



# Bill Digest

## Health (Regulation of Termination of Pregnancy) Bill 2018

Bill No. 105 of 2018

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### Abstract

The *Health (Regulation of Termination of Pregnancy) Bill 2018* proposes to provide a statutory basis for the regulation of the termination of pregnancy in Ireland, following the repeal and replacement of Article 40.3.3° of the Constitution.

Wednesday  
03 October 2018



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**Bill published:** 01 October 2018  
**Second stage debate:** 04 October 2018

**This Bill Digest may be cited as:** Oireachtas Library & Research Service, 2018. *Bill Digest – Health (Regulation of Termination of Pregnancy) Bill 2018*

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## Summary

### Objective

The objective of the [Health \(Regulation of Termination of Pregnancy\) Bill 2018](#) is to provide a statutory basis for the regulation of termination of pregnancy in Ireland, following the repeal and replacement of Article 40.3.3° of the Constitution.

### Background

On 28 March 2018, the Minister for Health published the General Scheme of a Bill to Regulate the Termination of Pregnancy in advance of a referendum on the issue.<sup>1</sup> The General Scheme was largely based upon recommendations made by the Joint Committee on the Eighth Amendment to the Constitution in its final report, following a series of hearings which took place between September and November 2017. An updated General Scheme of a Bill was published by the Minister for Health on 10 July 2018.<sup>2</sup>

The referendum on the Thirty-sixth Amendment to the Constitution was held on 25 May 2018. The electorate voted, by a margin of 66.4% Yes to 33.6% No, to replace Article 40.3.3° of the Constitution ('the Eighth Amendment') with an Article stating provision may be made by law for the regulation of termination of pregnancy. Challenges to the result of the vote were dismissed by the High Court and the Court of Appeal. Following the Supreme Court's refusal to hear a further challenge, President Michael D Higgins signed the *Thirty-sixth Amendment of the Constitution Bill 2018* into law on 18 September 2018.

### Pre-legislative Scrutiny

This Bill has received an exemption from Pre-Legislative Scrutiny from the Business Committee under Standing Order 146A.

### Cost and implications

No Regulatory Impact Analysis (RIA) has been published with this Bill. It was reported on 24 September 2018 that resources for abortion services, including improved ultrasound scan services in maternity hospitals, would be included in Budget 2019.<sup>3</sup>

### Commencement and Implementation

This Act will come into operation by order of the Minister and different provisions may come into operation on different days.

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<sup>1</sup> Available here: <https://health.gov.ie/blog/publications/general-scheme-of-a-bill-to-regulate-termination-of-pregnancy/>

<sup>2</sup> Available here: <https://health.gov.ie/wp-content/uploads/2018/07/Updated-General-Scheme-of-the-Health-Regulation-of-Termination-of-Pregnancy-Bill-2018.pdf>

<sup>3</sup> 'Harris includes new funds for abortion bill to meet its pledges', The Times, 24 September 2018.

## Introduction

The [Health \(Regulation of Termination of Pregnancy\) Bill 2018](#) ('the Bill') was published on 1 October 2018 by the Minister for Health, Simon Harris T.D. ('the Minister'). The Bill will, if enacted:

- Provide for termination of pregnancy up to 12 weeks gestation, subject to certification and a three day waiting period;
- Provide for termination of pregnancy where there is a risk to the life of a woman, or a risk of serious harm to her health, where the foetus has not reached viability and the termination is necessary in order to avert the risk;
- Provide for termination of pregnancy in an emergency where there is a risk to the life of a woman, or a risk of serious harm to her health, and the termination is immediately necessary to avert that risk;
- Provide for termination of pregnancy where the foetus has been diagnosed with a condition likely to lead to death either before, or within 28 days of, birth;
- Provide for a process whereby a woman who has been refused a termination of pregnancy under certain grounds can have that decision reviewed;
- Provide for conscientious objection for medical practitioners, including nurses and midwives who do not wish to carry out, or participate in carrying out, a termination of pregnancy, and
- Provide for requirements for medical practitioners to notify the Minister of all terminations of pregnancy carried out in the State, as well as a requirement for the Minister to prepare a report on this information and lay it before both Houses of the Oireachtas.<sup>4</sup>

This Bill Digest does not propose to address all aspects of the Bill, or indeed all aspects of the provision of abortion services. The detailed aspects of care pathways and service provision are largely matters for clinical guidelines currently being prepared by the relevant professional bodies.

An L&RS Note entitled 'Sexual and Reproductive Health and Rights (SRHR): a framework for the introduction of abortion services in Ireland' has also been published to accompany this Bill Digest.<sup>5</sup>

This Bill Digest addresses the following themes:

- **Policy background** - A summary overview of the abortion debate in Ireland and review of the causes and outcomes of crisis pregnancy including updated statistics on abortions obtained outside the State. This section will explain Ireland's commitment to the provision of a comprehensive programme of sexual and reproductive health and rights (SRHR) as part of an international [Programme of Action](#), which was first adopted by Ireland at the [International Conference on Population and Development \(ICPD\)](#) in 1994, and examines Ireland's policy framework for SRHR within this context. It also reviews current provision for a comprehensive package of sexual and reproductive health services within the State with a particular focus on the services that provide an entry point for prevention and support of crisis pregnancy.

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<sup>4</sup> The Explanatory Memorandum which accompanies the Bill can be accessed here: <https://www.oireachtas.ie/en/bills/bill/2018/105/?tab=documents>

<sup>5</sup> This L&RS Note can be accessed here: [http://opac.oireachtas.ie/AWDData/Library3/SRHR\\_A\\_Framework\\_for\\_the\\_introduction\\_of\\_abortion\\_services\\_in\\_Ireland\\_185600.pdf](http://opac.oireachtas.ie/AWDData/Library3/SRHR_A_Framework_for_the_introduction_of_abortion_services_in_Ireland_185600.pdf)

- **Principal themes of the Bill** - This section of the Bill Digest will examine thematically the principal provisions of the Bill; termination on request in early pregnancy, termination in cases of a fatal foetal diagnosis, termination due to a risk to the life or health of the woman, and the review procedures available. For an overview of every provision in the Bill, please see the Table of Provisions contained in Appendix 1.
- **Other issues** – This section of the Bill Digest will examine other miscellaneous issues within the Bill. They are: conscientious objection, offences, the collection of statistics on the operation of the Act, and other policy issues identified by the L&RS which do not fall within the other categories.

The use of a red text box such as this one denotes an area identified by the L&RS, in the time available, where the Bill as published has deviated from the General Scheme. This is intended as an aid to Members as no Pre-Legislative Scrutiny (PLS) was undertaken on the General Scheme, or updated General Scheme, of this Bill published by the Department of Health.

This Bill Digest does not address the arguments for and against abortion in general terms. For such an overview, please see the previous L&RS Bill Digest on the [Thirty-sixth Amendment of the Constitution Bill 2018](#).<sup>6</sup>

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<sup>6</sup> Available here: [http://vhfms-a01/AWDData/Library2/Bill\\_Bill\\_Digest\\_Thirty\\_sixth\\_Amendment\\_of\\_the\\_Constitution\\_Bill\\_2018\\_FINAL\\_092128.pdf](http://vhfms-a01/AWDData/Library2/Bill_Bill_Digest_Thirty_sixth_Amendment_of_the_Constitution_Bill_2018_FINAL_092128.pdf)

## Policy Background

### Overview of abortion in Ireland

Since the referendum in 1983, there have been five abortion referenda, the last on 25<sup>th</sup> May 2018 in which the electorate voted by a 66.4% majority to repeal the Eighth Amendment.

Existing legislation provides for the 1992 judgment of the Supreme Court in the X case and the 2010 ruling of the European Court of Human Rights in the case of [A, B, and C v Ireland](#)<sup>7</sup> which found that Ireland had violated Applicant C's rights under Article 8 of the [European Convention on Human Rights](#). The [Protection of Life during Pregnancy Act, 2013](#) (see here for [Bill Digest](#)) provides for lawful access to abortion where a pregnant woman's life is at risk, however, termination of pregnancy remains otherwise criminalised in Ireland.

### Characteristics of Crisis Pregnancy in Ireland

Crisis Pregnancy in Ireland	What do we know?
Who is at risk?	<ul style="list-style-type: none"> <li>• Sexually active women in Ireland in all fertile age categories are at risk of developing a crisis pregnancy;</li> <li>• Younger women between the age of 18-25 years and women with a pre-Leaving Certificate education are more at risk;<sup>8</sup></li> <li>• Young women whose first sexual experience is before the age of 17 are less likely to use contraception than women who delay sex;<sup>9</sup></li> <li>• These women are also 70% more likely to experience a crisis pregnancy and three times more likely to experience an abortion in later life;</li> <li>• Crisis pregnancy in Ireland reflects wider international trends: higher socio-economic status and higher educational attainment are associated with improved access to health care, fewer births and better sexual health outcomes overall.<sup>10 11 12</sup></li> </ul>

<sup>7</sup> European Court of Human Rights, [CASE OF A, B AND C v. IRELAND](#) (Application no. 25579/05), JUDGMENT STRASBOURG 16 December 2010

<sup>8</sup> [Mayock, P. and Byrne, T., "A Study of Sexual Health Issues, Attitudes and Behaviours: The View of Early School Leavers CPAR Report No.8. 2004, Crisis Pregnancy Agency: Dublin." \(Dublin: Crisis Pregnancy Agency, n.d.\).](#)

<sup>9</sup> HSE Sexual Health and Crisis Pregnancy Programme. 2018

<sup>10</sup> Jejeebhoy S. Women's education, autonomy and reproductive behavior: experience from developing countries. New York, NY: Oxford University Press, 1995.

<sup>11</sup> United Nations Development Programme, "Human Development Report 2016: Human Development for Everyone" (New York, 2016).

<sup>12</sup> Güneş PM. The role of maternal education in child health: Evidence from a compulsory schooling law. *Econ Educ Rev* 2015; 47: 1–16

<p>Causes of crisis pregnancy</p>	<ul style="list-style-type: none"> <li>• Almost 50% of women who reported a crisis pregnancy in Ireland in 2010 did not use contraception at the time of conception. Reasons included that ‘sex was not planned’ (32%); they ‘took a chance’ (30%) or that alcohol or other drugs were used at the point of conception (20%);<sup>13</sup></li> <li>• International research points to clear links between substance use, sexual risk taking and early sexual initiation;<sup>14</sup></li> <li>• 47% of those surveyed in 2010 who did not use contraception reported that did not believe that they were at risk of becoming pregnant at the time. One Irish study found that only 50% of adults correctly identified when a woman is fertile;<sup>15</sup></li> <li>• A change of circumstances in a planned pregnancy including fatal foetal abnormality or other factors.<sup>16</sup></li> </ul>
<p>Reasons why people do not use contraception</p>	<ul style="list-style-type: none"> <li>• Most unplanned pregnancies result from inconsistent or incorrect contraceptive use;<sup>17</sup></li> <li>• The proportion of men and women who consistently use contraception has decreased in Ireland;<sup>18</sup></li> <li>• Barriers to access include cost, embarrassment and stigma.<sup>19</sup> non-use of contraception is a factor in half of all reported crisis pregnancies.<sup>20</sup></li> </ul>
<p>Outcomes of Crisis Pregnancy</p>	<ul style="list-style-type: none"> <li>• Up to 75% of women and 66% of men who experienced a crisis pregnancy in Ireland chose to parent;<sup>21</sup></li> <li>• 1% of women and men opted for adoption</li> </ul>

<sup>13</sup> McBride, O., Morgan, K. and McGee, H., “Irish Contraception and Crisis Pregnancy Study 2010: A Survey of the General Population Crisis Pregnancy Programme Report 24.” (Dublin: HSE Crisis Pregnancy Programme, 2012).

<sup>14</sup> Jackson C, Sweeting H, Haw S. Clustering of substance use and sexual risk behaviour in adolescence: analysis of two cohort studies. *BMJ Open*. 2012;2:55; Wiefferink CH, Peters L, Hoekstra F, Ten Dam G, Buijs GJ, Paulussen TG.

Clustering of health-related behaviours and their determinants: possible consequences for school health interventions. *Prev Sci*. 2006;7:127–49; Spriggs Madkour A, Farhat T, Tucker Halpern C, Godeau E, Nic Gabhainn S.

Early adolescent sexual initiation as a problem behaviour: a comparative study of five nations. *J Adolesc Health*. 2010;47:389–98.57; Connell C, Gilreath T, Hansen N. A multiprocess latent class analysis of the co-occurrence of substance use and sexual risk behaviour among adolescents. *J Stud Alcohol Drugs*. 2009;70:943–51.

<sup>15</sup> HSE Sexual Health and Crisis Pregnancy Programme, “Sexual Health in Ireland: What Do We Know?”

<sup>16</sup> Irish Statute Book, “Crisis Pregnancy Agency (Establishment) Order.,” Pub. L. No. S.I. No. 446/2001 (2001).

<sup>17</sup> HSE Sexual Health and Crisis Pregnancy Programme, “Sexual Health in Ireland: What Do We Know?”

<sup>18</sup> *Ibid*. pp36

<sup>19</sup> McBride, O., Morgan, K. and McGee, H., Irish Contraception and Crisis Pregnancy Study 2010: A Survey of the General Population, Crisis Pregnancy Programme Report 24. 2012, HSE Crisis Pregnancy Programme: Dublin

<sup>20</sup> *Ibid*

<sup>21</sup> HSE Sexual Health and Crisis Pregnancy Programme.



