



24TH JUNE 2021

YOUR VOTE MATTERS

**INDEPENDENT GUIDE TO THE
CRIMES (AMENDMENT) ACT 2019
REFERENDUM 2021**

Introduction

On Thursday 24 June 2021, you will be asked to vote on whether legislation that regulates the termination of pregnancy should be brought into force.

The Gibraltar Parliament passed the Crimes (Amendment) Act 2019 which amends the law in relation to the termination of pregnancy. That law is not in force and in this referendum you are being asked whether that law should be brought into force.

In this guide, we explain the current law, we describe what changes will be made to the current law if the Crimes (Amendment) Act 2019 is brought into force, and we explain the legal effect of a Yes vote and the legal effect of a No vote.

The Gibraltar Parliament passed a resolution approving the contents of this guide, which is being distributed to households throughout Gibraltar.

This guide does not argue for a Yes vote or a No vote, but all Members of Parliament join me in strongly encouraging you to vote.

Paul E. Martinez
Referendum Administrator

The present legal position

The current law relating to the prohibition of termination of a pregnancy is contained in Part 10-Offences Against the Person- of the Crimes Act 2011, and more specifically in sections 161 to 163. The effect of these sections are summarised below-

Section 161 – Child destruction

Child destruction is an offence that is committed when a person has the intent to destroy the life of a child capable of being born alive and undertakes an act that causes that child to die before it has an existence independent of its mother.

No offence is committed when the act that causes the death of the child is done in good faith and for the only purpose of preserving the life of the mother.

A person who is convicted of an offence under this section is liable to imprisonment for life.

Section 162 – Administering drugs or using instruments

This section creates the offence of procuring a miscarriage whether through poison or other noxious things or through any other means. The offence is capable of being committed by a woman who intends to procure her own miscarriage and by any person who intends to procure the miscarriage of a woman.

A person who is convicted of an offence under this section is liable to imprisonment for life.

Section 163 – Procuring drugs, etc.

This section creates the offence of providing another person with poison or noxious thing or instrument or thing with the intention that it will be unlawfully used or employed to procure the miscarriage of a woman.

A person who is convicted of an offence under this section is liable to imprisonment up to a maximum of 5 years.

The full text of sections 161 to 163 of the Crimes Act 2011 is reproduced in Annex 1. Annex 1 also includes a link to the Act which is freely available on the Gibraltar laws website.

The proposed changes to the current law

The Crimes (Amendment) Act 2019 proposes changes to the current law by inserting sections 163A to 163E into the Crimes Act 2011. The effect of these new sections are summarised below:

Section 163A – Medical termination of pregnancy

This section permits the termination of a pregnancy where 2 doctors employed by the Gibraltar Health Authority have formed the opinion that one of the following circumstances applies:

Firstly, where the pregnancy has not gone beyond 12 weeks and continuing the pregnancy involves a risk of injury to the physical or mental health of the pregnant woman that is greater than if the pregnancy is terminated.

Secondly, where the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman.

Thirdly, where continuing the pregnancy involves a risk to the life of the pregnant woman that is greater than if the pregnancy is terminated.

Fourthly, where there is a substantial risk that the foetus is suffering from a fatal foetal abnormality.

As regards the second, third and fourth situation, there is no prescribed limitation of time.

In addition to the matters set out above a doctor may terminate a pregnancy when that doctor is of the opinion that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

Section 163B – Notification

This section gives the Minister for Health powers to make regulations to provide for the procedural matters regarding terminations that are conducted pursuant to section 163A. These include the reporting of terminations, the manner of recording the opinions that doctors are required to form and the preservation and disposal of certificates.

Section 163C – Conscientious objection to participation in treatment

This section allows a person to refuse to participate in a termination that is permitted under section 163A, on grounds of conscience.

A person who is under a duty to act, may not refuse to participate in life saving or other critical treatment based on the grounds of conscience.

Section 163D – Supplementary provisions

This section clarifies that anything that is done with the intention that a woman has a miscarriage is only lawful if it is authorised under section 163A and also sets out what is permissible as regards the termination of one or more foetuses in a pregnancy consisting of multiple foetuses.

Section 163E – Interpretation

This section provides the definition of terms that are used in sections 163A to 163E.

