

# PROJET DE LOI

ENTITLED

## **The Abortion (Guernsey) Law, 1997 \***

[CONSOLIDATED TEXT]

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. VI of 1997 (Ordres en Conseil Vol. XXXVII, p. 72); as amended by the: Abortion (Guernsey) (Amendment) Law, 2021 (No. XII of 2021); Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the: Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996 (No. IX of 1996, Ordres en Conseil Vol. XXXVI, p. 639); Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015 (No. XXII of 2015).

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## **The Abortion (Guernsey) Law, 1997**

### ARRANGEMENT OF SECTIONS

1. Use of poisons or instruments to cause abortion.
2. Supplying or procuring poisons or instruments to cause abortion.
3. Medical termination of pregnancy.
4. Records and notification.
5. Conscientious objection to participation in treatment.
6. Supplementary provision.
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## **The Abortion (Guernsey) Law, 1997**

**THE STATES**, in pursuance of their Resolution of the 13<sup>th</sup> day of June 1996<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### **Use of poisons or instruments to cause abortion.**

1. Subject to the provisions of section 3 –

(a) ...

(b) any person who, with intent to procure the miscarriage of any [other person, being a] woman, whether she is pregnant or not –

(i) unlawfully administers to her or causes to be taken by her any poison or other noxious thing,  
or

(ii) unlawfully uses any instrument or other means  
whatsoever,

shall be guilty of an offence and liable on conviction to imprisonment for life.

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<sup>a</sup> Billet d'État No. VIII of 1996.

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**NOTES**

*In section 1, first, paragraph (a) was repealed and, second, the words in square brackets in paragraph (b) were inserted by the Abortion (Guernsey) (Amendment) Law, 2021, respectively section 2(a) and section 2(b), with effect from 2nd February, 2022.*

*In accordance with the provisions of the Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996, section 6, and with reference to the penalty prescribed for the offences in section 1, a court, instead of or in addition to any other punishment which may lawfully be imposed, may fine the offender for such offence.*

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**Supplying or procuring poisons or instruments to cause abortion.**

2. Subject to the provisions of section 3, any person who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any [other person, being a] woman, whether she is pregnant or not, shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding three years.

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**NOTES**

*In section 2, the words in square brackets were inserted by the Abortion (Guernsey) (Amendment) Law, 2021, section 3, with effect from 2nd February, 2022.*

*In accordance with the provisions of the Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996, section 6, and with reference to the penalty prescribed for the offence in section 2, a court, instead of or in addition to any other punishment which may lawfully be imposed, may fine the offender for such offence.*

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**Medical termination of pregnancy.**

3. (1) [An authorised person shall not be guilty of an offence under section 1 or 2 where the authorised person terminates a pregnancy in any case where a recognised medical practitioner is] of opinion, formed in good faith –

- (a) that the termination is immediately necessary to save the life of the pregnant woman,
- (b) that the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman,
- [(c) that, at the time of the diagnosis, there is a substantial risk that if the child were born it would suffer from a significant physical or mental impairment that would have a seriously debilitating effect on the child, or]
- (d) that the pregnancy has not exceeded its [twenty-fourth] week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family.

[ (2) For the purposes of subsection (1)(d), whether or not a pregnancy has exceeded its twenty-fourth week is to be determined and calculated in accordance with any guidance published by the Committee in any manner it considers appropriate for this purpose.]

(3) ...

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**NOTE**

*In section 3, first, the words in square brackets in subsection (1), second, paragraph (c) of that subsection and, third, the words in square brackets in subsection (1)(d) were all substituted and, fourth, subsection was substituted*

*and subsection (3) repealed by the Abortion (Guernsey) (Amendment) Law, 2021, respectively section 4(a)(i), section 4(a)(ii), section 4(a)(iii) and section 4(b), with effect from 2nd February, 2022.<sup>1</sup>*

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**Records and notification.**

4. (1) [ An authorised person] who terminates a pregnancy shall keep an accurate medical record of the termination.

(2) [ The Committee] may by regulation provide –

- (a) for requiring any such opinion as is referred to in section 3 to be certified by the [practitioner] concerned in such form and at such time as may be prescribed,
- (b) for requiring the preservation and disposal of certificates made for the purposes of the regulations,
- (c) for requiring any [authorised person] who terminates a pregnancy to give notice of the termination and such other information relating to the termination as may be prescribed,
- (d) for prohibiting the disclosure, except to such persons or for such purposes as may be prescribed, of certificates, notices or information given pursuant to the regulations.

(3) The information furnished in pursuance of regulations made under subsection (2)(c) shall be notified solely to the [Director of Public Health].

(4) A person who wilfully contravenes any provision of

regulations under subsection (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale of fines.

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**NOTES**

*In section 4,*

*first, the words in square brackets in subsection (1), second, the word in the second pair of square brackets in subsection (2), third, the words in the third pair of square brackets therein and, fourth, the words in square brackets in subsection (3) were all substituted by the Abortion (Guernsey) (Amendment) Law, 2021, respectively section 5(a), section 5(b)(i), section 5(b)(ii) and section 5(c), with effect from 2nd February, 2022;*

*the words in the first pair of square brackets in subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.*

*The following Regulations have been made under section 4:*

*Abortion (Guernsey) Regulations, 2022.*

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**Conscientious objection to participation in treatment.**

5. (1) Subject to [subsections (3) and (3A) and any regulations made under subsection (5)], no person shall be under any duty, whether arising by contract or by statutory or other legal requirement, to participate in any treatment [of a woman] authorised by this Law to which he has a conscientious objection.

