



**AN BILLE UM CHOSAINT NA BEATHA LE LINN
TOIRCHIS, 2013
PROTECTION OF LIFE DURING PREGNANCY BILL 2013**

EXPLANATORY MEMORANDUM

Background

A referendum was held in 1983, resulting in the adoption of a provision which became Article 40.3.3° of the Irish Constitution, the Eighth Amendment. Article 40.3.3° provides as follows:

“The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.”

The interpretation of the Eighth Amendment was considered in *Attorney General v X & Others* in 1992. The Supreme Court held that if it were established as a matter of probability that there was a real and substantial risk to the life, as distinct from the health, of the mother and that this real and substantial risk could only be averted by the termination of her pregnancy, such a termination was lawful. A termination of pregnancy arising from a risk to life from suicide was deemed lawful under this judgment.

The area was revisited in the judgment of the European Court of Human Rights in *A, B and C v Ireland* case, which placed Ireland under a legal obligation to put in place and implement a legislative or regulatory regime providing effective and accessible procedures whereby pregnant women can establish whether or not a termination may be carried out in accordance with Article 40.3.3° of the Constitution as interpreted by the Supreme Court in the *X* case.

Last December, the Government approved the implementation of the judgment of the European Court of Human Rights in the *A, B and C v Ireland* case by way of legislation with regulations, within the parameters of Article 40.3.3° of the Constitution as interpreted by the Supreme Court in the *X* case. The Bill aims to give effect to the Government’s decision to legislate in this area.

Purpose of Bill

The main purpose of the Protection of Life during Pregnancy Bill 2013 is to restate the general prohibition on abortion in Ireland while regulating access to lawful termination of pregnancy in accordance

with the *X* case and the judgment of the European Court of Human rights in the *A, B and C v Ireland* case. Its purpose is to confer procedural rights on a woman who believes she has a life-threatening condition, so that she can have certainty as to whether she requires this treatment or not.

The Bill is divided into three parts, and a Schedule is also appended.

Part 1 deals with PRELIMINARY AND GENERAL PROVISIONS and covers Sections 1 to 6.

Section 1 — (Short title and commencement)

Subsection (1) contains the Short title of the Bill, and *subsection (2)* concerns the commencement date of the Bill.

Section 2 — (Interpretation)

Section 2 provides for the definition of certain terms used in the Bill. *Subsection (2)* sets out the meaning of *section 13* certification. *Subsection (3)* sets out the meaning of the term “physical illness” as it is used in the Bill.

Section 3 — (Appropriate institutions for purposes of Act)

Subsection (1) provides that the Minister may deem an institution to be an appropriate institution by order where it (a) provides in-patient services under the care of medical practitioners from at least 3 medical specialties and which provides pregnancy, childbirth and post-partum services to women, or (b) at which in-patient services (including intensive and critical care services) are provided under the care of medical practitioners from at least 7 medical specialties.

Subsection (2) specifies that any such order made by the Minister under the Act must be brought before the Houses of the Oireachtas for approval.

Section 4 — (Regulations)

This section makes provision for the laying of the regulations before the Houses of the Oireachtas. *Subsection (1)* provides that the Minister may issue regulations (a) for the purpose of any matter referred to by the Bill and (b) for any matter that he/she deems necessary for the operation of the Bill. *Subsection (2)* gives power to the Minister regarding the content of any regulations to be issued under the aegis of the Bill. *Subsection (3)* specifies that any regulations made under the terms of the Bill must be brought before the Houses of the Oireachtas for approval.

Section 5 — (Repeals)

Section 5 repeals sections 58 and 59 of the Offences Against the Person Act 1861.

Section 6 — (Expenses)

Section 6 allows for approved expenses associated with the administration of the Bill to be paid for from public funds.

Part 2 deals with MEDICAL PROCEDURES PERMISSIBLE UNDER ACT. Chapter 1 is concerned with *Risk of Loss of Life of Pregnant Woman* and covers sections 7 to 9.

Section 7 — (Risk of loss of life from physical illness)

This section states that it shall be lawful to carry out a medical procedure in the course of which, or as a result of which, unborn human life is ended where the procedure is carried out by an obstetrician/gynaecologist in an appropriate institution, and two medical practitioners registered on the Specialist Division of the Medical Council Register have certified that in their reasonable opinion there is a real and substantial risk to the life of a pregnant woman arising from a physical illness that can only be averted by that medical procedure. This risk does not need to be immediate nor inevitable.

