

DÁIL ÉIREANN

AN BILLE SLÁINTE (FOIRCEANNADH TOIRCHIS A RIALÁIL), 2018 —AN TUARASCÁIL

HEALTH (REGULATION OF TERMINATION OF PREGNANCY) BILL 2018 —REPORT

Leasuithe Ionaid Substitute Amendments

28. In page 10, lines 32 and 33, to delete all words from and including “that” in line 32 down to and including line 33 and substitute the following:

“that—

- (a) the pregnancy concerned has not exceeded 12 weeks of pregnancy, and
- (b) a termination of the pregnancy concerned is not being sought because of the sex or race of the foetus concerned or because of any condition or disability affecting the foetus concerned.”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins,
Michael Fitzmaurice, Noel Grealish, Peter Fitzpatrick, Peadar Tóibín.

[*This amendment is in substitution for amendment No. 28 on the principal list of amendments,
dated 26th November 2018.*]

30. In page 10, line 36, to delete “matter” and substitute “matters”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins,
Michael Fitzmaurice, Noel Grealish, Peter Fitzpatrick, Peadar Tóibín.

[*This amendment is in substitution for amendment No. 30 on the principal list of amendments,
dated 26th November 2018.*]

37. In page 11, between lines 7 and 8, to insert the following:

“Administration of anaesthetic or analgesic to foetus

15. (1) A medical practitioner who carries out a termination of pregnancy shall take all steps as may be appropriate and practicable to avoid causing pain to the foetus.
- (2) Where the medical practitioner who is carrying out a termination of pregnancy is of the reasonable opinion formed in good faith that the gestational age of the foetus is 20 weeks or more, he or she shall administer or ensure the administration of an anaesthetic or analgesic to the foetus prior to the carrying out of the termination of pregnancy.
- (3) *Subsection (2)* shall not apply where—
- (a) 2 medical practitioners certify that they are of the reasonable opinion formed in

good faith that the administration of an anaesthetic or analgesic to the foetus would pose a risk to the life, or of serious harm to the health, of the pregnant woman in respect of whom the termination of pregnancy is being carried out, or

(b) a medical practitioner proposes to carry out a termination of pregnancy in accordance with section 11 and it is not practicable to comply with the obligation in subsection (2) because of the particular circumstances of the case.

(4) Where—

(a) an anaesthetic or analgesic is administered to a foetus in accordance with *subsection (2)*, or

(b) *subsection (3) or (4)* applies,

the medical practitioner who carries out the termination of pregnancy shall include this information in the notification forwarded or caused to be forwarded to the Minister under *section 21(1)*.”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins, Noel Grealish., Peter Fitzpatrick, Peadar Tóibín.

[*This amendment is in substitution for amendment No. 37 on the principal list of amendments, dated 26th November 2018.*]

38. In page 11, between lines 18 and 19, to insert the following:

“Protection of infants born alive

16. (1) In this section “born alive” means the complete emergence of a foetus from the body of the woman, regardless of the state of gestational development, who, after emergence, whether or not the umbilical cord has been cut or the placenta is attached, and regardless of whether the emergence occurs as a result of natural or induced labour, caesarean section, termination of pregnancy or otherwise, shows any evidence of life including, but not limited to, one or more of the following:

(a) breathing;

(b) a heartbeat;

(c) umbilical cord pulsation; or

(d) definite movement of voluntary muscles.

(2) In this section “infant” means a foetus who has been born alive as a result of the carrying out or attempted carrying out of a termination of pregnancy under this Act.

(3) A medical practitioner shall take all steps as may be appropriate and practicable to preserve the life of an infant.

(4) For the avoidance of doubt, the fact that the infant has been born alive as a result of the carrying out or attempted carrying out of a termination of pregnancy under this Act shall not be a relevant consideration for a medical practitioner when determining what constitutes an appropriate and/or practicable step under *subsection (3)*.”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins,
Michael Fitzmaurice, Noel Grealish, Peter Fitzpatrick, Peadar Tóibín.

[*This amendment is in substitution for amendment No. 38 on the principal list of amendments,
dated 26th November 2018.*]

41. In page 14, line 29, to delete “or *section 14* certification” and substitute “, *section 14* certification or *section 23* certification”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins,
Michael Fitzmaurice, Noel Grealish, Peter Fitzpatrick, Peadar Tóibín.

