



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*  
(OFFICIAL REPORT—*Unrevised*)

*Insert Date Here*

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## SEANAD ÉIREANN

*Déardaoin, 18 Iúil 2013*

*Thursday, 18 July 2013*

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

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*Machnamh agus Paidir.  
Reflection and Prayer.*

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### **Business of Seanad**

**An Leas-Chathaoirleach:** I have received notice from Senator Trevor Ó Clochartaigh that, on the motion for the Adjournment of the House today, he proposes to raise the following matter:

Cén uair atá sé i gceist ag an Aire Ealaíon, Oidhreachta & Gaeltachta scéim faoi alt 11 d'Acht na dTeangacha Oifigiúla 2003, a dhaingniú leis an Gníomhaireacht Bainistíochta an Chisteáin Náisiúnta agus soiléiriú cén uair a iarradh orthu dréacht scéim a leagan faoina bhráid agus cén chúis nach bhfuil scéim daingnithe go fóili?

I regard the matter raised by the Senator as suitable for discussion on the Adjournment and it will be taken at the conclusion of business.

### **Order of Business**

**Senator Maurice Cummins:** The Order of Business shall be No. 1, motion re proposal for a directive of the European Parliament and the Council on fight against fraud and the Union's financial interests by means of criminal law, to be taken on the conclusion of the Order of Business without debate; No. 2, motion re enforcement co-operation and training (EUROPOL) to be taken on the conclusion of No. 1 without debate; No. 3, Protection of Life During Pregnancy Bill 2013 - Committee Stage (resumed), to be taken at 11.45 a.m. and to adjourn at 2.15 p.m., and to resume again at 4 p.m.; No. 4, Health (Amendment) Bill 2012 - Report Stage (amendments from Dáil Éireann), to be taken at 2.15 p.m. and to conclude no later than 3 p.m.; No. 5, Courts and Civil Law (Miscellaneous Provisions) Bill 2013 - Report Stage (amendments from Dáil Éireann), to be taken at 3 p.m. and to conclude no later than 4 p.m.

**Senator Paschal Mooney:** I ask the Leader to indicate how he sees the Protection of Life During Pregnancy Bill 2013 progressing. Earlier this week the British House of Commons published a report on the horsemeat scandal, which is still very much alive despite the lack of

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media coverage. It is alive in the context of a lack of prosecutions. The report was critical of both UK and Irish Governments for what it described as lack of action in exposing fraudulent activities in the meat industry. One member of the committee, Margaret Ritchie, MP, of the SDLP, went further, stating that within the committee criticism had been expressed about Ireland. The Irish interests were well-defended in that it was Ireland that initially exposed this scandal but according to the Minister, Deputy Coveney, who was on the media earlier this week, there is one prosecution pending. That is not enough. I would hate to think that people within the industry who acted fraudulently will get away with this just because the matter seemingly has been resolved. Restrictive procedures have been put in place to ensure this does not happen again. In that context, the Minister, Deputy Coveney, is currently before the agriculture committee discussing the recent CAP reform decisions. The Leader might consider inviting the Minister to the House in the new session. It would be an opportunity also for him to expand on the horsemeat scandal in the context of the questions I have raised.

I was one of the members present at the transport committee meeting yesterday, and it has been widely reported in today's media, who raised the issue of the lack of sufficient funding for the maintenance of our primary national road network as distinct from our local and regional road network. On the previous occasion I raised that with Fred Barry, the chief executive officer, he indicated some concern in the National Roads Authority about the lack of adequate funding to ensure that the road maintenance programme would be maintained. The amounts we are talking about are running to billions of euro. I appreciate fully that the Government and the economy does not have that sort of resource but it seems to me, and I have made this point previously, that that it is "short-termism". A way should be found to come up with a sufficient amount of money, whether from the European Investment Bank or under the proposal now emanating from Government, to use some of the €1 billion promissory note savings on capital programmes because we must maintain our national road network, which is a vital artery in terms of our entire economic activity, to the required standards. That the funding has been cut from €600 million last year to €300 million when €1.2 billion is needed gives some indication of the scale of the problem. It would be worthwhile if the Leader invited the Minister, Deputy Varadkar, to the House in the new session to outline the Government's thinking on this because it will be coming at a time when the Budget Estimates are more or less confirmed and it might give some succour, not only to private motorists but to the commercial life of this country, that our road network would not continue to crumble in the manner in which it now appears to have done, as outlined by some engineers.

**Senator Ivana Bacik:** I welcome the publication yesterday by the Minister, Deputy Burton, of the Bill for gender recognition, which will finally provide a way in which transgender persons can achieve recognition of their gender. This Bill has been a long time coming. There was a very detailed consultation process, and I very much look forward to having a debate on it in this House, but we need to move on also with seeking to legalise marriage for same-sex couples because without that it is difficult to see how the new gender recognition legislation will apply to persons who are already married. That has been a real obstacle in trying to achieve the final drafting of that Bill. In a way that issue has been left unresolved pending the referendum on marriage equality that we all hope will happen next year.

I also welcome the publication this week of the new Bill on assisted decision-making and capacity to replace a very outdated wards of court system dating back to 1871. We have had extensive hearings on that in the justice committee on the previous heads of a Bill. Again, it has been a long time coming and I am glad to see it has been published. I hope we will debate

it early in the autumn.

I call on the Leader for a debate, as other Members have done, on the Magdalen institutions but in particular on ways in which religious orders might be compelled legally to provide contributions to the redress fund. The Taoiseach and others have said rightly that there does not appear to be any way legally to compel them but a creative debate on ways in which compulsion could be brought to bear would be very useful. Today's edition of *The Irish Times* reports that the assets of the four religious orders that ran the Magdalen laundries, and profited for many years from the slave labour of the women incarcerated there, on the last occasion they were valued, were worth €1.5 billion. It is clear there are assets available and it seems extraordinary that there is no legal way for the State to compel some sort of recovery from those religious orders of the moneys that will be expended on the redress scheme, given the extent of those assets.

I call for a debate in the autumn on the MABS service in light of the worrying delays reported in accessing MABS, particularly with the new insolvency legislation coming into place. Increasing numbers of people will be looking for the services of MABS and it is a worry to hear there are real inconsistencies in the length of time people must wait for an appointment with MABS across the country. Some of it may be to do with management in particular offices but if there is a resourcing issue we need to examine that. I ask the Leader for a debate on that again early in the autumn.

**Senator Sean D. Barrett:** I wish a happy 95th birthday to Nelson Mandela. I have here the tributes to him when he got his honorary degree in Trinity College Dublin in 2000. Professor John Luce stated: "With all due respects, I now present to you our past century's most outstanding champion of human rights, His Excellency, Nelson Mandela." The accolade to him concludes:

You see before you a man of exceptional tenacity and outstanding magnanimity whom I think it is appropriate to salute in the old Roman fashion as the father of his country. As he inscribes his name on our Roll of Honour, see to it that the thunder of your applause re-echoes through this hall.

His proposers were two great human rights advocates, one a former Member of this House, Senator Trevor West, and Professor Kader Asmal. It is worth noting also that long before that the students named their headquarters in Trinity, when Nelson Mandela was in the Robben Island jail, as Nelson Mandela House. It is a terrific occasion for us to celebrate one of the great people of recent times.

I express my support for the Government again in dealing with banking. I base that on the Which? survey of banking, which shows that the two worst banks are Bank of Ireland and Ulster Bank. Bank of Ireland has 41% approval while Ulster Bank has 45%. We all realise the immense problems these people have created for the Government, and I assure the Government that any measures to reform these awful institutions will have support from this side of the House.

Regarding Senator Mooney's comments about roads, the Leader may recall that when we discussed it with the Minister of State, Deputy O'Dowd, on a previous occasion he said he would come back with a measure to change the way in which heavy goods vehicles are taxed from the unladen weight of the vehicle to the laden weight per axle. He was not against the idea in total but I am informed by civil engineers that these inappropriately taxed commercial

vehicles account for the bulk of the damage done to roads. The research is 40 or 50 years old. It is time to change the basis on which we tax commercial vehicles to reflect the fact that in times of budget constraints we wish to reward vehicles that do not damage the highways, impose the appropriate levies on those that do and hope the fleet will gradually change to ones which do not crack the road surface. A road tax system could be designed to reflect that. The Minister of State, Deputy O'Dowd, was not opposed to the idea. He said he would examine it and in view of what was presented in the transport committee yesterday and Senator Paschal Mooney's comments, it is now time to reopen the file on that. We might debate it in the new term or perhaps the Minister of State might consider it is worth doing without debate.

**Senator Paul Coghlan:** I am concerned, as I know all Members are, about the absence of MABS and the Irish League of Credit Unions from the Central Bank pilot debt scheme. We learned this week that the well-respected Government-funded body, MABS, has been forced out of the new pilot resolution scheme being set up by the Central Bank because lenders were not happy with their part in the process. That is a worrying development. *The Irish Independent* quoted a MABS spokesperson as saying they were booted out of the scheme because the MABS approach to debt resolution was not acceptable to certain members. MABS had been proposing a more holistic approach to debt resolution and apparently this was not acceptable to some banks. It now looks as if the Central Bank will seek to get a United Kingdom debt charity or a debt collection service to get involved in place of MABS. That is a very worrying development because it means that the pilot process set up at the initiative of the banks now only comprises the Central Bank and the lenders. It is devoid of the involvement of those who are concerned about financial services from the perspective of the borrower and the wider general public. The Irish League of Credit Unions opted out because its members regarded it as too one-sided against borrowers. Now the banks have succeeded in getting MABS excluded because they do not like the proposals from MABS. We need to become involved and to find out more about the situation. We need to ensure that the Central Bank is not being led by the nose by some banks.

**Senator Sean D. Barrett:** Hear, hear.

**Senator Paul Coghlan:** We all accept that this is a very important initiative. It is a major concern that the Central Bank is apparently allowing the banks to dictate terms and set the parameters for the scheme. This partnership and close co-operation in the past, as we know, has yielded woeful results for the consumer and the wider public. I call on the Governor of the Central Bank and the heir apparent to Mr. Elderfield, Ms Fiona Muldoon, to show that the Central Bank is independent of the banks - which it is meant to be - and can resist their attempts to mould an initiative in a way which sets the lenders' agenda. I call on the Leader to arrange an early debate. We have asked for this debate before and I acknowledge it has been difficult to arrange. I suggest that we have this debate very early in the new term because this is a most important subject.

**Senator Terry Leyden:** I second Senator Barrett's proposal to send the best wishes of the House to Nelson Mandela on his 95th birthday today. This occasion is wonderful for the world and it is being celebrated throughout the world. It is proposed in South Africa that people dedicate 67 minutes of their time today to helping others in honour of Nelson Mandela. It is a lovely gesture and I hope it will be repeated here. I recall the joint sitting of the Houses of the Oireachtas which was addressed by Nelson Mandela. I was a Member of the Dáil at that time. It was a great honour to welcome him to Ireland. He also attended the Special Olympics in 2003. The years he spent in Robben Island and his dedication to the ending of apartheid was

an inspiration for people throughout the world and throughout America, where apartheid, in a sense, is still being exercised in many areas, as highlighted by the recent tragic death of a young black person. Kadar Asmal was a lecturer in Trinity College and subsequently became Minister for Water in South Africa. We should also recall today those heroic workers in Dunnes Stores who boycotted South African fruit in support of the anti-apartheid movement. Those women should also be recognised today, on Nelson Mandela's birthday, for their contribution. They were absolutely courageous in the stand they took.

**An Leas-Chathaoirleach:** Has the Senator a question for the Leader?

**Senator Terry Leyden:** I ask the Leader to convey the best wishes of this House in an e-mail to the former President of South Africa for a very happy birthday and to thank him for his contribution to the human race through his work.

**Senator Aideen Hayden:** I support the comments of my colleague Senator Paul Coghlan on the independence of the Central Bank and the apparent message that the interests of the lenders are paramount and will not in any way be subservient to the interests of the borrowers. On a number of occasions I have called for a debate at which the Minister for Finance would be present in order to discuss the banking system. I do not think that letters to say the code of conduct on mortgage arrears is none of his business are an adequate and sufficient response. A debate on banking is critical in the context of where we want to go in September. A resolution of the mortgage crisis is one of the most pressing issues, as discussed over the past months, which will not go away over the summer and will be waiting for us in September. The latest IBF figures on mortgage lending showed that lending is down by 20%, from 2,630 mortgages in the first quarter of last year to 2,068 mortgages in the first quarter of this year. I am sick of seeing the advertisements everywhere from the various pillar banks stating that they are open for business and please come in because they are dying to lend money. This statement is misleading and deceptive. Unless we get the mortgage market operational again, there will be major difficulties.

I support the comments of the Society of Chartered Surveyors Ireland which suggests the Government should introduce a mortgage credit review body to ensure fairness and transparency in the mortgage market. It is a very interesting call, which I support.

**Senator David Norris:** I support the calls for moral pressure to be applied to the various orders of nuns. I understand that some orders have investment portfolios in hedge funds and elsewhere of hundreds of millions of euro. It seems to me to be grossly unchristian not to make this available to people who have been mistreated and to lump the burden on taxpayers who are already very heavily overburdened.

I share the concerns expressed on the Government side about MABS. It is a wonderful service but it is grossly overstretched and it has not been properly funded. People looking for appointments are being told they will not be seen until Christmas. The banks have now been unleashed upon them and with the passing of the Insolvency Bill they can make any number of harassing telephone calls. I voted against that provision. I am afraid this will lead to people taking their own lives.

I welcome the Bill on gender recognition, but it has some very serious flaws. For example, the plight of younger people going to school has not been sufficiently addressed. More worrying, this is despite the evidence given to the Joint Committee on Health and Children by Dr. Crowley, the HSE national director for quality and patient safety, who said that the HSE en-

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dorses a gender recognition process which places the responsibility for self-declaration on the applicant rather than on the details of a medical certificate diagnosis. In doing so, the emphasis is placed on the process of legal recognition of that self-declaration as opposed to the legal recognition of the medical certificate or diagnosis. They are flying in the face of their own expert advice.

I campaigned on the divorce referendum. Just as I said about abortion, I said that nobody is being forced to have a divorce, but the worrying aspect is that it seems they are. This legislation provides that people who undergo gender reassignment - even if they are in a happy relationship from which the sexual element may have faded out, they may have children and want to stay together for the sake of the family - the State is now forcing them to divorce. This is forced, involuntary divorce and it is utterly wrong. It should be the decision of the two people involved. Why should the State destroy that wish if they want to stay together as a family? It is absurd.

**Senator Cáit Keane:** I welcome the Bill on gender recognition and I acknowledge that some flaws exist, but the provision on age could be re-examined. Yesterday I raised the issue of the orders of nuns who are not paying up. I then discovered that they had €1.5 billion in assets and I was even more incensed.

Brendan Nix, the coroner for Limerick, spoke on “Morning Ireland” this morning. In his opinion the verdict of suicide should be officially recorded at inquests as this is not the current practice. The pathological evidence of cause of death is recorded. In his view this serves no purpose and actually conceals the real suicide figures. The House has debated the issue of suicide but we need to do more than talk about it. We need to reach out to people who are suffering. Services are in place but information on these services should be available to those who are suffering. Brendan Nix is also a senior counsel. I ask the Leader to ask the Minister if the practice in inquests could be changed. More than 500 people died from suicide last year and the figure is increasing.

*11 o'clock*

We must do something about it other than talk about it in the House. If we do not have real statistics, we will not know where we are going or where we have come from, but we know we have to do something. Many issues have been raised. Young people, in particular, are suffering. We should publicise the services available more and ensure we can reach out.

MABS was mentioned in the context of people in trouble with debt and I support what has been said. An official of MABS said on radio this morning that anybody with an emergency would skip the queue. People should not fear that they cannot go to MABS, as they will be seen straightaway in an emergency. The official made this point loud and clear because he did not want people to be scared that they would have to wait three months if they had a real problem. A MABS official is always at the end of the telephone. I want to make this clear also.

**Senator Mary Moran:** I, too, welcome the announcement made yesterday by the Minister for Justice and Equality, Deputy Alan Shatter, and the Minister of State, Deputy Kathleen Lynch, on the publication of the Assisted Decision-Making (Capacity) Bill, for which I have called on many occasions in the past two years. It will replace the wards of court system with a legal framework to support people in exercising their decision-making capacity in order that they can better manage their personal welfare, property and financial affairs. It will also clarify the law for carers and enable individuals to have greater autonomy, where possible, in decision-

making in order that they can better manage their affairs.

Yesterday I raised the issue of the decision made by the four religious orders not to support financially the fund for the survivors of the Magdalen laundries. I read yesterday exactly how much money was in the pot, or how much money they had. We need a debate on this issue now to see if there is any way the religious orders can be compelled to contribute.

I refer to a comment made during a debate yesterday which was extremely offensive to people with disabilities and any person with any knowledge of same. During the debate on the Protection of Life During Pregnancy Bill yesterday Senator Brian Ó Domhnaill said: “The Senator is depriving future Special Olympic athletes of being born.” I find these comments absolutely appalling. The amendment under discussion at the time was on fatal foetal abnormalities. It had nothing to do with disability.

**An Leas-Chathaoirleach:** The Senator has made her point.

**Senator Mary Moran:** I utterly resent anybody using disability as a-----

**An Leas-Chathaoirleach:** I remind the Senator that the debate will continue. It would be more appropriate to make her point later.

**Senator Mary Moran:** I call on Senator Brian Ó Domhnaill to withdraw the comment and apologise to the House.

**An Leas-Chathaoirleach:** As he is not present, bí cúramach.

**Senator David Cullinane:** Yesterday I raised the issue of the Magdalen laundries and the refusal of the religious orders to face up to their moral, ethical and financial responsibilities to the women concerned. I also asked the Leader if he would impress upon the Taoiseach the need for him to be more forceful on the issue. I was not at all persuaded by the Taoiseach’s contribution in the Dáil yesterday. The State has a responsibility to be much more insistent, to say the least, with the religious orders to force them to face up to their responsibilities. Equally, the religious orders have to look to themselves. If they seek redemption and want to redeem themselves for the horrors of the past and what the women concerned went through in the Magdalen laundries, they must face up to their responsibilities and contribute to the redress scheme.

There is also the issue of the survivors of Bethany Home. They also deserve justice. It was a disgrace that they were excluded from the residential institutions redress scheme. We know Bethany Home was not just a mother and baby home but that it was also a home for children and bore all of the characteristics of the Magdalen laundries and the inhumane treatment people suffered. The State inspection of Bethany Home, under the Maternity Home Act, showed that there was horrendous neglect. Again, the State has a responsibility to face up to its failure to protect children and women. The survivors also need justice. I understand the Taoiseach gave a commitment yesterday that the Cabinet would discuss the issue next week. I hope we will all use our collective influence to make sure the Taoiseach does the right thing by the survivors of Bethany Home. He made a very powerful and emotive speech a number of months ago in the Dáil on the survivors of the Magdalen laundries and it was universally accepted and commended. He must also do the right thing by the survivors of Bethany Home. Will Senators and the Leader raise this issue with the Taoiseach in advance of the Cabinet meeting next week?

