STOP GENDERCIDE

Analysis of the Abortion Reform Bill 2017 (Isle of Man)

August 2017

Executive Summary

- Sex-selective abortion is currently illegal on the Isle of Man, as implicitly in UK law, due to the general illegality of abortion under the Criminal Code 1872, and the Infanticide and Infant Life (Preservation) Act 1938, excepting for exemptions from prosecution under certain conditions established by the Termination of Pregnancy (Medical Defences) Act 1995.
- The new Abortion Reform Bill 2017 would repeal the 1995 Act and the 1872 provisions. It would replace these with a system of abortion on demand, for any reason, up to 14 weeks, and ostensibly limited abortion exemptions from new criminal sanctions for doctors performing abortions, after that point in pregnancy.
- If passed by the Manx Tynwald, this new framework **would legalise sex-selective abortion *de iure* (formally) up to 14 weeks**.
- Due to technological improvements in non-invasive pre-natal testing (NIPT), which is about to be introduced to the Isle of Man and north-west England, foetal sex can now be detected after 7 weeks. This means that, assuming passage of the proposed Bill, sex-selective abortion **would soon become an explicit and viable possibility on the Island between 7-14 weeks**. Concern that such a possibility might occur has been raised by the UNESCO International Bioethics Committee since 2015.
- The new framework **would also enable sex-selective abortion *de facto* (informally; practically) at least up to 24 weeks**. This is because the Bill allows for abortion after 14 weeks when one doctor discerns abortion to be necessary to prevent "serious injury to the pregnant woman's life or health", or on "serious social grounds". These bases are so poorly defined, that they may be expected to be abused in similar ways to the 'social clause' of the Abortion Act 1967 in Great Britain.
- The demonstrated potential for the practice of sex-selective abortion in British medical practice, combined with the total absence of medical guidelines forbidding sex-selective abortion, and the implicit allowance for legal sex-selection in Guidance and legal argumentation, shows that the current construction in the draft Bill would introduce a similar and indeed worsened potential for sex-selective abortion on the Isle of Man.
- The abuse of Manx addresses (as some Manx and Irish women currently abuse British addresses) to gain access to Manx abortions, would also create the possibility of 'abortion tourism' for sex-selective purposes to the Island.
- We encourage Manx citizens to contribute to the consultation on the Bill, and prescribe an explicit ban on sex-selective abortion be added, and the omission of those clauses that introduce abortion on demand before 14 weeks as well as broad 'health' and 'social' grounds.

Background and Introduction

The Isle of Man is a Crown Dependency, which means that it is not within the jurisdiction of the United Kingdom, but its foreign policy and defence are determined by the UK Government. Being a Crown Dependency means that it is semi-independent, and has its own Constitution, Parliament (called Tynwald), and laws. The Island consequently has its own legislation concerning abortion, which has been more restrictive than those in Great Britain, and less so than those in Northern Ireland.

This legislation makes 'unlawful procurement of a miscarriage' illegal throughout pregnancy according to clauses 71 and 72 of the Criminal Code 1872[1], and 'Child Destruction' illegal after 28 weeks gestation according to the Infanticide and Infant Life (Preservation) Act 1938[2]. These laws followed legal reforms in English law, and Irish law (now applying solely in Northern Ireland).

The Isle of Man did not adopt a law like the Abortion Act 1967. In 1995, a more restrictive set of exemptions from prosecution to the crimes established in 1872 and 1938 was passed, called the Termination of Pregnancy (Medical Defences) Act 1995[3]. This allows for abortions due to serious threats to the mother's life, sexual crime, and foetal impairment.

Dr. Alex Allinson MHK, a member of the lower house of the Tynwald called the House of Keys, is currently seeking to amend the abortion law on the Isle of Man though a Private Member's Bill, the 'Abortion Reform Bill 2017'[4], a draft of which is currently under public consultation[5].

The interest of the Stop Gendercide campaign in this Bill and abortion reform on the Isle of Man, is the effect it will have on the legality of sex-selective abortion there, and the wider consequences this could have on the issue in the rest of the British Isles. The following analysis constitutes an evaluation of the Bill with both those issues in mind.