	<p>following their most recent experience of crisis pregnancy;</p> <ul style="list-style-type: none"><li>• There has been a 54% decrease in the number of women travelling from the Republic of Ireland to the UK for an abortion between 2001 and 2017: in 2017, 3,092 women living in Ireland obtained an abortion in the UK.<sup>22</sup></li><li>• Between January 2010 and December 2016 the number of women accessing abortion pills from one online provider tripled from 548 in 2010 to 1,748 in 2016.<sup>23</sup></li><li>• There were 25 abortions performed in the State in 2016 with the majority of these due to a risk to the life of the mother.<sup>24</sup></li></ul>
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(Source: Compiled by the L&RS from a range of sources as referenced)

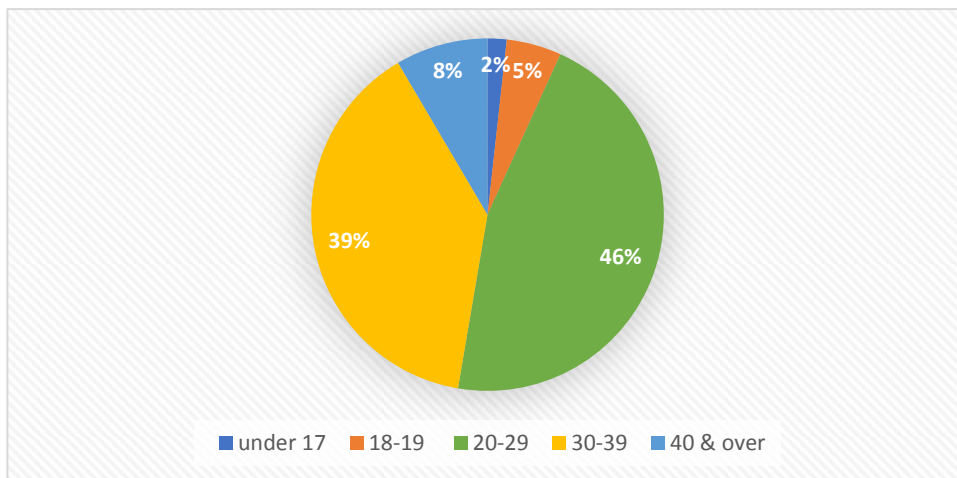
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<sup>22</sup> Department of Health and Social Care, "Abortion Statistics, England and Wales: 2017: Summary Information from the Abortion Notification Forms Returned to the Chief Medical Officers of England and Wales.," June 2018.pp19

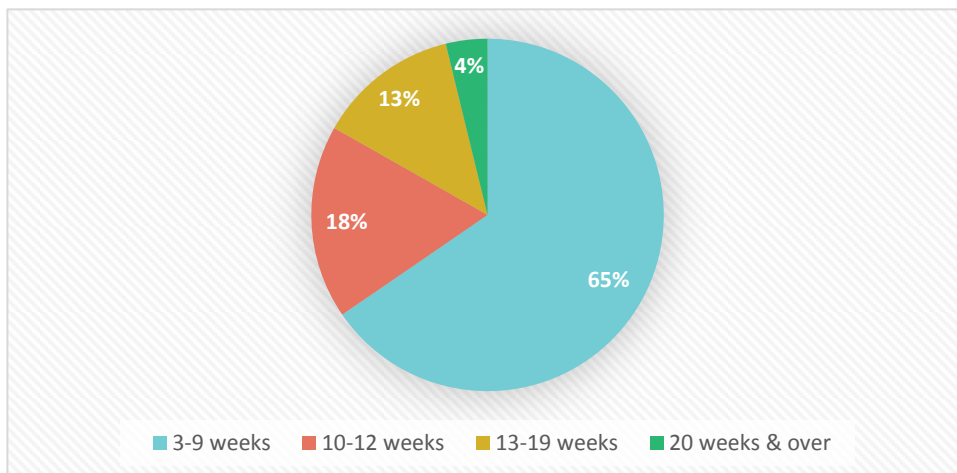
<sup>23</sup> Ibid

<sup>24</sup> Department of Health, *Notifications in Accordance with Section 20 of the Protection of Life During Pregnancy Act 2013: Annual Report 2016. 2017*, Department of Health: Dublin.

**Figure 1: Abortions by age category in England and Wales by women providing an address in the Republic of Ireland 2017**



**Figure 2: Abortion by number of weeks gestation in England and Wales by women providing an address in the Republic of Ireland 2017**



(Source: Compiled by the L&RS from data provided by the United Kingdom Department of Health and Social Care, 2018)<sup>25</sup>

### **The International Conference on Population and Development (ICPD), 1994 and Ireland’s relationship with Human Rights treaties.**

The ICPD was the first international platform to define sexual and reproductive health and rights (SRHR). However, ICPD recognised that abortion would only be incorporated into SRHR services in countries where it is permitted by law. Ireland’s statement to the [UN Commission on Population and Development in April 2011](#) reconfirmed Ireland’s commitment to the ICPD but confirmed Ireland’s alignment with the provisions of paragraph 8.25, which emphasises the inclusion of abortion in sexual and reproductive health services only in countries where it is permitted by law.

<sup>25</sup> Can be accessed here: <https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2017>

In October 2012, the Department of Foreign Affairs and Trade in collaboration with the Department of Health agreed negotiating guidelines for SRHR at international levels. Ireland has ratified nine United Nations (UN) human rights treaties.<sup>26</sup> The Committees of five of these have expressed concern and criticised Ireland's restrictive abortion laws.<sup>27 28 29 30</sup>

## Abortion as part of an integrated programme of sexual and reproductive health and rights (SRHR) in Ireland

The [National Sexual Health Strategy 2015-2020](#) aims to reduce negative sexual health outcomes, including crisis pregnancy, through the provision of high quality, equitable, accessible and targeted services.<sup>31</sup> These services represent a holistic vision of SRHR:

- crisis pregnancy management;
- contraception services/family planning services;
- counselling, information and support services;
- clinical services for the diagnosis and management of STIs;
- community outreach services for sexual health promotion; and
- education/information and support.<sup>32</sup>

<p><b>Type of Sexual and Reproductive Health Service</b></p> <p><b>What do we know from international evidence?</b></p>	<p><b>What services are available in Ireland?</b></p>
<p><b>Crisis pregnancy counselling services</b></p> <ul style="list-style-type: none"> <li>• The WHO advocates the provision of counselling services for abortion but the evidence is unclear.<sup>33</sup></li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">Positive Options</a> is funded by the HSE Sexual Health and Crisis Pregnancy programme in 15 counselling services over 30 locations nationwide;</li> <li>• There has been decline in the demand for crisis pregnancy counselling (from 4,662 in 2010 to 2,570 in 2016);<sup>34</sup></li> <li>• A review of the counselling service proposed the establishment of a national crisis pregnancy telephone counselling service and this will be available by the end of 2018.<sup>35</sup></li> </ul>
<p><a href="#">School-based relationships and</a></p>	<ul style="list-style-type: none"> <li>• Since 1997, RSE has been a mandatory component of Social Personal and</li> </ul>

<sup>26</sup> As Ireland is a dualist state, it requires implementing legislation alongside ratification. See [L&RS Note on International Law](#) for more information on this process.

<sup>27</sup> United Nations Committee against Torture, "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Concluding Observations on the Second Periodic Report of Ireland\*," August 31, 2018.

<sup>28</sup> Committee on the Rights of the Child, "Convention on the Rights of the Child: Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland" (United Nations, March 1, 2016).

<sup>29</sup> Committee on the Rights of the Child.

<sup>30</sup> Committee on the Elimination of Discrimination and against Women.

<sup>31</sup> Department of Health, "National Sexual Health Strategy 2015-2020" (Dublin, 2015: p46).

<sup>32</sup> Department of Health. (2015:44)

<sup>33</sup> World Health Organisation, "Safe Abortion: Technical and Policy Guidance for Health Systems. Second Edition" (Geneva, 2012: 73).

<sup>34</sup> HSE Sexual Health and Crisis Pregnancy Programme. "Sexual Health in Ireland: What do we know? (June, 2018) pp 26-27

<sup>35</sup> HSE Sexual Health and Crisis Pregnancy Programme. "Sexual Health in Ireland: What do we know? (June, 2018) pp 26-27

<p><b><u>sexuality education (RSE)</u> (see L&amp;RS 2018 Spotlight)</b></p> <ul style="list-style-type: none"> <li>• Women who have experienced sex education in schools are less likely to report having experienced rape, abortion or distress about sex;<sup>36</sup></li> <li>• UNESCO and the WHO claim that sexuality education leads to improved sexual and reproductive health outcomes, including a reduction in sexually transmitted infections (STIs), Human Immunodeficiency Virus (HIV) and unintended pregnancy.<sup>37</sup></li> <li>• A Cochrane Database Systematic Review published in 2016 reported that schools “may” be a good place in which to provide interventions that prevent HIV, sexually transmitted infections, and crisis pregnancy in adolescents but found little evidence that educational curriculum-based programmes alone are effective in improving sexual and reproductive health outcomes for adolescents.<sup>38</sup></li> </ul>	<p>Health Education (SPHE) and must be provided to all students in both junior and senior cycles at post-primary level. This programme is currently under review by the National Council for Curriculum Development.</p>
<p><b>Access to contraceptive services</b></p> <ul style="list-style-type: none"> <li>• Abortion incidence declines as contraceptive use increases in countries with steady fertility rates;<sup>39 40</sup></li> <li>• Condom use tends to be higher among those who last had sexual intercourse with someone they just met (70%) and those aged 17-24 (61%);<sup>41</sup></li> <li>• 15% of respondents in one survey reported that the cost of condoms discouraged their use, especially among young people.<sup>42</sup></li> <li>• Women who undergo an abortion are more motivated than other women to use contraception - post-abortion is an</li> </ul>	<ul style="list-style-type: none"> <li>• The National condom distribution Service (NCDS) was established in 2015 by the Sexual Health and Crisis Pregnancy Programme;</li> <li>• Condoms are widely available to purchase throughout Ireland but they are subject to VAT at 13.5%;</li> <li>• Long Acting Reversible Contraceptive devices and combined hormonal contraception is available on prescription in Ireland and free-of-charge to those with medical cards. Partial cost-recovery is available through the Primary Care Reimbursement Service (PCRS) for non-medical card holders;</li> <li>• Emergency contraception is available</li> </ul>

<sup>36</sup> Pound et al, 2016: 4

<sup>37</sup> UNESCO, *Emerging Evidence, Lessons and Practice in Comprehensive Sexuality Education: A Global Review* (Paris: France, 2015); WHO. *Defining sexual health. Report of a technical consultation on sexual health 28-31 January 2002.* Geneva: WHO; 2006

<sup>38</sup> Amanda J Mason-Jones, David Sinclair, Catherine Mathews, Ashraf Kagee, Alex Hillman, Carl Lombard, *School-based interventions for preventing HIV, sexually transmitted infections, and pregnancy in adolescents*, Cochrane Database of Systematic Reviews, 2016

<sup>39</sup> Marston C, Cleland J. Relationships between contraception and abortion: a review of the evidence. *International Family Planning Perspectives* 2003;29:6–13.

<sup>40</sup> Wei-Hong Zhang, “Contraception Interventions for Women Seeking Abortion,” ed. Yan Che et al., *Cochrane Database of Systematic Reviews*, no. 4 (April 9, 2014), <http://search.ebscohost.com/login.aspx?direct=true&db=chh&AN=CD011067&site=ehost-live>.

<sup>41</sup> HSE Sexual Health and Crisis Pregnancy Programme. “Sexual Health in Ireland: What do we know? (June, 2018) pp 29

<sup>42</sup> HSE Sexual Health and Crisis Pregnancy Programme. “Sexual Health in Ireland: What do we know? (June, 2018) pp 29

<p>optimal entry point for contraceptive commencement &amp; counselling.<sup>43 44</sup></p> <ul style="list-style-type: none"> <li>• There is a higher uptake of Long Acting Reversible Contraceptives by women accessing sexual health services in the community rather than the hospital setting.<sup>45</sup></li> <li>• 9% of young women report that cost is a barrier to refilling a contraceptive prescription.<sup>46</sup></li> </ul>	<p>without a prescription in Ireland through community pharmacies.</p> <ul style="list-style-type: none"> <li>• Sterilisations are decreasing among women in Ireland and vasectomy (male sterilisation) is not evenly available across the country at primary care level.<sup>47</sup></li> </ul>
<p><b>Sexual Assault and Treatment Services</b></p> <ul style="list-style-type: none"> <li>• 99% of pregnancies are prevented when emergency contraception is provided within the 72-hour window.<sup>48</sup></li> <li>• Rape Crisis Centre data shows that the rape-related pregnancy rate is 5%.<sup>49</sup></li> </ul>	<ul style="list-style-type: none"> <li>• The 6 Sexual Assault Treatment Units (SATUs) in Dublin, Cork, Waterford, Mullingar and Letterkenny provide 24 hour clinical, forensic and supportive care for those who have experienced sexual violence.</li> </ul>
<p><b>Reproductive healthcare services: detection of foetal abnormalities</b></p> <ul style="list-style-type: none"> <li>• In the United States and Europe, magnetic resonance imaging (MRI) is the standard of care and can change a fatal foetal diagnosis to life limiting, while the overall diagnostic accuracy of MRI is 93% compared to 68% for ultrasound.<sup>50</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Termination for foetal abnormality currently takes place outside the State;<sup>51</sup></li> <li>• Diagnoses of fatal foetal abnormalities are almost entirely based on ultrasound.<sup>52</sup></li> </ul>

### Implementation science: key factors in successful implementation of abortion services

- Political will is a primary success factor in establishing or expanding access to safe abortion services;<sup>53 54</sup>

<sup>43</sup> Speroff L, Mishell DR. The postpartum visit: it is time for a change in order to optimally initiate contraception. *Contraception* 2008;78:90–8

<sup>44</sup> Zhang, "Contraception Interventions for Women Seeking Abortion."