[*This amendment is in substitution for amendment No. 41 on the principal list of amendments,
dated 26th November 2018.*]

43. In page 15, line 16, to delete “out.” and substitute the following:

“out;

(e) any information required to be included in the notification under *section 16(4)**.”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins,
Michael Fitzmaurice, Noel Grealish, Peter Fitzpatrick, Peadar Tóibín.

[**This is a reference to a section proposed to be inserted by amendment No. 38.*]

[*This amendment is in substitution for amendment No. 43 on the principal list of amendments,
dated 26th November 2018.*]

44. In page 15, between lines 29 and 30, to insert the following:

“Provision of foetal ultrasound imaging and auscultation of foetal heart tone

23. (1) At least 24 hours before the carrying out of a termination of pregnancy the relevant medical practitioner or a qualified person assisting the relevant medical practitioner shall perform ultrasound imaging of the foetus and auscultation of foetal heart tone.
- (2) The active ultrasound image referred to in *subsection (1)* must be of a quality consistent with standard medical practice, shall contain the dimensions of the foetus, and shall accurately portray the presence of external members and internal organs of the foetus, if present or viewable.
- (3) The auscultation of foetal heart tone referred to in *subsection (1)* must be of a quality consistent with standard medical practice
- (4) Before or during the imaging and auscultation services referred to in *subsection (1)*, the relevant medical practitioner or the qualified person, as the case may be, shall offer the pregnant woman, orally and in person, the opportunity to view the active ultrasound of the foetus and hear the heartbeat of the foetus, if the heartbeat is audible.
- (5) At least 24 hours before the carrying out of a termination of pregnancy the relevant medical practitioner shall certify that—
- (a) foetal ultrasound imaging and auscultation of foetal heart tone have been performed,

- (b) the pregnant woman has been offered the opportunity to view the active ultrasound image of the foetus and to hear the heartbeat of the foetus, if the heartbeat is audible,
- (c) the pregnant woman either—
 - (i) requested to view the active ultrasound imaging and hear auscultation of foetal heart tone, or
 - (ii) opted not to view the active ultrasound imaging and hear auscultation of foetal heart tone.
- (6) The relevant medical practitioner shall obtain the signature of the pregnant woman on the certification referred to in *subsection (5)* verifying that it is factually correct.
- (7) A medical practitioner who contravenes *subsection (1), (4), (5) or (6)* shall be guilty of an offence.
- (8) A person who is guilty of an offence under *subsection (7)* shall be liable—
 - (a) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both,
 - (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 4 years, or both.

(9) In this section—

“auscultation” means the act of listening for sounds made by internal organs of the foetus, specifically for a foetal heartbeat, utilizing an ultrasound transducer and foetal heart rate (FHR) monitor or similar device;

“midwife” means a person whose name is for the time being registered in the midwives division of the register of nurses and midwives established under section 46 of the Nurses and Midwives Act 2011;

“nurse” means a person whose name is for the time being registered in the register of nurses and midwives established under section 46 of the Nurses and Midwives Act 2011;

“qualified person” means a nurse, midwife or medical practitioner who is competent to perform foetal ultrasound imaging and auscultation of foetal heart tone services;

“relevant medical practitioner” means—

- (i) in the case of a termination of pregnancy to be carried out in accordance with *section 10 or 12*, the obstetrician by whom the termination of pregnancy is to be carried out, and
- (ii) in the case of a termination of pregnancy to be carried out in accordance with *section 13*, the medical practitioner who has certified or is required to certify his or her opinion as to the matter referred to in *subsection (1)* of that section;

“ultrasound” means the use of ultrasonic waves for diagnostic or therapeutic

purposes, specifically to monitor a developing foetus.”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins,
Michael Fitzmaurice, Peter Fitzpatrick, Peadar Tóibín.

