



**An Bille Sláinte (Foirceannadh Toirchis a Rialáil), 2018**  
**Health (Regulation of Termination of Pregnancy) Bill**  
**2018**

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*Meabhrán Mínitheach*  
*Explanatory Memorandum*

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**AN BILLE SLÁINTE (FOIRCEANNADH TOIRCHIS A RIALÁIL),  
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HEALTH (REGULATION OF TERMINATION OF PREGNANCY)  
BILL 2018**

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**EXPLANATORY MEMORANDUM**

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**Background**

A referendum on the Thirty-sixth Amendment of the Constitution Bill 2018 was held on 25 May 2018. The Amendment sought to delete Article 40.3.3 of the Constitution and substitute it with wording confirming that the Oireachtas may make laws for the regulation of the termination of pregnancy. The referendum was passed with the following result: 66.4% Yes; 33.6% No.

The Thirty-sixth Amendment of the Constitution Act 2018 was signed into law by the President on 18 September 2018.

The Health (Regulation of Termination of Pregnancy) Bill 2018 seeks to give effect to the decision of the people to permit the Oireachtas to make laws governing the regulation of termination of pregnancy.

**Purpose of Bill**

The main purpose of the Health (Regulation of Termination of Pregnancy) Bill 2018 is to set out the law governing access to termination of pregnancy in this country. The legislation permits termination to be carried out in cases where there is a risk to the life, or of serious harm to the health, of the pregnant woman, where there is a condition present which is likely to lead to the death of the foetus either before or within 28 days of birth, and without restriction up to 12 weeks of pregnancy.

The Bill is divided into three parts.

**Part 1** deals with PRELIMINARY AND GENERAL PROVISIONS and covers sections 1 to 8.

*Section 1 - (Short title and commencement)*

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

*Section 2 – (Definitions)*

*Section 2* provides for the definition of certain terms used in the Bill.

*Section 3 - (Regulations)*

This section makes provision for the laying of the regulations before the Houses of the Oireachtas. *Subsection (1)* provides that the Minister may issue regulations for the purpose of any matter referred to in the Bill as prescribed or to be prescribed.

*Subsection (2)* gives power to the Minister regarding the content of any regulations to be issued under the aegis of the Bill.

*Subsection (3)* specifies that any regulations made under the terms of the Bill must be brought before the Houses of the Oireachtas for approval.

#### *Section 4 - (Expenses)*

*Section 4* allows for approved expenses associated with the administration of the Bill to be paid for from public funds.

#### *Section 5 - (Offences)*

*Section 5, subsection (1)* states that it shall be an offence for a person, by any means whatsoever, to intentionally end the life of a foetus, otherwise than in accordance with the provisions of this Bill.

*Subsection (2)* provides that it shall be an offence for a person to prescribe, administer, supply or procure any drug, substance, instrument apparatus or other thing which is intended to be used with the intent of ending the life of a foetus or being reckless about whether it might be used for that purpose, otherwise than in accordance with the provisions of this Bill.

*Subsection (3)* clarifies that *subsections (1) and (2)* do not apply to a pregnant woman ending or attempting to end her own pregnancy.

*Subsection (4)* states that it is further an offence for a person to aid, abet, counsel, or procure a pregnant woman to intentionally end or attempt to end the life of that pregnant woman's foetus otherwise than in accordance with the provisions of the Bill.

*Subsection (5)* states that a person who is found guilty of an offence will be liable on conviction on indictment to a fine or imprisonment for a term not exceeding 14 years, or both.

*Subsection (6)* provides that a prosecution for the offence may only be brought by or with the consent of the Director of Public Prosecutions.

*Subsection (7)* clarifies that nothing in *subsection (4)* will prevent or restrict access to services lawfully carried out outside the State.

#### *Section 6 - (Offence by body corporate)*

*Section 6* clarifies that offences under this Bill also apply to a body corporate.

#### *Section 7 - (Repeals)*

*Section 7* repeals (a) *sections 16 and 17(1)* of the Censorship of Publications Act 1929; (b) *sections 7(b) and 9(1)(b)* of the Censorship of Publications Act 1946; (c) *section 10* of the Health (Family Planning) Act 1979; (d) the Regulation of Information (Services Outside the State for Termination of Pregnancy) Act 1995; (e) and the Protection of Life During Pregnancy Act 2013 (the Act of 2013).

#### *Section 8 - (Transitional provisions)*

*Section 8, subsection (1)* puts transitional provisions in place to cover (a) situations where a review committee has been convened under the Act of 2013 and is ongoing at the time the present Bill comes into effect, to allow the review committee to continue in operation as if it had been established under *section 16* of the current legislation, so that *sections 17 and 18* of this legislation shall apply and have effect in relation to the review; and (b) to oblige the Health Service Executive (HSE) to prepare and submit a final report to the Minister on any reviews not previously reported upon, not later than 6 months after the commencement date of the present legislation.