<sup>45</sup> Cameron, Glasier and Johnstone, Comparison of uptake of long-acting reversible contraception after abortion from a hospital or a community sexual and reproductive healthcare setting: an observational study *J Fam Plann Reprod Health Care*.2017 Jan;43(1):31-36. doi: 10.1136/jfprhc-2015-101216. Epub 2015 Dec 8.

<sup>46</sup> Ibid

<sup>47</sup> Ibid.

<sup>48</sup> Joint Committee on the 8th Amendment of the Constitution, debate Wednesday 25th October 2017, Termination Arising From Rape: Mr. Tom O'Malley, NUI Galway; Dublin Rape Crisis Centre; and Dr. Maeve Eogan, Rotunda Hospital.

<sup>49</sup> Ibid. Rape Crisis Centre, 2015.

<sup>50</sup> Ibid

<sup>51</sup> Dr. Peter Boylan to the Joint Committee on Health, Clinical Guidelines for the Introduction of Abortion Services: Discussion, Wednesday, 19th September 2018

<sup>52</sup> Ibid

<sup>53</sup> Chavkin W, Stifani BM, Bridgman-Packer D, Greenberg JMS, Favier M. Implementing and expanding safe abortion care: An international comparative case study of six countries. *Int J Gynecol Obstet* 2018. In Press.

- Publicity around the change in the legal status of abortion; dissemination of detailed medical guidelines for the provision of legal procedures; development of data collection and monitoring systems, with mechanisms for adequate financing are important steps in the successful implementation of abortion services;<sup>55 56</sup>
- Planners need to consider health-worker motivation, support and working conditions when implementing new abortion services.

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<sup>54</sup> This multicountry study included Colombia, Ethiopia, Ghana, Portugal, South Africa, and Uruguay and as such the implementation lessons for these jurisdictions may not be transferable to an Irish context

<sup>55</sup> Ashford L, Sedgh G, Singh S. Making abortion services accessible in the wake of legal reforms: A Framework and Six Case Studies. Issues Brief (Alan Guttmacher Inst) 2012:1–4.

<sup>56</sup> This multicountry study included Cambodia, Colombia, Ethiopia, Mexico City, Nepal and South Africa and as such the implementation lessons for these jurisdictions may not be transferable to an Irish context

## Principal Themes

### Termination where there is a risk to life or health

**Section 10** provides that a termination of pregnancy will be permitted where 2 medical practitioners, having examined the pregnant woman, certify that, in their opinion:

- there is a risk to the life, or a risk of serious harm to the health, of the woman,
- the foetus has not reached viability, and
- the termination is appropriate to avert the risk.

One of these medical practitioners must be an obstetrician and the other must be an appropriate medical practitioner. The termination must be carried out by the certifying obstetrician or, if the other medical practitioner is also an obstetrician, that person may carry it out.

The term 'health' is defined in section 9 of the Bill as referring to 'physical or mental health'.

'Viability' is defined in section 9 as the point in pregnancy at which, in the reasonable opinion of a medical practitioner, the foetus is capable of survival outside the uterus without extraordinary life-sustaining measures.

Both the original and updated General Scheme provided that termination of pregnancy in these circumstances would be carried out either by the certifying obstetrician or by another obstetrician where such arrangements had been made by the certifying medical practitioners. The Bill as published provides that the termination must be carried out by the certifying obstetrician or by the other medical practitioner if they are also an obstetrician. The Bill is silent on whether arrangements may be made for another obstetrician, uninvolved with the case, to carry out the termination if the certifying medical practitioners are for some reason unable to do so.

**Section 11** provides for situations where there is a risk to the life, or a risk of serious harm to the health, of a pregnant woman **in an emergency**. This section would allow a termination of pregnancy where one medical practitioner certifies, having examined the woman, that s/he is of the reasonable opinion formed in good faith that:

- there is an immediate risk to the life, or a risk of serious harm to the health, of the woman, and
- it is immediately necessary to carry out a termination of pregnancy in order to avert that risk.

The medical practitioner must certify that these conditions have been satisfied before the termination takes place. However, if it is not practicable to do so before the termination, the certification must be completed no later than 3 days afterwards.

### Termination in cases of a condition likely to lead to death of the foetus

Currently, pregnant women who receive a diagnosis of a foetal abnormality, fatal or otherwise, must travel abroad if they wish to terminate their pregnancy. The majority of those women travel to

the United Kingdom.<sup>57</sup>

Termination of pregnancy in England & Wales is governed by the [Abortion Act 1967](#) as amended and it permits termination of a pregnancy by a registered medical practitioner subject to certain conditions. A legal abortion must be certified by two registered medical practitioners as justified under one or more grounds, known as Grounds A to E. There are two further grounds related to emergency situations which need only be certified by the operating practitioner as immediately necessary.

In 2017 there were 148 abortions carried out in England & Wales on residents of the Republic of Ireland on Ground E (either alone or with Ground A, B, C, D), which is that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped. This accounted for 4.8% of all abortions obtained by Irish residents.<sup>58</sup>

With regard to the number of women or couples who receive a prenatal diagnosis of a foetal abnormality but who choose to continue with their pregnancy, nationwide figures do not appear to be available. However in their evidence to the Joint Committee on the Eighth Amendment, the Masters of the Rotunda Hospital and the National Maternity Hospital gave the following information for their own hospitals which may be of use to Members:

### Rotunda Hospital

- In 2016, there were 26 cases in the Rotunda Hospital in which Down's Syndrome was prenatally diagnosed. 57% of patients chose to travel and 43% continued with their pregnancy.
- There were 24 cases diagnosed of Trisomy 18, known as Edwards' Syndrome, which is a fatal foetal abnormality. Of those patients, 12 chose to travel and 12 continued with their pregnancy.
- "In general it depends on each abnormality, approximately 50:50 is how it splits out."<sup>59</sup>

Speaking about the **National Maternity Hospital**, Dr Rhona Mahony stated:

*"...[W]e diagnose approximately 400 foetal anomalies a year...and approximately 60 women travel. A lot of women would choose not to travel. Among those 400, there will be anomalies that are less severe, for example, a number of heart issues, that are amenable to treatment and to surgery...Of the 60 women who travel, they tended to be chromosomal and genetic anomalies. They tended to be neural tube defects, cranial abnormalities and complex heart abnormalities. They tended to have abnormalities that were at the very severe end of the spectrum indeed."<sup>60</sup>*

<sup>57</sup> Joint Committee on the Eighth Amendment of the Constitution, 11 October 2017. Transcript available here: [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_the\\_eighth\\_amendment\\_of\\_the\\_constitution/2017-10-11/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_the_eighth_amendment_of_the_constitution/2017-10-11/3/)

<sup>58</sup> Data tables available here: <https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2017>

<sup>59</sup> Joint Committee on the Eighth Amendment of the Constitution, 11 October 2017. Transcript available here: <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/EAJ2017101100002?opendocument#W00050>

<sup>60</sup> Ibid.



### What does the Bill propose?

**Section 12** of the Bill proposes to allow termination of pregnancy in cases where a condition has been diagnosed which is likely to lead to the death of the foetus either before, or within 28 days, of birth.

In order for a termination to be carried out, two medical practitioners must certify that, in their reasonable opinion formed in good faith, there is a condition affecting the foetus which is likely to lead to the death of the foetus either before, or within 28 days of birth.

One of these medical practitioners must be an obstetrician and the other must be a medical practitioner of a relevant specialty. 'Relevant speciality' is defined in section 9 of the Bill as a medical specialty in respect of which the practitioner is registered in the Specialist Division of the register, and which is relevant to the diagnosis, care or treatment of such a condition.

The Bill provides that the termination must be carried out by either the obstetrician who co-certified the procedure, or if the other medical practitioner is also an obstetrician, that person.

1. The Bill as published provides that a termination of pregnancy will be permitted where the foetus has been diagnosed with a condition which is likely to lead to the death of the foetus either before, or within 28 days of, birth. While this is the same provision as was contained in the updated General Scheme published in July 2018, it marks a change from the original General Scheme of the Bill published prior to the referendum, which provided that death must be likely either before, or "shortly after" birth.

2. Both the original and updated General Scheme provided that termination of pregnancy in these circumstances would be carried out either by the certifying obstetrician or by another obstetrician where such arrangements had been made by the certifying medical practitioners. The Bill as published provides that the termination must be carried out by the certifying obstetrician, or by the other medical practitioner if they are also an obstetrician. The Bill is silent on whether arrangements may be made for another obstetrician, uninvolved with the case, to carry out the termination if the certifying medical practitioners are for some reason unable to do so.

## Termination in early pregnancy

### What does the Bill propose?

**Section 13** of the Bill provides that a termination of pregnancy may be carried out where a medical practitioner certifies that, having examined the pregnant woman, the pregnancy concerned has not exceeded 12 weeks in their reasonable opinion formed in good faith. While it is presumed that this would be done on the request of the pregnant woman, the section does not explicitly state this.

**Section 13(2)** also provides for a waiting period, which means that the termination cannot be carried out until a period of 3 days has elapsed from the date of certification. Once that period has elapsed, but before the pregnancy has exceeded 12 weeks, the medical practitioner must make such arrangements for carrying out the termination of pregnancy.

**Section 13(4)** provides that for the purposes of this section, “12 weeks of pregnancy” will be construed in accordance with the medical principle that pregnancy is generally dated from the first day of a woman’s last menstrual period.

Unlike in sections 10 and 12, the Bill does not provide for a process whereby a woman can request a review of a medical practitioner’s decision under this section. The section is silent on what options, if any, would be open to a woman where a medical practitioner refuses to certify and carry out a termination under this section. Pending clinical guidelines on care pathways may afford more clarity on this issue.

### Mandatory waiting period

As already stated, the Bill provides that a termination of pregnancy under section 13 (i.e. within the first 12 weeks of pregnancy) must not be carried out until 3 days have elapsed since the date of certification. Certification can only be provided if a medical practitioner is satisfied that in their reasonable opinion, formed in good faith, the pregnancy has not exceeded 12 weeks. There has been some commentary on the 3 day waiting period, including whether it could, or should, begin from when the woman first makes contact with the medical practitioner, or when her appointment is booked.<sup>61</sup> Speaking to the Joint Committee on Health on 19 September 2018, Dr Mary Favier of the Irish College of General Practitioners (ICGP) said:

*“...the three days should start from the very first point of contact, whether one rings the helpline or one’s GP or a family planning clinic.”<sup>62</sup>*

However the Bill is clear that the waiting period begins from the time of certification. And section 13(1) provides that certification can only be given once the medical practitioner has examined the pregnant woman. This would appear to suggest that at least one visit, in person, to the medical practitioner would be required before certification could be obtained.

Section 13(1) of the Bill provides that a termination of pregnancy may be carried out in accordance with the section by a medical practitioner where, having examined the pregnant woman, they are of the reasonable opinion formed in good faith that the pregnancy has not exceeded 12 weeks. The requirement that the medical professional examine the pregnant woman did not appear in either General Scheme.

Such a waiting period was not specifically recommended by the Joint Committee on the Eighth Amendment, though it did arise during discussions, particularly in discussion with representatives from The Netherlands, which has a 5 day waiting period between request and termination.

Several reasons for the waiting period have been advanced. Introducing the *Thirty-sixth Amendment to the Constitution Bill 2018*, the Minister stated:

*In line with the recommendation of the all-party committee, it is proposed to permit termination up to 12 weeks of pregnancy without specific indication. However, I am proposing the introduction of a time period that is required to elapse between the assessment by a medical practitioner and the procedure being carried out. Contrary to*

<sup>61</sup> ‘Harris includes new funds for abortion bill to meet its pledges’, The Times, 24 September 2018.

<sup>62</sup> Joint Committee on Health, 19 September 2018. Transcript available here: [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_health/2018-09-19/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_health/2018-09-19/3/)

*some assertions, such provision would not make Ireland an outlier internationally... I believe it reasonable for there to be a brief period of time after the woman has her first consultation with her doctor in order to allow all the options to be considered and to facilitate informed consent. Informed consent is not an unusual medical principle. Only medical practitioners on the register of the Medical Council would be permitted to assess and, where appropriate, carry out a termination...<sup>63</sup>*

Separately, a spokesperson for the Minister was reported as saying that such a waiting period “would allow a doctor to refer a woman for a scan if it is clinically determined to be necessary.”<sup>64</sup> An Taoiseach, Leo Varadkar T.D. has also said that the waiting period would “allow for reflection, and counselling to allow alternatives to be offered and considered.”<sup>65</sup> It should be noted that counselling is not mandatory under the Bill.