[*This amendment is in substitution for amendment No. 44 on the principal list of amendments, dated 26th November 2018.*]

45. In page 15, between lines 29 and 30, to insert the following:

“Parental notification

23. (1) A termination of pregnancy in respect of a pregnant minor may only be carried out in accordance with *section 10* where a copy of the certification referred to in that section has been served on a parent of the minor at least 24 hours before the termination of pregnancy is carried out.
- (2) In respect of a pregnant minor, a copy of the certification referred to in *section 11(2)* shall be served on a parent of the minor—
- (a) before the termination of pregnancy is carried out, or
- (b) where it is not practicable to do so before the termination of pregnancy is carried out, as soon as may be but, in any event, not later than 2 days after the making of that certification.
- (3) A termination of pregnancy in respect of a pregnant minor may only be carried out in accordance with *section 12* where a copy of the certification referred to in that section has been served on a parent of the minor at least 48 hours before the termination of pregnancy is carried out.
- (4) A termination of pregnancy in respect of a pregnant minor may only be carried out in accordance with *section 13* where a copy of the certification referred to in that section has been served on a parent of the minor at least 72 hours before the termination of pregnancy is carried out.
- (5) Service of any certification required to be served under this section shall be carried out in such manner as may be prescribed and shall be recorded in any notification required to be forwarded to the Minister under *section 21*.
- (6) The High Court, upon application made to it by any interested party, and if satisfied that it is in the best interests of the minor concerned, may make an order dispensing with any requirement for service provided for under this section.
- (7) An application under *subsection (6)* shall be made on notice to the parent or parents of the minor concerned, unless the High Court is satisfied that, in the particular circumstances of the case, it may justly proceed to hear and determine the application without notice to the parent or parents of the minor concerned.
- (8) In this section—
- “minor” means a woman who has not attained the age of 16 years;
- “parent” includes—

- (a) a guardian appointed under the Guardianship of Infants Act 1964,
- (b) any other natural or legal person acting in *loco parentis* in respect of the pregnant minor under any statutory power or order of a court and,
- (c) in the case of a minor who has been adopted under the Adoption Acts, 1952 to 2010, or, where the child has been adopted outside the State and that adoption is recognised by the State by virtue of any statute or rule of law for the time being in force, the adopter or, where relevant, the surviving adopter.”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins, Noel Grealish, Peter Fitzpatrick, Peadar Tóibín.

[*This amendment is in substitution for amendment No. 45 on the principal list of amendments, dated 26th November 2018.*]

46. In page 15, to delete lines 32 to 34 and substitute the following:

“Information and informed consent

23. (1) Except in a case of an immediate risk to the life, or of serious harm to the health, of the pregnant woman, where it is immediately necessary to carry out the termination of pregnancy in order to avert that risk, no termination of pregnancy shall be carried out without the voluntary and informed consent of the pregnant woman.
- (2) Consent to a termination of pregnancy is voluntary and informed if and only if the medical practitioner who is to perform the termination of pregnancy or another medical practitioner assisting him or her—
- (a) has informed the pregnant woman, orally and in person, of the following:
 - (i) medically accurate information that a reasonable patient in the position of the pregnant woman would consider material to the decision of whether or not to undergo the termination of pregnancy, including:
 - (I) the proposed termination of pregnancy method;
 - (II) the immediate and long-term medical risks associated with the proposed termination of pregnancy method;
 - (III) the medical risks associated with carrying her child to full term; and
 - (IV) alternatives to the termination of pregnancy;
 - (ii) the probable gestational age of the foetus at the time the termination of pregnancy is to be performed; and
 - (iii) the probable anatomical and physiological characteristics of the foetus at the time the abortion is to be performed,
 - (b) in the case of a pregnant woman intending to avail of a termination of pregnancy in accordance with *section 13*, has offered the pregnant woman in person a printed copy of the document referred to in *subsection (7)*,
 - (c) in the case of a pregnant woman intending to avail of a termination of pregnancy

in accordance with *section 11* or *14*, has offered the pregnant woman in person a printed copy of the document referred to in *subsection (8)*, and

