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**TWENTY-FIFTH AMENDMENT OF THE CONSTITUTION  
(PROTECTION OF HUMAN LIFE IN PREGNANCY)  
BILL, 2001**

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**EXPLANATORY MEMORANDUM**

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*Introduction*

The purpose of the Twenty-fifth Amendment of the Constitution (Protection of Human Life in Pregnancy) Bill is to provide for the amendment of the Constitution to state that the proposed *Protection of Human Life in Pregnancy Act, 2002*, shall be the law on abortion in the State.

It provides for the operation of a mechanism whereby proposed changes to Article 40.3 of the Constitution and the text of proposed legislation on the protection of human life in pregnancy will be put to the people in a referendum.

*Provisions of Bill*

*Section 1* provides for the amendment of Article 46 of the Constitution so that the text of the *First Schedule* to the Bill will be inserted after the existing section 5 of that Article.

*Section 2* states that the amendment of the Constitution effected by the Act shall be called the Twenty-fifth Amendment of the Constitution and that the Act may be cited as the Twenty-fifth Amendment of the Constitution (Protection of Human Life in Pregnancy) Act, 2001.

*First Schedule*

The *First Schedule* contains the proposed text of the amendment of Article 46 of the Constitution. This in turn contains the proposed text of Articles 40.3.4° and 40.3.5° of the Constitution and also specifies the conditions under which the amendment of Article 40 can take place.

The procedure for the insertion of the amendment into the Constitution is expressed to be “notwithstanding” Article 46, as otherwise it would have been necessary to hold a second referendum under the provisions of that Article. In effect, the electorate is being asked to approve a conditional amendment to the Constitution, which will have effect only if, subsequent to the referendum, the Oireachtas enacts the *Protection of Human Life in Pregnancy Act, 2002*, exactly as contained within the *Second Schedule* to this Bill as enacted.

The text proposed as Article 40.3.4° provides that, in particular, the life of the unborn in the womb shall be protected in accordance with the provisions of the *Protection of Human Life in Pregnancy Act, 2002*.



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**AN BILLE UM AN gCÚIGIÚ LEASÚ IS FICHE AR AN  
mBUNREACTH (BEATHA DHAONNA LE LINN TOIRCHIS  
A CHOSAINT), 2001**

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**MEABHRÁN MÍNIÚCHÁIN**

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*Réamhrá*

Is é is cuspóir don Bhille um an gCúigiú Leasú is Fiche ar an mBunreacht (Beatha Dhaonna le linn Toirchis a Chosaint) ná socrú a dhéanamh chun an Bunreacht a leasú chun a rá gurb é *an tAcht chun Beatha Dhaonna le linn Toirchis a Chosaint, 2002*, mar atá beartaithe, an dlí a bheidh ann maidir le ginmhilleadh sa Stát.

Déantar socrú sa Bhille go mbainfear feidhm as meicníocht trína ndéanfar athruithe atá sé i gceist a dhéanamh ar Airteagal 40.3 den Bhunreacht, agus an téacs de reachtaíocht bheartaithe maidir le beatha dhaonna le linn toirchis a chosaint, a chur faoi bhráid an phobail i reifreann.

*Forálacha an Bhille*

In *alt 1* déantar socrú chun Airteagal 46 den Bhunreacht a leasú ionas go gcuirfear téacs an Chéad Sceidil a ghabhann leis an mBille isteach i ndiaidh alt 5 den Airteagal sin mar atá sé faoi láthair.

In *alt 2* deirtear go dtabharfar an Cúigiú Leasú is Fiche ar an mBunreacht ar an leasú a dhéantar ar an mBunreacht leis an Acht, agus gur féidir an tAcht um an gCúigiú Leasú is Fiche ar an mBunreacht (Beatha Dhaonna le linn Toirchis a Chosaint), 2001, a ghairm den Acht.