[1] Criminal Code 1872, clauses 71 and 72:
http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1872/1872-0001/CriminalCode1872_1.pdf
[2] Infanticide and Infant Life (Preservation) Act 1938:
http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1938/1938-0003/InfanticideandInfantLifePreservationAct1938_1.pdf
[3] Termination of Pregnancy (Medical Defences) Act 1995:
http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1995/1995-0014/TerminationofPregnancyMedicalDefencesAct1995_1.pdf
[4] Abortion Reform Bill 2017:
https://consult.gov.im/office-of-the-clerk-of-tynwald/abortion-reform-bill-2017/user_uploads/abortionreformbill2017_consultationdraft.pdf
[5] Abortion Reform Bill 2017 Consultation: https://consult.gov.im/office-of-the-clerk-of-tynwald/abortion-reform-bill-2017/

Analysis of the Draft Bill

Formal Legalisation of Sex-Selective Abortion (up to 14 Weeks)

One of the key changes that the draft Bill seeks to affect is found in clause 6(2), which reads:

"*During the first 14 weeks of the gestation period, abortion services may be provided upon request by or on behalf of a pregnant woman*".

This would remove all limitations on access to abortion up to 14 weeks, formally introducing abortion-on-demand, and for any reason, up to that point in pregnancy.

This is of chief concern, **as the effect of this would be to also formally legalise sex-selective abortion.** If there is no legal limitation to abortion provision before 14 weeks, then abortion for any reason can include abortion for the purposes of sex-selection.

Medical Context: Non-Invasive Pre-natal Testing (NIPT)

The seriousness of this issue becomes even more grave in light of recent advances made in the efficacy of pre-natal testing in the detection of foetal sex. In November 2015, the Manx Health and Social Care Minister Kate Beecroft MHK declared that pregnant women on the island will be offered access to a new form of non-invasive pre-natal testing (NIPT), once the system is implemented throughout the NHS in the UK[6]. Already available through private healthcare, this form of NIPT is called 'cell-free DNA' (cfDNA) testing, as it analyses the cells from the gestating foetus that exist in the maternal bloodstream.

In 2011, a systematic review and meta-analysis in the Journal of the American Medical Association (JAMA)[7], looking at 57 studies involving about 6,500 pregnancies, discovered that cfDNA can detect foetal sex with an accuracy of 95% when carried out at 7 weeks. Due to this evolving technology the UNESCO International Bioethics Committee (IBC) in the *Report of the IBC on Updating Its Reflection on the Human Genome and Human Rights* in 2015[8], stated:

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[6] *Island to offer new prenatal Down's test*, Manx Radio, 12/11/16: http://www.manxradio.com/news/isle-of-man-news/island-to-offer-non-invasive-prenatal-testing/

[7] Devaney SA, Palomaki GE, Scott JA, Bianchi DW. *Noninvasive Fetal Sex Determination Using Cell-Free Fetal DNA: A Systematic Review and Meta-analysis*. JAMA. 2011;306(6):627–636. doi:10.1001/jama.2011.1114: http://jamanetwork.com/journals/jama/article-abstract/1104804

[8] *Report of the IBC on Updating Its Reflection on the Human Genome and Human Rights*, UNESCO (2015): http://unesdoc.unesco.org/images/0023/002332/233258e.pdf

"*[A] risk lies in the cultural prejudices of preferring a child of the male sex, the sex of the baby being one of the characteristics that can obviously be discovered by NIPT. As this test can be carried out at a very early stage of the pregnancy it would be difficult, even impossible for doctors to forbid the communicating of sex to the parents, and especially at a time when many countries have liberalised abortion. This could lead to a selection based on sex, which is against ethical values of equality and non-discrimination*".

In 2015, UK Government officials also expressed concerns that cfDNA implementation could carry the risk of enabling sex-selective abortions[9]. Nothing in law or medical Guidelines (further discussion of which is on page 9 of this briefing) forbids notification of foetal sex to parents, so this is a perennial danger of emerging technology in the current legal and regulatory context.

The draft Bill fails to take these problems into account, since the combination of abortion on demand in the first and early second trimesters, and the availability of NIPT that can discern foetal sex after 7 weeks, will make sex-selective abortion a legal potential reality on the Isle of Man between 7-14 weeks.