While waiting periods are found in the regimes for termination of pregnancy in many jurisdictions, World Health Organisation (WHO) guidance on safe abortion states that:

*“Mandatory waiting periods can have the effect of delaying care, which can jeopardize women’s ability to access safe, legal abortion services and demeans women as competent decision-makers.”<sup>66</sup>*

It recommends that:

*“States should consider eliminating waiting periods that are not medically required, and expanding services to serve all eligible women promptly.”<sup>67</sup>*

Addressing the Joint Committee on Health on 19 September 2018 on the issue of clinical guidelines for abortion services, several medical practitioners expressed reservations about the necessity for a waiting period. Dr Peter Boylan said:

*“In respect of the three day waiting period, there is not really any evidence that it is necessary. There are mixed opinion about it obviously and in some countries in Europe, the Netherlands for example, there is a waiting period between the time of first consultation and the actual termination of pregnancy. There is not, however, any evidence that it is necessary and it also makes presumptions about women’s ability to make decisions about their own healthcare.”<sup>68</sup>*

Dr Cliona Murphy of the Institute of Obstetricians and Gynaecologists noted that it may lead to practical difficulties for women where multiple visits are necessary:

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<sup>63</sup> Dáil Éireann debate. 9 March 2018. Transcript available here: <https://www.oireachtas.ie/en/debates/debate/dail/2018-03-09/5/>

<sup>64</sup> Abortion in Ireland: How would it work?, Irish Independent, 28 April 2018

<sup>65</sup> ‘Repeal won’t lead to abortion free-for-all, says Varadkar’, Sunday Independent, 22 April 2018

<sup>66</sup> World Health Organisation, “Safe Abortion: Technical and Policy Guidance for Health Systems. Second Edition” (Geneva, 2012:96) Available here: [http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434\\_eng.pdf;jsessionid=D137A60090F1A5E6491640A5A19F2D2F?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf;jsessionid=D137A60090F1A5E6491640A5A19F2D2F?sequence=1)

<sup>67</sup> Ibid at 97.

<sup>68</sup> Joint Committee on Health, 19 September 2018. Transcript available here: [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_health/2018-09-19/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_health/2018-09-19/3/)

*“As far as I understand, it will lead to an extra visit and that could be difficult, particularly for someone travelling from one area to another, perhaps to another community practice. It would be a particular difficulty for someone on the margins of the 12 week limit.”<sup>69</sup>*

When asked about whether there were other instances in which a waiting period was required before availing of treatment, Dr John O’Brien of the Irish College of General Practitioners (ICGP) said: *“In general practice, I cannot think of another instance.”*

Responding to the comments made before the Joint Committee on Health, Dr Ruth Cullen of the Pro Life Campaign said:

*“The calls by Dr. Peter Boylan and others to consider shelving the three day waiting period for abortion was probably predictable but it’s also sad that all the focus is on speeding up abortions, leaving little or no time for women to reflect on the enormity of what the procedure involves. Some argued today at the committee that it is paternalistic to have a three-day waiting period before an abortion takes place. It would be more fitting to describe as paternalistic denying a woman access to full information on what precisely an abortion involves and the possible negative after effects it can have for some women.”<sup>70</sup>*

Writing in The Irish Times on 22 September 2018, master of the National Maternity Hospital Rhona Mahony identified the waiting period as one of the aspects of the proposed legislation she finds challenging, however she also cautioned against deviating from the proposals made prior to the referendum, saying:

*“For example, the introduction of a three-day ‘cooling-off period’ between when a doctor certifies that a woman can have a termination and when she can actually get one raises the practical problem of additional medical visits and cumbersome process. It also potentially makes an already painful process more distressing.*

*The international evidence suggests that women rarely change their minds as they have made careful, thoughtful decisions prior to presentation in the first place. But some people felt this insertion to provide for reflection gave weight to the enormity of the decision being made and perhaps in a supportive environment someday even one person might reverse the decision to terminate.”<sup>71</sup>*

## Licensing of medication for the termination of pregnancy in Ireland

Medical termination in early pregnancy requires the prescription and administration of medication which is not currently licensed for use in Ireland. Text Box 1 below outlines the procedure necessary for the licensing of abortion medication in Ireland.

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<sup>69</sup> Joint Committee on Health, 19 September 2018. Transcript available here: [https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_health/2018-09-19/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_health/2018-09-19/3/)

<sup>70</sup> Pro Life Campaign, Press Release, ‘Those who thought abortion law would be restrictive just got a rude awakening’, 19/09/2018. Available here: <https://prolifecampaign.ie/main/portfolio/detail/19-09-18-those-who-thought-abortion-law-would-be-restrictive-just-got-a-rude-awakening-plc/>

<sup>71</sup> ‘Opinion - Integrity of the Eighth Amendment repeal vote must be respected’, Irish Times, 22/09/2018. Available here: <https://www.irishtimes.com/opinion/integrity-of-eighth-amendment-repeal-vote-must-be-respected-1.3637261>

**Text Box 1 - Licensing of a new medication in Ireland**

On 19 September 2018, representatives from the Health Products Regulatory Authority (HPRA) addressed the Oireachtas Joint Committee on Health with regard to the licensing of abortion medication. The following overview is adapted from their opening statement to the Committee:<sup>72</sup>

The HPRA is the competent body responsible for the authorisation of health products in Ireland. Medical termination of pregnancy is achieved by the taking of two medicines, up to 48 hours apart, to induce a miscarriage. In the EU, both of these medicines are subject to prescription, and can only be prescribed and administered in accordance with a country's national laws and regulations.

The first medicine, mifepristone, acts by blocking the effects of progesterone, a hormone which is needed for pregnancy to continue. It can also be used to soften and open the entrance or the cervix to the womb or uterus.

The second medicine, misoprostol, a prostaglandin, causes contraction of the womb and also softens the cervix. Gemeprost, an alternative prostaglandin may be used instead of misoprostol.

In Ireland, at the moment, there are no medicines authorised for termination of pregnancy. Medicines for this medical indication are authorised in many EU Member States. Across the EU, there are only a small number of companies involved in the supply of these medicines.

Apart from in exceptional circumstances, medicines must be authorised before being marketed in an EU Member State. The HPRA authorises a medicine for sale and supply following a detailed technical assessment of an application for marketing authorisation submitted by a company. The application consists of a dossier containing data to support the medicine's quality, safety and efficacy. If this application is successful, the company is termed the Marketing Authorisation Holder.

Medicines used in the termination of pregnancy are currently authorised in other EU Member States under a scheme of mutual recognition. Under this scheme, a single EU Member State is designated as the 'Reference Member State'. This Member State is the EU-based competent authority which was responsible for assessment of the original application dossier and the ongoing coordination of dossier updates on behalf of other named Member States.

EU law requires that where a medicine is authorised in another Member State, a mutual recognition procedure must be used. So, in order to market a medicine in Ireland for this indication, a Marketing Authorisation Holder must apply to the Reference Member State to extend their authorisation to the Irish market. At the same time, they must submit the application dossier to the HPRA for the national phase of the process. This procedure is required to be completed within a maximum of 90 days of the HPRA's validation of the company's application dossier.

The HPRA advised the Joint Committee on Health that following the result of the referendum in May 2018, they identified the medicines in use in other EU Member States for the medical termination of pregnancy and enquired of the Marketing Authorisation Holders as to their plans to market their medicines in Ireland. This was done with a view to, if possible, ensuring that authorised medicines would be available upon the commencement of any future legislation.

The HPRA confirmed to the Committee that applications have been received and are being assessed under the 90-day mutual recognition procedures. If these applications are successful,

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<sup>72</sup> Full statement available here:

[https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint\\_committee\\_on\\_health/submissions/2018/2018-09-19\\_opening-statement-health-products-regulatory-authority\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_health/submissions/2018/2018-09-19_opening-statement-health-products-regulatory-authority_en.pdf)

marketing authorisations could be issued in late 2018. They noted, however, that this process is also dependent on the simultaneous procedure in other Member States. So while issues are not foreseen, there must also be a note of caution.

If authorisation is granted, the HPRA has requested that the company would expedite the process for making supplies available to Ireland in order to facilitate the timely implementation of services.

In the event that medicines are not authorised by the time legislation is enacted and commenced, in the interim period there is an Exempt Medicines Scheme for the treatment of patients with medical conditions for which an authorised medicine is not available. This scheme is governed by the [\*Medicinal Products \(Control of Placing on the Market\) Regulations 2007 \(S.I No 540 of 2007\)\*](#).

## Review of medical decisions under the Act

**Section 14** provides that where a medical practitioner has been requested to give an opinion on a risk to the life or health of a pregnant woman, or on a condition likely to lead to death of the foetus, and either does not give that opinion, or gives an opinion that does not allow for a termination of pregnancy, s/he must inform the pregnant woman **in writing** that she may make an application to the HSE for a review of that decision. The woman, or a person acting on her behalf, may make the application. The section **does not** provide that the medical practitioner must give reasons for the refusal.

**Section 15** provides that the HSE must establish and maintain a panel of medical practitioners for the purposes of establishing a review committee in relation to a decision referred to in section 14. The review panel must consist of appropriate medical practitioners registered in the Specialist Division of the register, and medical practitioners of relevant specialties. If a person ceases to be a medical practitioner, his/her membership of the review panel must be revoked by the HSE.

**Section 16** provides that when the HSE receives an application from/on behalf of a woman under section 14 it must, within 3 days, establish and convene a review committee for the purposes of reviewing the decision. The membership of that committee will be drawn from the review panel described above.

A review committee must consist of an obstetrician and another medical practitioner who will be either:

- An appropriate medical practitioner where the decision relates to circumstances under s.10(1) [risk to life or health], or
- A medical practitioner of a relevant specialty where the decision relates to circumstances under s.12(1) [condition likely to lead to death of foetus].

A medical practitioner will be disqualified from sitting on the review committee where s/he has previously been consulted by the pregnant woman in relation to the circumstances at issue.

**Section 17** sets out the process for the review of a decision. It provides that a review must be completed no later than 7 days after the review committee is established and convened. If, having examined the pregnant woman, the review committee concludes that:

- there is a risk to the life, or of serious harm to the health, of the woman, the foetus has not reached viability, and a termination is appropriate to avert the risk, or

- there is a condition present affecting the foetus which is likely to lead to the death of the foetus either before, or within 28 days of, birth,

the Committee **must jointly certify** those matters and give notice in writing to the woman and the HSE. The review committee must then make arrangements for the carrying out of the termination.

If the review committee completes its review and is not satisfied as to the matters described above, it must give notice in writing of this decision to both the woman and the HSE.

The requirement that the review committee examine the pregnant woman, as provided for in section 17(2), is an addition which did not appear in either General Scheme.

**Section 18** sets out in broad terms some of the procedures to be followed by a review committee. It provides that a review committee may direct, in writing, a current or former medical practitioner to either produce documents or records, or to attend before the committee to give assistance or answer questions, or both. Any person who attends a review committee pursuant to a written direction will be paid such expenses and remuneration as the Minister may, with the approval of the Minister for Public Expenditure and Reform, determine.

A person who fails to comply with a written direction from a review committee to either produce records/documents, or to attend the committee, will be guilty of an offence. On summary conviction, they would be liable to a class C fine (maximum fine of €2,500 as per the [Fines Act 2010](#)). Summary proceedings under this section will be brought and prosecuted by the HSE.

The pregnant woman will be entitled to be heard by the review committee, and where she or her representative informs the committee that she wishes to be heard, the committee must make arrangements to hear her or a person acting on her behalf.

Subject to the provisions of the Act, the Bill provides that the review committee may determine its own procedures. The HSE must provide, or arrange for the provision of, administrative facilities as may be necessary to enable the review committee to perform its functions. A member of a review committee will be paid by the HSE such remuneration and expenses as the Minister may, with the approval of the Minister for Public Expenditure and Reform, determine.

**Section 19** imposes an obligation on the HSE to report to the Minister on an annual basis on the operation of reviews under the Act. It provides that the HSE must, no later than 30 June each year, prepare and submit a report detailing:

- the number of applications for review received by the HSE;
- the number of reviews carried out;
- the reason why each review was sought in each of the reviews carried out, and
- the outcome of the reviews.

In preparing the report, the HSE must exclude any information any information which identifies, or could reasonably lead to the identification of:

- a woman who applied for a review or a person acting on her behalf, or
- a medical practitioner who made a relevant decision, carried out a review, complied with a written direction from a review committee or otherwise assisted a committee, or carried out a termination of pregnancy following a review.

The report must be laid before both Houses of the Oireachtas and, as soon as practicable there afterwards, published in such a form and manner as the HSE thinks appropriate.



## Other issues

### Conscientious objection

#### What is ‘conscientious objection’?

Freedom of thought, conscience and religion is a fundamental right which the State is obliged to vindicate.<sup>73</sup> It is long established in international human rights law and is enshrined in the Irish Constitution.<sup>74</sup>

Conscientious objection can be defined as the refusal to participate in an activity that an individual considers incompatible with their religious, moral, philosophical or ethical beliefs. It is increasingly used in the context of healthcare, where it is asserted by medical professionals who do not wish to take part in certain medical procedures with which they personally disagree.