**Senator Michael Mullins:** I join Senators in extending good wishes to Nelson Mandela on

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his 95th birthday. As was said, he is the inspirational world leader of our time. Many leaders of the strong nations of the world would do well to model their behaviour and actions on his as they struggle to find peace in the troubled parts of the world.

I welcome the renewed efforts by the Taoiseach to reduce unemployment levels. I understand he will unveil a plan today to get 75,000 off the live register by 2015. We regularly speak in this House about the totally unacceptable levels of unemployment, even though some progress has been made in the past 12 months. We need to give people hope and look at all aspects of the economy to see how we can assist it in reaching its job creation potential. I hope the forthcoming budget will be innovative and geared towards helping the creation of badly needed employment, in particular in small businesses and throughout the retail sector.

We need to see the construction sector return to sustainable levels. I very much welcome the fact that the Construction Contracts Bill has been passed by Dáil Éireann and pay particular tribute to our colleague, Senator Feargal Quinn, for his work on that Bill. We have seen a drop of 200,000 people employed in the construction sector in recent years and badly need to rebuild trust in that sector, in particular for small contractors and small business people involved in it. In complimenting Senator Feargal Quinn, I hope this will be the start of a gradual return to sustainable economic levels in the construction sector and that many of the Government-sponsored projects, in particular the building of schools and other infrastructural projects, will be of significant benefit to many of the small contractors who lost out significantly as a result of, and whose livelihoods were ruined by, ruthless operators. Let us ensure this never happens again and that we get the construction sector back to sustainable levels.

**Senator John Kelly:** I call on the Leader to arrange a debate when we come back in September on the future of rural Ireland. Like many other Members, I am very concerned about its future because there is nothing happening there. We see economic activity in Dublin and the large cities, but there is nothing happening in the west. Anything west of the River Shannon is forgotten about. There is probably a need to consider having a Minister for rural affairs. I was concerned when I read newspaper reports yesterday that there was talk of rowing back on the provision of broadband in rural Ireland. That would be a retrograde step at a time when EirGrid is putting up pylons throughout the country. In rural Ireland, the infrastructure serves only to provide a conduit for energy for the bigger cities. At the same time, we say there should be community gain where pylons and wind turbines are accepted. If pylons are to crisscross the landscape, broadband should be provided on those pylons for rural Ireland. There should be joined-up thinking on the part of the Minister and EirGrid to provide these things. This warrants an extensive debate. Anybody from rural Ireland knows that towns are dying on their feet. It has been said repeatedly in the House. It must be dealt with as a matter of urgency. I call on the Leader to provide for a debate early in September.

**Senator Maurice Cummins:** The Acting Leader of the Opposition, Senator Mooney, raised the question of the horsemeat scandal, which was raised by Senator O'Donovan in recent days. I note his points. The Minister for Agriculture, Food and the Marine is addressing the Joint Committee on Agriculture, Food and the Marine on CAP negotiations. I hope the Minister will attend the House early when we return to discuss agriculture, during which debate the particular matter of the horsemeat issue can be discussed. I note the Senator's question on the Joint Committee on Transport and Communications, which is discussing road maintenance. I will seek to have the Minister for Transport, Tourism and Sport, Deputy Varadkar, address the problem and provide the House with his opinions.

Senators Bacik, Moran and Norris spoke about the publication of the Gender Recognition Bill, which I understand will be coming before the House in the autumn. There will be a comprehensive debate and we will all have ample time to discuss it. Senators Moran and Bacik also welcomed the publication of the Assisted Decision-making (Capacity) Bill, which is very comprehensive. I am sure it will be discussed and debated at length in the House in the autumn. Senator Bacik and others spoke about the Magdalen laundries, which matter was also raised on the Order of Business yesterday. I stated then that there is no legal responsibility on the religious institutions. Certainly, they have a moral responsibility and I call on them to make a significant financial contribution.

Senator Barrett and others congratulated Nelson Mandela on his 95th birthday. I am sure we all join in wishing that wonderful man a happy birthday and wish him well. Senator Barrett referred also to the recent report on banking and I note his points. He also referred to the change in the basis on which we tax heavy goods vehicles in particular. I will raise that matter. It was addressed with the Minister of State at the Department of the Environment, Community and Local Government, Deputy O'Dowd, and I will ask him what the up-to-date position is.

Senators Coghlan and Hayden referred to MABS withdrawing from the pilot scheme. MABS has released a press release which states:

MABS, the Money Advice and Budgeting Service, was surprised at media reports of their withdrawal from the Central Bank initiative on support to distressed borrowers with multiple debts. MABS was very pleased to submit a proposal to fulfil this role of Third Party Service Provider and to present a proposal to the panel of lenders, convened and facilitated by the Central Bank. As indicated in its submission and elaborated on at the meeting with the panel, MABS felt that the initiative was an important one for borrowers and one which was attractive to MABS on the basis that it provided an opportunity to further expand on the work MABS currently does with all creditors, and in particular with IBF members, and to further develop relationships with credit unions. Further it is to the mutual benefit of all parties, and most importantly to the benefit of distressed borrowers. MABS were willing to accept the associated terms and conditions as presented however, on further engagement with panel members, it became apparent that the proposed approach was not acceptable to certain lenders. Based on its proven track record of delivering for both lenders and borrowers for over 20 years, MABS believes it could add value to this important initiative, delivering positive outcomes for borrower and lender alike. MABS proposal, as originally outlined, still stands.

I concur with Senators Coghlan and Hayden that we will have to have a very hard look at this situation if lenders and bankers are dictating things. It will have to be addressed. Senator Hayden also called for a debate on banking. Certainly, I will ask the Minister for Finance, Deputy Noonan, to come to the House for a debate on that topic. We have had a number of debates on banking, but I agree that we should continue to discuss the subject.

Senator Keane referred to the opinion of the Limerick coroner on the recording of suicide in reports. It is something we will raise with the Minister for Justice and Equality to see if it can happen. I note Senator Moran's remarks on the offensive comments which were made by a Member in the House yesterday.

Senator Mullins spoke about the Government's priority of job creation and called for an innovative budget to include measures which will help to create jobs, particularly in the con-

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struction sector. I agree with him. The measures which will be taken will assist. While we are creating 2,000 jobs per month currently, it is very important that we provide jobs in the development of infrastructure, including schools, which would put people who were involved in the construction industry back to work.

Finally, Senator Kelly called for a debate on rural Ireland, with particular reference to broadband. I have asked the Minister for Communications, Energy and Natural Resources, Deputy Rabbitte, to come to the House and am waiting for a date to be nominated for him to attend to discuss that matter.

**Senator Paschal Mooney:** I asked the Leader if, for the benefit of all Members, he would give some indication of his thinking on how the Protection of Life During Pregnancy Bill will progress through the House.

**Senator Maurice Cummins:** I hope Committee Stage of the Bill will be concluded today. Report Stage will take place on Monday on Tuesday.

**Senator Paschal Mooney:** What time is it expected to finish?

**Senator Maurice Cummins:** It is ordered from 4 p.m. for two hours and thereafter it will take whatever it takes.

**An Leas-Chathaoirleach:** In fairness to the Leader, it is an ongoing debate, which he has indicated he will not stymie. It is difficult to set parameters on the issue.

Order of Business agreed to.

### **Proposed Directive on the Fight Against Fraud: Motion**

**Senator Maurice Cummins:** I move:

That Seanad Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to take part in the adoption and application of the following proposed measure:

Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law — General Approach,

a copy of which was laid before Seanad Éireann on 12th June, 2013.”

**Senator Mark Daly:** The Joint Committee on Justice, Defence and Equality said that the proposal warranted further scrutiny. I asked the clerk of the committee if that further scrutiny had occurred. It did not happen. The Seanad is being asked to pass a motion in respect of which further time for scrutiny has been requested. We have said time and again that we should scrutinise EU regulations and directives but we are being asked to rubber stamp this.

**An Leas-Chathaoirleach:** I note the Senator's objection. The motion was ordered without debate.

Question put:

The Seanad divided: Tá, 33; Níl, 13.	
Tá	Níl
Bacik, Ivana.	Barrett, Sean D.
Bradford, Paul.	Cullinane, David.
Brennan, Terry.	Daly, Mark.
Burke, Colm.	Healy Eames, Fidelma.
Clune, Deirdre.	Leyden, Terry.
Coghlan, Eamonn.	Mooney, Paschal.
Coghlan, Paul.	Norris, David.
Comiskey, Michael.	Ó Domhnaill, Brian.
Conway, Martin.	Ó Murchú, Labhrás.
Cummins, Maurice.	Reilly, Kathryn.
D'Arcy, Jim.	Walsh, Jim.
D'Arcy, Michael.	White, Mary M.
Gilroy, John.	Wilson, Diarmuid.
Harte, Jimmy.	
Hayden, Aideen.	
Heffernan, James.	
Henry, Imelda.	
Higgins, Lorraine.	
Keane, Cáit.	
Kelly, John.	
Landy, Denis.	
Moloney, Marie.	
Moran, Mary.	
Mulcahy, Tony.	
Mullins, Michael.	
Noone, Catherine.	
O'Donnell, Marie-Louise.	
O'Keeffe, Susan.	
O'Neill, Pat.	
Sheahan, Tom.	
van Turnhout, Jillian.	
Whelan, John.	
Zappone, Katherine.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Mark Daly and Diarmuid Wilson.

Question declared carried.

### **EU Agency for Law Enforcement Cooperation and Training: Motion**

**Senator Maurice Cummins:** I move:

That Seanad Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to take part in the adoption and application of the following proposed measure:

Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA,

a copy of which was laid before Seanad Éireann on 3rd April, 2013.

Question put and agreed to.

*Sitting suspended at 11.35 a.m. and resumed at 11.45 a.m.*

### **Protection of Life During Pregnancy Bill 2013: Committee Stage (Resumed)**

#### SECTION 2

Debate resumed on amendment No. 4:

In page 6, line 8, after “treatment” to insert the following:

“but excludes any procedure undertaken or drug administered with the direct intention of killing the unborn”.

- (Senator Jim Walsh)

**An Cathaoirleach:** The House is resuming debate on amendment No. 4, which is grouped for debate with amendments Nos. 37 and 38.

**Senator Fidelma Healy Eames:** The Minister is very welcome. I wish to speak on amendment No. 38, which seeks to insert: “(d) where the unborn is sixteen weeks gestation or older, an effective anaesthetic for pain relief shall be administered to the foetus before the medical procedure is commenced.” Truly, I regret that we even have to discuss this issue. However, we know what we are legislating for. We are legislating so terminations and abortions can take

place, albeit in limited circumstances. If we must do so, the very least we should do is ensure the procedure will be pain-free for the little baby, the unborn, the foetus.

There is a lot of evidence to support the view that the unborn feels pain from 17 weeks onwards. Neonatal surgeons in the United Kingdom use anaesthetics in surgery on unborn children as they conclude they feel pain. A pro-choice professor, Professor Glover, called for anaesthetics to be used during abortions of unborn children from 17 to 24 weeks. She said that a foetus aborted between 17 and 24 weeks after conception may feel pain. To give her her due, she said she was pro-choice, which means supporting terminations and abortions, but she said that “one should not muddle the two”. She stated, “One should think about how one is doing it in the most pain-free way.” What can the Minister tell us about foetal pain during a termination or abortion? Would he support me in saying that when a procedure must be carried out that will take the life of the unborn, it should happen in the most pain-free way possible? I plead with him to accept my amendment to ensure the presence of an anaesthetist at every termination and abortion to ensure the baby, the unborn, will not feel pain.

According to Professor John Wyatt, consultant neonatal paediatrician at University College Hospital, London, and a member of the Commission of Inquiry into Human Fetal Sentience, anxiety is now stifling research. He said “no responsible scientist or clinician can publish work in this area without a certain degree of trepidation that it will be seized upon by spin doctors and propagandists from both sides of the abortion debate.” In other words, he is saying we should forget about the spin doctors and look at the evidence. The evidence is that the foetus, the unborn, feels pain. Let us ensure the procedure is done in as pain-free and dignified a way as possible.

What is the Minister planning to approve in this jurisdiction? Will he accept my amendment providing that an anaesthetist should be present at every termination and abortion? It is the very least the Government could provide for. What does the Minister know about foetal pain during termination?

**Minister for Health (Deputy James Reilly):** I will first address amendment No. 4. I do not propose to accept it, as the main purpose of the Bill is to restate the general prohibition on abortion in Ireland in line with Article 40.3.3° of the Constitution while regulating access to lawful termination of pregnancy in accordance with the X case and the judgment of the European Court of Human Rights in the A, B and C v. Ireland case.

Section 22 sets out that it is an offence to destroy unborn human life intentionally. However, in order to regulate access to lawful terminations of pregnancy, exemptions are made under the terms of Bill where there is a real and substantial risk to the woman’s life. I therefore do not propose to accept this amendment.

With regard to amendments Nos. 37 and 38, which concern the issue of viability, the Bill makes reference to a medical practitioner’s reasonable opinion, which places a statutory duty on each medical practitioner forming an opinion to have regard to the need to preserve unborn human life as far as practicable. This imposes a clear duty on medical practitioners to make every effort to preserve the life of a foetus where possible.

*12 o’clock*

A failure to do so would place a practical practitioner in breach of the proposed legislation and subject to its penalties.

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It is not the purpose of the Bill to regulate obstetric procedures which do not constitute termination of pregnancy or to dictate the practice of obstetrics. Standard medical practice will provide appropriate mechanisms for assessment of both the woman and the unborn. It would not be appropriate to include this or other details of medical treatment in legislation. In other words, as we have said elsewhere, we cannot be prescriptive in terms of how members of the medical profession carry out their duty. Best practice changes in line with guidelines from the respective educational facilities, institutes and college. Therefore, I cannot accept the amendments.

**Senator David Norris:** I do not support amendment No. 4 because it would reverse the entire intention of the Bill. It is unrealistic because there are clearly circumstances where it is important and proper to end the life of a foetus in preference to the loss of life of the mother. That might not be in line with the Constitution but, as I have already said, that was a mistaken amendment. Everybody now knows it was a huge error.

I am much more in sympathy with the other proposals in this group. However, in regard to amendment No. 37, in the name of Senator Rónán Mullen, as I understand it, the provision contained therein is already the position in the legislation as it stands, namely, that when a foetus becomes viable, the effort will be made to preserve that life. That is my understanding of the legislation as it exists. I am sympathetic to the amendment, but it is redundant.

In regard to the first part of amendment No. 38, in the name of Senator Fidelma Healy Eames, I would make the same argument, that it is already covered. The second part of the amendment states: “where the unborn is sixteen weeks gestation or older, an effective anaesthetic for pain relief shall be administered to the foetus before the medical procedure is commenced”. If this is an effort to generate political momentum behind the notion that the foetus is a complete and separate individual, I do not agree with it. However, if it can be demonstrated medically that the foetus is capable of experiencing pain, then of course it would be natural to administer an anaesthetic. I have no problem with that and hope doctors would do it in any case. I have no difficulty with either part of Senator Healy Eames’s amendment, but the first is already covered and the second is presumably standard medical practice where it can be demonstrated that the foetus is capable of feeling pain. However, I would not like it to be taken as an opportunity to push the notion that the unborn - that is a very unattractive description which reminds me of “undead”; I do not like it - is a separate individual. Pain relief should certainly be administered where the foetus can demonstrably feel pain. One would do the same for an animal. In short, I have no real difficulty with this part of the amendment, with the proviso I have given, but if I have understood the Minister’s response, it is not possible for the legislation to be prescriptive of medical practice to that level of detail.

**Senator Jim Walsh:** The Minister has been at pains over many months, as has the Taoiseach, to tell us that this Bill is about the protection of both mother and baby. Those comments are either the truth or they are lies. They cannot be both. I am prepared to accept the Minister at his word, to accept that he believes what he is saying is true. That is why I tabled amendment No. 4. The medical procedures envisaged under this legislation are not defined in the definitions section, but they include the prescribing by a medical practitioner of any drug or medical treatment. We all know what those procedures are in the context of abortion as it is understood globally. I have described one such procedure, based on Dr. Anthony Levatino’s evidence to a committee of the United States Congress, and I challenge the Minister to say whether anything in that evidence is wrong.

I was asked by my colleague, Senator Darragh O'Brien, to clarify whether this amendment could in some way impede the working of sections 7 or 8 of the Bill. There is no way, in my opinion, that it could do so, nor is it my intention that it would. The medical evidence we heard over the six days of hearings by the Joint Oireachtas Committee on Health and Children clearly set out current medical practice in dealing with situations where complications in pregnancy put the mother's life at risk. There was unanimous evidence from all the medical practitioners that they were not inhibited by the current constitutional or legal framework in ensuring they give every possible treatment and are able to intervene in appropriate ways to save the mother's life.

Most of the opposition to this Bill relates to section 9.

**An Cathaoirleach:** The Senator must speak to the amendments. These points have already been made.

**Senator Jim Walsh:** I am outlining why I tabled this particular amendment. I did so because the evidence given in regard to section 9-----

**An Cathaoirleach:** The Senator is being repetitive.

**Senator Jim Walsh:** It is a matter of clarity.

**An Cathaoirleach:** He has already spoken on this amendment.

**Senator Jim Walsh:** I will tell the House what I said when I spoke about the issue yesterday.

**An Cathaoirleach:** The Senator cannot repeat it today.

**Senator Jim Walsh:** I said that in claiming that the Title of the Bill means exactly what it says, the Minister should then have no difficulty accepting my amendment. I left it at that because I felt there was no need to press the case further. I am doing so now because of the Minister's response and, with respect, I am entitled to do so.

I am concerned that a situation will arise where a physically healthy mother presents with a physically healthy baby and is certified as having suicidal intent. All of the evidence from the psychiatrists who presented to the committee hearings was that an abortion would be no treatment for such a woman and her medical condition. That was the clear evidence, even from the pro-choice psychiatrists. One need only study Professor Veronica O'Keane's evidence to the committee to clarify that. What is proposed under section 9 represents a significant change to the law. We are moving from a situation where the saving of the life of the mother sometimes has the unfortunate consequence of the baby dying to one where a physically healthy woman can present and there will now be an intent to kill her unborn baby on some sort of pretence that an abatement of her condition will be thereby achieved. We know the consequences-----

**Senator Ivana Bacik:** On a point of order, we agreed that language in the Chamber would be respectful. There is immense repetition in the Senator's contribution and he is veering well off the amendment.

**An Cathaoirleach:** That is not a point of order.

**Senator Jim Walsh:** We know the consequences of that. It was described at the committee

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hearings and elsewhere. We also know that a baby has a heartbeat at around 20 days gestation and brain waves at 40 days or so.