*An Chéad Sceideal*

Sa *Chéad Sceideal* tá an téacs den leasú atá sé i gceist a dhéanamh ar Airteagal 46 den Bhunreacht. Sa leasú sin tá an téacs beartaithe d'Airteagail 40.3.4<sup>o</sup> agus 40.3.5<sup>o</sup> den Bhunreacht agus leagtar amach ann freisin na coinníollacha faoinar féidir Airteagal 40 a leasú.

Deirtear maidir leis an nós imeachta chun an leasú a chur isteach sa Bhunreacht gur “d’ainneoin” Airteagal 46 é; murach sin bheadh gá leis an dara reifreann faoi fhorálacha an Airteagail sin. I ndáiríre táthar ag iarraidh ar thoghthóirí toiliú le leasú coinníollach ar an mBunreacht, nach mbeidh éifeacht leis ach sa chás amháin go n-achtaíonn an tOireachtas, tar éis an reifrinn, *an tAcht chun Beatha Dhaonna le linn Toirchis a Chosaint, 2002*, díreach mar atá sé leagtha amach sa Dara Sceideal a ghabhann leis an mBille seo mar a achtaítear é.

Foráiltear leis an téacs a mholtar mar Airteagal 40.3.4<sup>o</sup> go ndéanfar, go sonrach, beatha na mbeo gan breith sa bhroinn a chosaint de réir fhorálacha *an Achta chun Beatha Dhaonna le linn Toirchis a Chosaint, 2002*.

The text proposed as Article 40.3.5° provides that any Bill containing provisions to amend the *Protection of Human Life in Pregnancy Act, 2002*, must be referred to the people in a further referendum.

The text proposed as Article 46.6.2° has been inserted because, once the amendments to Article 40 take place, it would be undesirable for the new Article 40 to appear in more than one place in the Constitution (i.e. in Article 46 as well as in Article 40). Accordingly, once the *Protection of Human Life in Pregnancy Act, 2002*, is enacted and amendments are made to Article 40, the amendments to Article 46 will no longer appear in the official text of the Constitution and the amendments made to Article 40 will appear in the appropriate place within that Article.

The text proposed as Article 46.6.3° contains a mechanism whereby, if the law in relation to the protection of human life in pregnancy does not enter into force within 180 days of the amendment of the Constitution, the whole section will cease to have effect and the Constitution will revert to the form in which it existed before the Referendum.

The text proposed as Article 46.6.4° states that the Bill for the law on the protection of human life in pregnancy is excluded from the terms of Articles 26 and 27 of the Constitution. This is because, if the people in a referendum decide that the *Protection of Human Life in Pregnancy Act, 2002*, should be enacted, it would be inappropriate that this legislation should nonetheless be subject to the provisions of these Articles and the mechanisms for which they provide.

#### *Second Schedule*

The *Second Schedule* contains the text of the proposed *Protection of Human Life in Pregnancy Act, 2002*.

*Section 1* defines abortion for the purposes of the Act.

*Subsection (2)* specifies the type of medical procedure which is excluded from the definition of abortion contained in the Act.

*Subsection (3)* deals with the interpretation of certain terms used in *section 1*. It is intended that arrangements will be put in place for the approval by a Minister of the Government of certain hospitals for the carrying out of medical procedures of the type involved. The definition of “reasonable opinion” includes a requirement that the medical practitioner make a written, signed record of that opinion.

*Section 2* deals with the prohibition of abortion.

*Subsection (1)* prohibits abortion within the State.

*Subsection (2)* provides that a person shall be presumed (though this presumption may be rebutted) to have intended the natural and probable consequences of his or her conduct.

*Subsection (3)* stipulates the penalties for contravention of the law in relation to abortion and includes as offences attempted abortion and aiding, abetting, counselling or procurement of such abortion. The prohibitions encompass those currently contained in sections 58 and 59 of the Offences Against the Person Act, 1861, which are repealed by *section 6*.