International Context: The Swiss and Canadian Experiences

Two obvious international analogues that show the practical sex-selective potential of abortion-on-demand after 7 weeks, are Switzerland and Canada.

Switzerland introduced abortion-on-demand up to 12 weeks into law in 2002[10], with abortion available throughout all of pregnancy "to prevent the pregnant woman from sustaining serious physical injury or serious psychological distress"[11], but made sex-selective abortion explicitly illegal[12]. Since however, parents are able to receive a diagnosis of foetal sex at 9 weeks through ultrasound tests, this has meant that there is a 3-week window in which sex-selection is legally possible. The suggestion has been made of forbidding the reporting of foetal sex to parents, but Swiss citizens can go abroad to ascertain that information through foreign laboratories, and technological improvements may soon allow 'home kits' for foetal sex detection that parents can use at home. Swiss abortion on demand, combined with

[9] *Experts worried pre-natal blood test might lead to sex-selective abortions*, by Claire Newell, Olivia Rudgard and Edward Malnick, Daily Telegraph, 06th November 2015: http://www.telegraph.co.uk/news/health/11980660/Experts-worried-pre-natal-blood-test-might-lead-to-sex-selective-abortions.html

[10] *Schweizerisches Strafgesetzbuch* (Swiss Criminal Code), Article 119 paragraph 2: https://www.admin.ch/opc/en/classified-compilation/19370083/201709010000/311.0.pdf

[11] *Ibid*., Article 119 paragraph 1.

[12] *Swiss scientists against sex-selective abortion*, by Caroline Bishop, The Local, 10th October 2014: https://www.thelocal.ch/20141010/sciencists-push-to-outlaw-sex-selective-abortion

improving pre-natal detection technology, and *even with a legal ban on sex-selection*, has enabled sex-selective abortion.

Between 1969-1988, Canada's Criminal Code required women who wished to have an abortion to satisfy a hospital therapeutic abortion committee that the continuation of her pregnancy would be likely to endanger her life or health[13]. After the Canadian Supreme Court voided all abortion laws in the case of *R. v. Morgentaler, Smoling and Scott*[14] however, abortion on demand, for any reason, right up to birth was introduced. The consequence of this over time has been that a serious situation of sex-selective abortion has developed in that country.

In 2016, the Canadian Medical Association Journal (CMAJ) published two related studies that found a higher-than-expected ratio of boys to girls born to immigrants to Canada from India over the previous two decades[15]. This gender imbalance was especially pronounced among families that already had two daughters, and researchers linked the ratio imbalance to preceding terminations. This institutionalised misogyny was enabled by the radical abandonment of legal abortion safeguards.

This has been a long term problem in Canada. Four years before these studies, a 2012 study found evidence of sex ratio disparity in Ontario amongst certain minority communities, which it connected to the practice of prenatal sex-selection[16]. Earlier that year, a CMAJ editorial had called on Canadian medical colleges "to rule that a healthcare professional should not reveal the sex of the fetus to any woman before, say, 30 weeks of pregnancy", in the hope that this might curb foetal femicide in Canadian abortion practice[17].

Such a move would be broadly unfortunate: the detected sex of a child should not be denied to parents for whom it is valuable information not just in planning, but also in bonding with their children *in utero*.

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[13] Canadian Criminal Code, section 251, as amended by the Criminal Law Amendment Act, 1968-69.
[14] *R. v. Morgentaler* (1988), 1 SCR 30, 44 DLR (4th) 385:
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/288/index.do
[15] *Some couples in Canada practising prenatal sex selection in favour of male fetuses*, studies suggest, by Wendy Leung, Globe and Mail, April 11th 2016:
https://www.theglobeandmail.com/life/health-and-fitness/health/some-couples-in-canada-practising-prenatal-sex-selection-in-favour-of-male-fetuses-studies-show/article29583670/
Urquia *et al, Variations in male-female infant ratios among births to Canadian- and Indian-born mothers, 1990-2011: a population-based register study*. CMAJ. 2016;4(2):E116-E123. doi: 10.9778/cmajo.20150141:
http://cmajopen.ca/content/4/2/E116.full
Urquia *et al*, Sex ratios at birth after induced abortion. CMAJ. 2016;4(2):E181. doi: 10.1503/cmaj.151074:
http://www.cmaj.ca/content/early/2016/04/12/cmaj.151074
[16] Ray *et al*, *Sex ratios among Canadian liveborn infants of mothers from different countries*. CMAJ. 2012;184(9):E492-496. doi:10.1503/cmaj.120165:
http://www.cmaj.ca/content/184/9/E492.full.pdf?sid=9d6d87e8-22d3-45c4-9f10-29a2e7bceac3
[17] Rajendra Kale, MD, *"It's a girl!" — could be a death sentence*. CMAJ. 2012; 184(4):387-388. doi: 10.1503/cmaj.120021:
http://www.cmaj.ca/content/184/4/387.full
See also Lauren Vogel, *Sex selection migrates to Canada*. CMAJ. 2012; 184(3):E163-E164. doi: 10.1503/cmaj.109-4091:
http://www.cmaj.ca/content/184/3/E163