**An Cathaoirleach:** The Senator is being repetitive. All of these issues were raised not only in respect of this group of amendments but also in the context of previous amendments. The Senator is making the same argument again. I ask him to adhere to the amendment.

**Senator Jim Walsh:** I am adhering to the amendment. The Minister's failure to accept it speaks volumes for his intentions. I am asking him directly if his statement that this Bill is about protecting the life of the unborn is true or not. If it is true, is he not conceding the untruth of it by agreeing there will be intentional killing of a baby in circumstances where all the medical evidence clearly indicates it will do nothing for the woman and may indeed have serious adverse effects for her subsequently?

I would also like to ask about medical procedures, because this amendment proposes to define and confine medical procedures. In the opinion of the Minister, what medical procedures will be applied in order to achieve the intention of aborting the baby?

**Senator Rónán Mullen:** I wish to wait until the Minister has responded on this.

**An Cathaoirleach:** The Minister has responded already on this group of amendments.

**Senator Rónán Mullen:** I do not have the grouping list with me. Perhaps the Chair will assist me and tell me which of my amendments are in this grouping.

**An Cathaoirleach:** We are dealing with amendments Nos. 4, 7 and 38.

**Senator Rónán Mullen:** With regard to the amendment proposed by Senator Healy Eames, I have always been of the view that there are great sensitivities around two issues - how the reality of abortion changes according to different stages of gestation, and the issue of foetal pain. These are very relevant issues, particularly for those of us who see the need for two lives to be protected at all times, as far as practicable. For example, the issue arose previously regarding the display of images of aborted children and whether that is appropriate and sensitive. I am aware that Senator Walsh - I do not criticise him for this - caused a degree of controversy with his very frank account of what abortion can involve. That, perhaps, had the indirect, but desirable, effect of a discussion on radio, where people got to hear about some of the realities. Life deserves to be protected, regardless of the means of its ending.

There is no doubt that in terms of mere discussion, the ending of an unborn child's life at an early stage of pregnancy is not as evocative or as disturbing as that of the late-term ending of the unborn child's life. I have often felt that RTE is greatly to be criticised in this regard. While I would not suggest or ever support the random display of disturbing images - I have always been against that - I have always felt that we should be able to display some images, in the same way as we are invited to contemplate the effect of famine, on occasions, with appropriate warnings to people that the images they may see are likely to be disturbing. It seems strange and bizarre that as a public service broadcaster, RTE has never, over the years, introduced us to the reality of what abortion involves in clinics abroad, in Britain and America in particular.

**An Cathaoirleach:** We are dealing with the amendments.

**Senator Jim Walsh:** On a point of order, the Chair should be acting independently, not taking his lead from the Minister.

**An Cathaoirleach:** I am acting independently. Much of what is being said here is repetitive.

**Senator Rónán Mullen:** Bear with me. I have no desire to be repetitive and I will not be repetitive today.

**An Cathaoirleach:** The Senator must stick to the amendments also. I am fair to everyone.

**Senator Rónán Mullen:** I hear that. There is a real and serious coherence to these points. This is a life and death issue and I want to develop this point because it is important and relates directly to the issue. I ask the Chair's indulgence.

My point is that I have always felt that appropriate information should be given to the public. I do not think RTE has fulfilled its duty as a public service broadcaster in the way, for example, that programmes such as "Panorama" in Britain have done. We heard from doctors in Britain who are very disturbed at the fact that in one part of a hospital they may be trying to save a pre-term child who is at the cusp of viability while in another part of the hospital a similar child might have his or her life destroyed because that child is not wanted. These are the serious realities that are confronted-----

**An Cathaoirleach:** I do not see anything about information in the three amendments that have been grouped together.

**Senator Jim Walsh:** They are about medical procedure.

**Senator Rónán Mullen:** It is not all about soundbites.

**An Cathaoirleach:** It is about procedures, not about giving out information.

**Senator Rónán Mullen:** With the greatest respect, sometimes the argument must be laid out. The point is that there are appropriate moments to discuss issues people find disturbing and that this must be done in an appropriate way, with particular respect for the vulnerability of children and people's sensitivities. I would never enter a discussion about this issue without first warning people or asking them if they were ready to hear something I might have to impart to make a full presentation of the issues.

The same issue arises in regard to the issue of foetal pain. We are acquiring knowledge in this area. As a non-medical person, I am very slow to speak on this issue until I have checked with medical experts. However, Senator Healy Eames has raised a real issue. The Minister would be the first to tell us we are operating against a constitutional background which still provides, even in its flawed state, the full and unqualified guarantee to respect the equal right to life of the unborn and the duty to defend and vindicate that right as far as practicable. If that protection is to have meaning, then even in situations in which one is sure of the death of the unborn child as a result of procedures the Minister proposes to protect through this legislation - and I accept the legitimacy of some of those procedures, but not others - his duty to protect unborn human life also encompasses a duty to honour and respect the dignity of that life, even in moments when that life is being compromised.

Whether the Minister is going to accept this amendment or not - and I hope he will accept one on Report Stage if not - what I want to know more than anything else is how much the Minister knows about this matter. Has he researched the issue of foetal pain?

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**Senator Fidelma Healy Eames:** Hear, hear.

**Senator Rónán Mullen:** Have his officials researched the issue of foetal pain? Is that the reason there do not appear to be any of them behind him at this moment? If the Minister is not fully briefed - I know he trained with the Irish Family Planning Association and we know what it has been up to in terms of bringing the A, B and C case-----

**Senator Marie-Louise O'Donnell:** That is an uncalled-for accusation.

**Senator Rónán Mullen:** I made no accusation. I only commented on matters that are on the public record. My point is this-----

**Senator Marie-Louise O'Donnell:** What does Senator Mullen know the IFPA has been up to?

**An Cathaoirleach:** Senator Mullen without interruption, please.

**Senator Rónán Mullen:** We heard in this Chamber of an investigation that revealed that IFPA counsellors were telling women to mislead their GPs-----

**Senator Marie-Louise O'Donnell:** That is hearsay.

**Senator Ivana Bacik:** On a point of order, the rules of this House require us to stick to the topic at issue, which is the amendments under discussion. This Senator is veering well off those amendments and is making allegations about other parties.

**An Cathaoirleach:** He is not veering that far off them, but-----

**Senator Fidelma Healy Eames:** On a point of order, who is the Cathaoirleach in this House?

**An Cathaoirleach:** Senator Mullen without interruption.

**Senator Fidelma Healy Eames:** On a point of order, Senator Bacik constantly decides to act like the Chair from the floor.

**Senator Paul Bradford:** Only when she does not like what she hears.

**Senator Fidelma Healy Eames:** That is completely inappropriate.

**An Cathaoirleach:** I have ruled. I called Senator Mullen, without interruption.

**Senator Rónán Mullen:** It would be a great development in the House if Government Senators, and the Deputy Leader in particular, led by example and did not abuse the facility to make a point of order in order to make political points. I will try to imitate that also.

**Senator Marie-Louise O'Donnell:** I hope the Senator will and that he will stop making generalisations. He should take his own advice.

**An Cathaoirleach:** Senator Mullen without interruption. I ask Senator Mullen not to use the names of people who are not here in the Chamber to defend themselves.

**Senator Rónán Mullen:** I hear the hostility coming from Senator O'Donnell and am disappointed by it.

**Senator Marie-Louise O'Donnell:** There is no hostility coming from me at all. Stick to the facts and stop making up stories.

**An Cathaoirleach:** Has Senator Mullen a question for the Minister?

**Senator Rónán Mullen:** Yes. My point is that the Minister told the Dáil last week that he had undergone some training with the IFPA. I would not expect the IFPA to be up to date on the issues around foetal pain, but I would expect the Minister and his officials to have researched the issue. If he has not researched the issue - I am not saying he has not - I will be very pleasantly surprised if I hear him expatiate on the subject with respect for the serious issues at stake. However, so far the Minister has not shown any inclination to engage with this serious dimension. Will the Minister reassure us that he and his officials know something about these matters, have considered them and will seek to protect the unborn child from pain in any situation in which he or she might be exposed to it as a result of procedures which will be made lawful under this Bill?

**Senator Fidelma Healy Eames:** I want an answer to the questions I put to the Minister on the issue of pain. We are all human beings in this House. We understand pain. I have put the evidence on the record. There is evidence that the foetus feels pain from 17 weeks onwards. It is unbelievable that they do not feel pain before that, but that is the science I am bringing to the Minister.

I ask the Minister to answer these questions directly. Will an anaesthetist be present at the termination with the obstetrician? Will an anaesthetic be administered so the foetus does not feel pain during the termination? Surely it is fine for us not to be cruel to a little defenceless mite who has no say or choice in this. I know, to be fair to the woman who is in great difficulty, that she would not want that little mite to feel pain either. Can the Minister tell us whether a pain-free procedure will be administered in Ireland? Will an anaesthetic for pain-free termination or abortion be administered? Please answer that question.

**Senator Mary Ann O'Brien:** I want to second Senator Healy Eames-----

**An Cathaoirleach:** You can do that when we get to the amendment. We are only discussing the amendments at the moment.

**Senator Mary Ann O'Brien:** I want to speak on the issue of pain. We have medical evidence from 17 weeks onwards. I cannot for the life of me understand why the Minister will not put this in the legislation. He said earlier in his reply to Senator Healy Eames's first contribution that he did not want to prescribe rules for the obstetrician. This legislation is certainly prescribing what to do for the obstetrician because, if we have a suicidal woman who simply cannot cope and has to have a termination, gosh golly, the obstetrician in Ireland who never had to take a baby's life before in a case in which a woman was suicidal will now have to do so. I think that is prescribing a rule for that particular doctor.

To me, it is a no-brainer amendment. Senator David Norris said earlier he did not like the word "unborn". Neither do I. I like the word "baby". Anybody here who has had a baby in their tummy knows they are babies. We have medical evidence that these babies can feel pain after 17 weeks. We all know what pain is. We know what a headache is like or what it is like to have a needle stuck into us. This is a tiny little baby. All we are asking for is that we legislate to have an anaesthetist present. If we have to do what we have to do, let us do it in as humane a way as possible, and treat these little people with dignity and kindness. Let us stand over being

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Irish. If we have to put this legislation through, which I believe we do, I appeal to the Minister to hear us on this issue. It is not good enough to leave it to the obstetrician because-----

**Senator Fidelma Healy Eames:** They cannot provide an anaesthetist unless it is provided for by the State.

**Senator Mary Ann O'Brien:** The Cathaoirleach can correct me if this is not appropriate, but I believe we have the same issue with the fact that there is no gestational term in this legislation. We are talking about 17 weeks with regard to pain but, again, we do not want to make any rules for the obstetrician, so does he opt for 22 weeks, 23 weeks, 21 weeks or 24 weeks? When does he decide? Why does this poor man or woman - the obstetrician - get to decide whether this life is viable?

**Senator Paul Bradford:** I want to support my colleagues on the amendments before us. I spoke on the matter to the Minister of State, Deputy Alex White, when he was here yesterday. He simply dismissed our views, which is not surprising because he did say during the course of this debate that he was not open to any amendments except what he described as "technical amendments". These are more than technical amendments. These are amendments about the philosophy behind the Bill and where we wish to take the country. They go to the very core of what the legislation is truly about, as opposed to the mantra and spin we have had over the past number of months, namely, that it is about saving women's lives. As I said, everybody in this House and in the other House, everybody in this country, wants to save women's lives. However, to use that spin to put through an abortion Bill is a very inappropriate way of practising politics.

A most convincing case has been made for these amendments, particularly with regard to the need to provide some type of anaesthetic to the baby whose life is being ended. Senators Mary Ann O'Brien, Healy Eames and Mullen have made a very substantial case.

In trying to accept the concept behind all of this legislation, we have to remove ourselves a little from reality. Many young children, when their mother is due another baby, believe the stork somehow comes and delivers the baby. Of course, they grow up from that sort of fantasy land. We are actually trying to introduce a new sort of fantasy whereby, when an abortion happens, the stork comes along and somehow the baby disappears - that there is actually no procedure, no pain, no stress, no duress. Let us not live in that fantasy land. Let us face what is actually happening. Let us deal with the inconvenient truth put on the record of this House by Senator Walsh two days ago, which appeared to cause huge distress. We are talking about life and death. We are talking about all the gory details of this procedure, and let us not pretend otherwise. At least, however, as a so-called civilised society, let us try to put in place some type of pain alleviation. I am not an expert in that field but many of the Minister's colleagues are. In particular, I would be very interested in a response to the question raised by Senator Mullen as to whether the Department of Health has reflected upon this. My understanding is that this amendment was not tabled in the other House.

**Senator Fidelma Healy Eames:** This is the first time.

**Senator Paul Bradford:** This is a Seanad amendment, not a Dáil amendment. However, if the Minister's officials have not yet reflected on this amendment, will they let the Minister know? No Minister and no Government can know everything. Will the Minister's officials let him know what evidence and studies are available to them to reflect upon the pain element of

abortion, and what we can do to at least try to alleviate it? Will the Minister at least assure us that he and his officials will sit down and come forward with the studies and scientific papers, and we can then reflect on it on Report Stage? That would at least be a sign of good faith. How can any civilised society anywhere, not just in this country, justify the opposition to introducing pain relief?

**Senator Labhrás Ó Murchú:** Having listened to the debate, I know all of us here have different emotions and that there are different sensitivities and different perceptions. It is important that we do not try to create a uniformity in the debate itself. I have always felt that heckling and interruptions in this House on any subject are not acceptable. I am glad to say that in 16 years I have never done it.

In this particular case, in the early part of the abortion debate, I spent a lot of time reflecting. I said very little, perhaps, except on Second Stage, but I always reflected on what exactly it meant to the unborn child to be aborted. I started initially in the context of the status the unborn child has in our Constitution, but I also went further than that with regard to an issue that is being expanded on here today, that of foetal pain. There is a temptation to avoid that discussion. To some extent I can understand its avoidance out in the media, but I cannot understand our avoiding it here, in a House of Parliament, where each of us individually must respond to the knowledge we have accumulated and also to the values we hold. If we do not do that, the feeling at the end of the day will be that we did not act as good legislators. I also reflected on what that abortion meant. The contribution made in the Chamber by Senator Jim Walsh did not shock me at all. We are in a House of Parliament. It might have shocked me on the “Late Late Show” or “Prime Time”, or if it had been used as propaganda methodology in a publication. That is not where we are; we are in a House of Parliament. Each piece of understanding we requested, whether from the Minister or from someone who holds a different view, is very important. I accept the fundamental issue is that we are denying an innocent human being of the opportunity to achieve his or her full potential.

The question of foetal pain is a very important one for us. It is not a matter of changing other people’s minds but of helping us to make up our own. I know nobody in this House would deliberately inflict pain on another human being and I respect each person for that. However, we may ignore some information if we do not endeavour to tease it out. Very relevant questions were put to the Minister today; it is for that reason he is present. The Department has the resources. The questions put by Senator Mullen are very relevant. What information does the Minister have in regard to that point? What is the medical evidence? Is that not why we are here today? It would certainly help me to understand. Obviously I am anti-abortion and would be an advocate for the unborn child but I would still like to know if there is pain involved in an abortion. That is all we are discussing and we should be able to do so in a courteous, tolerant and understanding way in this House.

**Senator Marie-Louise O’Donnell:** Although I support this Bill, I believe Senators Healy Eames, Bradford, Mary Ann O’Brien and others have made a good point. I have a question for the Minister. In an abortion procedure where women are put asleep, would it not also be feasible to expect the foetus is also put asleep? Even if that expectation-----

**Senator David Norris:** That is a very good point.

**Senator Marie-Louise O’Donnell:** Even though some of my colleagues might think I am interruptive, in regard to this point I am not. I would just like to have that answered. Is it not

feasible that the foetus would also be put asleep, as the woman is?

**Senator Fidelma Healy Eames:** I will wait for the Minister's response but will put this point to it. I will not put the amendment to a vote at this time if I get an assurance from the Minister, but will resubmit it on Report Stage when the Minister might return with answers to the questions we asked around pain and evidence of pain felt by the foetus. I have put quite a bit of evidence on the record. Would an anaesthetist be present at the termination? As Senator O'Donnell said, then at least that little mite, that foetus, that little unborn baby could be put to sleep. It is good practice in this country at the end of life to have good palliative care. Guess what - that is the end of the unborn baby's life. Surely we want to give them the same dignified ending, if one could so call it.

**An Cathaoirleach:** On the amendment-----

**Senator Fidelma Healy Eames:** I will not withdraw it but will wait for the Minister's reply.

**Deputy James Reilly:** I thank the Senators for their contributions. The Bill is what it says it is - the Protection of Life During Pregnancy Bill, for both mother and unborn child. I can only restate what I have said, namely, the Bill cannot be prescriptive of medical practice. Some have pointed out that we are telling doctors what to do, but we are not. We are clarifying the legal situation for them concerning the service they are obliged to provide and what is legally permissible. We are not telling them how to do that service or how to practise and I certainly do not believe we should. Medical practice changes and there are now so many different facets of medicine, not only in Ireland but generally. Advances are made and new techniques are brought in all the time.

I cannot accept these amendments because I am not prepared to be prescriptive. I return to what others mentioned during the course of the debate. We have to trust our doctors and nurses, who give of their best on a daily basis to keep us and our fellow citizens safe. They practise with care and compassion. For me to prescribe precisely how they should do that would, first, be wrong, and, second, be a very dangerous place to go.

**Senator David Norris:** I understand what the Minister means when he says he cannot be prescriptive because it would lead to a huge accretion of unnecessary detail in the legislation. The Minister is a doctor with good experience in the medical field. Can he comment on the very interesting observations made by Senator O'Donnell? I have no difficulty, being strongly pro-choice, but it seems to me that if the foetus is capable of experiencing pain of course one would give it an anaesthetic. It is very interesting, and probably true as Senator O'Donnell noted, that if the mother is fully anaesthetised so is the child, the unborn, or whatever they call it nowadays. That seems reasonable. Could we have a clarification on that point? I do not expect an absolute one because, as I understand it, the Minister has not practised as a gynaecologist. I wonder if there is any knowledge that could be made available to the Seanad that would set at ease the minds of people such as me, who are reasonable and pro-choice. Is what Senator O'Donnell noted true? It sounds eminently sensible to me. If not, is it general practice to ensure the foetus does not experience pain if it is capable of so doing?

That would set my mind at rest. Otherwise I will be forced to vote in favour of the amendment on Report Stage.

**Senator Fidelma Healy Eames:** In his response to me and to others, the Minister said he

did not wish to be prescriptive and does not want to tell doctors what to do. I can accept that. What will the doctors do? That is what I want to know. What will they do in the course of a termination-abortion? Will an anaesthetist be present to ensure the baby is given an anaesthetic so that when its life is ended it is ended pain free? I do not know any human being, any Senator in this Chamber, who would not want that.