Foráiltear leis an téacs a mholtar mar Airteagal 40.3.5° nach foláir aon Bhille ina bhfuil forálacha chun leasú a dhéanamh ar *an Acht chun Beatha Dhaonna le linn Toirchis a Chosaint, 2002*, a chur faoi bhráid an phobail i reifreann eile.

Tá an téacs a mholtar mar Airteagal 46.6.2° curtha isteach toisc nach mbeadh sé inmhianaithe, nuair a dhéanfar na leasuithe ar Airteagal 40, go mbeadh an tAirteagal 40 nua i níos mó ná áit amháin sa Bhunreacht (is é sin, in Airteagal 46 agus in Airteagal 40). Dá bhrí sin, nuair a bheidh *an tAcht chun Beatha Dhaonna le linn Toirchis a Chosaint, 2002*, achtaithe, agus na leasuithe déanta ar Airteagal 40, ní bheidh na leasuithe ar Airteagal 46 san áireamh a thuilleadh sa téacs oifigiúil den Bhunreacht agus beidh na leasuithe a dhéantar ar Airteagal 40 san áit cheart san Airteagal sin.

Sa téacs a mholtar mar Airteagal 46.6.3° tá meicníocht a fhágfaidh, mura dtiocfaidh an dlí a bhaineann le beatha dhaonna le linn toirchis a chosaint i bhfeidhm laistigh de 180 lá ón dáta a leasaítear an Bunreacht, go scoirfidh an t-alt ar fad d'éifeacht a bheith leis agus go rachaidh an Bunreacht ar ais go dtí an fhoirm ina raibh sé roimh an Reifreann.

Sa téacs a mholtar mar Airteagal 46.6.4° deirtear nach dtagann an Bille le haghaidh an dlí chun beatha dhaonna le linn toirchis a chosaint faoi réir théarmaí Airteagail 26 agus 27 den Bhunreacht. Is éard is cúis leis sin ná, má chinneann an pobal i reifreann gur cóir *an tAcht chun Beatha Dhaonna le linn Toirchis a Chosaint, 2002*, a achtú, nach mbeadh sé cuí go mbeadh an reachtaíocht sin, mar sin féin, faoi réir fhorálacha na nAirteagal sin agus na meicníochtaí dá bhforáiltear iontu.

#### *An Dara Sceideal*

Sa *Dara Sceideal* tá an téacs beartaithe den *Acht chun Beatha Dhaonna le linn Toirchis a Chosaint, 2002*.

*In alt 1* mínítear ginmhilleadh chun críocha an Achta.

I *bhfo-alt (2)* sonraítear an cineál beart liachta atá eisiata ón míniú ar ghinmhilleadh atá san Acht.

I *bhfo-alt (3)* déantar forléiriú ar théarmaí áirithe a úsáidtear in *alt 1*. Tá sé i gceist go gcuirfead socruithe ar bun le go gceadóidh Aire den Rialtas ospidéal áirithe chun bearta liachta den chineál atá i gceist a dhéanamh. Sa mhíniú ar “tuairim réasúnta” tá ceanglas go ndéanfaidh an lia-chleachtóir taifead scríofa agus sínithe ar an tuairim sin.

Baineann *alt 2* le ginmhilleadh a thoirmeasc.

Le *fo-alt (1)* toirmiscear ginmhilleadh sa Stát.

I *bhfo-alt (2)* foráiltear go dtuimhdeofar (cé go bhféadfar an toimhde sin a fhrisnéis) go raibh sé ar intinn ag duine na hiarmhairtí nádúrtha dóchúlacha a theacht as a iompar nó as a hiompar.