According to the [European Convention on Human Rights](#), freedom of conscience is not absolute. It can be limited where those limitations are necessary in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.<sup>75</sup>

The Irish Human Rights and Equality Commission (IHREC) has pointed out that conscientious objection is part of the legal framework for access to abortion in many jurisdictions. However, findings of several international human rights bodies have made it clear that provision for conscientious objection must not act as an undue barrier to women who wish to avail of abortion services.<sup>76</sup>

The World Health Organisation’s guidance on providing safe abortion states that while individual healthcare providers have a right to conscientious objection, this “does not entitle them to impede or deny access to lawful abortion services because it delays care for women, putting their health and life at risk”.<sup>77</sup>

A comparative study by Chavkin et al (2017) of the regulation of conscientious objection to abortion found that, in order for a health system to provide for conscientious objection while also ensuring abortion access, several features appeared to be necessary:

- Clarity about who can object, and to what;

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<sup>73</sup> Irish Human Rights and Equality Commission, ‘Human rights and equality considerations in the development of a new legislative and regulatory framework on abortion’, October 2017, at page 27. Available here: <https://www.ihrec.ie/app/uploads/2017/10/Human-rights-and-equality-considerations-in-the-development-of-a-new-legislative-and-regulatory-framework-on-abortion.pdf>

<sup>74</sup> Article 44 of Bunreacht na hÉireann.

<sup>75</sup> Article 9, of the European Convention on Human Rights. Available here: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>76</sup> Irish Human Rights and Equality Commission, ‘Human rights and equality considerations in the development of a new legislative and regulatory framework on abortion’, October 2017, at pages 27-28. Available here: <https://www.ihrec.ie/app/uploads/2017/10/Human-rights-and-equality-considerations-in-the-development-of-a-new-legislative-and-regulatory-framework-on-abortion.pdf>

<sup>77</sup> World Health Organisation, “Safe Abortion: Technical and Policy Guidance for Health Systems. Second Edition” (Geneva, 2012:69) Available here: [http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434\\_eng.pdf;jsessionid=D137A60090F1A5E6491640A5A19F2D2F?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf;jsessionid=D137A60090F1A5E6491640A5A19F2D2F?sequence=1)

- Either mandatory referrals or direct access to services; and
- Ensuring abortion services through either directly providing them or by contracting to abortion providers.

In practice, this means that while individual healthcare professionals (not institutions) should be entitled to conscientiously object, they must refer women to a non-objecting practitioner and the State must ensure that there are enough non-objecting practitioners to guarantee meaningful access to abortion services.

### What does the Bill propose?

**Section 23** of the Bill provides for a regime of conscientious objection. It states that nothing in the Act will be construed as obliging any medical practitioner, nurse or midwife to carry out, or to participate in carrying out, a termination of pregnancy in accordance with sections 10,<sup>78</sup> 12<sup>79</sup> or 13.<sup>80</sup> An exception is provided for in cases under the circumstances outlined in section 11, where there is a risk to the life or health of a woman in an emergency. A person who has a conscientious objection must, as soon as may be, make arrangements for the transfer of care of the pregnant woman to enable her to obtain a termination of pregnancy.

The Bill makes clear that the right of conscientious objection can only be exercised by individuals as opposed to institutions, which appears to be in line with international obligations as described above. The Bill **does not** expressly prohibit a person with a conscientious objection from sitting on a review committee.

The provisions of the Bill mirror those contained in the Act of 2013, and are in line with current Medical Council ethics guidelines, which provide that doctors may refuse to take part in the provision of lawful treatments or forms of care which conflict with their sincerely held ethical or moral values.<sup>81</sup> The Guidelines state that conscientious objectors must inform the patient that they have a right to seek treatment from another doctor and give them enough information to enable them to transfer to another doctor to get the treatment they want. If the patient is unable to arrange their own transfer of care, the conscientious objector should make these arrangements on their behalf.<sup>82</sup> In an emergency, the patient's care must be the priority and treatment must be given.<sup>83</sup>

The provision is also similar to that in England & Wales. Section 4 of the [Abortion Act 1967](#) states that no person will be under any duty to participate in any treatment authorised under the Act to which they have a conscientious objection. There is an exception for emergency treatment.

The Bill does not impose any requirement to notify the Minister of refusals of care on the basis of conscientious objection. Enright et al note that such information would arguably be useful in identifying areas of un-met need.<sup>84</sup>

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<sup>78</sup> Risk to life or health of the woman.

<sup>79</sup> Conditions likely to lead to the death of the foetus.

<sup>80</sup> Termination in early pregnancy up to 12 weeks gestation.

<sup>81</sup> Medical Council, (2016) 'Guide to Professional Conduct and Ethics for Registered Medical Practitioners', 8<sup>th</sup> ed. at page 35. Available here: <https://medicalcouncil.ie/News-and-Publications/Reports/Guide-to-Professional-Conduct-and-Ethics-8th-Edition-2016-.pdf>

<sup>82</sup> Ibid

<sup>83</sup> Ibid

<sup>84</sup> Enright, M., Fletcher, R., de Londras, F., Conway, V. 'Position Paper on The Updated General Scheme of the Health (Regulation of Termination of Pregnancy) Bill 2018'. Available here: <https://lawyers4choice.files.wordpress.com/2018/08/position-paper-1.pdf>

In its observations on the *Protection of Life During Pregnancy Bill 2013*, the Irish Human Rights and Equality Commission (IHREC) Designate recommended that that legislation contain a specific offence in the event that “a person claiming to have a conscientious objection and refusing to carry out or assist in carrying out a lawful procedure...substantially contributes to the death of or significant harm to the woman...”<sup>85</sup> This recommendation was not reflected in the 2013 Act, nor does it form part of this Bill.

In observations on the General Scheme of the Health (Regulation of Termination of Pregnancy) Bill 2018, IHREC made several observations on conscientious objection:

- The Commission welcomed the requirement for a conscientiously objecting medical practitioner to transfer care of a woman requesting a termination of pregnancy, which it said is in line with international best practice.<sup>86</sup>
- It noted that the right of conscientious objection “does not refer to the wider health and social care professions with whom a pregnant person may come into contact, and to whom considerations of conscientious objection may also apply”, and recommended it be made to apply more broadly.<sup>87</sup>
- The Commission finally recommended that in addition to the provision in legislation, clear procedures for expeditious transfer of care are provided through regulation and guidelines.<sup>88</sup>

## Definition of ‘woman’

The term ‘woman’ in the Bill is defined as meaning a female person of any age. This means that ‘woman’ in this context also refers to young girls and adolescents. One issue which has also been raised is that the definition is not inclusive of transgender men, or non-binary people, who may also experience a crisis pregnancy.

Enright et al have suggested that the language of the Bill should be changed to ensure inclusivity for all gender identities. They suggest the use of gender neutral language such as ‘pregnant person’, or ‘woman or pregnant person’.<sup>89</sup>

In July 2018 it was reported that while the Minister was aware of these concerns, he had received advice to the contrary and was willing to look at the issue further.<sup>90</sup>

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<sup>85</sup> Irish Human Rights Commission, Observations on the Protection of Life During Pregnancy Bill 2013, July 2013, at page 36. Available here: [https://www.ihrec.ie/app/uploads/download/pdf/ihrc\\_observations\\_protection\\_of\\_life\\_in\\_pregnancy\\_bill\\_2013.pdf](https://www.ihrec.ie/app/uploads/download/pdf/ihrc_observations_protection_of_life_in_pregnancy_bill_2013.pdf)

<sup>86</sup> Irish Human Rights and Equality Commission, ‘Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health (Regulation of Termination of Pregnancy) Bill 2018, September 2018, at page 9. Available here: <https://www.ihrec.ie/app/uploads/2018/09/Observations-on-General-Scheme-of-a-Bill-Entitled-Health-Regulation-of-Termination-of-Pregnancy-Bill-2018.pdf>

<sup>87</sup> Irish Human Rights and Equality Commission, ‘Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health (Regulation of Termination of Pregnancy) Bill 2018, September 2018, at pages 8 and 9. Available here: <https://www.ihrec.ie/app/uploads/2018/09/Observations-on-General-Scheme-of-a-Bill-Entitled-Health-Regulation-of-Termination-of-Pregnancy-Bill-2018.pdf>

<sup>88</sup> Irish Human Rights and Equality Commission, ‘Observations by the Irish Human Rights and Equality Commission on the General Scheme of a Bill Entitled Health (Regulation of Termination of Pregnancy) Bill 2018, September 2018, at page 9. Available here: <https://www.ihrec.ie/app/uploads/2018/09/Observations-on-General-Scheme-of-a-Bill-Entitled-Health-Regulation-of-Termination-of-Pregnancy-Bill-2018.pdf>

<sup>89</sup> Enright, M., Fletcher, R., de Londras, F., Conway, V. ‘Position Paper on The Updated General Scheme of the Health (Regulation of Termination of Pregnancy) Bill 2018’, at page 7. Available here: <https://lawyers4choice.files.wordpress.com/2018/08/position-paper-1.pdf>

## Medical consent

**Section 22** of the Bill provides that nothing in the Bill will operate to affect any enactment or rule of law relating to consent to medical treatment.

In its comments on a future regulatory framework for abortion services in Ireland, the IHREC has flagged the issue of accessible and age-appropriate medical treatment for young women and girls. It notes that the UN Committee on the Rights of the Child has outlined the need for states to ‘ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services’, and that ‘girls can make autonomous and informed decisions on their reproductive health.’<sup>91</sup>

The current Bill’s provision on consent to medical treatment mirrors that contained within the *Protection of Life During Pregnancy Act 2013*. In its observations on that Bill in 2013, IHREC raised concerns as to how a minor’s consent to medical treatment would be accommodated. It highlighted the absence from the 2013 Bill of provision for “accessible age-appropriate sexual and reproductive health services without discrimination...and [age-appropriate] procedures which should apply concerning consent to medical treatment.”

In considering any future provision for abortion access, IHREC recommends that:

*“A new framework for access to abortion services in Ireland should ensure that the state meets its international human rights obligations to children and adolescents. It should ensure that the framework is implemented in an age-appropriate manner, in a way that meets the particular health needs of girls and adolescents, and that gives due weight to their views, in keeping with the Convention on the Rights of the Child.”<sup>92</sup>*

IHREC also considered the issue of mental capacity and assisted decision-making. The Commission recommended that any revised framework for abortion services in Ireland should meet the State’s obligations under the UN Convention on the Rights of Persons with Disabilities, in particular Articles 12 (equal recognition before the law), 23 (respect for home and the family) and 25 (health). This is with the aim of ensuring that, as with all areas, CRPD-compliant procedures for assisted decision-making in accessing abortion or other reproductive health services are applied.<sup>93</sup>

## Statistics on the operation of the Act

Section 21 of the Bill provides for the maintenance of data on the operation of the Act.

It provides that when a termination of pregnancy is carried out under sections 10, 11, 12 or 13, the medical practitioner must keep a record of that and certain other information specified in the section. No later than 28 days after a termination has been carried out, a copy of the record must be forwarded to the Minister. This record is referred to as a ‘notification’.

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<sup>90</sup> ‘Abortion legislation: ‘woman’ reference, 28 days, consent and other changes’, Irish Times, 11 July 2018. Available here: <https://www.irishtimes.com/news/politics/abortion-legislation-woman-reference-28-days-consent-and-other-changes-1.3561706>

<sup>91</sup> Irish Human Rights and Equality Commission, ‘Human rights and equality considerations in the development of a new legislative and regulatory framework on abortion’, October 2017, at page 14. Available here: <https://www.ihrec.ie/app/uploads/2017/10/Human-rights-and-equality-considerations-in-the-development-of-a-new-legislative-and-regulatory-framework-on-abortion.pdf>

<sup>92</sup> Ibid at 15.

<sup>93</sup> Ibid at 30.

The information which must be recorded is:

- The Medical Council registration number of the medical practitioner who carried out the termination of pregnancy,
- The section under which the termination of pregnancy was certified, and the Medical Council registration numbers of each of the medical practitioners who made the certification concerned,
- The county of residence of the pregnant woman or, if she is resident outside the State, her place of residence, and
- The date on which the termination was carried out.

The Minister must, no later than 30 June each year, prepare a report on the notifications s/he has received during the year. This report must be laid before both Houses of the Oireachtas and published by the Minister in such form and manner as s/he thinks appropriate.

In preparing this report, the Minister must exclude any information which identifies, or could reasonably lead to the identification of, either a medical practitioner or a woman involved in a termination of pregnancy.

The requirement to collect information on the place of residence of women resident outside the State will provide information on the proportion of women coming from Northern Ireland to access abortion services in the Republic of Ireland.<sup>94</sup> Recent statistics on abortions obtained by Northern Ireland residents in England & Wales is contained in Text Box 2 below.

### Text Box 2 - Northern Ireland residents seeking abortions in England & Wales

In 2017, 919 residents of Northern Ireland availed of legal abortions in England and Wales.<sup>95</sup>

83% of these took place at between 3 and 12 weeks gestation. 98.3% of them took place on the basis of Ground C alone. Of the remainder, 1.6% were on the basis of Ground E (either alone or with A, B, C, or D)<sup>96</sup> and 0.1% (which amounted to 1 termination) on the basis of Ground D (either alone or with C).

It was reported in August 2018 that, while speaking at an event in Belfast, the Minister for Health, Simon Harris TD stated:

*“Whilst I respect the issue of abortion laws in Northern Ireland is a matter for public representatives in Northern Ireland, I really hope this is addressed in the near future.*

*In the meantime, I intend to ensure women from Northern Ireland can access such services in the Republic, just like they can access other health services here.”<sup>97</sup>*

<sup>94</sup> Joint Committee on Health, 19 September 2018. Transcript available here:

[https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_health/2018-09-19/3/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_health/2018-09-19/3/)

<sup>95</sup> Department of Health and Social Care, “Abortion Statistics, England and Wales: 2017. Available here:

<https://www.gov.uk/government/statistics/abortion-statistics-for-england-and-wales-2017>

<sup>96</sup> Ibid.