- (d) in the case of a pregnant woman who expresses a wish to receive the information contained in either of the documents referred to in *paragraph (b)* or *(c)* respectively but is unable to read the said document, has conveyed the said information to the woman in an appropriate alternative manner.
- (3) Where it is intended to carry out a termination of pregnancy on a foetus who is twenty weeks' gestation or more, the medical practitioner intending to carry out the termination of pregnancy or another medical practitioner assisting him or her shall, orally and in person, offer information on foetal pain to the pregnant woman.
 - (4) The information offered in accordance with *subsection (3)* shall include, but shall not be limited to, the following:
 - (a) that maternal anesthesia typically offers little pain prevention for the foetus; and
 - (b) that an anesthetic or analgesic is available in order to minimize and/or alleviate pain to the foetus.
 - (5) Where it is intended that a termination of pregnancy be performed using abortion-inducing drugs, the person who supplies the drugs to the woman intending to have the termination of pregnancy shall, orally and in person, inform the woman of the following:
 - (a) that it may be possible to reverse the effects of the abortion-inducing drugs should she change her mind, but that time is of the essence; and
 - (b) that information on reversing the effects of abortion-inducing drugs is available in the document referred to in *subsection (8)*.
 - (6) For the purposes of this section, the phrase "abortion-inducing drugs" means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood end the life of the foetus, other than drugs that may cause such a termination, but which are prescribed for other medical indication.
 - (7) The Health Service Executive shall cause to be published in both printed and digital formats a document containing information as to:
 - (a) available medical and nursing assistance and care, including neonatal palliative care;
 - (b) available social and counselling supports and services; and
 - (c) contact details for public and private agencies and services,

which may be of relevance and practical assistance for a pregnant woman in a case where a foetus has a condition referred to in *section 13*, including a pregnant woman who does not wish to avail of a termination of pregnancy in accordance with *section 13*.

- (8) The Health Service Executive shall cause to be published in both printed and digital formats a document containing information as to:
- (a) public and private agencies and services available to assist a pregnant woman through pregnancy, upon childbirth, and while her child is dependent;
 - (b) information as to available medical assistance, supports and benefits for prenatal care, childbirth, and neonatal care;
 - (c) information on the support obligations of the father of a child who is born; and
 - (d) the information referred to in *subsections (5)(a) and 5(b)*.
- (9) The Health Service Executive shall develop and maintain an internet website, which may be part of an existing website, on which the information referred to in *subsections (7) and (8)* can be viewed and from which the documents referred to in *subsections (7) and (8)* respectively can be obtained.
- (10) The document referred to in *subsection (8)* shall also include the following statement:
- “There are many public and private agencies willing and able to help you to carry your child to term, and to assist you and your child after your child is born, whether you choose to keep your child or to place her or him for adoption. The law requires that your health care professional give you the opportunity to call agencies like these before you undergo a termination of pregnancy.”.
- (11) Nothing in this Act shall operate to create an entitlement by a pregnant woman under the age of eighteen years to consent to medical treatment.
- (12) A medical practitioner who carries out a termination of pregnancy in accordance with *section 11* shall certify in writing in addition to the matters referred to in *section 11(1)*:
- (a) the nature of the medical emergency; and
 - (b) in cases where the voluntary and informed consent of the woman concerned was not obtained, the reason for its not having been obtained.
- (13) The failure to comply with the requirements of this section shall provide the basis for:
- (a) a civil action for damages (including aggravated and exemplary damages) by the woman concerned for breach of statutory duty;
 - (b) professional disciplinary action against the health professional concerned.
- (14) In any matter referred to in *subsection (13)* the court shall, upon application by the woman concerned or of its own motion, allow a woman to proceed using solely her initials or a pseudonym and may make such other protective orders as it considers necessary and appropriate to preserve the privacy of the woman concerned.”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins, Michael Fitzmaurice, Peter Fitzpatrick, Peadar Tóibín.

[*This amendment is in substitution for amendment No. 46 on the principal list of amendments, dated 26th November 2018.*]

47. In page 15 and 16, to delete lines 36 and 37 on page 15, and on page 16, to delete lines 1 and 2 and substitute the following:

“24. (1) A medical practitioner, nurse or midwife shall not be obliged to carry out or to participate in carrying out a termination of pregnancy in accordance with *section 11, 13 or 14* to which he or she has a conscientious objection.”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins, Michael Fitzmaurice, Noel Grealish, Peter Fitzpatrick, Peadar Tóibín.