Just because this amendment was never presented in the Dáil does not mean we should not have open enough minds. Ours is not a barbaric country. I ask the Minister to give us a chance and open his mind. I am not looking for him to do anything except to tell me what the doctors will do. Will they deliver an anaesthetic so that the baby's life is pain free as it is being ended?

I have a second point. I understand the Minister is bringing out regulations in conjunction with the Bill. Where are the regulations, and when will we see them? Will they include information about the actual termination, how it will be carried out and whether an anaesthetist will be present to ensure the ending is pain free?

**Senator Jim Walsh:** I have not spoken on amendments Nos. 37 and 38 but that is no indication I do not agree with them. I agree fully with what is being said in this regard. It concerns me because we regard ourselves as humane. I understand the Minister's indication that he does not want to be prescriptive, and some obstetricians and gynaecologists would have asked him not to legislate because they feared it could inhibit their current best medical practice in saving the life of a woman. The Minister chose to legislate and we are faced with the repercussions. I am sure any further prescription in the Bill could perhaps be counterproductive, particularly in cases where the mother's life is at risk from a medical complication or emergency. I appreciate that.

I have a concern which I will mention particularly with regard to amendments Nos. 37 and 38. If a woman presents who is suicidal, the clear evidence given at the health committee was that she would be suicidal not because she is pregnant but because she does not want to have a baby. The idea is that the only way of abating her suicidality is for the baby not to be born. If we are not prescriptive, could a woman present late in the term, at 20 to 32 weeks, for example, with a pregnancy and get certification and entitlement to abortion? The Minister will be familiar with some of the abortion procedures, particularly partial birth abortions, where the baby's legs are pulled from the womb, with the head remaining inside the womb. A scissors is then jammed into the back of the skull and it is used-----

**An Cathaoirleach:** The Senator is being repetitive. All of this has been put on the record before.

**Senator Jim Walsh:** -----so that a catheter-----

**An Cathaoirleach:** The Senator is being repetitive.

**Senator Colm Burke:** He is ignoring Article 40.3.3° of the Constitution.

**Senator Jim Walsh:** -----can be inserted and the brains sucked out of the baby. That is legal-----

**An Cathaoirleach:** The Senator has put all of this on the record of the House on a number of occasions.

**Senator Jim Walsh:** -----in many countries. That is a late-term abortion.

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**An Cathaoirleach:** The Senator should stick to the amendments.

**Senator Jim Walsh:** Let me finish. That is legal in other countries.

**An Cathaoirleach:** The Senator is being repetitive.

**Senator Jim Walsh:** I am not being repetitive. I never mentioned that.

**An Cathaoirleach:** You have raised all these issues before and the Minister is well aware of them.

**Senator Jim Walsh:** You have not been chairing these meetings, a Chathaoirligh.

**An Cathaoirleach:** I have.

**Senator Jim Walsh:** I must say I am unhappy. You were not here when I discussed these issues, as the Leas-Chathaoirleach was in the Chair.

**An Cathaoirleach:** I was here when you spoke.

**Senator Jim Walsh:** Perhaps those late-term abortions would not be allowed. If they are not to be allowed, will the Minister point out the part of the Bill forbidding them? What assurances can we get that this barbaric practice will not be allowed to happen, as it is in many countries where abortion is available? If it is allowed to happen, surely it would be an inhumane act, and the pain inflicted on the unborn baby would be absolutely appalling.

Although I support the amendments, I have gone a step back with my amendment. Senator Norris and others may have picked up the point incorrectly but it is not my intention to impede or interfere with any case arising from sections 7 or 8. The amendment will not do so. The Minister is not accepting it as it would, in effect, any abortion taking place under section 9, as it involves the direct and intentional killing of the baby.

With regard to foetal pain, at eight weeks - which is very early in pregnancy - a child can make tiny fists, get hiccups and whatever else. That baby is evolving. At 11 weeks, the placenta continues to supply food and oxygen, and the child has legs and can make complex facial expressions and even smile. Current medical technology is able to prove this. That is the first trimester. At 16 weeks, the child can use hands to grasp, swim and turn somersaults. At 18 weeks, still in the second trimester and at a time when the baby would be regarded as not viable by many, he or she is active and energetic and can flex muscles. That is often the first indication to a mother as she can feel the baby in her womb.

We are talking about a mother's life but the Minister has rightly indicated the need to protect the unborn as well. Surely to goodness we can do that by building in as many safeguards as possible. I do not see that within the Bill and, unfortunately, by leaving medical procedures open, we are leaving women open to a coterie of "medical procedures", although they are not in the medical interest of the child.

Will saline abortions, suction aspiration, dilation and curettage and dilation and evacuation be permitted under this Bill? I know the Minister does not want to be prescriptive but if we are voting on this Bill - and particularly the people in the Minister's party who are supporting it - we should do it knowing what the Bill is about. That is why so many people have reacted to what I put on the record on Second Stage. *The Irish Times* has campaigned strongly for

abortion and I compliment the newspaper for at least publishing what is an abortion, although the reporter was disgusted. If anybody is disgusted with a description of what happens with an abortion, whether in this House, the medical profession, the Department, the HSE or elsewhere, they would be disgusted to a factor of 100 if they envisaged the procedure becoming a reality in practice. As Senator Bradford rightly stated, it is an inconvenient truth.

What procedures will be allowed if the Minister is not to be prescriptive in the Bill? If the Minister puts it on the record of the House, it will at least give an indication to a court that would subsequently determine what is allowed; it would demonstrate the intention of the Minister for Health when he introduced the Bill to the Houses.

**Senator Paul Bradford:** I am thankful for the opportunity to comment once again, and I will reflect a little further on amendment No. 38 and particularly paragraph (d), the proposal that pain relief should be administered to the foetus before death. I appeal in particular to my colleagues in the Fine Gael Party, as they are members of a Christian democratic party, and ask how we could oppose such an amendment. How could we oppose putting in place a request that before an abortion takes place or an unborn child is killed, we would at least try to provide some degree of pain relief?

Will the Minister reflect on the decisions taken by his colleague in a different Department, the Minister for Agriculture, Food and the Marine, Deputy Coveney, who is monitoring veterinary clinics and providing animal welfare legislation? We all support the regulations he has correctly put in place to ensure animals in this country do not suffer. We spent weeks in this House debating the animal welfare legislation, and I am sure the Minister heard some of the discussion in the other House. Our country put in place measures to look after animals, which is only right. We are proposing a modest amendment requesting that where an abortion is unfortunately taking place, we can ensure there will be pain relief for the child. How could any civilised citizen say “No” to such an amendment?

I concede that the amendment was not discussed in the Dáil and it is a Seanad amendment. The Minister’s officials may not have sufficient time to reflect on it and they may not have sought the evidence that is freely available clearly showing that unborn children suffer pain, with at least some degree of a remedy available. We should not divide on it this afternoon but the Minister should give an indication that he is willing to think long and hard before ultimately saying “No”. If there is any amendment in any section that makes a very profound statement about the legislation, as legislators, our Government and our conscience, this is the one. The Minister should at least be willing to think and sit down with his officials over the weekend in order to examine the evidence and believe that as a civilised society, we will take this very modest step. It is impossible to come up with even a reasonable excuse to say “No” to this amendment. Let us think about it over the weekend and come back on Report Stage. Let us prove that we speak for people born and unborn and can do so in a civilised fashion.

**Senator Rónán Mullen:** I did not do justice to my friend, Senator Marie-Louise O’Donnell. I do not think she was sending waves of hostility towards me. She was just following her own inimitable style. I felt my comments were entirely justified and on point.

**Senator Marie-Louise O’Donnell:** I accept that.

**Senator Rónán Mullen:** I did not do the Senator justice and I apologise for that.

I am very unhappy with the Minister’s response to what is a very reasonable proposal.

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Maybe he will give us more than he has done but I fear that the more he fails to engage with this issue, the more he is revealing the ideological heart of this Bill. If it not his ideological heart, then it is the ideological heart of people behind him, from the expert group onwards.

It is really not acceptable for the Minister to come into the House, act like the Borg and repeat standard lines like the idea the Bill cannot be prescriptive of medical practice. That sounds so reasonable until one realises it is just a mantra. Of course, the Bill is prescriptive of medical practice; it has to be. It is not prescriptive about the details of medical practice which must be left to medical practice.

Let us just look at the section which states: “It shall be lawful to carry out a medical procedure in accordance with this section in the course of which, or as a result of, which an unborn life is ended...” subject to there being two medical practitioners and their having to assess a real and substantial risk and their forming a reasonable opinion. That reasonable opinion is defined in a most unsatisfactory way. That is all prescription. The Minister should not play with language and try to pull the wool over our eyes.

The Minister is not in the parliamentary party now, where most people can be suborned because there are other issues like fear of party whips and so on. The Minister is in the second Chamber in which we have to ask him serious hard questions and where words have to mean something. This legislation is certainly prescriptive of medical practice; it has to be. This legislation is not the “doctors shall do whatever they see fit Bill”. This Bill is quite prescriptive, and rightly so.

The Minister says this Bill cannot be prescriptive of medical practice but he knows, I know and the world and its mother knows the question of whether a child is anaesthetised, in the context of an abortion, has nothing to do with and could not inhibit whatever a doctor has to do. The only thing I can conclude is that the Minister believes in the use of an anaesthetic because he thinks we are all under the ether here of easy soundbites like the Bill cannot be prescriptive of medical practice.

I ask the Minister to be a Minister and to engage on behalf of the Government with the Legislature. Legitimate issues have surfaced here. I say in passing that if Senator O’Donnell is right in what she suggests - I think she asked it in a most helpful way and Senator Norris concurred with her - and if that disposes of the issue and we can be assured, that is fine but the Minister should not expect us to leave this issue alone when it has not even been ventilated in the Dáil and when we are operating against the background of a constitutional protection of the unborn. The Minister should not expect us to be neutral, blithe or uncaring about the question of whether an unborn child being aborted can feel pain and whether there ought to be a legislative duty on doctors and other medical personnel to ensure it does not happen. I ask the Minister for a better response than he has given to date.

**Deputy James Reilly:** It may be inconvenient for Senator Mullins but the truth is the truth.

**Senator Rónán Mullen:** Mullen.

**Deputy James Reilly:** My apologies.

**Senator Rónán Mullen:** It is a helpful interruption.

**Deputy James Reilly:** The fact of the matter is that what we are legislating for is to bring

clarity to a process of a determination. There is clarity around how the decision will be arrived at but not how the consequence of that decision should be carried out because that is to be prescriptive. There is no running away from that and no amount of language will cloud that or change that. That is why I will not be able to accept the amendment. I accept the Senator may want to withdraw it so that she can resubmit it on Report Stage, and so be it.

However, I will not be in any way deceitful here. I will be straight and clear. Doctors will make their clinical judgment and they will act to ensure safe and as pain-free as possible care. The Senator asked about the draft regulations and they will be on the Department's website this evening.

Senator Walsh talked about the viability of the baby. I am making it absolutely clear that if a viable baby is born, everything will be done to support that baby. A woman has a right in this country, as we speak and without this legislation, to a termination of pregnancy where it is the only treatment available to avert the real and substantial risk to her life. As I said earlier in this House and in the other one, no woman, no man, no citizen or no non-citizen in this country has a right to end the life of a newborn baby. That is infanticide and it is punishable under the law. Let us not try to confuse these issues and the idea of late abortions of a viable new born baby at 24 weeks onwards. Sadly, babies are not always viable at 24 or 30 weeks but in general they are. They will be looked after and given every support available.

I cannot prescribe to doctors how to carry out their treatments but we can, as a Legislature and as we are doing, tell them what treatments are legal. I expect that as medical practice becomes more innovative, sophisticated and complex, much of what the Senator talks about will become more prevalent.

In terms of there being an anaesthetist present at all times, I fail to see how occasions would arise in the general run of things where there would not be an anaesthetist available, except in an acute emergency and even then a lot of those emergencies would arise in the course of a surgical procedure where there would be an anaesthetist.

I accept the sentiment of what the Senator is bringing to this. Nobody wants to see any suffering of a mother or an unborn child. I believe the medical professionals involved will do everything to ensure that. I have to reiterate, inconvenient and all as it might be, that I cannot prescribe how doctors are to do their work.

**Senator Jim Walsh:** I find that an appalling but unsurprising reply from the Minister. As part of the untruths that have been perpetrated on the nation and members of his own party for the past number of months, presumably scripted for him by people in his Department, it sanitises what is happening. He failed to say clearly what type of medical procedures will be allowed. His failure clearly indicates that all current abortion procedures, many of which are barbaric, and one I described the other day will be allowed should the doctor have the discretion to do them. I would have expected the Minister to inform the House that most abortions are in the first trimester and most of those will probably be dealt with as medical abortions which involve taking drugs 48 hours apart and creating a situation similar to a miscarriage.

*I o'clock*

The drugs cause contractions and expel the unborn baby. It may take hours or sometimes days for it to happen. The Minister is a doctor and will be better informed than a Minister for Health who does not have that qualification. I understand that 8% to 10% of these will fail and

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a surgical procedure will have to be adopted. Surgical procedure involves suction aspiration, which uses a powerful suction tube with a sharp cutting edge which is inserted into the womb. It dismembers the body of the developing baby, sucking foetal parts into the collection bottle. Tell me if that is disallowed under the Bill. I am concerned because the taking of human life in whatever way is wrong. I ask the Minister to tell us whether that will be allowed either in the first or the second trimester.

Saline abortion is another fairly common one. It involves the injection of drugs or chemicals which cause the death of the child and his or her expulsion from the uterus. The baby, as the Minister will know, breathes in, swallowing the salt, and is poisoned. The chemical solution also causes painful burning and the deterioration of the baby's skin. After about an hour, the child dies. It is chilling for me to read this out and, I am sure, for people to hear. Surely it is more chilling for the mother and the child that are going to be put through that experience. In particular, it is chilling for the doctors to whom the Minister will look to impose it. They have not had a difficulty in dealing with situations in which there is a medical emergency involving the life of the mother. They deal with the mother and as a consequence the baby may well lose his or her life. Nobody in his or her right senses disagrees with that. There is no good reason suicidality is being included in the Bill. We will talk about that in detail when we come to section 9.

The Minister has not dismissed for me the totally barbaric procedure that was introduced in the United States of America by President Clinton in the 1990s, which is partial-birth abortion. In this procedure, the baby is pulled so that the head is left in the womb, after which one sticks a scissors in, opens it wide and sucks the brains out. This is the type of thing that happened in the Middle Ages and should have no place in modern medicine. The Minister refers to such procedures as "medical procedures" in his Bill. I challenge him in the name of everything that is right and in the name of humanity to stand up here and tell us if those acts will be allowed under his medical procedures or not. He owes us that. He should not stick to a script with sanitised language. This is what we are talking about. This is abortion. The Minister must tell us whether those things are allowed. That is why I am moving and will press amendment No. 4.

**Senator Mary Ann O'Brien:** With regard to viability and term limits, the Minister mentioned 24 weeks. That is where I have a problem. There is no term limit referred to in the Bill. I have a friend, to whom I can introduce the Minister, who is just graduating from Trinity College, Dublin. She was born at 23 weeks, but the Minister, who is a doctor, mentioned 24 weeks. We must go back to that. I acknowledge that we are leaving it to the medical profession, but I want to know when a person has a right to realise his or her potential and be born. Does one get terminated at 22 weeks or 24 weeks?

While I was very pleased to hear the Minister say that everything will be done to support the baby that is born viable, why did the Government promote the Bill without putting a national paediatric budget in place to care for babies who will be born due to the restrictions imposed by the Bill? There is no paediatric budget to look after babies with life-limiting conditions or multiple disabilities. While the LauraLynn Foundation and Sunshine Home exist, having been established by a woman who lost two children to cancer, there is no State provision to look after babies who may be born, particularly when their mothers do not want them. Even if the mother does want the baby, there is nothing to provide for his or her care.

**Senator Fidelma Healy Eames:** I listened to what the Minister said and I have to say-----

**An Leas-Chathaoirleach:** I do not wish to stymie debate, but some of the arguments are becoming circular. The Minister has a particular position and Senator Walsh has one, as is his right.

**Senator Fidelma Healy Eames:** I am only speaking on amendment No. 38(d), my amendment on delivering a pain-free ending to the baby. That is the only one I am speaking on. I am happier with what the Minister said in his reply. I will read the regulations over the weekend. None of my Fine Gael colleagues would want an unborn baby to feel pain as life is ended. No colleague would. I am giving the Minister and his officials time to ensure we do not have to use the Whip to whip good people to legislate for a cruel practice whereby a little mite - an unborn baby - has its life ended in pain. The Minister is not a cruel Minister. Equally, let us not ask people to legislate for a cruel practice. The ending of life is enough.

I spoke at the weekend to a gynaecologist who started working in Galway city after having practised in the UK. Now, when one is interviewed for a post in the UK, the first question one is asked is "Are you a terminator?". She just told me this.

**Senator David Cullinane:** Come on. This is getting ridiculous.

**Senator Fidelma Healy Eames:** It is so ridiculous, I could not believe it myself. I doubt she was misleading me, however. She told me her most common procedure as a gynaecologist was TOP, termination of pregnancy.

Just because an anaesthetist is in the hospital, it does not mean he or she is present at the termination. Let us call a spade a spade and proceed in a humane, sensitive way to ensure that the little unborn baby's life, if it has to be ended, is ended with a bit of dignity and pain-free. That is all I am asking for. I will take the Minister's counsel and read the regulations. I will not press the amendment now, but will reserve the right to re-enter it on Report Stage.

**An Leas-Chathaoirleach:** Senator Walsh indicated that he would press amendment No. 4.

**Senator Jim Walsh:** The Minister may wish to reply to Senator Healy Eames.

**Deputy James Reilly:** I do not want to add anything as it will not change anything. However, I do not want the Senator to be misinformed or under any illusion. The draft regulations relate to forms, etc., not the clinical guidelines, which must be agreed by the colleges. I will not be enacting the legislation until the clinical guidelines are put in place. I must qualify that by saying I cannot be held to ransom by any institute or college that refuses to agree guidelines. That will not happen either.

**Senator Colm Burke:** I acknowledge that people have strong views, but every medical practitioner in the hospital system is committed to providing the best possible level of care for both the mother and the baby. Everything possible is done to protect them both. That should not be lost in the debate. It was clear from the evidence in the public hearings that they will do everything possible to protect both lives. The legislation does not change that position.