<sup>97</sup> ‘NI Women to have access to abortion services; Women from North will be able to avail of abortion services in Republic, says Harris.’ Irish Times, 8 August 2018.

## Offences

Sections 5 and 6 provide for offences under the Bill. Section 5(1) contains a general offence providing that it will be an offence to intentionally end the life of a foetus, by any means whatsoever, otherwise than in accordance with the provisions of the Act.

Section 5(2) provides that it will also be an offence to prescribe, administer, supply or procure any drug, substance, instrument, apparatus or other thing knowing it is intended to be used to end the life of a foetus, or being reckless as to whether it is or not, otherwise than in accordance with the provisions of the Act. Such a provision did not appear in the General Scheme of the Bill.

Section 5(2) is a new provision which did not appear in either General Scheme of the Bill.

Section 5(3) clarifies that these offences **will not apply** to a pregnant woman in respect of her own pregnancy.

Section 5(4) provides that it will be an offence to aid, abet, counsel or procure a pregnant woman to intentionally end, or attempt to end, the life of the foetus of that pregnant woman otherwise than in accordance with the provisions of the Bill. This section will not operate to prevent or restrict access to services lawfully carried out outside the State.

Section 5(4) is a new addition to the Bill and did not appear in either of the General Schemes. It means that it would not be an offence to assist a pregnant woman to travel to another jurisdiction for a lawful termination. However it may be an offence to, for example, assist her in procuring abortion pills via the internet. This could lead to a situation whereby a woman attempted to terminate her own pregnancy via abortion pills purchased online with the assistance of another person (e.g a partner, parent or friend) and while she would not be guilty of an offence the person who assisted her may be.

Section 5(5) provides that a person guilty of an offence under this section will be liable on conviction on indictment to an unlimited fine and/or a maximum term of imprisonment of 14 years. This penalty mirrors that which is currently contained in the Act of 2013.

Section 5(5) of the Bill as published differs from the equivalent provision in the General Scheme. As drafted in the General Scheme of the Bill, the relevant offence was what is termed a 'hybrid offence', which could be prosecuted either summarily (i.e. in the District Court) or on indictment (i.e. in a higher court before a jury). On summary conviction, a person was liable to a class A fine (i.e. a maximum of €5,000) and/or a maximum term of imprisonment of 12 months, with the penalty for conviction on indictment the same as what is currently in the Bill. The Bill has removed the option to prosecute a person summarily.

**Section 5(6)** provides that a prosecution for an offence under this section may only be brought by, or with the consent of, the Director of Public Prosecutions.

**Section 6** deals with the issue of offences by bodies corporate and mirrors the equivalent provision currently contained in the Act of 2013.<sup>98</sup>

**Section 24** provides for a prohibition against receiving special benefits or advantages. It was a new addition to the updated General Scheme published by the Department of Health in July 2018. It provides that any person giving information, advice or counselling to members of the public in relation to termination of pregnancy, or who holds themselves out as such, must not receive or agree to receive, any special benefit or advantage in relation to the termination of a pregnancy within or outside the State.

A 'special benefit or advantage' means a financial or other benefit received, over and above that which they would ordinarily receive for, or the reasonable cost of, giving the information, advice, or counselling.

A person who contravenes this section will be guilty of an offence and will be liable on summary conviction to a class A fine (maximum fine of €5,000 as per the [Fines Act 2010](#)).

Section 24, while it did appear in the updated General Scheme published in July 2018, did not appear in the first General Scheme published by the Department of Health.

The provision has been criticised by Enright et al. who, in their observations of the equivalent provision of the updated General Scheme (Head 18) said:

*"The practical function of Head 18 is unclear. It does not appear to prohibit commercial or employment relationships between those providing abortion counselling and information, and those willing to provide abortion care in Ireland or abroad. Its purpose seems to be to stigmatise providers by raising the spectre of unreasonable remuneration for related services. Head 18 should be removed."*

## **Amendment of the Health Act 1970 – Availability of termination of pregnancy without charge**

**Section 25** of the Bill proposes to make a number of amendments to the [Health Act 1970](#). These include:

- an amendment to s.47A of the Act of 1970 to allow the Minister to issue guidelines to the HSE to aid them in their assessment of whether a person is ordinarily resident in the State for the purposes of accessing termination of pregnancy services without charge.
- an amendment to section 51, which deals with in-patient services, to amend the definition of 'acute in-patient services' to include care and treatment in respect of termination of pregnancy.

**Section 25(c)** proposes to insert a new paragraph 53C(9)(ba) to provide that a woman receiving services for the purpose of a termination of pregnancy will not be required to pay acute in-patient charges.

**Section 25(d)** proposes to insert a new section 62A entitled 'Services for women in accordance with Act of 2018'. The proposed section provides that the HSE will make available, without charge,

<sup>98</sup> See s.23 of the *Protection of Life During Pregnancy Act 2013*. Available here: <http://www.irishstatutebook.ie/eli/2013/act/35/section/23/enacted/en/html#sec23>

medical, surgical and midwifery services for the purpose of termination of pregnancy for women who are ordinarily resident in the State. This includes the supply without charge of specified drugs, medicines and surgical/medical appliances.

Finally, **section 25(e)** inserts a new paragraph 67C(7)(ba). This has the effect of exempting women receiving services for termination of pregnancy from maintenance and accommodation contributions for residential support services.



## Appendix 1 – Table of Provisions

Section	Title	Effect
<b>PART 1 – Preliminary and General</b>		
1	Short title and commencement	<p>Provides that the Act may be cited as the Health (Regulation of Termination of Pregnancy) Act 2018.</p> <p>Provides that the Act will come into operation by order of the Minister. Different provisions may come into effect on different dates, including for any repeals contained in section 7.</p>
2	Definitions	A standard provision setting out the definitions to be used in the interpretation of the Act.
3	Regulations	A standard provision allowing the Minister to make regulations in relation to any matter in the Act if passed.
4	Expenses	Provides that expenses incurred by the Minister in the administration of this Bill will be paid out of moneys provided by the Oireachtas, to such an extent as may be sanctioned by the Minister for Public Expenditure and Reform.
5	Offences	<p>Provides that it will be an offence to intentionally end the life of a foetus, by any means whatsoever, otherwise than in accordance with the provisions of this Act.</p> <p>It will also be an offence to prescribe, administer, supply or procure any drug, substance, instrument, apparatus or other thing knowing it is intended to be used to end the life of a foetus, or being reckless as to whether it is or not, otherwise than in accordance with the provisions of the Act.</p> <p>These offences will not apply to a pregnant woman in respect of her own pregnancy.</p> <p>It will further be an offence to aid, abet, counsel or procure a pregnant woman to intentionally end, or attempt to end, the life of the foetus of that pregnant woman otherwise than in accordance with the provisions of the Bill. This does not operate to prevent or restrict access to services lawfully carried out outside the State.</p> <p>A person found guilty of an offence under this section will be liable on conviction on indictment to an unlimited fine or imprisonment not exceeding 14 years or both.</p>

		A prosecution for an offence under this section may be brought only by or with the consent of the Director of Public Prosecutions.
6	Offence by body corporate	<p>Provides that if an offence under this Act is committed by a body corporate, and it is proven that the offence was committed with the consent, connivance or wilful neglect of a director, manager, secretary or other officer of the body corporate (or a person purporting to act in that capacity), that person will also be guilty of an offence. They may be prosecuted and punished as if they were guilty of the first offence.</p> <p>Where the affairs of a body corporate are managed by its members, the provisions in this section apply in relation to the acts and defaults of a member in connection with his or her functions of management as if they were a director or manager of the body corporate.</p>
7	Repeals	<p>Details provisions to be repealed:</p> <ul style="list-style-type: none"> <li>• sections 16 and 17 of the <a href="#">Censorship of Publications Act 1929</a></li> <li>• sections 7(b) and 9(1)(b) of the <a href="#">Censorship of Publications Act 1946</a></li> <li>• Section 10 of the <a href="#">Health (Family Planning) Act 1979</a></li> <li>• The <a href="#">Regulation of Information (Services Outside the State for Termination of Pregnancies) Act 1995</a></li> <li>• The <a href="#">Protection of Life During Pregnancy Act 2013</a></li> </ul>
8	Transitional provisions	<p>Provides that, notwithstanding the repeal of the 2013 Act, where a review committee was set up under s.12 of that Act and has not completed its work before this Act is commenced, it will continue in operation as if it had been established under s.16 of this Act and other relevant provisions of this Act will apply.</p> <p>The HSE must, in accordance with s.15 of the 2013 Act, no later than 6 months after the repeal of the Act of 2013, prepare a final report on reviews conducted under that Act in respect of whatever period has not been subject of a report to the Minister.</p>

<b>Part 2 – Termination of Pregnancy</b>		
<b>9</b>	Definitions (Part 2)	Provides definitions to be used in the interpretation of this Part of the Act.
<b>10</b>	Risk to life or health	Allows a termination of pregnancy to be carried out where 2 medical practitioners certify that, having examined her, in their opinion there is a risk to the life or health of the woman, the foetus has not reached viability, and the termination is appropriate to avert the risk. One of the medical practitioners must be an obstetrician. That obstetrician will either carry out the termination themselves or, if the other medical practitioner is an obstetrician, that person may also carry it out.
<b>11</b>	Risk to life or health in an emergency	Allows a medical practitioner to carry out a termination of pregnancy where, having examined her, in his or her opinion there is an immediate risk to the life of the woman, or an immediate risk of serious harm to her health, and a termination is appropriate to avert that risk. The medical practitioner must certify that these conditions have been satisfied before the termination takes place. However, if it is not practicable to do so before the termination, the certification can be completed no later than 3 days afterwards.
<b>12</b>	Condition likely to lead to death of foetus	Allows a termination of pregnancy to be carried out where 2 medical practitioners certify that, having examined her, in their opinion there is a condition affecting the foetus that is likely to lead to the death of the foetus either before, or within 28 days, of birth. One of these medical practitioners must be an obstetrician. That obstetrician will either carry out the termination him or her self or, if the other medical practitioner is an obstetrician, that person may also carry it out.
<b>13</b>	Early pregnancy	Allows a termination of pregnancy to be carried out where a medical practitioner certifies that, having examined the pregnant woman, in their opinion the pregnancy has not exceeded 12 weeks.  The section also provides for a waiting period, stating that the termination may not be carried out unless at 3 days has elapsed from the date

	<p>of certification.</p> <p>The medical practitioner will make appropriate arrangements for the carrying out of the termination as soon as may be after the waiting period has elapsed, but before the pregnancy has exceeded 12 weeks.</p> <p>It further provides that, for the purposes of the section, the term '12 weeks of pregnancy' will be interpreted in accordance with the medical principle that pregnancy is generally dated from the first day of a woman's last menstrual period.</p>
<p><b>14</b> Application for review of medical opinion</p>	<p>Provides that where a medical practitioner has been requested to give an opinion on a pregnant woman in the circumstances referred to in s.10(1) [risk to life or health] or s.12(1) [condition likely to lead to death of foetus], and either does not give that opinion, or gives an opinion that does not allow for a termination of pregnancy, they must inform the pregnant woman in writing that she may make an application for a review of that decision.</p> <p>The woman, or a person acting on her behalf, may make an application to the HSE for that review.</p>
<p><b>15</b> Establishment of a review panel, etc.</p>	<p>Provides that the HSE must establish and maintain a panel of medical practitioners for the purposes of establishing a review committee in relation to a decision referred to in s.14.</p> <p>The review panel will consist of appropriate medical practitioners registered in the Specialist Division of the register, and medical practitioners of relevant specialties.</p> <p>If a person ceases to be a medical practitioner, their membership of the review panel must be revoked by the HSE.</p>
<p><b>16</b> Establishment of review committee, etc.</p>	<p>Provides that when the HSE receives an application from/on behalf of a woman under s.14(2), the HSE must establish and convene a review committee for the purposes of reviewing the relevant decision. This must be done within 3 days. The membership of that committee will be drawn from the review panel described in s.15.</p> <p>A review committee will consist of an</p>

	<p>obstetrician and another medical practitioner who will be either:</p> <ul style="list-style-type: none"> <li>• An appropriate medical practitioner where the decision relates to circumstances under s.10(1) [risk to life or health]</li> <li>• A medical practitioner of a relevant specialty where the decision relates to circumstances under s.12(1) [condition likely to lead to death of foetus].</li> </ul> <p>A medical practitioner will be disqualified from sitting on the review committee where they have previously been consulted by the pregnant woman in relation to the circumstances at issue.</p>
<p><b>17</b>      Review of relevant decision</p>	<p>Sets out the process for the review of a relevant decision. Provides that a review must be completed no later than 7 days after the review committee is established and convened.</p> <p>If the review committee concludes, having examined the pregnant woman, that:</p> <ul style="list-style-type: none"> <li>• There is a risk to the life, or of serious harm to the health, of the woman, the foetus has not reached viability, and a termination is appropriate to avert the risk, or</li> <li>• There is a condition present affecting the foetus which is likely to lead to the death of the foetus either before, or within 28 days of, birth,</li> </ul> <p>then the Committee will jointly certify those matters and give notice in writing to the woman and the HSE.</p> <p>The review committee will make arrangements for the carrying out of the termination.</p> <p>If the review committee completes its review and is not satisfied as to the matters described above, it must give notice in writing of this decision to both the woman and the HSE.</p>
<p><b>18</b>      Procedures of review committee</p>	<p>Sets out in broad terms some of the procedures to be followed by a review committee.</p> <p>Provides that a review committee may direct, in writing, a current or former medical practitioner to either produce documents or records, or to attend before the committee to give assistance</p>

or answer questions.