[This amendment is in substitution for amendment No. 47 on the principal list of amendments, dated 26th November 2018.]

48. In page 15, line 37, after “practitioner,” to insert “pharmacist,”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins, Michael Fitzmaurice, Noel Grealish, Peter Fitzpatrick, Peadar Tóibín.

[This amendment is in substitution for amendment No. 48 on the principal list of amendments, dated 26th November 2018.]

51. In page 16, to delete lines 5 to 8.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins, Michael Fitzmaurice, Noel Grealish, Peter Fitzpatrick, Peadar Tóibín.

[This amendment is in substitution for amendment No. 51 on the principal list of amendments, dated 26th November 2018.]

54. In page 16, line 16, to delete “2011.” and substitute the following:

“2011;

“pharmacist” means a person whose name is for the time being registered in the register of pharmacists established under section 13 of the Pharmacy Act 2007.”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins, Michael Fitzmaurice, Noel Grealish, Peter Fitzpatrick, Peadar Tóibín.

[This amendment is in substitution for amendment No. 54 on the principal list of amendments, dated 26th November 2018.]

55. In page 16, between lines 16 and 17, to insert the following:

“(5) A reference to medical practitioner, nurse or midwife in this section shall include any person studying or training to qualify or work as a medical practitioner, nurse or midwife as the case may be.”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins, Michael Fitzmaurice, Noel Grealish, Peter Fitzpatrick, Peadar Tóibín.

[This amendment is in substitution for amendment No. 55 on the principal list of amendments, dated 26th November 2018.]

59. In page 16, between lines 16 and 17, to insert the following:

“Dignified Disposal of Foetal Remains

25. (1) The bodily remains of a foetus who has been the subject of a termination of pregnancy carried out by surgical means shall be disposed of only by way of:
- (a) burial in a burial ground for the purposes of section 44 of the Local Government (Sanitary Services) Act 1948; or
 - (b) cremation carried out in a crematorium, being a building fitted with appliances for the burning of human remains which is lawfully used for that purpose as its primary function.
- (2) The Minister shall make regulations to provide for the dignified disposal in accordance with *subsection (1)* of the bodily remains of a foetus who has been the subject of a termination of pregnancy carried out by surgical means.
- (3) The woman who has availed of a termination of pregnancy carried out by surgical means shall be entitled to choose the manner of the disposal of the bodily remains of the foetus subject to *subsection (1)* and regulations made by the Minister under *subsection (2)* and the said regulations shall provide for the manner of disposal in the event that no such choice is made.
- (4) A person who disposes of the bodily remains of a foetus who has been the subject of a termination of pregnancy carried out by surgical means otherwise than in accordance with *subsection (1)* shall be guilty of an offence.
- (5) A person who disposes of the bodily remains of a foetus who has been the subject of a termination of pregnancy carried out by surgical means otherwise than in accordance with regulations made by the Minister pursuant to *subsection (2)* shall be guilty of an offence.
- (6) A person who is guilty of an offence under *subsection (4)* or *(5)* shall be liable on summary conviction to a class A fine.
- (7) A person who sells or offers to sell a foetus or the bodily remains or any part thereof of a foetus who has been the subject of a termination of pregnancy shall be guilty of an offence.
- (8) A person who carries out any experiment or procedure not authorised by this Act on the bodily remains of a foetus or any part thereof who has been the subject of a termination of pregnancy shall be guilty of an offence.
- (9) A person who is guilty of an offence under *subsection (7)* or *(8)* shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.
- (10) In this section—
- “termination of pregnancy carried out by surgical means” means a termination of pregnancy which involves carrying out a procedure other than or in addition to the administration or self-administration of a drug or drugs to the pregnant woman in

order to end the life of a foetus.

(11) *Subsections (4), (5), (7) and (8) shall not apply to the woman who has availed of the termination of pregnancy concerned.*”.

—Mattie McGrath, Carol Nolan, Danny Healy-Rae, Michael J. Healy-Rae, Michael Collins,
Michael Fitzmaurice, Noel Grealish, Peter Fitzpatrick.

[This amendment is in substitution for amendment No. 59 on the principal list of amendments, dated 26th November 2018.]