*Subsection (2)* sets out the meaning of “commencement date” for the purposes of this section.

**Part 2** deals with TERMINATION OF PREGNANCY and covers sections 9 to 21.

*Section 9 – (Definitions (Part 2))*

*Section 9* provides for the definition of certain terms used in Part 2 of the Bill.

*Section 10 - (Risk to life or health)*

*Subsection (1)* of *section 10* states that a termination of pregnancy may be carried out where two medical practitioners, having examined the pregnant woman, are of the reasonable opinion formed in good faith that (a) there is a risk to the life, or of serious harm to the health, of the pregnant woman; (b) the foetus has not reached viability; and (c) it is appropriate to carry out the termination of pregnancy in order to avert the risk concerned.

*Subsection (2)* specifies that (a) one of the two medical practitioners must be an obstetrician; and (b) the other must be an appropriate medical practitioner.

*Subsection (3)* provides that a termination of pregnancy may not be carried out unless each of the medical practitioners involved has certified the matters set out in *subsection (1)*.

*Subsection (4)* states that the certified termination of pregnancy must be carried out (a) by the certifying obstetrician referred to in *subsection (2)(a)*; or (b) where the second medical practitioner is also an obstetrician, either obstetrician may carry out the procedure.

*Section 11 - (Risk to life or health in emergency)*

*Subsection (1)* provides that a termination of pregnancy may be carried out by a medical practitioner who, having examined the pregnant woman, is of the reasonable opinion formed in good faith that (a) there is an immediate risk to the life or of serious harm to the health of the pregnant woman, and (b) it is immediately necessary to carry out the termination of pregnancy in order to avert that risk (i.e. in an emergency situation).

*Subsection (2)* provides that, if medically necessary, the certification for the procedure may be issued by the medical practitioner (a) before the procedure is carried out, or (b) after the termination of pregnancy has been carried out, but no later than 3 days afterwards.

*Section 12 – (Condition likely to lead to death of foetus)*

*Section 12, subsection (1)* states that a termination of pregnancy may be carried out where two medical practitioners, having examined the pregnant woman, are of the reasonable opinion formed in good faith that there is a condition present affecting the foetus that is likely to lead to the death of the foetus either before, or within 28 days of, birth.

*Subsection (2)* specifies that (a) one of the two medical practitioners must be an obstetrician; and (b) the other must be a medical practitioner of a relevant specialty.

*Subsection (3)* states that the termination of pregnancy may not be carried out unless each of the medical practitioners involved has certified the matters set out in *subsection (1)*.

*Subsection (4)* states that the certified termination of pregnancy must be carried out (a) by the certifying obstetrician referred to in *subsection (2)(a)*; or (b) where the second medical practitioner is also an obstetrician, either obstetrician may carry out the procedure.

*Section 13 – (Early pregnancy)*

*Section 13 subsection (1)* provides that a termination of pregnancy may be carried out by a medical practitioner who, having examined the pregnant woman, is of the reasonable opinion formed in good faith that the pregnancy concerned has not exceeded 12 weeks of pregnancy.

*Subsection (2)* states that the termination of pregnancy may not be carried out unless (a) the medical practitioner involved has certified the matters set out in *subsection (1)* and (b) at least 3 days have elapsed from the date of certification referred to in (a).

*Subsection (3)* states that the medical practitioner in *subsection (1)* shall make arrangements necessary for the carrying out of the termination of pregnancy as soon as possible once the 3 day period has elapsed and before the pregnancy has exceeded 12 weeks of pregnancy.

*Subsection (4)* sets out the meaning of the term “12 weeks of pregnancy” for the purposes of this section.

*Section 14 - (Application for review of medical opinion)*

*Subsection (1)* makes it the responsibility of a medical practitioner who has not given an opinion when requested under *section 10(1)* or *12(1)*, or who has not given an opinion such as would be required for certification under *section 10* or *12* to inform the pregnant woman in writing that she may apply for a review of this decision.

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

*Section 15 - (Establishment of a review panel, etc.)*

*Section 15, subsection (1)* provides that the HSE must establish and maintain a panel of medical practitioners for the purpose of establishing a review committee when one is required.

*Subsection (2)* specifies that members of the review panel must be (a) medical practitioners registered on the Specialist Division of the Medical Council register, and (b) medical practitioners of relevant specialties.

*Subsection (3)* indicates that the HSE shall revoke the appointment of a member of the panel who is no longer a medical practitioner.