The pregnant woman shall be entitled to be heard. Where a pregnant woman or her representative informs the committee that she wishes to be heard, the committee must make arrangements to hear the woman or a person acting on her behalf.

Subject to the provisions of the Act, the review committee may determine its own procedures.

The HSE must provide, or arrange provision of, administrative facilities as may be necessary to enable the review committee to perform its functions.

A member of a review committee will be paid by the HSE such remuneration and expenses as the Minister may, with the approval of the Minister for Public Expenditure and Reform, determine.

Any person who attends a review committee pursuant to a written direction will be paid such expenses and remuneration as the Minister may, with the approval of the Minister for Public Expenditure and Reform, determine.

A person who fails to comply with a written direction from a review committee to either produce records/documents, or to attend the committee, will be guilty of an offence. On summary conviction, they would be liable to a class C fine (maximum fine of €2,500 as per the [Fines Act 2010](#)). Summary proceedings under this section will be brought and prosecuted by the HSE.

**19** Report by Executive on operation of reviews

Imposes an obligation on the HSE to report to the Minister on an annual basis on the operation of reviews under the Act in the immediately preceding year.

Provides that the HSE must, no later than 30 June each year, prepare and submit a report detailing:

- the number of applications for review received by the HSE
- the number of reviews carried out
- the reason why the review was sought in each of the reviews carried out, and

	<ul style="list-style-type: none"> <li>• the outcome of the reviews.</li> </ul> <p>In preparing the report, the HSE must exclude any information any information which identifies, or could reasonably lead to the identification of:</p> <ul style="list-style-type: none"> <li>• A woman who applied for a review or a person acting on her behalf, or</li> <li>• A medical practitioner who made a relevant decision, carried out a review, complied with a written direction from a review committee or otherwise assisted a committee, or carried out a termination of pregnancy following a review.</li> </ul> <p>The report must be laid before both Houses of the Oireachtas and, as soon as practicable after, published in such a form and manner as the HSE thinks appropriate.</p>
<p><b>20</b> Form of certification etc.</p>	<p>Provides that 'certification' under sections 10, 11, 12, or 13 will be made in the prescribed form and manner, and contain the prescribed information. It shall include confirmation of whether the termination of pregnancy was the subject of a review and, where the certification was under sections 10, 11 or 12, the clinical grounds for carrying out the termination of pregnancy.</p>
<p><b>21</b> Notifications</p>	<p>Provides that where a termination takes place under sections 10, 11, 12, or 13, the medical practitioner who carried it out must keep a record, in the prescribed form and manner, of the fact it was carried out and certain other information:</p> <ul style="list-style-type: none"> <li>• Their Medical Council registration number</li> <li>• Under which section the termination was certified, and the Medical Council registration number of the medical practitioners who made the certification</li> <li>• The county of residence of the woman or, in the case of a woman who resides outside the State, her place of residence, and</li> <li>• The date on which the termination was carried out.</li> </ul> <p>No later than 28 days after the termination is</p>

		<p>carried out, this record (or such part of it as may be prescribed) must be forwarded to the Minister in a manner prescribed.</p> <p>No later than 30 June every year, the Minister must prepare a report on the notifications received in the immediately preceding year and lay that report before both Houses of the Oireachtas. As soon as practicable after, this report must be published in such form and manner as the Minister considers appropriate.</p> <p>The Minister must exclude from the report any information that identifies, or could reasonable lead to the identification of, a medical practitioner or a woman.</p>
<b>Part 3 - Miscellaneous</b>		
<b>22</b>	Consent	This section clarifies that nothing in the Act will operate to affect any enactment or rule of law relating to consent to medical treatment.
<b>23</b>	Conscientious objection	<p>Provides that nothing in the Bill shall be construed as obliging any medical practitioner, nurse, or midwife to carry out, or to participate in carrying out, a termination of pregnancy in accordance with sections 10, 12, or 13, to which they have a conscientious objection. However this does not apply to s.11 (risk to life or health in an emergency).</p> <p>Where a person has a conscientious objection they must, as soon as may be, arrange for transfer of the care of the pregnant woman to enable her to avail of a termination of pregnancy.</p>
<b>24</b>	Prohibition against receiving special benefits or advantages	<p>This section provides that any person giving information, advice or counselling to members of the public in relation to termination of pregnancy, or who holds themselves out as such, must not receive or agree to receive, any special benefits or advantages in relation to the termination of a pregnancy within or outside the State.</p> <p>A person who contravenes this section will be guilty of an offence and will be liable on summary conviction to a class A fine (maximum fine of €5,000 as per the <a href="#">Fines Act 2010</a>).</p>
<b>25</b>	Amendment of Health Act 1970	Amends s.47A to allow the Minister to issue



		<p>guidelines to the HSE to aid them in their assessment of whether a person is ordinarily resident in the State for the purposes of termination of pregnancy services.</p> <p>Amends s.51, which deals with in-patient services, to amend the definition of 'acute in-patient services' to include care and treatment in respect of termination of pregnancy.</p> <p>Inserts a new paragraph 53C(9)(ba) to provide that a woman receiving services for the purpose of a termination of pregnancy will not be required to pay acute in-patient charges.</p> <p>Inserts a new section 62A entitled 'Services for women in accordance with Act of 2018'. The new section provides that the HSE will make available, without charge, medical, surgical and midwifery services for the purpose of termination of pregnancy for women who are ordinarily resident in the State. This includes the supply without charge of specified drugs, medicines and surgical/medical appliances.</p> <p>Inserts a new paragraph 67C(7)(ba). This has the effect of exempting women receiving services for termination of pregnancy from residential support services maintenance and accommodation contributions.</p>
<b>26</b>	Amendment of section 33 of Nursing Homes Support Scheme Act 2009	Inserts a new paragraph 33(7)(ba) to exempt women receiving services in respect of termination of pregnancy from charges associated with long term residential care services.
<b>27</b>	Amendment of Health (Pricing and Supply of Medical Goods) Act 2013	<p>Makes a number of consequential amendments to the Act in section 20, relating to the supply and reimbursement of listed items, to take account of the new section 62A of the Health Act 1970.</p> <p>Amends section 23 of the Act to take account of the new section 62A of the Health Act 1970 allowing the HSE to make arrangements for the supply of an item not on the reimbursement list.</p>
<b>28</b>	Amendment of Schedule to Bail Act 1997	Amends the Schedule of the Bail Act 1997 to list offences under s.5 of the Health (Regulation of Termination of Pregnancy) Act 2018 as serious offences for the purposes of the 1997 Act.

**Source:** Prepared by the L&RS based on the *Health (Regulation of Termination of Pregnancy) Bill 2018*

## Appendix 2 – The History of Abortion in Ireland

Year	Development	Description/Further information
1983	Article 40.3.3° amended by the insertion of the Eighth Amendment	The Eighth Amendment of the Constitution, recognising the right to life of the unborn with due regard for the right to life of the mother, was approved by referendum on 7 September 1983 after a contentious campaign.
1985	High Court proceedings initiated against pregnancy counselling services providing information on abortion abroad.	The Society for the Protection of the Unborn (SPUC) argued that Open Door Counselling and the Dublin Well Woman Centre were violating the constitutional prohibition on abortion by providing information on abortion services abroad.
1986	In September 1986, the Attorney General of Ireland joins SPUC in their case against the counselling services.	<i>The Attorney General (Society for the Protection of Unborn Children (Ireland) Ltd) v Open Door Counselling Ltd.</i>
	High Court grants SPUC's application for an injunction.	The High Court ruled in favour of SPUC and the two counselling services were ordered by injunction to cease providing information on abortion abroad and to cease assisting women obtain abortions abroad. The counselling services began an appeal to the Supreme Court.
1988	The Supreme Court rejects the appeal and rules in favour of SPUC.	The Supreme Court varied the order of the High Court by substituting its own perpetual injunction preventing the defendants from assisting pregnant women within the state to travel abroad to obtain abortions, by way of referring them to relevant clinics or informing them of the identity, location of and method of communication with the clinics. The Supreme Court also declared that the acts which the defendants were restrained from doing were "unlawful having regard to the provisions of Article 40, s 3, sub-s 3 of the Constitution". <sup>99</sup>  Open Door Counselling closed and Dublin Well Woman Centre stopped providing pregnancy counselling services.  They then began an appeal to the European Court of Human Rights (ECHR). <sup>100</sup>
1989	SPUC seeks an injunction in the	The High Court referred questions to the European

<sup>99</sup> *Attorney General (S.P.U.C) v Open Door Counselling Ltd. and Dublin Well Woman Centre Limited* [1988] 1 I.R. 593.

<sup>100</sup> *Open Door & Dublin Well Woman v Ireland*, App. No. 14234/88 .

	High Court restraining 3 students' unions from distributing information on abortion services available in the UK. ( <i>SPUC v Grogan &amp; Ors</i> )	Court of Justice, in order to get clarification on the correct meaning of certain provisions of European law which the student groups sought to rely on. The High Court made no order in relation to the application for an injunction, pending the decision of the Court of Justice.
	SPUC appeals to the Supreme Court against the failure of the High court to grant an injunction pending an opinion from the European Court of Justice. The Supreme Court grants the injunction.	The Supreme Court granted the injunction but did not overturn the decision of the High Court to refer the questions to Court of Justice. <sup>101</sup>
1991	European Court of Justice rules in the referred case of <i>SPUC v Grogan &amp; Ors</i> , that abortion constitutes a service under the Treaty of Rome.	As abortion was a service under the Treaty of Rome, this meant that Member States could not prohibit the distribution of information by agencies having a commercial relationship with foreign abortion clinics. However, the Court went on to find that since the student groups had no direct links with abortion services outside of Ireland, they could not claim protection of European Community law. Following this decision, SPUC sought and was granted in the High Court a permanent injunction restraining the activities complained of. <sup>102</sup>
	Government negotiates Protocol 17 to the Treaty on European Union (Maastricht Treaty) which states that nothing in European Treaties would affect the operation of Article 40.3.3°.	
1992	Maastricht Treaty is signed on 7 February 1992 but is yet to be ratified in Ireland.	
	Ten days later, <i>Attorney General v X</i> <sup>103</sup> ( <i>'The X Case'</i> ) comes before the High Court.	This case has been described as "the most controversial case ever to come before an Irish court." <sup>104</sup> It concerned a 14 year old child who was pregnant as a result of alleged rape and whose parents wished to bring her to the UK for an

<sup>101</sup> *S.P.U.C. v Grogan & Ors* [1989] 1 I.R. 753.

<sup>102</sup> *S.P.U.C v Grogan & Ors (No. 4)* [1994] 1 I.R. 46.

<sup>103</sup> [1992] 1 IR 1.

<sup>104</sup> Hogan, GW. & Whyte, GF. (2003) *JM Kelly: The Irish Constitution*, 4<sup>th</sup> ed., LexisNexis Butterworths, at page 1503.

		abortion. The Attorney General sought an injunction to prevent the girl from travelling. The injunction was granted by the High Court. This was appealed to the Supreme Court. In an unprecedented move, the State offered to pay the costs of the defendants' appeal to the Supreme Court. <sup>105</sup>
	Just over a week later, the Supreme Court lifts the injunction, allowing the child to travel. However the outcome has implications for ratification of the Maastricht Treaty.	The full judgments in the case were delivered on 5 March 1992. The majority held that Article 40.3.3° permitted abortion where there was a real and substantial risk to the life of the mother, which included a risk of suicide. Three members of the Court took a view that the right to travel had to be read subject to the right to life of the unborn. Such comments, prompted concern that if Protocol 17 of the Maastricht Treaty was ratified, the right to travel could be restricted to protect the life of the unborn.
	Government seeks to renegotiate Protocol 17 but other Member States refuse. Instead, a Solemn Declaration is made.	The Solemn Declaration stated that the parties to the Treaty do not intend for Protocol 17 to limit freedom to travel or to obtain information available in Ireland related to services lawfully available in other Member States.
	European Court of Human Rights rules, in the appeal from Open Door Counselling and Dublin Well Woman, that Ireland violated Article 10 of the European Convention on Human Rights (Freedom of Expression).	The Court found that the Irish Courts' injunction against Open Door and Well Woman from receiving or imparting information on abortion services legally available in other countries was disproportionate and created a risk to the health of women seeking abortions outside the State.
	A referendum is held on the right to travel, right to information, and the exclusion of suicide as a ground for legal abortion.	The 13 <sup>th</sup> and 14 <sup>th</sup> Amendments ensuring the right to travel and right to information were passed and inserted into Article 40.3.3°. The third proposed Amendment, which would have reversed the position set out in the X Case on the risk of suicide as a ground for legal abortion was rejected.
<b>1995</b>	<i>Regulation of Information (Services Outside the State for Termination of Pregnancies) Act 1995</i> is enacted.	Enacted to implement the 14th Amendment, this Act details the kind of information related to services outside the State for the termination of pregnancy which can be given to pregnant women or to the general public. The legislation was referred to the Supreme Court by the President and its constitutionality was upheld.

