

# **Blackline of Proposed Changes to the Termination of Pregnancy Bill, 20...**

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Women and Law in Southern  
Africa Research and  
Educational Trust—Malawi



GEORGETOWN LAW

THE CHOICE ON

TERMINATION OF PREGNANCY BILL, 20...

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THE CHOICE ON TERMINATION OF PREGNANCY BILL, 20...

A BILL

*entitled*

**An Act to provide for the legal and safe termination of pregnancies in Malawi; to prevent thousands of women and girls from dying and suffering serious health injuries from the hundreds of thousands of unsafe terminations they use to ensure their autonomy; to comply with the human rights treaties that require Malawi to protect women’s and girls’ rights to life, reproductive health, privacy, equality and non-discrimination, and dignity and freedom from cruel treatment by repealing laws that make abortion a crime; and to provide for matters connected with or incidental thereto**

ENACTED by the Parliament of Malawi as follows—

PART I — PRELIMINARY

Short title and commencement

1. This Act may be cited as ~~the~~ The Choice on Termination of Pregnancy Act....., and shall come into force on such date as the Minister shall appoint by notice published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

“certified health service provider” means a licensed medical doctor, clinical officer, registered nurse and midwife, nurse midwifery technician or medical assistant who has been certified by health professional regulatory bodies to carry out a termination of pregnancy;

“child” means any person under the age of eighteen (18) years old;

“conscientious objection” means refusal on moral or religious grounds to perform a medical procedure or prescribe a medication that is against one’s conscience; ~~and~~

“date of conception” means the date falling fourteen (14) days after the first day of the pregnant woman’s last menstrual period;

“defilement” means the criminal offence in Penal Code Section 138, read for purposes of this Act only to extend to any female child under the age of eighteen (18) years old, because Section 23(6) of the Constitution 1994 (rev. 2017) defines a “child” to be “a person under the age of eighteen years”;

“first trimester” means the first twelve (12) weeks of a pregnancy after the date of conception;

“health professional regulatory bodies” means the Medical Council of Malawi and the Nurses and Midwife Council of Malawi;

“termination” means ending a pregnancy by prescribing medication to be taken or by surgical means; and

“woman” means a female child or female adult.

## PART II — REGULATION OF TERMINATION OF PREGNANCIES AND SERVICE DELIVERY

Grounds for termination of a pregnancy

3. — (1) Subject to section 5, termination of a pregnancy may be performed by a certified health service provider where he or she is of the opinion, in good faith, that—

a. ~~a~~the pregnancy has not continued beyond the first trimester;

b. the continued pregnancy will endanger the life of a pregnant woman;

~~b~~c. the termination of pregnancy is necessary to prevent injury to the physical or mental health of a pregnant woman;

~~e~~d. there is severe ~~malformation of the foetus which will affect its viability~~ foetal impairment, including fatal foetal abnormality; or ~~or compatibility with life; or~~

~~d~~e. the pregnancy is a result of rape, incest or defilement; ~~Provided that the incident of rape, incest or defilement has been reported to Police, and that the pregnancy has not exceeded sixteen (16) weeks from the date of conception.~~

~~(2) In forming the opinion under subsection 1(b), the certified health service provider shall not take into account socio-economic circumstances of the pregnant woman.~~

~~(3)~~(2) Except as provided in this section, termination of pregnancy shall not be performed on demand or for any other reason.

Place of service

4. — (1) A termination of pregnancy shall only be performed at a health facility approved by the Minister by notice published in the *Gazette*.

(2) The Minister shall, when approving a health facility, take into account that termination of a pregnancy ~~of~~—

a. ~~less than twelve (12) weeks gestation~~during the first trimester may be carried out at a health centre or hospital; or

b. ~~over twelve (12) weeks gestation~~after the first trimester shall be carried out at a hospital.

(3) For purposes of this section, “hospital” means a community hospital, district hospital or central hospital.

