

**Ministerial Advice**

**To: Cabinet Secretary for Health and Social Services**

**From: Redacted**

**Date:** 19 June 2018

**Subject: Termination of Pregnancy – Administration of second pill at a woman's home**

**MATS Reference number:** MA - L/VG/0365/18

**When is a decision required from the Minister?** Urgent

**1. What is the issue you are asking the Minister to consider?**

This briefing provides an update on a number of termination of pregnancy matters and asks that you approve the written notification to enable women in Wales to be administered misoprostol for the purposes of an Early Medical Abortion at home.

**2. What action(s) are you recommending to the Minister?**

You are advised to:

1. Note the update on a number of termination of pregnancy issues and;
2. agree the written notification, accompanying guidance and draft Ministerial statement to allow women in Wales to administer misoprostol for purposes of an Early Medical Abortion at home.

**3. Deputy Director, Statement of Assurance**

☒ I, **Redacted**, confirm that I have quality assured this advice.

I am satisfied that the recommended decision or action, if agreed, would be lawful and affordable. Welsh Government policy priorities and cross portfolio implications have been fully considered, in line with delivery of the [government objectives](#) in [Prosperity for all: the national strategy](#).

## Advice

### **4. Context - What is the situation that has led to this advice?**

You agreed for officials to draft the written instrument to enable women in Wales to self-administer the second medication in an Early Medical Abortion at home (MA - P/VG/1659/18). The draft legal instrument and guidance is attached for your consideration.

A number of issues related to termination of pregnancy have been raised recently. Including Buffer Zones and waiting times for accessing termination services.

### **5. What is your advice to the Minister?**

#### **Buffer zones**

You asked officials to consider the options for buffer zones around clinics providing termination of pregnancy provision. This follows the decision by Ealing Council, London, to enforce a buffer zone, preventing anti-abortion protests taking place near the clinic in the local authority's area.

Legal services have advised the power to make a Public Space Protection Order (as made by Ealing Council) is exercisable by a local authority rather than Welsh Ministers. A local authority seeking to make such an Order would need to undertake a consultation process and if made, the Order could be challenged by an interested person. In the case of Ealing Council, the process of making the Order took around 7 months.

Officials have made enquiries with health boards and all Welsh police services who report no complaints made or any offences having taken place in relation to anti-abortion protests near clinics providing termination of pregnancy services in Wales over the past few years.

In light of no complaints or issues raised by health boards and police, officials advise the matter of buffer zones is not pursued further at this time.

#### **Waiting time for termination of pregnancy services**

Following concerns raised by AMs, officials have contacted health boards about waiting times for termination of pregnancy.

**Cardiff and Vale:** Over the past 3 years, the health board has increased the medical and nursing staff dedicated to this service and introduced quarterly meeting to ensure the very best evidence based protocols are used and that efficiency is at the centre of our practice. This has led to a reduced waiting time, currently less than 2 weeks.

**Aneurin Bevan:** There is no waiting list as appointments are booked over the phone at initial contact. Appointments are 7-10 days from phone call to assessment and some women start their procedure the same day. From assessment to completion of

medical termination is usually two days and for surgical about one week (i.e. the procedure usually takes place one week after assessment).

**Abertawe Bro Morgannwg:** Average waiting time is 2 weeks. HB has put on extra clinics to try to get the wait down, but this has been at the expense of other clinics and so cannot be continued long term.

**Hywel Dda:** The average waiting period from referral to clinic appointment has decreased from 10.4 days to 6.5 days between February 2016 and February 2017. The HB is looking into reducing it further. Future developments will include increasing capacity by delivering abortion care at all Sexual Health venues across the Health Board, with the aim of repatriating more women, who are unable to receive care locally. In addition, for the future, the introduction of surgical abortion, outpatient early medical abortion and ultra early medical abortion will further improve the patient experience.

**Betsi Cadwaladr:** The service is currently being provided by BPAS. The waiting time is approximately 5 working days.

Although there is a period of waiting which varies across individual health boards, the delay is not as significant as the concerns raised might imply. Health boards have also assured officials they are working to make further improvements.

### **Early Medical Abortion at home**

Following your announcement 17 April 2018, officials have worked to prepare the necessary documents to approve a woman's place of ordinary residence for the purposes of the administration of misoprostol, the second medication needed in a medical termination. The approval will enable patients up to 9 weeks + 6 days gestation to go home to self-administer misoprostol and pass the pregnancy. This change in practice offers additional choice to women requesting an abortion and, in addition to practical and logistical benefits, enables women to complete treatment in an environment where they feel most comfortable.

Women meeting the inclusion criteria will be required to attend a clinic for the administration of mifepristone, the first medication. They will then have the option to be discharged home to self-administer the second medication, misoprostol, at an agreed time interval and pass the pregnancy.

Officials have worked with clinicians to draft concise guidance for practitioners delivering the new practice across Wales. This is attached along with a letter for local health boards.