*Section 16 - (Establishment of review committee, etc.)*

*Subsection (1)* provides that the HSE has a duty to establish and convene a committee drawn from the review panel to review the relevant decision referred to in *section 14(2)* no later than 3 days from the date the application is received.

*Subsection (2)* specifies that a review committee will consist of (a) an obstetrician, and (b)(i) an appropriate medical practitioner where the decision relates to *section 10(1)*, or (b)(ii) a medical practitioner of a relevant specialty where the decision relates to *section 12(1)*.

*Subsection (3)* excludes medical practitioners from sitting on the review committee if they have been previously consulted by the pregnant woman in relation to the matter that is the subject of the review.

*Section 17 - (Review of relevant decision)*

*Section 17* sets out of the functions of the review committee. *Subsection (1)* specifies that the review committee shall complete its review as soon as possible but no later than 7 days from the date of its establishment.

*Subsection (2)* provides that where the committee, having examined the pregnant woman, has carried out its review and is of the reasonable opinion formed in good faith that (a)(i) there is a risk to the life or of serious harm to

the health of the pregnant woman, (ii) the foetus has not reached viability, and (iii) it is appropriate to carry out a termination of pregnancy to avert the risk in *subparagraph (i)*; or (b) there is a condition present affecting the foetus that is likely to lead to the death of the foetus either before or within 28 days of birth, then the committee shall jointly certify the opinion and inform the woman and where relevant the applicant on her behalf, and the HSE in writing as soon as possible.

*Subsection (3)* specifies that the review committee which made the certification is responsible for making the necessary arrangements for the carrying out of the termination of pregnancy to which the certification relates, in accordance with *section 10* or *12* as the case may be.

*Subsection (4)* states that where a review committee has carried out its review and is not satisfied that the conditions in *subsection (2)(a)* or *(b)* apply, it shall inform the woman and where relevant the applicant on her behalf, and the HSE, in writing as soon as possible.

*Subsection (5)* clarifies that ‘jointly certify’ means that both members of the review committee make the certification concerned.

#### *Section 18 - (Procedures of review committee)*

*Section 18* sets out the general procedures for the committee when reviewing a decision. *Subsection (1)* specifies that the committee may issue written directions to a medical practitioner to (a) produce documents or records to the committee or (b) to appear before the committee to assist and answer questions.

*Subsection (2)* provides that the pregnant woman or a person acting on her behalf is entitled to be heard by the committee, and should she so wish the committee shall make arrangements to enable her, or a person acting on her behalf, to be heard.

*Subsection (3)* states that the review committee may, subject to the provisions of the Bill, determine its own procedures.

*Subsection (4)* states that the HSE shall arrange administrative facilities so that the committee may perform its functions.

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

*Subsection (6)* provides for payment of a person called to attend the committee under *subsection (1)* by the HSE, subject to similar conditions laid out in *subsection (5)*.

*Subsection (7)* states that it is an offence not to comply with a direction under *subsection (1)*, the penalty for which is a class C fine.

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

#### *Section 19 - (Report by Executive on operation of reviews)*

*Subsection (1)* provides that the HSE shall submit a report on the operation of reviews to the Minister by 30 June each year, to cover the operation of reviews under the Bill in the year gone by, and that copies of the report must be laid before the Houses of the Oireachtas.

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

*Subsection (3)* specifies that certain forms of information shall be excluded from the report by the HSE, in order to prevent the identification of: (a) a woman who has made an application under *section 14(2)* or has had an application made on her behalf, (b) a person who has made an application on her behalf; or (c) a medical practitioner who has (i) made a relevant decision; (ii) carried out a review; (iii) assisted a committee in a review, or (iv) carried out a termination of pregnancy following a review.

*Subsection (4)* indicates that the HSE must arrange for publication of the report in an appropriate form as soon as practicable after it has been laid before the Houses of the Oireachtas.

*Section 20 - (Form of certification, etc.)*

*Section 20 subsection (1)* provides that certification under the Bill must (a) be made in the prescribed form and manner and (b) contain prescribed information, to include the (i) confirmation of whether the termination of pregnancy was carried out as the result of a review and (ii) for *section 10*, *11* or *12* certifications, the clinical grounds for certifying the termination of pregnancy.

*Subsection (2)* sets out the definition of the term “*certification*” for the purposes of this section.

*Section 21 - (Notifications)*

*Section 21, subsection (1)(a)* specifies that where a termination of pregnancy referred to in *sections 10, 11, 12* or *13* is carried out, the medical practitioner who carried out the termination of pregnancy shall keep or cause to be kept a record in the prescribed form and manner of (i) the carrying out of the termination of pregnancy and (ii) the information specified in *subsection (2)*.