(4) The Minister may, by regulations, prescribe the minimum standards and facilities to be available at each approved health facility designated to provide termination of pregnancy.

Service providers

5. — (1) Termination of pregnancy shall only be performed by a certified health service provider.

(2) Subject to subsection (1), termination of pregnancy may only be carried out by —

a. a medical assistant, nurse midwifery technician, registered nurse and midwife where the pregnancy does not exceed ~~twelve weeks of gestation~~the first trimester;

b. a clinical officer, where the pregnancy does not exceed ~~fourteen~~the first trimester and an additional two (2) weeks of gestationthe pregnancy; or

~~e. except as provided in section 3(1)(d), c.~~ a medical doctor, at any age of gestation.

Mandatory counselling

6. — (1) A certified health service provider shall, as part of the service to terminate a pregnancy, provide counselling to a pregnant woman before and after the termination of the pregnancy including counselling on family planning.

(2) Such counselling shall include—

a. information on options of continuing or terminating the pregnancy, including the available options for obtaining financial and social support for raising the child if the woman chooses to continue the pregnancy;

b. available methods for termination of pregnancy;

c. ~~possible~~scientifically proven evidence on short and long-term effects associated with each method of termination of pregnancy;

d. scientifically proven evidence on emotional and psychological responses following termination of pregnancy and where to go for support services if needed; and

e. information about family planning methods.

Conscientious objection

7. — (1) A person shall not be under a duty to perform a termination of pregnancy where he or she has a conscientious objection.

(2) A person who exercises the right to conscientious objection pursuant to subsection (1) shall promptly refer the pregnant woman to another health service provider who is willing and able to provide the service.

(3) Notwithstanding subsection (1), a health service provider shall provide women seeking to terminate a pregnancy with information on legal termination of pregnancy services.

(4) The right to conscientious objection may only be exercised by a person

who is directly involved in the termination of pregnancy.

(5) A person shall not exercise the right to conscientious objection where termination of pregnancy is necessary to save the life of the pregnant woman or in an emergency situation.

(6) A person who contravenes the provisions of this section commits an offence and shall upon conviction be liable to a fine of ~~K5 up to~~ K3,000,000.00 ~~and imprisonment for five (5) years.~~

#### Evidence of rape, incest or defilement

8. A pregnant woman ~~shall, before~~ seeking termination of pregnancy on the ground of rape, incest or defilement, ~~shall not be required to~~ report the crime to the police and such report but, in order to help in the prosecution of the criminal act, shall be prima facie evidence for accessing termination of pregnancy services provided the information about how to report the crime to police if she wishes to do so.

#### Consent for termination of pregnancy

9. — (1) Before any termination of pregnancy authorized under this Act is performed on a pregnant woman, a certified health service provider shall require the consent of the pregnant woman before terminating the pregnancy.

(2) A certified health service provider shall ~~require~~, in the case of a pregnant child and before termination of a pregnancy, ~~consent of~~ advise the child to consult with her parent or, legal guardian, or other family member, but must not require her to do so.

~~(3) Notwithstanding subsection (2) a certified health service provider may terminate a pregnancy of a child where he forms an opinion, in good faith, that consent of a parent or legal guardian may be difficult to obtain or is being unreasonably withheld and that termination of pregnancy is in the best interests of the child.~~

(3) In the case of a child who refuses to consult her parent, legal guardian, or other family member, the certified health service provider shall refer her to another certified health service provider who can insure her safety and continued support and shall provide consent on her behalf.

(4) In the case of a pregnant woman who is so incapacitated that she is completely incapable of understanding the nature or consequences of the termination or is unconscious without any chance of becoming conscious in



[the near future](#), a certified health service provider shall obtain consent to terminate the pregnancy from a legal guardian or next of kin.

Confidentiality of information

10. —(1) Every person in charge of a health facility approved to perform termination of pregnancy shall maintain a register and record of all terminations of pregnancy carried out at the facility.