Instead, the better response to avoid the sex-selective potential of abortion on demand would be to avoid the enabling potential of such a situation at any stage in pregnancy after 7 weeks, and provide explicit prohibition of sex-selective abortion in law.

In noting all this, the Isle of Man could profit much from the Swiss and Canadian experiences before creating conditions in their own jurisdiction that could lead to a similar legal and social situation.

Informal Legalisation of Sex-Selective Abortion (15-24 weeks)

Further to the formal legalisation of sex-selective abortion up to 14 weeks, the draft Bill **could also make sex-selective abortion a reality up to 24 weeks**. In Great Britain, section 1(1)(a) of the Abortion Act 1967[18] – colloquially known as the 'social clause' of the Act, even though it only discusses the physical and mental health of the pregnant woman or her family – has led to a situation of *de facto* abortion on demand due to its broad interpretation in practice. Two parts of the draft Bill carry the potential to act in a similar way:

- Clause 6(4) would authorise abortion for situations in which there will be "serious injury to the pregnant woman's life or health". What constitutes such an injury is not defined however, and so an appeal to 'health' would give the clause the same potential for abuse as section 1(1)(a) in British law. (Particularly since the draft Bill removes the requirement in current Manx abortion law for abortions on mental health grounds, the grounds under which 98% of British abortions occur, to be approved by a consultant psychiatrist[19], establishing an evidence-basis for such abortions to occur.)
- Clause 6(7) would authorise abortion on the basis of "serious social grounds". This is not defined either however, and although examples are given – maternal alcoholism or drug-dependency, death of a partner, incarceration of the mother or partner, or homelessness – these do not constitute legally binding strictures.

Consequently, either of these two clauses could affect abortion on demand between 15-24 weeks. Both would thereby constitute bases upon which sex-selective abortion could be effectively legalised by the draft Bill.

[18] Abortion Act 1967, section 1(1)(a): http://www.legislation.gov.uk/ukpga/1967/87/section/1
[19] Termination of Pregnancy (Medical Defences) Act 1995, clause 2(2).

Regulatory Context: Potential of Procedural Abuse

Sex-selective abortion would be especially practicable on the Isle of Man given that the provisions of the draft Bill suggest that it would establish abortion provision practised as least as loosely as currently takes place in Great Britain, if not more so.

The current Manx law requires two doctors all throughout pregnancy to make the 'good faith' decision that any woman's situation fits the terms of the law, and requires one of the doctors to be a consultant psychiatrist if the abortion is to take place to avoid risk to the mental health of the mother. These requirements are deleted by the draft Bill, clauses 6(3) and 6(8) of which require only one doctor, without any necessary mental health training or citation of any further evidence, to certify that an abortion should take place between 15-24 weeks.

Further to this, no doctor certification is required in the draft Bill up to 14 weeks at all, but a doctor may freely prescribe, and a nurse, pharmacist, or midwife can thereby freely supply, abortifacient drugs to a woman on demand.

This minimal procedural box-ticking, or lack of procedural limitations at all, would make it easy for the informal rubber-stamping of sex-selection to occur as it has been show as possible already in British practice.

In 2012, it was reported that Dr. Vincent Argent, who previously worked as medical director for the British Pregnancy Advisory Service (BPAS), one of the largest abortion providers in the UK, said that he had "no doubt" that women were terminating pregnancies because of the sex of the baby, and that he believed the practice was "fairly widespread"[20].