The full text of section 163A to 163E is reproduced in Annex 2. Annex 2 also includes a link to the Crimes (Amendment) Act 2019 that is freely available on the Gibraltar laws website.

The legal effect of voting YES or NO



The legal effect of a YES vote

If a majority votes Yes, the Government must, within 28 days, bring into force the Crimes (Amendment) Act 2019. When it comes into force the circumstances under which a pregnancy may be terminated in Gibraltar will be greater and as described in this Guide.



The legal effect of a NO vote

If a majority votes No, then the Crimes (Amendment) Act 2019 will not come into force and the circumstances under which a pregnancy may be terminated in Gibraltar will remain in place unchanged.

How to vote

Voting Stations will be open from 9am to 10pm on Thursday 24 June 2021

Before Referendum Day, **you should receive a voting card in the post** telling you at which voting station you should cast your vote. If you do not receive a voting card, you are still entitled to vote so long as you are on the Referendum Register. You can check this at www.parliament.gi/

You do not need to have your voting card with you when you go to vote. However, **you should bring some valid form of personal identification** such as your Identity Card, passport or driving licence. You may not be asked for proof of identity, but if asked for it you need to show it.

You can see a sample voting paper on the next page.

You will be voting on should the Crimes (Amendment) Act 2019, that defines the circumstances which would allow abortion in Gibraltar, to come into force.

You vote by marking an 'X' in the 'Yes' box or 'No' box, depending on how you want to vote. Mark only one box, or your vote will not count. Do not mark any other part of the voting paper.

REFERENDUM ACT 2015

**VOTING PAPER FOR THE REFERENDUM OF
THURSDAY 24TH JUNE 2021
ON THE CRIMES (AMENDMENT) ACT 2019**

QUESTION

Should the Crimes (Amendment) Act 2019, that defines the circumstances which would allow abortion in Gibraltar, come into force?

Yes

No

ANNEX 1

Excerpts from the current relevant part of the Crimes Act 2011-

PART 10 OFFENCES AGAINST THE PERSON

Causing and threatening death

Child destruction.

161.(1) Subject to this section, a person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, commits the offence of child destruction and is liable on conviction to imprisonment for life.

(2) A person is not to be found guilty of an offence against this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother.

(3) For the purposes of this section, evidence that a woman had at any material time been pregnant for a period of 28 weeks or more is prima facie proof that she was at that time pregnant of a child capable of being born alive.

Attempts to procure abortion

Administering drugs or using instruments.

162.(1) A pregnant woman who, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or unlawfully uses any other means with that intent, commits an offence and is liable on conviction to imprisonment for life.

(2) A person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any poison or other noxious thing, or unlawfully uses any instrument or other means with that intent, commits an offence and is liable on conviction to imprisonment for life.

Procuring drugs, etc.

163. A person who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing, knowing that it is intended to be unlawfully used or employed with intent to procure the miscarriage of a woman, whether she is or is not with child, commits an offence and is liable-

(a) on summary conviction to imprisonment for 12 months or the statutory maximum fine, or both;

(b) on conviction on indictment to imprisonment for 5 years.

An electronic copy of the Crimes Act 2011 may be accessed free of charge here-

<https://www.gibraltarlaws.gov.gi/legislations/crimes-act-2011-2856>

ANNEX 2

The following sections are the new sections inserted into the Crimes Act 2011 by the Crimes (Amendment) Act 2019 which will be commenced if the Yes vote wins:

Medical termination of pregnancy.

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

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

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

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

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

(5) Subsection (3) of this section, and so much of subsection (1) as relates to the opinion of two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

Notification.

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

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

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

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

Conscientious objection to participation in treatment.

163C.(1) Subject to subsection (2) of this section, no person shall be under any duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by section 163A to which he has a conscientious objection:

Provided that in any legal proceedings the burden of proof of conscientious objection shall rest on the person claiming to rely on it.

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

Supplementary provisions.

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

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

Interpretation.

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

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

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

An electronic copy of the Crimes (Amendment) Act 2019 may be accessed free of charge here-

<https://www.gibraltarlaws.gov.gi/legislations/crimes-amendment-act-2019-4693>

Published by Referendum Administrator
156, Main Street
Gibraltar