**Senator Brian Ó Domhnaill:** I agree with Senator Burke in some of what he said. We have an exemplary medical profession in private and public practice. Of course, their responsibilities are governed by the medical procedures prescribed in law. What we are going to do is bring in a new medical procedure to deal with suicidal ideation in women. It is a new procedure that is not legal in this country until the Bill is passed. Every doctor takes the Hippocratic oath

which is, first, to do no harm and, second, to do no harm. If that is the case, will doctors have the opportunity to refuse training in abortion procedures? Will new doctors and midwives have the opportunity to refuse training in abortion procedures or will they become part of compulsory qualifications training for them? The amendment tabled by Senator Jim Walsh on medical procedures is critically important and goes to the core of the Bill. Will the procedures and drugs used in countries where late term abortions are legal be used here? Before voting on the Bill, Government Senators would like to know whether such procedures and drugs will be used here. What is the objective in training provided for staff to ensure no child is born disabled as a result of the termination process? Does the Minister propose to introduce regulations in this area?

I read an interesting article, the subject of which is a documentary on medical procedures on Channel 4. The documentary focuses on the work of Dr. John Spencer, the senior clinical director for the Marie Stokes clinic. He is one of only a handful of doctors in the United Kingdom who perform abortions up to the legal limit of 26 weeks. In his contribution he outlines that women are hardly ever asked for any more details because they are gruesome. Why should we ask for more details? With the vote we cast we are making a decision not for our partners, sisters or wives but for the general population. We have every right to ask what are the procedures. Dr. Spencer goes on to explain, in the “Dispatches” programme aired on Channel 4 in 2007, that he broke a huge medical taboo and spelled out exactly what happened during an abortion. I am quoting some of the comments relevant to the discussion on the procedures used:

Though we do not show the aborted foetus, what viewers [viewers being the mothers] will see and hear may very well shock them, but it is a vital contribution to the whole debate. In the first 12 weeks or so of pregnancy, doctors can use a simple suction procedure. After that, the surgery becomes more complicated [as outlined by Senator Jim Walsh]. Dr Spencer opens a fresh pack of shiny instruments. He’s an extremely calm, softly spoken man, which somehow makes his words all the more devastating. “The foetus can’t come out in one go. We haven’t dilated sufficiently for that. The foetal parts are soft enough to break apart as they are being removed...” In other words, he has to dismember the foetus inside the uterus and pull it out, bit by bit. He uses an ultrasound scan to guide him. Even then, some body parts are too large to come out intact.

If we are voting for this-----

**Senator John Gilroy:** What does this have to do with the amendment we are debating? Let us do our job properly in this House.

**Senator Fiach Mac Conghail:** On a point of order, there are young people in the Visitors Gallery.

**An Leas-Chathaoirleach:** All I can say is that what Senator Brian Ó Domhnaill is saying has been said already. We have spent an hour and a half on the amendment and I do not want to stymie the debate, but the Minister has indicated that he has given a comprehensive reply, which some do not accept. Senator Jim Walsh intends to press amendment No. 4. Senator Brian Ó Domhnaill should be mindful that there are children in the Visitors Gallery.

**Senator Brian Ó Domhnaill:** I am trying to add as much as I can to the debate in a rational and practical manner.

**An Leas-Chathaoirleach:** That has been said very clearly and graphically already.

**Senator Brian Ó Domhnaill:** I hear the argument that young people are in the Visitors Gallery and listening to the debate over the Internet, which is to be welcomed. However, Ronald Reagan once said that it was odd that all of the people in the world legislating to introduce abortion had already been born.

**Senator Marie-Louise O'Donnell:** It is very difficult for the unborn to do so.

**Senator Brian Ó Domhnaill:** Who, therefore, is standing up for the unborn?

**Senator Marie-Louise O'Donnell:** We are on the planet. Seriously, it would be very difficult to legislate if we were not on the planet.

**Senator Brian Ó Domhnaill:** The reason I have referred to these comments in the course of the debate, as raised by Senator Jim Walsh in the past few days, is that it is actually what happens, regardless of whether we like it. I have seen videos and educated myself. It would nearly make me sick to look at the procedure that takes place. I am not coming at this from a medical point of view. It is gruesome, barbaric and involves the ending of life.

**Senator John Gilroy:** On a point of order, I ask the Senator to keep the provocation and graphic detail out of his contribution.

**An Leas-Chathaoirleach:** That is not a point of order.

**Senator John Gilroy:** Some 100,000 people have had the misfortune of having experienced an abortion.

**An Leas-Chathaoirleach:** That is an unusual point of order.

**Senator John Gilroy:** We do not want to distress people any further in a most distressing situation. There is an onus on Members to be cognisant of this.

**An Leas-Chathaoirleach:** The Senator knows that is not a point of order and that he is taking leave of the Chair.

**Senator Brian Ó Domhnaill:** Uncomfortable as those words may be to people who find themselves forced to vote for the legislation, it is the truth.

**Senator John Gilroy:** Not for me; I am asking the Senator to be conscious that 100,000 women in the country have had abortions.

**Senator Brian Ó Domhnaill:** Unless the Senator is aware of some other way in which abortions are carried out, I do not think that is a point of order.

**Senator Rónán Mullen:** I do not believe the Minister is a bad person or anything like it, but he is in the grip of something bad if he cannot at least engage with us on the question of what might be done to alleviate foetal pain, where possible. I would feel much more reassured if the Minister even answered Senator Marie Louise O'Donnell's question.

**Senator Marie-Louise O'Donnell:** On a point of order, I was trying to point out something rather than ask a question.

**Senator Rónán Mullen:** None of us is a medical person.

**Senator Marie-Louise O'Donnell:** Exactly.

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**Senator Rónán Mullen:** The Senator is not-----

**Senator Marie-Louise O'Donnell:** The Senator has been answered four times.

**An Leas-Chathaoirleach:** Senator Rónán Mullen should not try to interpret Senators' comments.

**Senator Rónán Mullen:** I am sorry, if I mistinterpreted-----

**An Leas-Chathaoirleach:** The Minister has responded in detail and it is unlikely that he will change his mind, no matter how long we argue the point. Perhaps the matter should be put to a vote. I will allow Senator Rónán Mullen to conclude as I am anxious not to stymie the debate. I will then ask Senator Jim Walsh whether he wants to put the amendment to a vote.

**Senator Rónán Mullen:** If Senator O'Donnell sought to clarify a point, it would be reassuring if the Minister for Health, assisted by his officials, conferred some kind of legitimacy on the clarification. I do not think that has happened. I am not sure whether what the Senator said, the desirability of which Senator David Norris concurred with, stands up. I am sure the Senator made the point in good faith, but we have heard testimony from experts on the pro-choice and pro-life side and abortion practitioners that there is an issue of foetal pain. We cannot accept Senator Marie Louise O'Donnell's words, with due respect to her, as providing some kind of reassurance that there is no problem. The Minister has not given us any kind of reply. For all he said, we do not know whether he has ever thought about the issue of foetal pain. The Minister has told us nothing. When an issue such as this arises in any other legislature, its Members are given some information for the assistance of their understanding and deliberation. The Minister has done nothing of the kind. That, in itself, is absolutely shocking.

The Minister stated he can tell doctors what treatments are legal but he seems to be saying we cannot tell doctors what treatment to use. What is it that prevents him from being prescriptive of medical practices, where necessary, in order to attend to and honour the dignity of the unborn child, even in circumstances where his or her life is to be lost, and requiring, none the less, that the doctor not be prevented from what the legislation requires him or her to do? This mantra that the Minister cannot be prescriptive of clinical practice is untrue; he can because he is the Minister responsible for health.

The only case in which he should not be prescriptive of medical practitioners would be if his being prescriptive were to have an overreaching effect and prevent practitioners from doing what they would need to do to protect a person's life or health. Nobody is talking about that here. If we are, or if there is a circumstance in which the administration of pain relief to an unborn child might cut across a doctor's ability to carry out the medical treatment that the law permits, he should tell us. He should show us some evidence that he consulted on this. He should not give us mantras, however. I ask again for some information, at the very least. It is simply not acceptable to say he will not engage with us on this because he will not be prescriptive, the result being that he gives us no information. That shows nothing but contempt for the legislative process. Even if he regarded Senators as mere advisers, he ought to engage with us. In theory, at least, we are supposed to be the people who, in conjunction with the Members of the Dáil, decide whether one can do as proposed. Obviously, that is a very theoretical idea. I ask the Minister one last time, if only to ease our concerns, to share with us his understanding of the pain issues.

I have not spoken to my amendment No. 37, as other amendments in other groups actually

deal with the same topic. I will not hold up the House at this point; suffice it to say my amendment concerns what happens to a child who is viable. I did not find the Minister's reassurance in this regard very reassuring at all. He said that if a viable baby is born, everything will be done to sustain its life. He told us about infanticide, etc. We know there will be no destructive procedures permitted after delivery, but many of the amendments ahead of us today, and ahead of the Minister if he stays with us, pertain to what happens prior to and in the course of delivery. The amendments seek to address what I hope are unintended lacunae in the Bill and not something more sinister.

**An Leas-Chathaoirleach:** Has the Minister anything else to add?

**Deputy James Reilly:** No.

**An Leas-Chathaoirleach:** We are at an impasse.

**Senator Jim Walsh:** I heard that. The Minister's silence speaks volumes. It has been more instructive than anything he has actually said to the House today. It clearly indicates the various forms of abortion practised in other countries will now be practised in Ireland.

**Senator John Gilroy:** That is ridiculous. We have to keep the debate honest.

**Senator Jim Walsh:** I hope the Minister will reflect on what he heard and that it might make him re-examine the evil outcome of this Bill. It would be wonderful if he did so and told the Labour Party where to go in regard to the Bill. However, the Minister is not accepting amendment No. 4, which goes to the core of the Bill. It would have a significant effect on the application of section 9, which is totally unnecessary, as we heard during the health committee hearings. The intention was that babies would not be aborted in any shape or form where it is not necessary to save the life of the woman. What I describe is clearly the case.

**Senator John Gilroy:** That is Article 40.3.3°.

**Senator Jim Walsh:** Article 40.3.3°, which we are not meeting.

**An Cathaoirleach:** We are on amendment No. 4.

**Senator Jim Walsh:** I know exactly the amendment I am on. I have been reminded of Article 40.3.3°. Section 9 is repugnant to the Constitution.

**An Cathaoirleach:** We are not on the section but on three grouped amendments.

**Senator Jim Walsh:** Is the Minister prepared to take us into his confidence and tell us precisely what advice he received from the Attorney General? That has been kept a closely guarded secret. It is impossible to visualise how any Attorney General could say what the Minister is doing is constitutional. Could he tell us what the constitutional advice was?

**Senator John Gilroy:** People have spoken twice on this issue, in two referendums.

**Senator Jim Walsh:** This is my first time speaking on it.

**An Cathaoirleach:** Is the amendment being pressed?

**Senator Jim Walsh:** Is the Minister prepared to answer the question?

**An Cathaoirleach:** Is the amendment being pressed?

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**Deputy James Reilly:** It is not relevant to the amendment.

Amendment put:

The Committee divided: Tá, 8; Níl, 39.	
Tá	Níl
Bradford, Paul.	Bacik, Ivana.
Healy Eames, Fidelma.	Brennan, Terry.
Mullen, Rónán.	Burke, Colm.
O'Brien, Mary Ann.	Clune, Deirdre.
Ó Domhnaill, Brian.	Coghlan, Eamonn.
Ó Murchú, Labhrás.	Coghlan, Paul.
Walsh, Jim.	Comiskey, Michael.
Wilson, Diarmuid.	Conway, Martin.
	Cullinane, David.
	Cummins, Maurice.
	D'Arcy, Jim.
	D'Arcy, Michael.
	Gilroy, John.
	Harte, Jimmy.
	Hayden, Aideen.
	Heffernan, James.
	Henry, Imelda.
	Higgins, Lorraine.
	Keane, Cáit.
	Kelly, John.
	Landy, Denis.
	Mac Conghail, Fiach.
	Moloney, Marie.
	Moran, Mary.
	Mulcahy, Tony.
	Mullins, Michael.
	Noone, Catherine.
	Norris, David.
	O'Brien, Darragh.
	O'Donnell, Marie-Louise.
	O'Keeffe, Susan.
	O'Neill, Pat.
	Ó Clochartaigh, Trevor.
	Reilly, Kathryn.
	Sheahan, Tom.
	van Turnhout, Jillian.
	Whelan, John.

	White, Mary M.
	Zappone, Katherine.

Tellers: Tá, Senators Jim Walsh and Diarmuid Wilson; Níl, Senators Paul Coghlan and Aileen Hayden.

Amendment declared lost.

**Senator oirleach:** Amendment No. 5 is in the name of Senator Colm Burke. Does the Senator wish to move the amendment?

**Senator Colm Burke:** No.

**Senator Marie Moloney:** May I raise a point, a Chathaoirligh?

**An Cathaoirleach:** Is it a point of order?

**Senator Marie Moloney:** I do not mind what it is called, but it is an important point. There are young people in the Visitors' Gallery and there are young people at home listening to this debate on their computers. The phraseology being used in the debate is disgraceful. I carried a dead baby who was removed while I was under anaesthetic. The carry-on here is disgraceful. I urge the Cathaoirleach to use his good office and stop this kind of talk here. There is no need for it. Everybody in the Chamber knows what we are talking about. We do not need to have it vocalised in front of children and young adolescents who may be listening in at home. I do not care what kind of point the Chair calls this, but that is the way I feel about it.

Amendment No. 5 not moved.

**An Cathaoirleach:** Amendments Nos. 6 to 8, inclusive, are related and will be discussed together. Is that agreed? Agreed.

**Senator Fiach Mac Conghail:** I move amendment No. 6:

In page 7, to delete lines 7 to 9 and substitute the following:

““unborn”, means a foetus which has reached that stage of development at which, if born, it would be capable of life outside the womb;”.

As if my life is not complicated enough, I find the grouping of these amendments complicated.

This issue has to do with the discussion we had yesterday on fatal foetal abnormalities and the definition of “unborn”. What I am seeking in this amendment is confirmation and reassurance regarding the definition of “unborn” as stated in this Bill. I am not a legal person, so perhaps Senator Bacik can answer this question for me, but will the definition of the “unborn” that is now, for the first time ever, being written into a Bill end up as a precedent for further or additional legislation or interpretation, or is the definition confined to this Bill? It is for this

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reason that Senator O'Donnell and I seek to include a definition of "unborn" which deals with the challenge of whether a foetus is compatible with life. This relates to our debate yesterday on fatal foetal abnormalities.

The National Women's Council of Ireland and the Irish Family Planning Association have the view that the new definition gives equal protection to a non-viable foetus and a woman and limits the Government's ability to introduce measures in the future to allow terminations in cases of fatal foetal abnormalities where the foetus is incompatible with life. They refer to the D case. I know the Minister has received advice from the Attorney General. However, I find it worrying that the definition, which is included in legislation for the first time in this Bill, limits the possibility of future change or might rule out future legislation, particularly legislation dealing with fatal foetal abnormalities.

The definition of "unborn" in the Bill relates to human life following implantation until such time as "complete emergence of the life from the body of the woman". The explanatory note states that this definition has been inserted to protect the life of a baby who is in the process of being delivered. As was identified by the expert group, a baby being delivered is not protected under the offence of either murder or abortion. While applicable within the narrow and defined parameters of the Bill, if this definition is applied in a broader sense, it amends the position the Irish Government adopted in the *D v. Ireland* case before the European Court of Human Rights. I will not go into detail on this, as my esteemed colleague Senator O'Donnell argued this case yesterday. I know the Attorney General's advice is a closely guarded secret, even more so than the secret of Fatima. However, on this issue it would be helpful if that advice was put on the record. Senator O'Donnell and I do not intend to press this amendment, but it is important for future legislation and law-making that we get clarification on the definition in regard to the advice from the Attorney General, the senior law adviser to the Government.

The Council for Civil Liberties points to the case of *Roche v. Roche*, in which Mrs. Justice Denham, who is now the Chief Justice, gave insights into the definition of "unborn" as in Article 40.3.3°. She stated that the concept of the unborn envisages the state of being born, the potential to be born and the capacity to be born, which occurs only after the embryo has been implanted in the uterus of the mother. The Irish courts can be expected to draw on Supreme Court jurisprudence in *Roche v. Roche* in any future determination of the definition of the "unborn". The interpretation section of this Bill does not state that the definitions contained in it apply only to this Bill. I heard the Minister say yesterday that was the case. However, I would like to hear the legal response on whether, with regard to any future cases, we have cornered ourselves as law-makers.

I know there is a political will to deal with this issue in the future and Senators Hayden and Bacik were very eloquent and supportive of the need for legislation dealing with fatal foetal abnormality, but they felt it could not be delivered in this Bill. Will the definition in this Bill stymie any attempts to introduce legislation to deal with fatal foetal abnormality under a separate Bill? We need clarification on that. There may also be circumstances in which a case falling outside of the scope of this Bill requires further interpretation of the meaning of "unborn". For example, the dictum of Mrs. Justice Denham in the *Roche* case would suggest that a non-viable foetus, being incapable of birth, does not come within the constitutional concept of "unborn". Therefore, it might be unwise to seek to apply the definition in this Bill to such a case, as to do so might not be in keeping with the constitutional interpretation. In addition, we might not want to fall foul of Article 3 of the European Convention on Human Rights, particularly with regard to protecting women, their treatment during pregnancy, and the issue of fatal foetal abnormality.

I would like legal clarification of the definition of “unborn” and ask the Government to publish the Attorney General’s advice on the definition and the reason it was felt it should be included in the Bill.

**Senator Jim Walsh:** I am sorry if Senator Moloney was upset. That was not my intention.

**Senator John Gilroy:** Oh my God. How could the Senator not know that what he said would be upsetting? It was disgraceful talk.

**An Cathaoirleach:** Senator Walsh without interruption.

**Senator Mary Moran:** On a point of order, it was insulting to all the women here.

**Senator Maurice Cummins:** And the men.

**An Cathaoirleach:** We are not reopening that debate.

**Senator Jim Walsh:** However, I am not sorry if people on the other side cannot stomach the graphic nature of the unfortunate reality.

**An Cathaoirleach:** The Senator should address the amendments. We are on amendments Nos. 6, 7 and 8. We will not reopen this.

**Senator Jim Walsh:** If this arises in the future - I do not think it will - I will give advance notice of what I am going to say.

**Senator John Gilroy:** On a point of order, Senator Walsh’s voyeurism does not offend me, but it is very offensive to a great number of people.

**An Cathaoirleach:** That is not a point of order. We are not opening that debate.

**Senator Jim Walsh:** This is offensive to anybody who is pushing this Bill.

**Senator Mary Moran:** That is the Senator’s opinion. We must all respect each other’s opinions.

**An Cathaoirleach:** Senator Walsh, on the amendments.

**Senator Jim Walsh:** Amendment No. 7 is a very short amendment which proposes, in page 7, line 7, after “life,” to insert “for the purposes of this Act.” As somebody who believes as a principle that human life is inviolate from conception to natural death, I want to clarify that the definition in this Bill only applies to this Bill and does not have any wider connotations. This part would then read ““unborn”, in relation to a human life, is a reference to such a life, for the purposes of this Act, during the period of time commencing after implantation...” If one likes, it is making the distinction between conception and implantation, and not interfering with the Bill. For clarity, I would not like this definition to influence other areas that might come up in the future.