These comments took place in the wake of an undercover investigation by the Daily Telegraph, which discovered that British doctors were willing to certify sex-selective abortions under the pretence of mental health grounds. One, Dr. Prabha Sivaraman, when approached for a sex-selective abortion, told the undercover reporter, "I don't ask questions. If you want a termination, you want a termination". She was then recorded telephoning a colleague to book the procedure, explaining that it was for "social reasons" and the woman "doesn't want questions asked"[21]. The other, Dr. Palaniappan Rajmohan, when told by the

[20] *Sex-selection abortions are 'widespread'*, by Claire Newell, and Holly Watt, Daily Telegraph, 24th February 2012: http://www.telegraph.co.uk/news/health/news/9104994/Sex-selection-abortions-are-widespread.html

[21] *Abortion investigation: doctors filmed agreeing illegal abortions 'no questions asked'*, Claire Newell, and Holly Watt, Daily Telegraph, 22nd February 2012: http://www.telegraph.co.uk/news/health/news/9099511/Abortion-investigation-doctors-filmed-agreeing-illegal-abortions-no-questions-asked.html

reporter that she wanted an abortion because she and her partner "don't want a girl", whilst admitting of such an abortion, "That's not fair. It's like female infanticide isn't it?" signed off on such a termination when the pregnant woman asked if he could put down a different reason for it, saying, "That's right, yeah, because it's not a good reason anytime... I'll put too young for pregnancy, yeah?"[22].

Both of these two doctors were investigated by the General Medical Council (GMC). Nothing, however, in the GMC Guidelines on *Good Medical Practice*[23], the Royal College of Obstetricians and Gynaecologists' (RCOG) Guidelines on *The Care of Women Requesting Induced Abortion*[24], or professional guidelines in any other relevant area, forbade or currently forbids (as already stated) doctors from notifying parents of foetal sex, or even from signing off on or carrying out sex-selective abortions.

Given that such Guidelines apply in the Crown Dependencies, this is relevant across the British Isles, including in the Isle of Man. The reason for an absence of guidance against sex-selective abortion is that both the GMC and the RCOG assume, in keeping with the policy of the British Government[25], that sex-selection is illegal across the UK. Consequently, they simply prescribe to doctors that they follow the requirements of existing British legislation. This is why, when the RCOG issued a briefing on Fiona Bruce MP's amendment to the Serious Crime Bill in 2015 that would have explicitly banned sex-selective abortion in Great Britain[26], it mentioned no guidelines forbidding that practice, but simply stated that:

"The RCOG stance is that non-medically indicated sex selection is unacceptable. Within the context of abortion, the RCOG supports the CMO's view that abortions carried out on the sole premise of foetal sex are illegal… The RCOG has written to its members about sex selective abortions, reminding them about compliance with the law".

Were sex-selective abortion to be legalised in any jurisdiction where the GMC or RCOG are authoritative bodies, such as on the Isle of Man by the formal introduction of abortion on demand in clause 6(2) of the draft Bill, there would be no professional guidelines that would provide a basis for disciplining doctors who sanctioned sex-selective abortions. Even where there is, such as the abuse of the mental provision of

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[22] *Abortion investigation: doctor filmed admitting termination would be 'infanticide'*, Daily Telegraph, 23rd February 2012: http://www.telegraph.co.uk/news/health/news/9102160/Abortion-investigation-doctor-filmed-admitting-termination-would-be-infanticide.html

[23] *Good Medical Practice*, General Medical Council (2013): http://www.gmc-uk.org/Good_medical_practice___English_1215.pdf_51527435.pdf

[24] *The Care of Women Requesting Induced Abortion: Evidence-based Clinical Guideline Number 7*, Royal College of Obstetricians and Gynaecologists (2011): https://www.rcog.org.uk/globalassets/documents/guidelines/abortion-guideline_web_1.pdf

[25] *Gender-selective abortion is illegal, Health Secretary Jeremy Hunt to announce*, by Steven Swinford and Peter Dominiczak, Daily Telegraph, 22nd May 2014: http://www.telegraph.co.uk/news/health/news/10850072/Gender-selective-abortion-is-illegal-Health-Secretary-Jeremy-Hunt-to-announce.html

