high fees, which cannot be justified in terms of cost recovery and are potentially intended to act as deliberate barrier to access to termination.

224. The amended law should provide that the Minister may, by Order, determine all matters relating to the charging of fees in respect of the termination services provided by the Minister. This includes determining:
    a. the services or service elements for which a fee is to be levied for example, early medical terminations and / or terminations up to 21 weeks and 6 days / terminations and / or by type (surgical or medical) and associated counselling provision
    b. the amount of fees payable,
    c. the woman required to pay a fee or be exempt from payment (the Minister should be able to vary fees depending on the woman's residency status)
    d. any associated appeals process.

225. In bringing forward the fees Order, it is anticipated that the Minister would not charge for medically necessary terminations (whether before or after 21 weeks and 6 days) as per current arrangements.

226. Prior to making a fees Order, the amended Law should provide that the Minister may consult any person who the Minister deems it appropriate to consult (for example, the Medical Officer for Health, Treasury Minister, third sector organisations, providers of termination services or auxiliary services).

227. Providing a power to set fees by Order does not place the Minister under a duty to charge fees but it provides that the Minister may continue the current charging policy but in a manner which is more transparent.

228. On enactment of the amended law, it is envisaged that the Minister will bring forward a fees Order providing for continuation of the existing charging policy but that fees would not apply to:
    a. medically necessary, or medically recommended terminations
    b. currently exempt groups.

229. If an approved place provider in Jersey, other than the Minister, provides termination services in Jersey, that approved place will be responsible for establishing its own fees.

Section 14: Power to make further provision

234. Health care is constantly evolving, with the provision of services subject to changes driven by medical and technical advances, changes to professional practice and health care economics, in addition to longer-term and immediate-term changes required in response to major events such as pandemics, or to shifts in societal norms.

235. As such the amended law must provide that the States Assembly may by Regulations make any amendments to any enactment (including to the amended Termination of Pregnancy Law) as the Assembly deems necessary for the purpose of the law, or a consequence of the Law and its provisions.

236. The power to make Regulations includes power to make any supplementary, incidental, consequential, transitional, transitory or saving provisions which appear to the States to be necessary or expedient for the purposes of the Regulations.

END OF REPORT