**Senator Maurice Cummins:** We have spent six and half hours on the Title and section 2 of the Bill. I agreed to give ample time in the House for everybody to have an opportunity to speak but I am being approached by Members from both sides of the House in regard to the filibustering that is going on and the lack of decorum in the House. I am being forced-----

**Senator Rónán Mullen:** Shame.

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**Senator Brian Ó Domhnaill:** That is shameful.

**Senator Fidelma Healy Eames:** On a point of order-----

**Senator Maurice Cummins:** I have been asked to bring this to-----

**Senator Brian Ó Domhnaill:** Name the people.

**An Cathaoirleach:** What is the point of order?

**Senator Fidelma Healy Eames:** I take exception to calling the debate in this House filibustering. Views are sincerely held and very well meant.

**An Cathaoirleach:** The Senator should resume her seat.

**Senator Fidelma Healy Eames:** It should not be called filibustering.

**Senator Maurice Cummins:** We see the support for the filibustering - eight votes on the last vote.

**Senator Fidelma Healy Eames:** Against the barbaric approach in the proposal here.

**Senator Maurice Cummins:** I ask Members to be brief and not to be repetitive. The Cathaoirleach and all the chairpersons have asked for this but it is not being adhered to. We are finishing Committee Stage tonight, that is all I am saying.

**An Cathaoirleach:** On the amendments, I call Senator Mullen.

**Senator Rónán Mullen:** I take this issue very seriously, as do many other people on both sides of the argument. However, it really does demean our efforts, it demeans the Seanad and it demeans the sincere and constructive way we are trying to earn our living from the people by doing our duty to them to use the word “filibustering”.

**An Cathaoirleach:** On the amendments, Senator.

**Senator Rónán Mullen:** I am deeply disappointed. Anybody who could characterise a debate like this on a life and death issue as filibustering really does not deserve a mandate from the people ever again. If there is one issue-----

**Senator Maurice Cummins:** Not one bit was untrue.

**An Cathaoirleach:** Senator Mullen, without interruption.

**Senator John Gilroy:** On a point of order, those remarks about the Leader cannot be allowed to stand on the record of this House.

**Senator Maurice Cummins:** I treat them with the contempt they deserve.

**An Cathaoirleach:** I did not hear what he said. Senator Mullen, without interruption, on the amendments.

**Senator John Gilroy:** He is a disgrace.

**Senator Rónán Mullen:** I gave the courtesy to the Leader of not even mentioning him. I was simply trying to urge people to avoid disparaging language about our efforts by suggesting

that filibustering is going on, which was shameful. We spent about two and a half hours talking about foetal pain. If the Leader does not think that is important, I am sorry for him.

**Senator Maurice Cummins:** It is six and a half hours.

**An Cathaoirleach:** Silence in the Chamber. On the amendments, Senator.

**Senator Rónán Mullen:** I wonder what the people of Waterford make of that attitude.

**An Cathaoirleach:** Senator Mullen, are you going to stick to the amendments?

**Senator Rónán Mullen:** I am, but I have to say I am disturbed.

**Senator Fidelma Healy Eames:** If foetal pain is not important, what is important?

**An Cathaoirleach:** We have dealt with those amendments. We are on amendments Nos. 6 to 8, inclusive.

**Senator Fidelma Healy Eames:** Let us not demean them, please.

**Senator Mary Moran:** On a point of order, I do not know where this is going. I ask that the Leader or the Cathaoirleach would adjourn the Seanad for five minutes for Members to take stock.

**An Cathaoirleach:** Senator, resume your seat, please.

**Senator Mary Moran:** This debate is sinking lower and lower, and is doing nothing for the House.

**An Cathaoirleach:** The only one who can propose amending the business is the Leader or somebody on his behalf. I call Senator Mullen, on the amendments.

**Senator Rónán Mullen:** I respect what Senator Moran has said, and I would support that-----

**An Cathaoirleach:** I ask the Senator to stick to the amendments before us.

**Senator Brian Ó Domhnaill:** Yes. Amendment No. 6 is that of Senators Mac Conghail and O'Donnell. I understand this would basically remove protection from any unborn child prior to viability. If I am right in that, I want to say that, obviously, I would oppose it. I do not think I need say any more about that.

My own amendment No. 8 relates to the issue of viability. I am not trying to remove any protection for unborn children prior to viability but, in fact, to ensure that, where a child is viable, his or her life would be fully protected. That involves inserting a definition that the word ““viable”, in relation to a pregnancy, means an unborn who, as a matter of medical probability, would, by reason only of his or her gestational age, be capable of surviving outside the womb with the appropriate medical support”. Clearly, the purpose of that amendment is to help incorporate the idea of time limits into the legislation.

The amendment works in conjunction with the suggested amendments to sections 7 to 9, inclusive, and 13, which we will go on to consider. It also works with amendment No. 37, on which I did not speak earlier and which adds the requirement that “the medical procedure is not intended to end the life of the unborn where such life is viable.” This is in conjunction with the

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definition of viability. The rationale for all of this has to do with the discussions about whether time limits could be introduced into the Bill.

The line from the Government on this has been that one cannot time limit a constitutional right. If one looks at the Government's utterances on this issue, however, there is considerable confusion. I would quote the Minister of State, Deputy Alex White, on this point. At one point, he said:

... the plain meaning of a gestational limit must mean that the test of a real and substantial risk goes out the window after it is reached. ... It is manifestly against the intention of the legislation to introduce such limits. They would undermine the legislation and change the meaning, giving a right with one hand and taking it back with the other.

However, the Minister of State, Deputy Alex White's objections expressed there missed the mark. Time limits refer not to the general rights of a woman but to the procedures which end the life of a viable child. The Government is at pains to suggest to us that what the eighth amendment provides for is not the termination of a life but the termination of a pregnancy, even if, in many cases, that termination of pregnancy will result inevitably in the termination of the life of the child. That is why it is so controversial. However, time limits do not refer to the general rights of the woman. The idea of time limits refers to the procedures which are used which end the life of a viable child. The Government is at pains to point out that the woman, under section 9, does not have the right to end a life of a viable child - that is in the context of suicide. They themselves limit the woman's right in this regard. What this amendment seeks to do is to express and make explicit that sentiment.

The Minister of State, Deputy White, cannot have his cake and eat it. He cannot claim, on the one hand, that there is no right to kill a viable child under section 9 and then, on the other, claim that making this explicit in the Bill would actually revoke a woman's rights under the Bill. One cannot make both of those statements.

**Deputy Kathleen Lynch:** I propose to deal first with amendments Nos. 6 and 8. The definition of "unborn" in the Bill provides protection to the unborn from the moment of implantation and ends on the complete emergence of the life from the body of the woman, in line with the Constitution. That is exactly the legal advice we got from the Attorney General, namely, this Bill has to be in compliance with the Constitution. In addition, the Bill imposes a clear duty on medical practitioners to make every effort to preserve the life of the foetus. Not to do so would mean a medical practitioner would be in breach of the proposed legislation and subject to penalties.

With regard to amendment No. 7, I see Senator Mac Conghail had to leave but Senator van Turnhout is present. As a matter of course, the definition or interpretation provisions contained in a specific Act define words or phrases for the purposes of that Act alone. Therefore, the amendment is not necessary and I cannot accept it. The definition clearly relates just to this Bill. If, as legislators, we were in future to introduce additional legislation, it would supersede this.

**Senator Jillian van Turnhout:** The amendment will be withdrawn but we reserve the right to bring it back on Report Stage.

*2 o'clock*

**Senator Brian Ó Domhnaill:** In reference to the amendments tabled on the issue of life, particularly amendments Nos. 6 to 8, inclusive, the one thing that is very apparent in the legislation - indeed, in its Title, the Protection of Life During Pregnancy Bill - is that it contains no legal definition of "life". What exactly are we protecting if we are not protecting life? Perhaps that is something the Minister of State could clarify. The people have a right to know what is being protected within the Bill.

The legal definition of life, which holds the same meaning as it does under natural law, is life "from conception until natural death". That is as contained in natural law. I have sought legal clarification from the Attorney General's Office on this issue. I wrote to that office on 4 July, forwarding an opinion of Senior Counsel on the issue, and asked questions. I requested in writing that before the Bill came to the Seanad legal clarification should be provided to me, such as I am entitled to receive as a Member of the Oireachtas. I have a copy of the letter I sent to the Attorney General's Office. All I received on 9 July was an acknowledgment-----

**An Cathaoirleach:** The Senator can raise that point on the section. We are discussing amendments Nos. 6 to 8, inclusive.

**Senator Brian Ó Domhnaill:** I would be happy to do that. For the avoidance of doubt, I refer again to the definition of life. Where is there contained in the Bill such a definition? I have not observed it. Perhaps the Minister of State might outline that. The Bill is entitled the Protection of Life During Pregnancy Bill - where is the legal definition that relates to the protection of "life" contained within it? That may be one for the Minister for Health.

Senator Walsh made a point about the need to seek the advice of the Attorney General. Such advice should be made available to all Members of the House, irrespective of our political colours, especially in the case of such a defining piece of legislation in the history of the nation.

**Senator David Norris:** I support Senators Mac Conghail and O'Donnell on amendment No. 6.

**An Cathaoirleach:** That amendment was not moved.

**Senator David Norris:** I regard that as rather a pity. Perhaps I will have a word on the section.

**An Cathaoirleach:** We are discussing amendments Nos 6 to 8, inclusive.

**Senator David Norris:** I refer to a definition of "unborn", which is a rather ungainly and unpleasant word. I do not know what it means. Anything could be unborn. For example, the attempts to attribute grotesquely sophisticated capacities to a fertilised egg are unseemly - I have listened to them. That is the very beginning of life and it is not that I disrespect it. However, to describe such entities as "citizens" is utterly unreal. Fertilised eggs are shed by the million on this planet every day. Nature is very profligate. I do not understand why we cannot have acceptance that life is a spectrum and it develops. It does not automatically and intrinsically have these qualities. Again, I point to the fact that the Roman Catholic Church only changed its mind in this respect less than 200 years ago. For 18 centuries it took the view that abortion during anything up to 166 days was reasonable, even under Catholic law.

The definition of "unborn" is an important one for that reason, and I do not terribly like the one in the legislation, which states:

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“unborn”, in relation to a human life, is a reference to such a life during the period of time commencing after implantation in the womb of a woman and ending on the complete emergence of the life from the body of the woman;

“woman” means a female person of any age.

I will be happy to propose or second the definition contained in the amendment if its proposers or seconders are not able to do so and would be happy to put it back in if we have another opportunity on Report Stage. There is a cleanness, clarity and focus about it: ““unborn”, means a foetus which has reached that stage of development at which, if born, it would be capable of life outside the womb;”.” I agree with that definition and much prefer it to the Government’s one. It is realistic. I am sorry it was not moved and am very grateful to the Cathaoirleach-----

**An Cathaoirleach:** It was moved, but the Senator has indicated it is more than likely that it will be withdrawn.

**Senator David Norris:** She has not withdrawn it. In that case, I will wait and see what happens. If it is withdrawn, presumably it can be put back. I believe it is a good idea and I support it for the reasons I gave.

**Senator Jillian van Turnhout:** May I clarify this? We have withdrawn amendment No. 6 with a view to perhaps bringing it back on Report Stage.

**An Cathaoirleach:** The House has not agreed to that yet. We are discussing amendments Nos.-----

**Senator Jillian van Turnhout:** Just to clarify this for Senator Norris, we will listen to the reply of the Minister of State and reserve the right to bring the amendment back on Report Stage. Obviously the House must agree to this.

**Senator Jim Walsh:** As I understand it, the term “implantation” applies only to this Bill. Any other legislation would supersede that, and therefore my amendment-----

**Deputy Kathleen Lynch:** That is if we were to introduce any other legislation.

**Senator Jim Walsh:** Yes. It would not apply to subsequent legislation.

**Deputy Kathleen Lynch:** It might.

**Senator Jim Walsh:** Yes, but not following from this.

**Deputy Kathleen Lynch:** The term applies only to this piece of legislation.

**Senator Jim Walsh:** Obviously this Bill could be amended in the future and therefore “implantation” would be the term applicable.

**Deputy Kathleen Lynch:** And the summer may last forever. Anything is possible.

**An Cathaoirleach:** Have we finished discussing amendments Nos. 6 to 8, inclusive? Is amendment No. 6 being pressed?

**Senator Jillian van Turnhout:** No.

Amendment, by leave, withdrawn.

**An Cathaoirleach:** Amendment No. 7 was discussed with amendment No. 6.

**Senator Jim Walsh:** I move amendment No. 7:

In page 7, line 7, after “life,” to insert “for the purposes of this Act”.

Amendment put and declared lost.

**An Cathaoirleach:** Amendment No. 8 was discussed with amendment No. 6.

**Senator Rónán Mullen:** I move amendment No. 8:

In page 7, between lines 9 and 10, to insert the following:

“ “viable”, in relation to a pregnancy, means an unborn who, as a matter of medical probability, would, by reason only of his or her gestational age, be capable of surviving outside the womb with the appropriate medical support;”.

Amendment put and declared lost.

Question proposed: “That section 2 stand part of the Bill.”

**Senator Colm Burke:** I wish to refer briefly to this section because it is important to have clarification.

Much incorrect information was given this morning in regard to the procedures for termination. The majority - 99.99% - of terminations involve the application of medication, not the procedure outlined by Senator Walsh, who is about 25 years behind the times in the description he gave yesterday, today and other days. It is wrong that this kind of false, misleading and untrue information is given out. It is important that I clarify that.

The issue I wish to raise in respect of section 2 is a concern I have had. In fairness, I have had a detailed discussion with the Minister on the matter, which is the definition of “obstetrician”, and I know the matter is being dealt with. It was raised at the public hearings. I refer to what Professor Fionnuala McAuliffe said in those hearings. This comes from the report on the heads of the Bill. She is a member of the Institute of Obstetricians and Gynaecologists, which proposed that the definition be expanded to cover cases in which an obstetrician who is registered only on the General Medical Register is acting in the role of a consultant, who would be on the specialist register. These situations occur commonly, such as over weekends, and requiring a full registered consultant to intervene in such a case could cause harmful delays. This was endorsed by Dr. Rhona Mahony. The term “obstetrician-gynaecologist” could be used to cover cases in which a specialist has simply chosen not to register, or where a specialist registrar is covering for a registered consultant.

I raise this issue because the Institute of Obstetricians and Gynaecologists contacted me last Friday and raised its concern that it had not made progress with the Department on the matter. There are three parties to this issue: the Department, the institute and the Medical Council. It is important to deal with the issue. I was talking not just to one person; I spoke to Professor Robert Harrison, Professor Fionnuala McAuliffe and Dr. Cathy Allen. There is no legal requirement for obstetricians to be on the specialist register. The definition in the Bill provides that people who are on that register are defined as “obstetricians”. Professor Robert Harrison has indicated to me that up to 30% of those involved may not be on the specialist register. He has agreed to

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write to every practising obstetrician to make an application to go on the specialist register. The process must be expedited to get people on. The issue arose as when the legislation was being passed a number of years ago, people who had been practising for a number of years were already recognised as being on a specialist register and everybody else coming through after that had come through a training process on the specialist register. A number of people were offered positions but had not taken them up at the time the legislation went through and were not on the specialist register in real terms. The issue must be resolved, as I am speaking particularly about smaller units with three obstetricians, for example. The problem with smaller units is there is a one-in-three call, meaning one consultant is on call from 5 p.m. on Friday right through to 9 a.m. on Monday. If the person on call is not on a specialist register, there may be a problem with a delay in dealing with a medical procedure.

I raise the matter in this context as it is a genuine concern of mine and the institute. The matter should be resolved. It is not just the Department that is involved, and although I know it does not oversee the issue, we must nonetheless progress the matter. There 12 small units with only three consultants among the 19 units. There is another matter relating to locums, which are difficult to recruit for smaller units. I know a major effort is made by the Department and the HSE to ensure all locums are suitably qualified but there may be instances where some locums are not on the specialist register. We must resolve the issue in the shortest possible time.

**Senator Jim Walsh:** Senator Burke is inaccurate in rebutting my comments. The only way I know of carrying out an abortion - perhaps the Senator knows a different way - is the medical and surgical process.

**Senator Colm Burke:** The Senator is incorrect. He should speak to a consultant.

**Senator Jim Walsh:** I have done so.

**Senator Colm Burke:** Speak to another.

**An Cathaoirleach:** Senator Walsh, without interruption.

**Senator Jim Walsh:** I have spoken with people active within the gynaecological and obstetrics area, as well as elsewhere. The fundamental issue is the life of the baby is not protected, which is a major concern.

**Deputy Kathleen Lynch:** I have nothing more to contribute.

**Senator Brian Ó Domhnaill:** I did not refer to amendment No. 6 but I will refer generally to the Bill. I thought when it was not moved that I could not refer specifically to it.

**An Cathaoirleach:** That amendment has been dealt with and we are on section 2.

**Senator Brian Ó Domhnaill:** I mostly agree with the Government wording, as it gives a fairer reflection. There is the idea that we move from reclassifying “unborn” to a “foetus” but I have never heard a couple say they are expecting a foetus. They expect a child.

**Senator David Norris:** They expect a child when it comes.

**Senator Brian Ó Domhnaill:** Maybe some couples would refer to it otherwise but I have never heard of it.

**An Cathaoirleach:** The Senator should confine himself to section 2.

**Senator Brian Ó Domhnaill:** I mostly agree with the Government's terminology. I have a question regarding section 2, with the definition of unborn and the idea of "complete emergence". There is no reference throughout the section to "complete emergence" and what that means. In reference to human life, the reference is to life during the period of time commencing after implantation in the womb and ending on the complete emergence of the life from the body of the woman. Will the Minister of State give some clarification in that regard?

Section 2 deals predominantly with definitions. This morning I received a note from a gentleman living in this city who is a member not of my party but of a Government party. He e-mailed to say that as a result of an unplanned and unwanted pregnancy in 1968-----

**An Cathaoirleach:** I ask the Senator to report progress as it is 2.15 p.m.

Progress reported; Committee to sit again.

### **Health (Amendment) Bill 2013: [Seanad Bill amended by the Dáil] Report and Final Stages**

**An Cathaoirleach:** I welcome the Minister of State, Deputy White, to the House. This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 118, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question "That the Bill be received for final consideration", the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For Senators' convenience, I have arranged for the printing and circulation of the amendments. The Minister of State will deal with the subject matter of the amendments in each group, and I have also circulated the proposed grouping in the House. A Senator may contribute once on the grouping and I remind Senators that the only matter that may be discussed are the amendments made by the Dáil.

Question proposed: "That the Bill be received for final consideration."