[26] *RCOG briefing on the abortion amendment in the Serious Crime Bill* (2015): https://vfc.org.uk/wp-content/uploads/2015/02/RCOG-briefing-on-sex-selective-amendment.pdf

the Abortion Act's 'social clause', the failure by the GMC to seriously discipline either of the two doctors referred to above is instructive. Despite the clear evidence against her for falsifying abortion forms, the GMC dropped their investigation into Dr. Sivaraman[27]. Meanwhile, Dr. Rajmohan was found guilty by the GMC of "recording a false reason for a woman wanting to terminate her pregnancy", but was only suspended for a mere 3 months[28].

The current laxity of British law and practice (a worsened version of which the proposed Bill would introduce to the Isle of Man), is made worse by the British Medical Association's (BMA) Guidance on *The Law and Ethics of Abortion*[29], which although it asserts that "it is normally unethical to terminate a pregnancy on the basis of fetal sex, except in the case of severe sex-linked disorders", admits for the limited legality of sex-selective abortions *on the basis of physical and mental health*:

"*[A]s part of their assessment, doctors should consider all relevant factors, which may include the woman's views about the effect of the sex of the fetus on her physical and mental health. Doctors may come to the conclusion, in a particular case, that the effects on the physical or mental health of the pregnant woman of having a child of a particular sex would be so severe as to provide legal and ethical justification for a termination. If two doctors formed the opinion, in good faith, that there was a greater risk to the woman's health from continuing the pregnancy than there would be from termination, abortion would be lawful*".

The BMA also goes on to state that "the GMC has confirmed that its understanding of the Abortion Act is that fetal gender could be a contributing factor in determining that one of the lawful grounds for abortion has been met". This forms a clear cover for any doctor who would sanction sex-selective abortions.

Indeed, despite the position taken by the UK Government that sex-selective abortion is illegal, advocates for more permissive abortion legislation have been able to affirm and prescribe the current legality of that practice on exactly the same basis given by the BMA, rooted in the laxity of the mental health provision of the 'social' clause. Dr. Ellie Lee, the Director of the Centre for Parenting Culture Studies at the University of Kent, in explaining the Abortion law that pertains in Great Britain, answered the question

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[27] *Doctor who agreed to gender abortion of baby girl could be struck off*, by Claire Newell, and Edward Malnick, Daily Telegraph, 22nd April 2015: http://www.telegraph.co.uk/news/investigations/11556130/Doctor-who-agreed-to-gender-abortion-of-baby-girl-could-be-struck-off.html

[28] *Abortion doctor who agreed to gender-based termination suspended for three months*, Daily Telegraph, 03rd November 2015: http://www.telegraph.co.uk/news/investigations/11973688/Abortion-doctor-who-agreed-to-gender-based-termination-suspended-for-three-months.html

[29] *The Law and Ethics of Abortion: BMA Views*, British Medical Association (November 2014; updated June 2017), pp. 7-8: https://www.bma.org.uk/-/media/files/pdfs/practical%20advice%20at%20work/ethics/the-law-and-ethics-of-abortion-updated-june-2017.pdf?la=en

'Is abortion for reasons of fetal sex illegal under the Abortion Act?', "No. The law is silent on the matter. Reason of fetal sex is not a specified ground for abortion within the Abortion Act, but nor is it specifically prohibited"[30]. Her colleague Jennie Bristow, Senior Lecturer in Sociology at Canterbury Christ Church University, has argued that the simple 'good faith' discretion of doctors can allow for sex-selective abortion[31]. Meanwhile, Sally Sheldon, a Professor of Law at the University of Kent, has similarly maintained that the mental health grounds of the 'social clause' form a possible basis for a sex-selective abortion based on cultural misogyny[32]:

"*Imagine a woman with two daughters who comes from an ethnic group that places a very high value on sons. She and her husband live with her in-laws, who threaten to render them homeless if she gives birth to another girl. Clearly, we might wish that this woman could leave this situation or, better, simply live in a world where such things do not happen. But while we await that world, a doctor who authorises a termination could make a strong legal case that she had acted in good faith to preserve the mental health of her patient*".