Officials have identified that the current arrangements in place in Betsi Cadwaladr University Health Board (BCUHB) may not allow the at home service to be offered in North Wales. BCUHB commissions the British Pregnancy Advisory Service (BPAS) to provide all termination of pregnancy provision for residents within the health board area. For women in North West Wales, BPAS operates a nurse-led service in Llandudno and doctors remotely authorise terminations from England. Women in North East Wales go to a BPAS clinic over the border in Chester where they take the first medication and then return later to take the second medication.

The Cabinet Secretary's approval under section 1(3) of the Abortion Act only

approves a woman's place of ordinary residence "in relation to Wales". It is difficult to be certain about the lawfulness of a medical practitioner located in England certifying an abortion and prescribing the second medication to be taken in Wales. These arrangements mean that policy of allowing self-administration at home will not be achievable under the current arrangements in BCUHB and will deprive women in North Wales the opportunity to take the second medication at home. Approximately 1,800 terminations per year are carried out in BCUHB per year.

However, policy officials have asked BCUHB to consider their commissioning arrangements in view of the new practice approval. BCUHB are eager to offer the service and have indicated their intention to change their arrangements to allow that to be achieved. This is not an issue for any other health board and BCUHB have indicated they will advise your officials of their plans as soon as possible.

You are advised to agree the draft notification and accompanying guidance and draft written statement.

MA-P/VG/1659/18 explained that the decision to allow self-administration of the second medication at home is subject to a judicial review in Scotland. The case was heard in the Court of Session on 14 and 15 of May 2018 and the judgment is expected over the coming 2-3 months, although this cannot be guaranteed.

If the Court determines that the Scottish Ministers' decision was unlawful the approval will be withdrawn immediately. Health Boards in Scotland will no longer be able to allow the second medication to be prescribed for self-administration at home.

While the judgment is expected over the coming weeks, it is possible that the judgment will be appealed by the Scottish Ministers or SPUC.

## **6. What legal or policy obligations are relevant to this advice?**

Under section 1(3) and (3A) of the Abortion Act 1967, the Welsh Ministers have power "in relation to Wales" to approve a place where treatment for the purposes of an abortion may be carried out.

The attached approval is issued under section 1(3) and (3A) and approves a woman's home (place of ordinary residence) as a place where treatment for the termination of pregnancy may be carried out. The approval allows a woman who has attended a clinic to take first medication, to take the second medication at her home in Wales. The risks associated with this decision were set out in MA - P/VG/1659/1.

There is a question about whether the arrangements in BCUHB would allow the second medication to be taken at home because under the arrangements in place terminations are certified and supervised by medical practitioners in England. It is unlawful to carry out an abortion in a woman's home in England.

It is arguable that the location of the medical practitioner (whether that be in England or Wales) is irrelevant provided that the treatment takes place in an "approved place". Conversely, it can be argued that it is unlawful for a medical practitioner located in England to certify an abortion and prescribe the second medication to be

taken at a home in Wales. An abortion carried out otherwise than in accordance with the Abortion Act is a serious criminal offence.

Legal Services have advised policy officials that allowing women to take the second medication at home may not be achievable in BCUHB given the arrangements that are in place on the ground. Women in North Wales may therefore be denied the opportunity to take the second medication at home if the current arrangements persist.

However, policy officials have discussed this with BCUHB who have stated that they would change their commissioning arrangements to allow at home services to be offered in its area by ensuring that there is a medical practitioner located in Wales.

Legal Services note that the ongoing judicial review in Scotland centres around—

- a) whether it is lawful to approve a class of place that is as broad as a “the home” under section 1(3) of the Abortion Act; and
- b) whether self-administration of the second medication at home is lawful given that under section 1(1) of the Abortion Act a pregnancy can only be terminated “by a registered medical practitioner”.

The outcome of the judicial review is expected over the coming 2-3 months.

### **Policy obligations**

Termination of pregnancy is a part of healthcare provision. Allowing women to take the second abortion pill at home will help ensure they are able to access services at an earlier stage in their pregnancy, which will be safer for them. This is consistent with the Well-being goal *A Healthier Wales*, as set out in the Well-being of Future Generations Act.

This advice sets the strategic direction for health boards in Wales for the delivery of early intervention termination of pregnancy services that are designed to ensure that all women can access safe, high-quality services earlier in their pregnancy. As such, it supports the principles of equality and human rights.

There are no implications for the Welsh Language Standards.

There are no implications for EU law, or for trade union engagement.

No specialist advice has been sought in the preparation of this submission.

### **7. What are the financial implications of Ministers agreeing to this advice and which budget will this be paid through?**

There are no cost implications for the Welsh Government as a consequence of this advice.

**8. What communication, engagement or media activity is planned following this decision?**

There has been some media interest since your announcement in Plenary on 17 April. Policy officials are working with Communications colleagues to ensure there are relevant lines in place.

The Society for the Protection of Unborn Children (SPUC) have directed their welsh members to write to their Assembly Member and 22 pieces of correspondence opposing the policy have so far been received. Officials have prepared lines for correspondence from AMs and members of the public and are working with Communications and HSS Government Business Unit to ensure a suitable response.

**Annex A: Copy Recipients**

All mandatory copy recipients (as indicated in the guidance).

Additional copy recipients specifically interested in this advice:

Mandatory cc list

**Redacted**