**Minister of State at the Department of Health (Deputy Alex White):** The first grouping takes in amendments Nos. 1, 3 and 10. Section 2 of the Bill provides for the commencement of the Bill's provisions and amendment No. 1 made by the Dáil related to the commencement provisions in respect of the private inpatient charge, together with technical amendments regarding other commencement provisions. To briefly summarise the technical changes to section 2, amendment No. 1 included a provision to commence, upon enactment of the Bill, Part 1 and sections 5 and 14, in addition to section 6 and most of section 7. Other sections or subsections of the Bill shall be commenced as appropriate by way of commencement order.

As regards the private inpatient charge, sections 13, 15, 16 and 17 all require co-ordination in the commencement. As a result of discussions the Department has had with the private insurance industry in order to agree a phasing in of charges for all private patients, including those occupying public beds, the Minister has decided to implement these charges from 1 January 2014 to ensure the agreed additional revenue is realised. As a result, the hospital income will be received in the latter eight months of 2014 rather than in 12 months, based on an implementation date of 1 September 2013.

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The rates included in the legislation are set at the level to raise an additional €30 million in hospital revenue in 2014. This phasing is intended to enable the insurance market to adjust to the new charges without destabilising impacts. It will also allow for assurances to be provided to insurers that the additional revenues raised in 2014 will amount to €30 million in the calendar year. The Minister will keep rates under review to deliver the targeted revenue in 2014, as well as for the phasing in over future years. As a result of this Bill, the hospital charge for a private day-case patient will be reduced from €828 to €407 in a Category 1 hospital, specified in the Fifth Schedule to the Health Act 1970. The daily charge for a private patient accommodated overnight in a multi-occupancy room in a Category 1 hospital will be €813. Currently the equivalent charges applied to a patient in a semi-private bed come to €1,008. To support this phasing approach, the private health insurers have confirmed their commitment in principle to continuing this year's process of payments to public hospitals in respect of private patients who have already been treated, as well as their commitment to participating in the initiative to be chaired by Mr. Pat McLoughlin that will address costs in the private health insurance industry to support the ongoing sustainability of the market.

Amendment No. 3 passed by the Dáil is purely technical in respect of section 9(c)(i), which is unchanged, apart from syntax and numbering, from section 9(c) as initiated. Regarding Dáil approval of the insertion of section 9(c)(ii), it has always been the case that where a person "does not avail of" some part of inpatient services under their full or limited eligibility, then under section 52 of the Health Act 1970 they are "deemed not to have full or limited eligibility, as the case may be, for those in-patient services", and may therefore be charged accordingly. The insertion of "waives his or her right to avail of, some part of those services", mirrors the language in section 13 of the Bill and reflects the freedom of choice that patients currently have to access private care if they so wish.

**Senator Colm Burke:** I welcome the phasing in of these measures. It is important that the insurance industry is given time to respond to these changes, and I welcome the way the Minister of State and the Department officials have approached this matter. It is a welcome development.

**Senator Sean D. Barrett:** Some of these regulations seem to assume that it is a person from Mars who has a VHI subscription. We also have entitlements as taxpayers, and I would ask that this be borne in mind. I agree with Senator Burke that doing it on a more gradual basis is to be commended. People can be members of two schemes. Are we saying that a person with VHI must waive all entitlements that he or she has as a taxpayer and a citizen? I am glad the Minister of State is trying to juxtapose the two in a different manner than was originally intended, and I welcome that.

**Acting Chairman (Senator Cáit Keane):** I call on the Minister to speak on the second grouping, which takes in amendments Nos. 2 and 9.

**Deputy Alex White:** Amendments Nos. 2 and 9 were made in the Dáil to clarify the current situation that maternity services for women are provided by or on behalf of the HSE, both in a hospital context and in a community or home setting. This is in line with current practice in hospitals and in the community. The majority of women choose to have their babies delivered in hospitals. Therefore, it is important to be clear that the HSE is in a position to provide this service. Amendment No. 2 provided this clarification in respect of inpatient services.

**Acting Chairman (Senator Cáit Keane):** We will move on to third group, which deals

with the Schedules and the subject matter of amendments Nos. 4 to 8, inclusive, and 11 to 16, inclusive.

**Deputy Alex White:** Amendments Nos. 4 to 8, inclusive and 16 relate to the deletion of section 18 and the Fourth Schedule of the Bill, and consequential amendments to delete the reference to the Seventh Schedule in section 13. These deletions were necessary following confirmation by Swinford District Hospital that it does not have any patients for whom charges payable in respect of inpatient services provided under section 55 of the Health Act 1970 apply. No other hospitals have been identified by the HSE as being in this category, reflecting a change in hospital activity over many decades whereby less complex and intrusive care is provided in local hospitals and units closer to the patient's community, and more complex care is provided in hospitals that are more appropriate in terms of specialities and quality and safety.

Amendments Nos. 11 to 15 were technical amendments relating to corrections to the names of Connolly hospital, Sligo General Hospital and St. Luke's Hospital in Kilkenny, and to the addition of Our Lady's Hospices in Blackrock and Harold's Cross, Peamount Hospital and St. Vincent's Hospital, Fairview, to the list of institutions that may apply the private inpatient charge.

Question put and agreed to.

Question, "That the Bill do now pass," put and agreed to.

*Sitting suspended at 2.25 p.m. and resumed at 3 p.m.*

*3 o'clock*

### **Courts and Civil Law (Miscellaneous Provisions) Bill 2013: [Seanad Bill amended by the Dáil] Report and Final Stages**

**Acting Chairman (Senator Michael Mullins):** This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 118, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question, "That the Bill be received for final consideration," the Minister of State may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. The only matters, therefore, which may be discussed are the amendments made by the Dáil. For Senators' convenience, I have arranged for the printing and circulation of the amendments. Senators may speak only once on Report Stage.

Question proposed: "That the Bill be received for final consideration."

**Minister of State at the Department of Health (Deputy Alex White):** I am taking the Bill on behalf of the Minister for Justice and Equality who is away on EU business.

A total of 29 amendments, all of which were Government amendments, were proposed and approved on Committee and Report Stages in the Dáil. All of them are technical or refinements of the provisions of the Bankruptcy Act 1988 or the Personal Insolvency Act 2012 to facilitate

the Insolvency Service of Ireland and the courts in dealing with insolvency cases as quickly as possible.

Amendment No. 1 is a drafting amendment to delete the reference to the Courts (Supplemental Provisions) Act 1961 which is no longer required. Its acceptance will mean the deletion of section 26.

Amendment No. 2 is a technical amendment which improves the text of section 8 of the Bankruptcy Act 1988 in regard to the prescription of certain notices that may be issued by a creditor and is necessary in the preparation of draft rules of the superior courts to facilitate the amendments to the Bankruptcy Act effected by the Personal Insolvency Act 2012. The second change aligns the required notice period in the old section 8 of the 1988 Act, which was only a four day notice to the debtor, with a new 14 day notice period in the revised subsection (1)(c) inserted by the 2012 Act as a precondition of a creditor being granted a bankruptcy summons.

Amendment No. 3 corrects an error in the text of new section 60A(2) in regard to the transfer of staff from the Courts Service to the Insolvency Service of Ireland. The reference in subsection (2) should be to the whole of the section, not just to subsection (2) alone.

Amendment No. 4 is a technical amendment to improve the text of subsection (5)(c) of section 60A by including a specific reference to the superannuation benefits of the staff concerned who may transfer from the Courts Service to the Insolvency Service of Ireland.

Amendment No. 5 inserts a new subsection (2A) in section 85B of the Bankruptcy Act of 1988 which was inserted by section 157 of the Personal Insolvency Act 2012. It concerns the entitlement to discharge from bankruptcy. The new subsection provides that an order of discharge from bankruptcy shall provide that any property of the bankrupt then vested in the official assignee shall be returned to the bankrupt. This provision was inadvertently omitted from the 2012 Act. Of course, it would only arise when all of the necessary conditions of the bankruptcy, including satisfaction to the fullest extent possible of the claims of the creditors, had been fulfilled. Any remaining surplus property would then be returned to the former bankrupt.

Group 2 concerns amendments to the Personal Insolvency Act 2012 in regard to court jurisdiction. Amendment No. 6 is a technical drafting amendment, recommended by the Office of the Attorney General, to better refer to the particular Circuit Court to which an application is made for one of the debt resolution processes under the Personal Insolvency Act 2012.

Amendment No. 27 is also a technical drafting amendment, recommended by the Office of the Attorney General, to make it clear that an appeal against a decision of the Circuit Court under the Personal Insolvency Act shall lie to the High Court sitting in Dublin, with the exception of the situation under section 169(4), which relates to appeals to the Circuit Court against certain decisions of the Insolvency Service of Ireland regarding the regulation of personal insolvency practitioners.

Group 3 concerns amendments to the Personal Insolvency Act 2012 in regard to approved intermediaries who process applications for debt relief notices. Amendment No. 7 amends section 9(1)(g) of the Personal Insolvency Act 2012 to ensure the Insolvency Service of Ireland has sufficient powers in regard to the ongoing supervision of approved intermediaries. The original provision had effectively concentrated on the initial authorisation process only.

Amendment No. 13 inserts a new subsection (5) into section 47 of Personal Insolvency Act

2012 to extend the powers of the Insolvency Service of Ireland beyond making regulations for the criteria for authorisation of persons as approved intermediaries to the ongoing supervision and regulation of these approved intermediaries. Amendment No. 13 inserts a new subsection (5) into section 47 of the Personal Insolvency Act 2012 to extend the powers of the insolvency service beyond making regulations for the criteria for authorisation of persons as approved intermediaries to the ongoing supervision and regulation of those approved intermediaries. The proposed new subsection 5A is designed to ensure that the insolvency service can monitor compliance with any regulations made pursuant to this section.

The second amendment to section 47 is a drafting amendment to improve the text by re-locating the current provisions of subsections (9) to (12) of section 27, concerning situations where the approved intermediary can no longer perform that function, to section 47, in subsections (8) to (11), where they would seem to be more appropriately located.

**Acting Chairman (Senator Michael Mullins):** Does anybody wish to speak on the amendments in this group? No. We will move to the next group and I call on the Minister of State to speak on the amendments in group 4.

**Deputy Alex White:** Group 4 concerns miscellaneous provisions of the Personal Insolvency Act 2012. There are two amendments, Nos. 8 and 20. Amendment No. 8 inserts a new section 21A in the Personal Insolvency Act 2012 regarding the retention of information by the insolvency service to the effect that, notwithstanding the Data Protection Act 1988, the insolvency service shall retain such information or data obtained by it under this Act as is necessary for the performance of its functions. For example, the Personal Insolvency Act does not permit repeat applications for each debt resolution process. Thus, the insolvency service must be in a position to detect such applications.

Amendment No. 20 corrects a typographical error in the referencing of a subsection in the text of section 91(3) the Personal Insolvency Act 2012.

**Acting Chairman (Senator Michael Mullins):** If everybody is happy with that we will move to the amendments in group 5. I ask the Minister of State to speak on those amendments.

**Deputy Alex White:** Group 5 concerns amendments to the Personal Insolvency Act 2012 in regard to debt relief notices. There are two amendments, Nos. 9 and 12. Amendment No. 9 makes two changes to section 27 of the Personal Insolvency Act 2012, which deals with the initiation of a debt relief notice process by a debtor. A new subsection (4) extends the provisions of the previous subsection by now adding that where the debtor has provided information in regard to his or her application for a debt relief notice, he or she must also give written consent to the making by the approved intermediary of an inquiry under subsection (9) and to the disclosure by the approved intermediary of personal data of the debtor, to the extent necessary for such an enquiry. Such enquiries would be made to creditors or perhaps to a relevant State authority such as the Revenue Commissioners.

New subsections (9) and (10) replace the previous subsections (9) to (12) in section 27 and provide an explicit power to the approved intermediary to verify the value of a debt or other liability of the debtor with the creditor concerned in regard to the application for a debt relief notice. The creditor is required to respond to the request for information from the approved intermediary within 21 days. Otherwise, the approved intermediary is entitled to presume that the amount of the debt owed is that claimed by the debtor.

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Amendment No. 12 corrects a typographical error in the text of the new subsection (3) of section 37 of the Personal Insolvency Act 2012, contained in section 49 of the Bill as passed by the Seanad. The section concerns possible payments by the debtor to end a debt relief notice supervision period earlier than after three years.

**Acting Chairman (Senator Michael Mullins):** We now move to the amendments in group 6, and I invite the Minister of State to speak on those amendments.

**Deputy Alex White:** Group 6 concerns provisions in regard to the prescribed financial statement, which is a critical requirement in the new debt resolution processes in the Personal Insolvency Act 2012. Amendment No. 10 contains technical amendments to section 29(2) of the Personal Insolvency Act 2012. The new paragraph (c) in subsection (2) in regard to the prescribed financial statement completed by the debtor under section 27 now includes a reference to the statement required of the approved intermediary, under section 27(6), in paragraph (a) of subsection (2).

The amendment to section 29(2), paragraph (d), is a drafting improvement to make it clear that the debts concerned are those as specified in the prescribed financial statement submitted by the debtor. Amendment No. 24 amends section 136(1) of the Personal Insolvency Act 2012 in regard to the prescription of a prescribed financial statement by now referring to part 2 in total of the Act rather than referencing the individual debt resolution processes.

**Acting Chairman (Senator Michael Mullins):** We will move to the amendments in group 7, and I ask the Minister of State to speak on these amendments.

**Deputy Alex White:** The subject matter of amendments Nos. 11, 17, 18, 21 and 22 relates to court consideration of applications for the new debt resolution processes.

Amendment No. 11 amends section 31 of the Personal Insolvency Act 2012, which concerns the supporting documentation that the insolvency service must furnish to the appropriate court when making the application for a debt relief notice. The requirement to include the documents referred to in section 29(2), paragraphs (e) and (f), which relate to the debtor's consent to the processing of their documents and the making of inquiries to verify information by the insolvency service, is deleted.

The other change in amendment No. 11 and the same changes in amendments Nos. 17, 18, 21 and 22 have the same intention, which is to repeal the same subsection (4) in each of sections 31, 61, 95, 78 and 115 of the Personal Insolvency Act 2012. That subsection provides that a court may hear additional evidence or information in a hearing of an application under an insolvency process otherwise than in public.

Further discussion with the Office of the Attorney General has led to the conclusion that it would be desirable to repeal these subsections and to remove the exceptional provision that, where a court requires additional information or evidence, it could hear it other than in public. The repeal will avoid any aspersions on the legality of the primary court sitting process in insolvency applications being in public. No special protection is provided for any particular element of the debtor's application being considered by the judge. It has not been possible to devise a "legally safe" provision to allow the judge discretion to hold back the disclosure of any part of an insolvency application from public view during the sitting - for example, orally, by way of a court TV screen, or by some other means. The insolvency sitting would have to be no different to any other court sitting. This position reflects the wider issues and, indeed, tensions associ-

ated with ensuring that justice be done and be seen to be done in public.

**Acting Chairman (Senator Michael Mullins):** If everybody is happy with that, we will move on to amendments in group 8. I ask the Minister of State to speak on these amendments.

**Deputy Alex White:** Group 8 concerns amendments to the Personal Insolvency Act 2012 in regard to personal insolvency practitioners. There are three amendments, Nos. 14, 15 and 16, in this group. Amendment No. 14 limits the scope of section 49 of the Personal Insolvency Act 2012 to the initial appointment by a debtor of a personal insolvency practitioner to represent him or her and to noting the termination or ceasing of that appointment either by the debtor or by the personal insolvency practitioner. The previous subsections (6) to (9) of section 49 are deleted. Their provisions are recreated in the proposed new sections 49A, 49B and 49C.

Amendment No. 15 inserts three new sections, 49A, 49B and 49C, into the Personal Insolvency Act 2012. The sections are designed around the previous text of subsections (6) to (9) of section 49, which were deleted by Amendment No. 14. The new section 49A deals with the situation whereby the debtor terminates the appointment of the personal insolvency practitioner to represent him or her, and its consequences. The debtor would have to give one month's notice of termination to the personal insolvency practitioner and also notify the insolvency service. The debtor would have no longer than two months from the date of termination to find a replacement personal insolvency practitioner. New section 49B deals with a situation in which a personal insolvency practitioner terminates his or her appointment on behalf of a debtor and its consequences. The personal insolvency practitioner would have to give one month's notice to the debtor and notify the insolvency service. The debtor would have no longer than two months from the date of termination to find a replacement personal insolvency practitioner.

The new section 49C essentially recreates the provisions of section 48, subsections (7) to (9), in regard to the involuntary termination or ceasing of the appointment by the personal insolvency practitioner in a general sense and not relating to a specific debtor as such, or the ending of the practitioner's authorisation by the insolvency service or a court to act as a personal insolvency practitioner. The debtor is allowed a maximum of three months from the time of becoming aware of the involuntary termination to find a replacement personal insolvency practitioner. In any eventuality arising under new sections 49A to 49C, the validity of anything done under the respective arrangements is not affected.

Amendment No. 16 involves the deletion of section 55 of the Bill, which had inserted a new section 54A in the Personal Insolvency Act 2012 with regard to some delegation of administrative functions by a personal insolvency practitioner. It arises as a consequence of Amendment No. 14, which has been discussed. That amendment provided for a change in section 49(2) of the Personal Insolvency Act 2012 to refer better to the more specific instance in which an employee of the personal insolvency practitioner could hold a meeting with a debtor in the context of preparing the possible application for a debt settlement arrangement or personal insolvency arrangement. That amendment will permit better management of the potential caseload of a personal insolvency practitioner. With the acceptance of amendment No. 14, there is no longer a need for the retention of section 55.

**Acting Chairman (Senator Michael Mullins):** Before moving on I welcome the ladies of the Erne from Cavan to the Visitors Gallery and hope they enjoy their visit to the Oireachtas.

As we move to the amendments in group 9, I call the Minister of State to speak to those

amendments.

**Deputy Alex White:** Group 9 concerns amendments to the Personal Insolvency Act 2012 in regard to the process and procedures governing those situations where a variation of the terms of a debt settlement arrangement or personal insolvency arrangement is requested. We are dealing with amendments Nos. 19 and 23 in that regard.

Amendment No. 19 concerns section 82, variation of a debt settlement arrangement, and the similar amendment No. 23 concerns section 119, variation of a personal insolvency arrangement, of the Personal Insolvency Act 2012. Following further consultation with the Attorney General's Office and consideration by the Insolvency Service, it is proposed to replace the current provisions with regard to the variation of insolvency arrangements with clearer and more extensive provisions. The variation mechanisms are now aligned in respect of a debt settlement arrangement and a personal insolvency arrangement with differences between them arising only where the structure or operation of the relevant arrangement so requires. This eliminates any unnecessary differences and inconsistencies between the two mechanisms.

The provisions of sections 82 and 119 now clearly set out the roles and responsibilities of the debtor, creditor and personal insolvency practitioner in requesting, processing and participating in a variation mechanism. A variation to an insolvency arrangement may be sought in regard to a change in the income of the debtor and also where an asset has been acquired.