(2) Information and records on termination of pregnancy shall be kept confidential except where it is required by —

- a. the Minister or a person in charge of a public health facility or authorized health facility when carrying out his duties under the Act;
- b. the Minister for research and statistical purposes;
- c. a police officer not below the rank of Superintendent or such police officer as may be authorized by him, who is investigating whether or not an offence has been committed under this Act;
- d. a person who is acting pursuant to a court order;
- e. the registrar of a health professional regulatory body or a member of staff authorized by him conducting an investigation of an alleged misconduct or negligence; or
- f. any other person to whom a pregnant woman consents that the matter be disclosed.

Grievance handling procedure

11. —(1) A woman seeking services to terminate a pregnancy has a right to lodge a complaint against a decision refusing her access to a legal termination of pregnancy or in relation to any part of the broader abortion services.

(2) Every health facility authorised to provide termination of pregnancy under this Act shall set up a complaints handling committee headed by a certified health service provider not below the rank of clinical officer to hear complaints on abortion related services.

(3) Where a certified health service provider not below the rank of clinical officer to head the complaints handling committee is not available at a

particular health facility, a complaint may be lodged at the nearest health facility where such certified health service provider is available.

(4) Where a complaint has been lodged by a pregnant woman aggrieved by a decision refusing her treatment to terminate a pregnancy or in relation any part of the termination of pregnancy service, such a complaint shall be heard and determined within 30 days of it being lodged.

### PART III — OFFENCES

Unauthorized termination of pregnancy

12. (1) A person who —

a. not being a certified health service provider terminates a pregnancy;

~~b. unlawfully procures termination of her own pregnancy;~~

~~e~~b. being a certified health service provider terminates a pregnancy for any reason other than the grounds provided for under this Act;

~~d~~c. procures or performs termination of a pregnancy at a place that is not approved under this Act;

~~e~~d. not being a certified health service provider or licensed pharmacist unlawfully supplies to or procures for any person anything that is intended to be unlawfully used to terminate a pregnancy;

~~f~~e. forces a pregnant woman to terminate a pregnancy against her will,

Commits an offence and shall, on conviction, be liable to ~~imprisonment for a term~~fine of ~~fourteen (14) years~~up to K3,000,000.00.

(2) Proceedings in respect of an offence under subsection (1) may be brought only with the consent of the Director of Public Prosecutions.

Other unauthorised acts

13. A person who —

a. fails to provide counselling to a pregnant woman before and after any termination of pregnancy;

b. ~~except as permitted under section 9(3)~~, performs a termination of pregnancy without the required consent; under sections 9(1), 9(3), or 9(4); or

c. discloses information or records regarding any termination of pregnancy in a manner not authorised under this Act,

Commits an offence and shall, on conviction, be liable to a fine of ~~K3,000~~up to K300,000.00 ~~and to imprisonment for three (3) years.~~

~~False declaration of rape, incest or defilement~~

~~14. A person who, for purposes of procuring termination of pregnancy, knowingly makes a false declaration of rape, incest or defilement, as the case may be, commits an offence and shall, upon conviction, be liable to imprisonment for a term of five (5) years.~~

~~Obstructing a person from accessing treatment~~

~~15~~14. A person who obstructs or otherwise bars a pregnant woman from accessing services to terminate a pregnancy which she is legally entitled to under this Act commits an offence and shall, upon conviction, be liable to fine of up to K5,000,000.00 ~~and to imprisonment for a term of five (5) years.~~

~~General offence~~

~~16. Except where an offence and penalty has specifically been provided in this Act, a person who contravenes any provision of this Act commits an offence and shall, on conviction, be liable to imprisonment for a term of five (5) years.~~

## PART IV — MISCELLANEOUS

~~Power to make Regulations~~

~~17~~15. The Minister may make regulations for the effective carrying out of the provisions of this Act.

~~Repeals Cap. 7:01~~

~~18~~16. Sections 149, 150, 151 and 243 of the Penal Code are hereby repealed.