For all the reasons described in this section of our analysis, it is clear that the draft Bill's allowance for "serious social grounds" and mental health terminations based on a single doctor's 'good faith', without a consultant psychiatrist as required by current Manx law, combined with the absence of any meaningful procedural safeguards, would allow not merely a similar situation as prevails in Great Britain to be effectively replicated on the Isle of Man, but one potentially even worse.

The Danger of Sex-Selective 'Abortion Tourism'

The potential laxity of the draft Bill suggests that is particularly deeply concerning, as although the Bill limits legal abortion on the Isle of Man to Manx residents, the potential for travelling visitors to the Island to use a false postcode or other means of deception would be a viable easy abuse. It has been reported that some Manx women have mis-reported their address in order to gain abortions in England[33], and there seems little reason to think that it could not be abused in reverse.

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[30] *Britain's Abortion Law: What it says, and why*, by Dr. Ellie Lee, BPAS (2013), pg. 7:
http://www.reproductivereview.org/images/uploads/Britains_abortion_law.pdf

[31] *Sex selection abortions aren't illegal despite all the noise*, by Jennie Bristow, The Conversation, 19th September 2013:
https://theconversation.com/sex-selection-abortions-arent-illegal-despite-all-the-noise-18429

[32] *Is it illegal to abort an unborn baby because of its sex? Not necessarily*, by Sally Sheldon, The Guardian, 28th February 2012:
https://www.theguardian.com/law/2012/feb/28/is-sex-selective-abortion-illegal

[33] *Isle of Man abortion campaigners aim to catch up to 1960s UK*, by Frances Perraudin, The Guardian, 20th June 2016:
https://www.theguardian.com/uk-news/2016/jun/20/isle-of-man-campaign-abortion-law-modernisation
See also reports that some Irish women use the same tactic to get around the law:
Sheldon, Sally. *How can a state control swallowing? The home use of abortion pills in Ireland,* Reproductive Health Matters 2016;24:48
http://dx.doi.org/10.1016/j.rhm.2016.10.002

Conclusion

The draft abortion Bill on the Isle of Man carries provisions that formally legalise sex-selective abortion up to 14 weeks, and that are sufficiently lax in construction and in procedural application of abortion provision as to enable sex-selective abortion there informally up to 24 weeks. Both abortion on demand (at any stage in pregnancy after 7 weeks), and lax health and social grounds for abortion make it virtually impossible to prove that a request for abortion is based upon foetal sex rather than any other reason.

The British experience is that sex-selective abortion is possible *de facto* (practically) because of the barely regulated reliance on 'good faith' in medical decisions, and because of the vague 'mental health' provisions in the 'social clause', which require no evidence-basis whatsoever. It has been demonstrated that under these conditions, a worsened version of which the draft Bill would introduce into the Isle of Man if it were passed in its current form through Tynwald, sex-selective abortion is easily potentially accessible, either on a covert basis, or on a strictly *de iure* (legal) basis through the mental health provisions to which reference has already been made. Ironically, there are no medical Guidelines that are competent to prevent sex-selective abortion, by virtue of the nominal normative illegality of the practice in British law.

Not only however, would passage of the draft Bill in its current form be retrograde, a step in the wrong direction for the Isle of Man, it would undermine efforts elsewhere in the British Isles to prevent sex-selective abortion. It is concerning that the laxity of abortion practice that the Bill threatens to affect would introduce the possibility of women from Great Britain illegally abusing the Manx abortion laws as a means of procuring sex-selective abortions that they may not, either now or in the future, be able to access in their own jurisdiction.

Stop Gendercide recommends that the Manx public, and Manx legislators in Tynwald, bear these dangers in mind when considering the draft proposals currently being consulted on, and further recommends maintaining tighter strictures both in terms of legal grounds and procedural safeguards, that may form a clear bar to sex-selection ever becoming a risk of abortion practice on the Isle of Man. This would best be achieved by:

- **An explicit prohibition on sex-selective abortion.**
- **The omission of abortion on demand and for any reason before 14 weeks, as the draft Bill would currently affect through clause 6(2).**
- **The omission of abortion on non-specific or non-vital 'health' grounds, or 'social' grounds, as the draft Bill would currently affect through clauses 6(4) and 6(7).**