*Subsection (1)(b)* states that the medical practitioner must forward, or cause to be forwarded, a copy of the record, or a prescribed part of the record, to the Minister in the prescribed manner no later than 28 days after the termination of pregnancy has been carried out.

*Subsection (2)* provides that the record to be kept and forwarded to the Minister must contain the following information: (a) the Medical Council registration number of the medical practitioner who carried out the procedure; (b) whether the termination of pregnancy was carried out in relation to a *section 10*, *section 11*, *section 12* or *section 13* certification and the Medical Council registration numbers of each of the medical practitioners who made the certification concerned; (c) the county of residence, or the place of residence where she lives outside the State, of the pregnant woman concerned; and (d) the date on which the termination of pregnancy was carried out.

*Subsection (3)* indicates that the Minister shall prepare a report by 30 June each year on the notifications received in the year gone by and lay this report before the Houses of the Oireachtas.

*Subsection (4)* provides that the Minister must publish the report in an appropriate form as soon as practicable after it has been laid before the Houses of the Oireachtas.

*Subsection (5)* specifies that material that may identify (a) the medical practitioner who carried out the termination of pregnancy or (b) the woman concerned shall be excluded from the report.

*Subsection (6)* sets out the meaning of the term ‘notification’ for the purposes of this section.

**Part 3** deals with MISCELLANEOUS provisions and covers sections 22 to 27.

*Section 22 - (Consent)*

*Section 22* states that this Bill does not affect any current legal provisions relating to consent to medical treatment. The intention is that the provisions of the Bill will operate within the existing legal provisions on consent for medical treatment.

*Section 23 - (Conscientious objection)*

*Section 23 subsection (1)* clarifies that, subject to *subsections (2) and (3)*, medical practitioners, nurses and midwives will not be obliged to carry out or assist in carrying out terminations of pregnancy in accordance with *section 10, 12 or 13* if they have a conscientious objection to doing so.

*Subsection (2)* states that *subsection (1)* does not affect any duty to take part in a termination of pregnancy in accordance with *section 11*, where an emergency situation exists.

*Subsection (3)* provides that a person who has a conscientious objection under *subsection (1)* shall, as soon as possible, arrange for the transfer of care of the pregnant woman concerned so that she may avail of the termination of pregnancy concerned.

*Subsection (4)* sets out the meanings of the terms “Act of 2011”, “midwife” and “nurse” for the purposes of this section.

*Section 24 - (Prohibition against receiving special benefits or advantages)*

*Section 24 subsection (1)* states that a person shall not receive or agree to receive any special benefit or advantage in consideration of a termination of pregnancy within or outside the State, or for making any arrangements for a termination of pregnancy within or outside the State.

*Subsection (2)* states that a person who contravenes *subsection (1)* shall be guilty of an offence.

*Subsection (3)* states that a person who is guilty of an offence under *subsection (2)* shall be liable on summary conviction to a class A fine.

*Subsection (4)* sets out the meanings of certain terms for the purposes of this section.

*Section 25 – (Amendment of Health Act 1970)*

*Section 25* amends the Health Act 1970; *subsection (1)* amends *sections (a) 47A, (b) 51, (c) 53C (9) and (e) 67C (7)* of the 1970 Act to cover services for termination of pregnancy and to make reference to the Health (Regulation of Termination of Pregnancy) legislation.

*Subsection (1) (d)* makes provision for a new *section 62A* to be added to the 1970 Act, to provide termination of pregnancy services, otherwise than as in-patient services, on a universal basis for women who are ordinarily resident in the State, and to ensure that specified drugs, medicines, medical and surgical appliances for the purpose of termination of pregnancy may be supplied without charge.

*Section 26 – (Amendment of section 33 of Nursing Homes Support Scheme Act 2009)*

*Section 26* amends *section 33* of the Nursing Homes Support Scheme Act 2009, to include a reference to the Health (Regulation of Termination of Pregnancy) legislation.

*Section 27 – (Amendment of Health (Pricing and Supply of Medical Goods) Act 2013)*

*Section 27* amends *sections 20* and *23* of the Health (Pricing and Supply of Medical Goods) Act 2013, to include references to the amended Health Act 1970, to ensure that medication or other equipment needed for the termination of pregnancy may be provided free of charge.

*Section 28 – (Amendment of Schedule to Bail Act 1997)*

*Section 28* amends the Schedule to the Bail Act 1997 to include a reference to offences under the Health (Regulation of Termination of Pregnancy) legislation.

*An Roinn Sláinte,*

*Meán Fómhair, 2018.*