<sup>105</sup> Hogan, GW. & Whyte, GF. (2003) JM Kelly: The Irish Constitution, 4<sup>th</sup> ed., LexisNexis Butterworths, at page 1504. See footnote 571.

<p><b>1997</b></p>	<p>The ‘C Case’ comes before the High Court.</p>	<p>Miss C, a 13 year old child, became pregnant as a result of alleged rape. She was taken into the care of the Eastern Health Board. In accordance with her wishes, the Health Board obtained orders from the District Court allowing her to be taken abroad for an abortion. Her parents challenged the orders in the High Court.<sup>106</sup> Evidence was heard that Miss C may attempt to take her own life if she could not terminate her pregnancy. The High Court ruled that under the terms of the X Case, she was entitled to a legal abortion in Ireland.</p>
<p><b>1999</b></p>	<p>Interdepartmental Working Group Green Paper on Abortion is published.</p>	<p>This report<sup>107</sup> sets out the issues around abortion in Ireland as they were at the time, and proposes several options for resolving them: “an absolute constitutional ban on abortion; an amendment of the Constitution so as to restrict the application of the X case; the retention of the then current position; the retention of the constitutional status quo with a legislative restatement of the prohibition on abortion; legislation to regulate abortion as defined in the X case; a reversion to the pre-1983 position; and permitting abortion beyond the grounds specified in the X case.”<sup>108</sup> The paper was referred to the All-Party Oireachtas Committee on the Constitution for consideration.</p>
	<p>United Nations Committee for the Elimination of Discrimination Against Women “urges Government to facilitate a national dialogue on women’s reproductive rights, including on the restrictive abortion laws.”<sup>109</sup></p>	
<p><b>2000</b></p>	<p>All-Party Oireachtas Committee on the Constitution publishes its Fifth Progress Report on the topic of Abortion.<sup>110</sup></p>	<p>The Committee did not reach agreement on the substantive legal issue. None of the seven options proposed in the Green Paper gained unanimous support. Ultimately the Committee agreed on a</p>

<sup>106</sup> A & B v Eastern Health Board and C [1998] 1 I.R. 464.

<sup>107</sup> Available here: <http://opac.oireachtas.ie/AWData/Library3/Library2/DL024943.pdf>

<sup>108</sup> Report of the Joint Committee on the Eighth Amendment of the Constitution at page 33: <https://www.oireachtas.ie/parliament/media/committees/eighthamendmentoftheconstitution/Report-of-the-Joint-Committee-on-the-Eighth-Amendment-web-version.pdf>

<sup>109</sup> Report available here: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f54%2f38%2fRev.1\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f54%2f38%2fRev.1(SUPP)&Lang=en) at page 70.

<sup>110</sup> Available here: <http://opac.oireachtas.ie/AWData/Library3/Library2/DL026116.pdf>

		strategy aimed at reducing crisis pregnancies.
<b>2002</b>	A referendum is held proposing to exclude suicide as grounds for abortion, reversing the X Case position.	The referendum was rejected; 50.42% of voters voted against the proposal with 49.58% voting in favour.
<b>2005</b>	United Nations Committee for the Elimination of Discrimination Against Women reiterates its concerns about Ireland's abortion laws. <sup>111</sup>	
<b>2006</b>	European Court of Human Rights rules that the case of <i>D v Ireland</i> <sup>112</sup> is inadmissible due to not exhausting all domestic remedies.	D was an Irish woman who travelled to the UK for an abortion upon discovering that one of the twins she was carrying had died and the other had a fatal anomaly. She later brought a case to the European Court of Human Rights arguing that Ireland's ban on abortion violated her rights under the European Convention on Human Rights.
<b>2007</b>	<i>Miss D Case</i> comes before the High Court	Miss D was a 17 year old girl in the care of the HSE who discovered she was pregnant and that the unborn was suffering from anencephaly. She applied to the Court to compel the HSE to allow her to travel for the purposes of having an abortion. She was not suicidal. The High Court ruled that she be allowed to travel.
<b>2008</b>	UN Human Rights Committee reiterates its concerns "regarding the highly restrictive circumstances under which women can lawfully have an abortion in the State". <sup>113</sup>	
	European Human Rights Commissioner expresses concern at the lack of legislation in place to implement the findings of the X Case.	He urged the Irish authorities to rectify this situation. In response the Government said that it was satisfied that any medical treatment necessary to safeguard a woman's life during pregnancy was available in Ireland and that it had no plans to bring forward further constitutional or legislative proposals in relation to abortion.
<b>2009</b>	In <i>Roche v Roche</i> , the Supreme	<i>Roche v Roche &amp; Ors.</i> [2010] 2 I.R. 321

<sup>111</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f60%2f38\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f60%2f38(SUPP)&Lang=en) at paragraph 396.

<sup>112</sup> *D v. Ireland*, App. No. 26499/02, ECtHR.

<sup>113</sup>

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f3&Lang=en) at page 4.

	Court decides that the constitutional protection afforded to the unborn only begins after implantation in the womb.	
<b>2010</b>	European Court of Human Rights delivers judgment in <i>A, B and C v Ireland</i> .	The three applicants had travelled to the UK to terminate their pregnancies and argued that Ireland had breached their rights under the European Convention. The Court unanimously held that Applicant C’s Article 8 Right to Respect for Family and Private Life had been violated. Ireland had failed to implement any legislative regime which would have allowed her to access her constitutional right to an abortion where her life was at risk.
<b>2011</b>	In the wake of the judgment in <i>A, B and C v Ireland</i> , the UN Committee against Torture shares the concerns expressed by the Court about the absence of a legal framework for abortion in Ireland.	The Committee expressed concern that the lack of clarity for women and their medical doctors in establishing whether the test of a “real and substantial risk to life” has been met, and possible threat of criminal prosecution, may constitute a breach of the Convention. The situation would also have particularly serious consequences for minors, migrant women, and women living in poverty. <sup>114</sup>
<b>2012</b>	Savita Halappanaver dies in Galway University Hospital while suffering a miscarriage.	Ms Halappanaver’s death prompted fresh debate on the issue of abortion in Ireland. An investigation and report was commissioned by the HSE to establish the facts and contributory factors leading up to her death. The Report was published on 13 June 2013. <sup>115</sup>
	Report of the Expert Group on the Judgment in <i>A, B and C v Ireland</i> is published.	Available <a href="#">here</a> . This report set out a framework for legislation which would clarify the criteria to be used when assessing if an abortion was necessary to save a woman’s life.
<b>2013</b>	Joint Committee on Health and Children holds a series of hearings on the Expert Group’s report.	The Committee’s report based on those hearings was published in February 2013. <sup>116</sup>
	General Scheme of a Protection of Life During Pregnancy Bill is	The report of the Joint Committee on these hearings was published in May 2013. <sup>117</sup>

<sup>114</sup>

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fCO%2f1&Lang=en) at page 7.

<sup>115</sup> Available here: <https://www.hse.ie/eng/services/news/nimtreport50278.pdf>

<sup>116</sup> Available here: [http://vhllms-a01/AWDData/Library2/Volume\\_1\\_160532.pdf](http://vhllms-a01/AWDData/Library2/Volume_1_160532.pdf)

<sup>117</sup> <http://www.oireachtas.ie/parliament/media/committees/healthandchildren/Volume1.pdf>



	published and further hearings are held by the Joint Committee on Health and Children.	
	The <i>Protection of Life During Pregnancy Act 2013</i> was passed by the Houses of the Oireachtas in July 2013.	That Act gave legislative expression to the decision of the Supreme Court in the X Case; that termination of pregnancy is lawful where there is a real and substantial risk to the life of the woman, including a risk of suicide. It is otherwise an offence to intentionally destroy unborn human life. If found guilty of this offence, a person will be liable to an unlimited fine or imprisonment for up to 14 years or both.
2014	Ms Y case is reported in the media.	Ms Y was an asylum seeker who discovered she was pregnant shortly after arriving in Ireland as a result of rape in her home country. She sought an abortion and was refused. She attempted to travel to the UK but was arrested and returned to Ireland. Though she was assessed as suicidal she did not receive an abortion and went on hunger strike. The HSE obtained a court order to forcibly hydrate her and her baby was delivered by caesarean section at 25 weeks gestation.
	A case involving a 15 weeks pregnant woman who had died but whose body was medically maintained with a view to achieving foetal viability comes before the High Court.	PP v HSE <sup>118</sup> : The High Court ruled that, as requested by the woman's family, ongoing somatic support should be withdrawn.
2015	UN Committee on Economic, Social and Cultural Rights expresses concern at Ireland's "highly restrictive legislation on abortion and its strict interpretation thereof." <sup>119</sup>	It was "particularly concerned at the criminalization of abortion, including in the cases of rape and incest and of risk to the health of a pregnant woman; the lack of legal and procedural clarity on what constitutes a real substantive risk to life, as opposed to the health, of the pregnant woman; and the discriminatory impact on women who cannot afford to obtain an abortion abroad or access to the necessary information." <sup>120</sup> It recommended that Ireland take all necessary steps, including a referendum, to revise its legislation in line with international human rights standards.

<sup>118</sup> [2014] IEHC 622 Available here: <http://courts.ie/Judgments.nsf/bce24a8184816f1580256ef30048ca50/fb8a5c76857e08ce80257dcb003fd4e6?OpenDocument>

<sup>119</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/150/67/PDF/G1515067.pdf?OpenElement> at page 9.

<sup>120</sup> Ibid.

2016	UN Human Rights Committee finds, in <i>Mellett v Ireland</i> , that the applicant’s rights had been breached by denying her access to an abortion where her unborn child had been diagnosed with a fatal foetal abnormality.	The Committee called for the Government to offer the Applicant compensation, counselling and to change its laws to allow for abortion in cases of fatal foetal abnormality.
	Citizens’ Assembly established.	
	UN Committee on the Rights of the Child expresses concern about Ireland’s abortion regime under the 2013 Act.	In the context of Adolescent Health, the Committee criticizes Ireland’s abortion restrictions and criminalisation. <sup>121</sup>
2017	UN Committee on the Elimination of Discrimination against Women urges the State to amend Article 40.3.3°.	The Committee expressed concern that Article 40.3.3° had not been amended and “unduly restricts access to abortion.” <sup>122</sup> The Committee criticised what it termed as “the restrictive legal regime” for abortion contained in the 2013 Act, whereby abortion is limited to cases where there is a risk to the life of the woman, and the restrictions on abortion information contained in the 1995 Act.
	Citizens Assembly holds meetings and reports on the Eighth Amendment of the Constitution	
	UN Committee against Torture expresses concern about Ireland’s abortion law.	While welcoming the report of the Citizens’ Assembly, the Committee “expresses concern at the severe physical and mental anguish and distress experienced by women and girls regarding termination of pregnancy as a result of the State’s policies.” <sup>123</sup> The Committee recommended that Ireland ensure the provision of post-abortion health care for women irrespective of whether they have undergone a legal or illegal abortion.
	The Report of the Citizens Assembly is submitted for consideration to a new Oireachtas	

<sup>121</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fIRL%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fIRL%2fCO%2f3-4&Lang=en) at page 13.

<sup>122</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2fCO%2f6-7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIRL%2fCO%2f6-7&Lang=en) at page 3.

<sup>123</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fCO%2f2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fIRL%2fCO%2f2&Lang=en) at page 10.

	<p>Joint Committee on the Eighth Amendment of the Constitution. After a series of hearings, the Joint Committee publishes its own report recommending a repeal of the Eighth Amendment and a replacement provision allowing the Oireachtas to legislate for abortion access in Ireland.<sup>124</sup></p>	
<b>2018</b>	<p>An Taoiseach Leo Varadkar TD announces Government approval for the holding of a referendum to repeal and replace Article 40.3.3° of the Constitution.</p>	<p>The Department of Health publishes a General Scheme of a Bill to Regulate the Termination of Pregnancy in Ireland in March 2018,<sup>125</sup> in advance of the referendum. An updated General Scheme was published in July 2018.<sup>126</sup></p>
	<p>The Supreme Court rules that the only constitutional right enjoyed by the unborn is the right to life contained in Article 40.3.3°.</p>	
	<p>The Irish electorate, in a referendum held on 25 May 2018, voted to replace Article 40.3.3° with an Article permitting the Oireachtas to legislate for the regulation of termination of pregnancy.</p>	
	<p>The <i><a href="#">Health (Regulation of Termination of Pregnancy) Bill 2018</a></i> is published on 1 October 2018 by the Minister for Health, Simon Harris T.D.</p>	

<sup>124</sup> Available here: [http://opac.oireachtas.ie/AWData/Library3/Report\\_of\\_the\\_Joint\\_Committee\\_on\\_the\\_Eighth\\_Amendment\\_web\\_version\\_091929.pdf](http://opac.oireachtas.ie/AWData/Library3/Report_of_the_Joint_Committee_on_the_Eighth_Amendment_web_version_091929.pdf)

<sup>125</sup> Available here: <https://health.gov.ie/wp-content/uploads/2018/03/General-Scheme-for-Publication.pdf>

<sup>126</sup> Available here: <https://health.gov.ie/wp-content/uploads/2018/07/Updated-General-Scheme-of-the-Health-Regulation-of-Termination-of-Pregnancy-Bill-2018.pdf>



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