(2) In any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

(3) Nothing in subsection (1) shall affect any duty to participate in treatment which is necessary[ –

(a) to save the life of the woman concerned, or

- (b) to prevent serious injury to the physical or mental health of the woman concerned.]

[ (3A) Subsection (1) does not apply unless the person who has a conscientious objection, without delay –

- (a) in any case where the woman concerned has requested the person to participate in the treatment –

- (i) informs that woman that she has a right to see another person who is lawfully authorised to participate in the treatment and does not have a conscientious objection, and

- (ii) ensures that that woman has sufficient information to enable her to exercise the right mentioned in subparagraph (i), and

- (b) in any other case, makes any arrangements necessary to allow another person, who is lawfully authorised to participate in the treatment and does not have a conscientious objection, to participate in the treatment in place of the person who has a conscientious objection.]

(4) In any proceedings before a court, a statement on oath by a person to the effect that he has a conscientious objection to participating in any treatment authorised by this Law shall be sufficient evidence for the purpose of discharging the burden of proof imposed by subsection (2).

[ (5) The Committee may by regulations –



- (a) designate or limit the persons who may exercise the right to conscientious objection specified in subsection (1),
- (b) impose any condition or requirement for the exercise of that right, and
- (c) otherwise limit or restrict the exercise of the right in any manner that it thinks fit.

(6) In this section, for the avoidance of doubt, a reference to participation in any treatment includes a reference to provision of the treatment.]

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**NOTE**

*In section 5, first, the words in the first pair of square brackets in subsection (1) were substituted, second, the words in the second pair of square brackets therein were inserted, third, the words in square brackets in subsection (3) were substituted, fourth, subsection (3A) and, fifth, subsection (5) and subsection (6) were inserted by the Abortion (Guernsey) (Amendment) Law, 2021, respectively section 6(a)(i), section 6(a)(ii), section 6(b), section 6(c) and section 6(d), with effect from 2nd February, 2022.*

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**Supplementary provision.**

6. For the purposes of sections 1 and 2, anything done [by a person] with intent to procure the miscarriage of [another person, being a woman,] is unlawfully done unless authorised by section 3.

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**NOTE**

*In section 6, the words in the first and second pairs of square brackets were, respectively, inserted and substituted by the Abortion (Guernsey) (Amendment) Law, 2021, section 7(a) and section 7(b), with effect from 2nd*

February, 2022.

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**Concealment of birth.**

7. If any woman be delivered of a child, any person who, by any secret disposition of the dead body of the child, whether such child died before, at or after its birth, endeavours to conceal the birth thereof, shall be guilty of an offence and liable on conviction to a term of imprisonment for a term not exceeding two years.

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**NOTE**

*In accordance with the provisions of the Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996, section 6, and with reference to the penalty prescribed for the offence in section 7, a court, instead of or in addition to any other punishment which may lawfully be imposed, may fine the offender for such offence.*

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**Interpretation.**

8. In this Law, unless the context requires otherwise –

[ "**authorised person**" means –

- (a) a recognised medical practitioner, or
- (b) a person who is registered as a nurse or midwife in the register maintained by the Committee under section 3 of the Registered Health Professionals Ordinance, 2006,]

"[**the Committee**]" means the States [Committee for Health & Social Care] or such other committee of the States as may be specified by the States by Ordinance,

**"contravention"** includes failure to comply, and cognate expressions shall be construed accordingly,

**"prescribed"** means prescribed by [the Committee] by regulations,

**"recognised medical practitioner"** means a recognised medical practitioner within the meaning of the Doctors, Dentists and Pharmacists Ordinance, 1987<sup>b</sup>.

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## NOTES

*In section 8,*

*the definition of the expression "authorised person" was inserted by the Abortion (Guernsey) (Amendment) Law, 2021, section 8, with effect from 2nd February, 2022;*

*the words, first, "the Committee" and, second, "Committee for Health & Social Care" in square brackets in the definition of the expression "the Committee" and, third, the words "the Committee" in square brackets, wherever else occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 6, section 2, Schedule 1, paragraph 5 and section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.<sup>2</sup>*

*The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.<sup>3</sup>*

*In accordance with the provisions of the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, section 27(2), with effect from 3rd December, 2015, the references in this enactment to a "recognised medical practitioner" are to be construed as a reference to a registered practitioner within the meaning of section 26(1) of the 2015 Ordinance.*

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<sup>b</sup> Recueil d'Ordonnances Tome XXIV, p. 79.

**General provisions as to regulations.**

**9.** Regulations under this Law –

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to [the Committee] to be necessary or expedient,
- (c) shall be laid before a meeting of the States as soon as possible after being made and, if at that or the next meeting, the States resolve to annul the regulations, the regulations shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

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**NOTES**

*In section 9, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.*

*The following Regulations have been made under section 9:*

*Abortion (Guernsey) Regulations, 2022.*

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**Repeals.**

**10.** The Loi sur L'Avortement of 1910<sup>c</sup> is hereby repealed in respect of the Islands of Guernsey, Herm and Jethou.

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<sup>c</sup> Ordres en Conseil Vol. IV, p. 359.

**Citation.**

11. This Law may be cited as the Abortion (Guernsey) Law, 1997.

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**NOTE**

*The Law received Royal Sanction on 12th February, 1997 and was registered on the Records of the Island of Guernsey and came into force on 18th March, 1997.*

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<sup>1</sup> Prior to its substitution, subsection (2) was amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.

<sup>2</sup> The words "Committee for Health & Social Care" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

<sup>3</sup> The functions, rights and liabilities of the Health and Social Services Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Board of Health and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 4, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.