I *bhfo-alt (3)* leagtar síos na pionóis as sárú a dhéanamh ar an dlí a bhaineann le ginmhilleadh agus sonraítear mar chionta ann iarracht ar ghinmhilleadh, agus cabhrú nó neartú le haon duine eile, nó comhairliú d'aon duine eile nó cur faoi deara d'aon duine eile, ginmhilleadh den sórt sin a dhéanamh. Cuimsíonn na toirmisc sin na toirmisc atá in ailt 58 agus 59 den *Offences against the Person Act, 1861*, a aisghairtear le *halt 6*.

*Subsection (4)* provides that prosecutions may be brought only by or with the consent of the Director of Public Prosecutions.

*Section 3* is a “conscientious objection” provision.

*Section 4* deals with travel and information.

*Subsection (1)* provides that the Act does not limit the rights to travel and information already conferred by Article 40.3.3° of the Constitution.

*Subsection (2)* provides that the Act shall not operate to restrict a person from travelling to another state on grounds that his or her conduct there would be an offence under this Act, were it to occur in Ireland.

*Section 5* deals with the arrangements which apply to orders made under *section 1* of the Act.

*Subsection (1)* defines the term “an order” as it appears in the Act, other than in *section 7*.

*Subsection (2)* specifies the matters in relation to which an order may make provisions.

*Subsection (3)* deals with amendment or revocation of an order.

*Subsection (4)* deals with the laying of an order before the Oireachtas.

*Section 6* repeals the current legislation prohibiting abortion, in the form of sections 58 and 59 of the Offences Against the Person Act, 1861, as these provisions are to be replaced by those contained in *section 2* of this Act.

*Section 7* deals with the short title of the Act and arrangements for its commencement.

*Subsection (1)* specifies the short title of the Act.

*Subsection (2)* provides for the making of an order by the Taoiseach to bring the Act into operation.

*Department of Health and Children,*  
*October, 2001.*

I *bhfo-alt (4)* foráiltear nach bhféadfar ionchúisimh a thionscnamh ach amháin ag an Stiúrthóir Ionchúiseamh Poiblí nó le toiliú uaidh nó uaithi.

Foráil i dtaobh “agóid choinsiasa” is ea *alt 3*.

Baineann *alt 4* le taisteal agus faisnéis.

Foráiltear le *fo-alt (1)* nach dteorannaíonn an tAcht an ceart taistil agus an ceart chun faisnéise a thugtar cheana féin le hAirteagal 40.3.3 den Bhunreacht.

Foráiltear le *fo-alt (2)* nach n-oibreoidh an tAcht chun srian a chur ar aon duine taisteal chuig stát eile ar an bhforas go mbeadh a iompar nó a hiompar ann ina chion faoin Acht seo dá mba in Éirinn a tharlódh sé.

Baineann *alt 5* leis na socruithe a bhfuil feidhm acu i gcás orduithe a dhéanfar faoi *alt 1* den Acht.

I *bhfo-alt (1)* mínítear an téarma “ordú” mar atá sé san Acht, seachas in *alt 7*.

I *bhfo-alt (2)* sonraítear na hábhair a bhféadfar forálacha a dhéanamh ina leith le hordú.

Baineann *fo-alt (3)* le hordú a leasú nó a chúlghairm.

Baineann *fo-alt (4)* le hordú a leagan faoi bhráid an Oireachtais.

Le *halt 6* aisghairtear an reachtaíocht atá ann faoi láthair lena dtoirmiscítear ginmhilleadh, is é sin ailt 58 agus 59 den *Offences against the Person Act, 1861*, toisc go bhfuil na forálacha in *alt 2* den Acht seo le cur in ionad na bhforálacha sin.

Baineann *alt 7* le gearrtheideal an Achta agus leis na socruithe dá thosach feidhme.

I *bhfo-alt (1)* sonraítear gearrtheideal an Achta.

I *bhfo-alt (2)* foráiltear go ndéanfaidh an Taoiseach ordú chun an tAcht a thabhairt i ngníomh.

*An Roinn Sláinte agus Leanaí,  
Deireadh Fómhair, 2001.*