Subsection (2)(a) specifies that one of the two certifying medical practitioners will always be an obstetrician/gynaecologist who practises in an appropriate institution; *subsection (2)(b)* specifies that the second will be a medical practitioner in a specialty relevant to the risk to the life of the woman, e.g. a cardiologist, oncologist, etc.

Subsection (3) provides that during the process of assessment it may also be appropriate that the pregnant woman's general practitioner is consulted with her permission and where practicable and feasible.

Subsection (4) deals with the issuing of the required certification (see *Section 19* below) so that the medical procedure may be carried out; in such situations, the obstetrician/gynaecologist involved is responsible for making the arrangements with the appropriate institution.

Section 8 — (Risk of loss of life from physical illness in an emergency)

Section 8 provides that it shall be lawful to carry out a medical procedure in the course of which, or as a result of which, unborn human life is ended when the risk to the life of the pregnant woman from a physical illness is immediate (i.e. in an emergency situation). *Subsections (1)(a)-(c)* state that when the risk to the life of the pregnant woman is immediate, the opinion of one registered medical practitioner acting in good faith will be sufficient for the termination to be lawful. *Subsection (2)* provides that if medically necessary the certification for the procedure may be issued by the medical practitioner after the medical procedure has been carried out but no later than 72 hours afterwards.

Section 9 — (Risk of loss of life from suicide)

This section deals with a risk to the life of the pregnant woman from suicide. *Subsection (1)* states that termination of pregnancy shall be lawful in situations where the procedure is (a) carried out by an obstetrician/gynaecologist in an appropriate institution, and (b) three medical practitioners registered on the Specialist Division of the Medical Council Register have jointly certified that in their reasonable opinion there is a real and substantial risk to the life of a pregnant woman arising from suicide that can only be averted by that medical procedure.

Subsection (2)(a) specifies that one of the three certifying medical practitioners will always be an obstetrician/gynaecologist who practises in an appropriate institution; *subsection (2)(b)* specifies that one psychiatrist must practise in an appropriate institution and *subsection 2(c)* that the other psychiatrist must practise at an approved centre or for, or on behalf of, the HSE, or both.

Subsection (3) specifies that at least one of the psychiatrists involved must provide or have provided mental health services to women in respect of pregnancy, childbirth or after delivery.

Subsection (4), similar to *section 7(3)* above, provides that during the process of assessment it may also be appropriate that the pregnant woman's general practitioner is consulted, with her permission and where practicable and feasible.

Subsection (5), similar to *section 7(4)* above, makes it the responsibility of the obstetrician/gynaecologist involved to ensure that the required certification (see *Section 19* below) is sent on to the appropriate institution, and to make arrangements to ensure that the medical procedure may be carried out.

Part 2, Chapter 2 deals with *Reviews* and covers sections 10 to 15. The establishment of a formal framework providing for an accessible, effective and timely review mechanism is one of Ireland's obligations under the judgment in the *A, B and C v Ireland* case.

Section 10 — (Application for review of medical opinion)

Subsection (1) makes it the responsibility of a medical practitioner who has not given an opinion when requested under *section 7(1)* or *9(1)*, or who has not given an opinion such as would be required for certification under *section 7* or *9* to inform the pregnant woman in writing that she may apply for a review of this decision.

Subsection (2) provides that a pregnant woman or a person acting on her behalf may apply to the Executive for a review of the decision above.

Section 11 — (Establishment of a review panel, etc.)

Subsection (1) provides that the Health Service Executive will establish and maintain a panel consisting of at least 10 medical practitioners.

Subsection (2) specifies that the review panel must consist only of medical practitioners and the HSE shall revoke the appointment of a member of the panel who ceases to be a medical practitioner.

Subsection (3) indicates that the HSE shall identify medical practitioners for appointment to the panel and request the Institute of Obstetricians and Gynaecologists, the College of Psychiatrists of Ireland, the Royal College of Surgeons in Ireland and the Royal College of Physicians of Ireland to nominate medical practitioners for this purpose.

Subsection (4) provides that the Executive may appoint to the review panel one or more of the medical practitioners identified under *subsection (3)*.

Section 12 — (Establishment of review committee, etc.)

Subsection (1) provides that the Health Service Executive will have a duty to establish and convene a committee drawn from the review panel to review the relevant decision referred to in *section 10(2)* no later than 3 days from the receipt the application.

Subsection (2), similar to *section 7(2)(a)* and *(b)*, specifies that when the review committee is called upon to review a decision under *section 7(1)* it shall consist of one obstetrician/gynaecologist who practises in an appropriate institution and a medical practitioner in

a specialty relevant to the risk to the life of the woman, e.g. cardiologist, oncologist, etc.

Subsection (3), similar to *section 9(2)(a)* and *(b)*, specifies that when the review committee is called upon to review a decision under *section 9(1)* it shall consist of an obstetrician/gynaecologist who practises in an appropriate institution and two psychiatrists, one of whom must practise in an appropriate institution and the other must practise at an approved centre or for, or on behalf of the HSE, or both.

Subsection (4) specifies that at least one of the psychiatrists involved must provide or have provided mental health services to women in respect of pregnancy, childbirth or after delivery.

Subsection (5) excludes medical practitioners from sitting on the review committee if they have been previously consulted by the pregnant woman in relation to the matter that is the subject of the review.

Subsection (6) clarifies that a refusal to give an opinion to the woman will be treated as if it were a refusal to give such an opinion for the purposes of certification under *section 7* or *section 9*.

Section 13 — (Review of relevant decision)

Section 13 sets out of the functions of the Review Committee. *Subsection (1)* specifies that the review committee shall complete its review as soon as possible but no later than 7 days from the date of its establishment under *section 12(1)*.

Subsection (2) states that the committee shall examine the pregnant woman in order to reach a decision.

Subsection (3) provides that where the committee has carried out its review and has in good faith decided that there is *(a)* a real and substantial risk to the pregnant woman's life from physical illness or suicide *(b)* which can only be averted by carrying out the medical procedure set out in *section 7(1)* and *section 9(1)* then it shall, subject to *section 19*, jointly certify the opinion and inform woman/applicant on her behalf and the HSE in writing as soon as possible.

Subsection (4) provides that where a review committee has carried out its review and is not satisfied that the conditions in *subsection (3)* apply, it shall inform woman/applicant on her behalf and the HSE in writing as soon as possible.

Subsection (5) specifies that *(a)* the certifying obstetrician shall be responsible for forwarding the *section 13* certification to the appropriate institution, and *(b)* shall make the necessary arrangements for the carrying out of the medical procedure.

Subsection (6) clarifies that "jointly certify", as used in *subsection (1)*, means that all members of the committee make the *section 13* certification concerned.

Section 14 — (Procedures of review committee)

Section 14 sets out the general procedures for the committee when reviewing the case. *Subsection (1)* states that the pregnant woman is entitled to be heard by the committee, and should she so wish the committee shall make arrangements to enable her, or a person acting on her behalf, to be heard.

Subsection (2) specifies that the committee may issue written directions to a medical practitioner to (a) produce documents or records to the committee or (b) appear before it to assist and answer questions.

Subsection (3) states that the committee, subject to the provisions of the Act, determine its own procedures.

Subsection (4) provides for the HSE to arrange administrative facilities so that the committee may perform its functions.

Subsection (5) makes provision for the HSE to pay the members of the committee, at a level to be determined by the Minister and subject to approval of the Minister of Public Expenditure and Reform.

Subsection (6) provides for payment of a person called to attend the committee under *subsection (2)* by the HSE, subject to similar conditions laid out in *subsection (5)*.

Subsection (7) states that it is an offence not to comply with a direction under *subsection (2)*, the penalty for which is a class C fine.

Subsection (8) states that proceedings for an offence under *subsection (7)* may be brought and prosecuted by the HSE.

Section 15 — (Report by Executive on operation of Chapter)

Subsection (1) provides that the HSE shall submit a report by 30th June each year, to cover the operation of reviews under Chapter 2 of the Act in the year gone by.

Subsection (2) states that the report must cover (a) the total number of applications for review, (b) the number of reviews carried out, (c) the reasons why the review was sought and (d) the outcome of the reviews.

Subsection (3) clarifies that certain forms of information shall be excluded from the report by the HSE, in order to prevent identification of a woman who has (a) made an application under *section 10(2)* or (b) had an application made on her behalf.

Part 3 deals with MISCELLANEOUS items and covers sections 16 to 23.

Section 16 — (Consent)

Section 16 states that this Bill does not affect any current legal provisions relating to consent to medical treatment. The intention is that the provisions of the Bill will operate within the existing legal provisions in regard to consent for medical procedures.

Section 17 — (Conscientious objection)

Section 17 subsection (1) clarifies that, subject to *subsections (2)* and (3), medical practitioners, nurses and midwives will not be obliged to carry out or assist in carrying out medical procedures referred to in *section 7(1)* or *section 9(1)* if they have a conscientious objection.

Subsection (2) states that *subsection (1)* does not affect any duty to take part in a medical procedure laid out in *section 8(1)*, where an emergency situation exists.

Subsection (3) provides that a person who has a conscientious objection under *subsection (1)* shall arrange for the transfer of care of the pregnant woman concerned so that she may avail of the medical procedure concerned.

Section 18 — (Travel and information)

Section 18 subsection (1) clarifies that nothing in the Act limits (a) freedom to travel between this State and another or (b) to obtain or make available in this State information on services lawfully available in another state.

Subsection (2) clarifies that this Act does not restrict any person from travelling to another state on the basis that his/her intended conduct there would be an offence under *section 22* if it occurred in this State.

Section 19 — (Certification)

Section 19 provides that certification under the Act will (a) be made in the prescribed form and manner and (b) contain prescribed information, which may include the clinical grounds for the procedure.

Section 20 — (Notifications)

Section 20 subsection (1)(a) specifies that where a medical procedure referred to in *section 7(1)*, *8(1)* or *9(1)* is carried out, the person in charge of the appropriate institution concerned shall keep a record (i) in the prescribed form and manner and (ii) containing the information specified in *subsection (3)*. *Subsection (1)(b)* states that he/she must forward a copy of the record, or a prescribed part of the record, to the Minister in the prescribed manner no later than 28 days after the medical procedure has been carried out.

Subsection (2) specifies that where a medical procedure referred to in *section 8(1)* is carried out in a location other than an appropriate institution, the medical practitioner who carried out the medical procedure or the person in charge of the location, if appropriate, shall keep a record (i) in the prescribed form and manner and (ii) containing the information specified in *subsection (3)*. *Subsection (2)(b)* states that a copy of the record, or a prescribed part of the record, must be forwarded to the Minister in the prescribed manner no later than 28 days after the medical procedure has been carried out.

Subsection (3) provides that the record to be kept and forwarded to the Minister must contain the following information: (a) the Medical Council registration number of the medical practitioner who carried out the procedure; (b) whether the medical procedure was carried out in relation to a *section 7*, *section 8* or *section 9* certification; (c) the name of the appropriate institution in which the procedure was carried out, or an identifying description of the location, if the procedure was carried out under *section 8(1)*; (d) the date on which the procedure was carried out.

Subsection (4) indicates that the Minister shall prepare a report by 30th June each year on the notification received in the year gone by.

Subsection (5) provides that the Minister will publish the report in an appropriate form as soon as practicable after its preparation.

Subsection (6) specifies that, similar to *section 15(3)*, identifying information shall be excluded from the report.

Subsection (7) sets out the meaning of the term “notification” for the purposes of this section.

Section 21 — (Amendment of section 9 of Health Act 2007)

Section 21 amends *section 9* of the *Health Act 2007*, to provide for situations in which there is a serious risk of a failure by an institution to comply with the provisions of the Protection of Life during Pregnancy Bill. When an investigation is being undertaken in respect of such a serious risk relating to an appropriate institution, the Minister may suspend medical procedures referred to in *section 7(1)* or *section 9(1)*. When the Minister is satisfied that there is no such serious risk or that such risk no longer exists, he may revoke the suspension.

Section 22 — (Destruction of unborn human life)

Section 22 subsection (1) specifies that it is an offence to intentionally destroy human life.

Subsection (2) clarifies that the penalty for a person who is guilty of the offence is a fine or up to 14 years imprisonment, or both.

Subsection (3) states that prosecution for the offence may be brought only by or with the consent of the Director of Public Prosecutions.

Subsection (4) clarifies that *subsection (1)* does not apply to a medical procedure under *sections 7, 8 or 9*.

Section 23 — (Offence by body corporate)

Section 23 clarifies that the offence also applies to a body corporate.

SCHEDULE

The SCHEDULE lists the existing locations which qualify as “appropriate institutions” for the purposes of the Bill, as defined in *section 2*.

Department of Health,
June, 2013.