**Acting Chairman (Senator Michael Mullins):** Before moving to group 10, I welcome the Gleeson family from Limerick who are in the Visitors Gallery. I invite the Minister of State to speak to the amendments in group 10.

**Deputy Alex White:** This is the final group of amendments. It concerns amendments Nos. 25 and 26 which relate to regulation of personal insolvency practitioners.

Amendment No. 25 replaces the current section 161 of the Personal Insolvency Act with regard to the making of regulations relating to the activities of persons authorised to be personal insolvency practitioners. The changes to the section, while not extensive, are designed to address concerns that the original text may not be sufficiently broad enough in regard to certain aspects of the regulation of personal insolvency practitioners. Subsection (1) now includes a reference to maintaining public confidence in debt settlement arrangements and personal insolvency arrangements as a broad additional policy criterion. It also provides for the ongoing supervision of personal insolvency practitioners. In paragraph (a) of subsection (1), the requirements in regard to authorisation, supervision and cessation of practice for personal insolvency practitioners are restated in a clear fashion, as is a new requirement in regard to the personal insolvency practitioner's dealings with the Insolvency Service.

In subsection (1)(b)(v), there is now a requirement in regard to the case management of debtor's files by the personal insolvency practitioner.

The new subsection (1)(f) would allow for the setting out of the requirements to be met by a personal insolvency practitioner when handling complaints against him or her.

The new subsection (1)(g) would allow the Insolvency Service to set standards to be adhered to in regard to advertising by personal insolvency practitioners. The previous subsection (1)(f) which dealt with the charging of fees, etc. by a personal insolvency practitioner is reinstated as subsection (1)(h) with additional clarifications.

The new subsection (1)(i) would allow the Insolvency Service to make regulations for anything which is incidental to that set down in section 161 but which is not specifically provided for. The proposed new subsection (2) would extend the Service's monitoring of compliance by personal insolvency practitioners of their obligations to the whole Act and not just in regard to Part 5.

Amendment No. 26 is designed to facilitate the orderly regulation of personal insolvency practitioners and the effective use of resources by the Insolvency Service, by amending section 164(4) to permit an authorisation to act as a personal insolvency practitioner to remain in force for a period not exceeding five years rather than one year.

**Senator Trevor Ó Clochartaigh:** We do not have any particular issue with any of the amendments that have been put forward. A number of the amendments we tabled had been ruled out.

A long debate took place on Second and Committee Stages on the accreditation of journalists who would appear in a court. We have very good contributions from Senators Jillian van Turnhout and Ivana Bacik on the use of notes from people who had certain treatments, counselling etc. that they would be used very judiciously. The privacy of the relationship between the client and the practitioner in the counselling services would be sacrosanct. That those amendments have been ruled of order is very disappointing. I am disappointed the Minister of State did not bring forward his own amendments on those issues because they are still flaws in the Bill that should have been rectified at this stage.

**Deputy Alex White:** When this issue was raised in the House by Senator Jillian van Turnhout and others, the Minister lent his support to the view that the matter should be dealt with as speedily as possible. He pointed out that the issue was complex and did require careful consideration to ensure that any proposal, such as was canvassed at the time, would correctly balance the constitutional right of the accused to due process with the privacy rights of the complainant. The Attorney General has advised that a detailed examination is required to precisely identify and provide for the rights concerned. As it is intended to complete passage of the Bill before the House rises for the summer vacation, the Minister decided that there was not enough time to address comprehensively the issue with the careful consideration required in the time available. The Minister believes that further consultation with interested parties is necessary to bring forward a robust and workable solution. In particular, he wants to consult with the Director of Public Prosecutions to ensure that any proposal put forward will work in practice to protect the rights concerned and ensure the effectiveness of the prosecution process. He also believes that any proposal in this regard should be comprehensive and should address the rights of adult as well as child complainants.

The examination and consultation on this subject, proposed by the Law Reform Commission, would be a suitable way of examining such a complex issue. However, the Minister considers that the timeframe for such examination is not appropriate and that more immediate action is required. He has, therefore, decided that this issue will be addressed in the forthcoming sexual offences Bill which is at an advanced stage of preparation in his Department. He believes that this is the correct approach to ensuring that a suitable legislative solution is found as soon as possible to resolve the issue.

**Senator Jillian van Turnhout:** I support everything that has been said on this subject and I take the Minister of State at his word. As well as consulting with the Director of Public Pros-

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ecutions, I reiterate my call that the Minister would also consult with the organisations that deal with victims in these situations in order that we also hear their perspective.

**Senator Ivana Bacik:** I thank the Minister of State for his comprehensive reply. The Minister, Deputy Shatter, had indicated that earlier. I commend Senator Jillian van Turnhout on raising the issue. To echo her words, I welcome the fact that the Minister will not leave it to the Law Reform Commission but will introduce it in a more timely manner in the new sexual offences Bill. I ask that the consultation be as wide as possible within a relatively expeditious timeframe.

**Senator Martin Conway:** I will not go over the ground that has been covered already because the point was exceptionally well made. We have all been contacted separately. I have spoken to a couple of organisations on this issue. The points were well made to the Minister and he articulated where he was coming from his perspective. That is a very positive development and proves the importance of this House. Senator Jillian van Turnhout, through her own knowledge and experience, was able to construct amendments that, perhaps, were not accepted but the spirit of them was certainly taken on board. I welcome that. That is the type of co-operation and engagement that takes place here but few realise it and, unfortunately, the public and the media will not pick up on that.

**Acting Chairman (Senator Michael Mullins):** I confirm that amendments Nos. 1 to 3, inclusive, have been ruled out of order as they are not relevant to the subject matter of the amendments made by the Dáil, in accordance with Standing Order 118(2).

**Deputy Alex White:** Might I request approval from the House that two minor technical corrections be made to the Bill in addition to those that have been considered?

**Acting Chairman (Senator Michael Mullins):** Yes.

**Deputy Alex White:** I would appreciate that. I emphasise these are simply minor technical corrections to correct two typographical misprints in the Bill. The reference in section 14, to “column (3) of Part 1”, should read, “column (4) of Part 1”, and the reference to in section 15, to “column (3) of Part 2”, should read, “column (4) of Part 2”. I would request that these corrections be made.

**Acting Chairman (Senator Michael Mullins):** The Clerk of the Seanad will correct those accordingly. I thank the Minister of State.

**Senator Diarmuid Wilson:** I have a question for the Minister of State. If the Seanad did not happen to be here, what would he do about the amendments he had to make?

**Acting Chairman (Senator Michael Mullins):** It is a matter for another day.

**Senator Diarmuid Wilson:** I would like to hear the Minister of State’s thoughts on the matter.

**Deputy Alex White:** I will have to get back to the Senator on that.

Question put and agreed to.

**Acting Chairman (Senator Michael Mullins):** When is it proposed to take the next Stage?

**Senator Ivana Bacik:** Now.

Question, “That the Bill do now pass.”, put and agreed to.

*Sitting suspended at 3.30 p.m. and resumed at 4 p.m.*

*4 o'clock*

### Appointment of Minister of State

**An Leas-Chathaoirleach:** I must inform the House that a letter dated 16 July has been received from the Secretary to the Government regarding the resignation and appointment of Ministers of State. The correspondence will be published in the Official Journal of Proceedings.

### Business of Seanad

**Senator Maurice Cummins:** A Chathaoirligh, I propose an amendment to the Order of Business that Committee Stage of the Protection of Life During Pregnancy Bill 2013 be concluded at 10 p.m.

**Senator David Norris:** Is that intended as a guillotine?

**Senator Maurice Cummins:** The proposal is that Committee Stage will conclude tonight at 10 p.m.

**Senator David Norris:** We will be voting on all the amendments, which is a guillotine. I thank the Leader for the clarification.

**An Leas-Chathaoirleach:** The Leader has proposed an amendment to the Order of Business: “That Committee Stage of the Protection of Life During Pregnancy Bill 2013 be concluded at 10 p.m.” Is the amendment agreed to?

**Senator David Norris:** No.

Amendment put:

The Seanad divided: Tá, 37; Níl, 13.	
Tá	Níl
Bacik, Ivana.	Bradford, Paul.
Brennan, Terry.	Daly, Mark.
Burke, Colm.	Leyden, Terry.
Clune, Deirdre.	MacSharry, Marc.
Coghlan, Eamonn.	Mullen, Rónán.

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Coghlan, Paul.	Norris, David.
Comiskey, Michael.	Ó Domhnaill, Brian.
Conway, Martin.	Ó Murchú, Labhrás.
Cullinane, David.	O'Brien, Darragh.
Cummins, Maurice.	O'Donovan, Denis.
D'Arcy, Jim.	Walsh, Jim.
D'Arcy, Michael.	White, Mary M.
Gilroy, John.	Wilson, Diarmuid.
Harte, Jimmy.	
Hayden, Aideen.	
Healy Eames, Fidelma.	
Heffernan, James.	
Henry, Imelda.	
Higgins, Lorraine.	
Keane, Cáit.	
Kelly, John.	
Landy, Denis.	
Moloney, Marie.	
Moran, Mary.	
Mulcahy, Tony.	
Mullins, Michael.	
Noone, Catherine.	
Ó Clochartaigh, Trevor.	
O'Brien, Mary Ann.	
O'Donnell, Marie-Louise.	
O'Keeffe, Susan.	
O'Neill, Pat.	
Reilly, Kathryn.	
Sheahan, Tom.	
van Turnhout, Jillian.	
Whelan, John.	
Zappone, Katherine.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Rónán Mullen and David Norris.

Amendment declared .

**Protection of Life During Pregnancy Bill 2013: Committee Stage (Resumed)**

SECTION 2

Question again proposed: “That section 2 stand part of the Bill.”

**An Cathaoirleach:** We are on section 2 and Senator Brian Ó Domhnaill was in possession.

**Senator Darragh O’Brien:** I do not wish to delay the House any further. I laid out my position on Second Stage. As leader of the Fianna Fáil group in the Seanad it is necessary to state that remarks made by some of my colleagues have upset me deeply. I find them graphic in the extreme. They show a distinct lack of compassion. I respect all colleagues in the Chamber. I respect that some share differing views on the Bill, which is difficult legislation. I consider myself to be pro-life. I outlined the issues I have with the Bill on Second Stage, but all Members must remember that people are listening and watching this debate. We must all show compassion. I personally believe that some of the comments that have been made, not just by some of my colleagues but by others show a distinct lack of insight into what we are dealing with. While I share a pro-life position, I want fairness, and that our women and babies are protected. While we discuss this issue, we must be able to use language that is appropriate to the debate. I wish to disassociate myself completely from some of the remarks made in the past day.

**Senator Jim Walsh:** I can understand the reason that Members from the side opposite who are supporting the legislation would obviously support the comments of my colleague Senator Darragh O’Brien.

**Senator David Norris:** And on this side of the House.

**Senator Jim Walsh:** Nobody has a monopoly on compassion, conscience or morality on these issues. I would never purport to have. The debate during the past eight to ten months in the media and by Government spokesperson has exploited tragic situations and used them in order to introduce legislation which is unnecessary. I pressed the Minister this morning on what medical procedures would be carried out. I was one of a number of members who attended the health committee hearings but the evidence presented before those hearings was very clear and unambiguous. The evidence in relation to section 9 was clear that the introduction of abortion on the grounds of suicidal intent would do nothing for a woman with suicidal intent.

**An Cathaoirleach:** We are debating section 2.

**Senator Jim Walsh:** I am discussing section 2 and am talking about the medical procedures. I have laid out my arguments on the grounds of compassion.

**An Cathaoirleach:** Section 2 is on definitions

**Senator Jim Walsh:** Clearly the medical procedures defined in section 2 have caused tremendous angst and post-abortion trauma for many women. I am also conscious of those who attended the presentations made by Women Hurt when they came to the Houses on two occasions. They came to one of our parliamentary party meetings and came to the House again at the invitation of Deputy Billy Timmins. I was one of 11 members of the parliamentary party who attended and heard those women. I know and they know who was there. I also attended a meeting with the group One Day More and the women brought in by the National Women’s Council to promote and support this Bill.

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**An Cathaoirleach:** We are on the section.

**Senator Jim Walsh:** I know that. A comment has been made. I would not want to offend anybody, particularly women who have had abortions-----

**Senator Martin Conway:** You offended thousands of women throughout the country.

**An Cathaoirleach:** Senator Walsh without interruption.

**Senator Jim Walsh:** Let me say this-----

**An Cathaoirleach:** On the section.

**Senator Jim Walsh:** I do not retract one iota of what I said-----

**Senator Martin Conway:** You should.

**Senator Marie Moloney:** Shame.

**An Cathaoirleach:** Senator Walsh without interruption.

**Senator Jim Walsh:** -----because the people who are now complaining about the description of these “medical procedures” are happy to support them - which is why I charged the Minister this morning with the comments I made - and have them enacted in legislation so these practices will be legal and will happen. I cannot understand how anybody, be they in *The Irish Times*, Today FM or sitting around in these Houses, who will press the button to support this legislation could take any exception to the description-----

**An Cathaoirleach:** On section 2.

**Senator Jim Walsh:** -----of the medical procedure that happens in abortion while they are quite happy and content to support the implementation and enactment of a Bill which will achieve just this in practice. I have spoken to many medical people who are appalled at the introduction of the Bill and many women-----

**An Cathaoirleach:** We are on a specific section

**Senator Jim Walsh:** -----who have had abortions also.

**An Cathaoirleach:** Will the Senator stick to section 2?

**Senator Jim Walsh:** I am sticking to section 2.

**An Cathaoirleach:** If you do not stick to section 2 I will put the question now.

**Senator Jim Walsh:** I am sticking to section 2.

**An Cathaoirleach:** On section 2.

**Senator Jim Walsh:** On section 2-----

**Senator Martin Conway:** Put the question, Cathaoirleach.

**Senator Jim Walsh:** -----I have spoken about the medical procedure-----

**Senator Ivana Bacik:** Put the question.

**Senator Jim Walsh:** -----which is under section 2 to many medical people, who are appalled that we will enact legislation to introduce these terrible deeds which will happen to babies.

**Senator Colm Burke:** That is your version of events.

**Senator Brian Ó Domhnaill:** The debate in recent days on this issue has left me flabbergasted, to say the least.

**An Cathaoirleach:** We are on section 2 and the Senator has already spoken for a number of minutes on it.

**Senator Brian Ó Domhnaill:** I am referring to section 2. Every time a Senator on the side of the House speaks with a viewpoint, we are challenged and castigated and called names by people who do not agree with the viewpoint.

**An Cathaoirleach:** On section 2.

**Senator Ivana Bacik:** Nobody is calling names.

**Senator Brian Ó Domhnaill:** This is not democracy.

**An Cathaoirleach:** I asked the Senator to stick to section 2. The Bill has been debated on Second and Committee Stages-----

**Senator Brian Ó Domhnaill:** And so it should be.

**An Cathaoirleach:** -----and all of these points have been made over again. On section 2, please.

**Senator Rónán Mullen:** On a point of order, there comes a point at which reason must operate.

**An Cathaoirleach:** I have been very reasonable.

**Senator Rónán Mullen:** I wish to explain what I mean by this.

**An Cathaoirleach:** I am asking Senator Ó Domhnaill to stick to the section. We must work our way through the Bill.

**Senator Rónán Mullen:** Senator Darragh O'Brien, who I admire, made certain comments which, while he may have been sincere in making them, in my view were unfair on the whole to Senator Walsh, and it is important-----

**An Cathaoirleach:** The Senator is not raising a point of order. I call Senator Ó Domhnaill.

**Senator Rónán Mullen:** -----that the Senator be allowed to make some reflection-----

**An Cathaoirleach:** Senator Mullen should resume his seat.

**Senator Rónán Mullen:** -----on that.

**Senator Brian Ó Domhnaill:** This Bill is more important than any financial or social Bill

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which has come before the House since I became a Senator. It has to do with life and death. It is as simple as that. Every section of the Bill and every line of it should be debated in the greatest detail possible. Senators are hoping the Seanad will not be abolished while at the same time they are trying to abolish the opportunity for us to debate aspects of life and death.

**An Cathaoirleach:** We are on section 2.

**Senator Brian Ó Domhnaill:** Everyone in the House is equal, and everyone in the House should be afforded the opportunity to express his or her opinion in a dignified manner.

**Senator Marie Moloney:** Dignified?

**Senator Brian Ó Domhnaill:** I firmly believe the truth sometimes does hurt. If it does not lie with where one comes from it does not mean it is not the truth.

**An Cathaoirleach:** I ask the Senator to stick to section 2.

**Senator Brian Ó Domhnaill:** I have the greatest respect for the Fianna Fáil leader in the Seanad, and he is entitled to his opinion as I am entitled to mine, but I would never state the opinion of another Member of the House was less important.

**Senator Darragh O'Brien:** I did not say that.

**Senator Brian Ó Domhnaill:** Senator Walsh's contribution-----

**An Cathaoirleach:** If Senator Ó Domhnaill does not stick to section 2 I will put the question.

**Senator Colm Burke:** On a point of order, I ask the Senators to adjourn this debate to a meeting of the Fianna Fáil Parliamentary Party.

**An Cathaoirleach:** I ask Senator Burke to resume his seat.

**Senator John Whelan:** On a point of order, I ask the House to stick to the amendment.

**An Cathaoirleach:** It is not an amendment. We are on section 2.

**Senator John Whelan:** This is not a Fianna Fáil Ard-Fheis.

**An Cathaoirleach:** I ask the Senator to resume his seat. We are on section 2.

**Senator Brian Ó Domhnaill:** Today's debate is with regard to the medical procedures. We asked many challenging questions of the Minister for Health on the medical procedures to be adopted in carrying out the procedures on which we are voting. We have received no answers.

**An Cathaoirleach:** Does the Senator have a question on section 2?

**Senator Brian Ó Domhnaill:** They will destroy a human life but they are not willing to tell us how they will do it, and this is a disgrace.

**Senator Mary Moran:** Following on from the Order of Business this morning, which related to this debate, as Senator Ó Domhnaill was not in the room at the time, I will ask again whether he would care to comment on what he stated yesterday-----

**An Cathaoirleach:** I ask Senator Moran to resume her seat.

**Senator Mary Moran:** -----and if he will retract his comments on disability implying that people who support the Bill-----

**An Cathaoirleach:** Does Senator Moran have a question on section 2?

**Senator Mary Moran:** The Bill has nothing to do with disability.

**Senator Ivana Bacik:** Hear, hear.

**An Cathaoirleach:** Respect the Chair.

**Senator Mary Moran:** I am asking for an apology and a retraction.

**An Cathaoirleach:** On section 2. If the Senator has no question on section 2 I ask her to resume her seat.

**Senator Fidelma Healy Eames:** I would like the debate to proceed and, speaking specifically on section 2, I want to refer to the definition of the unborn and a response given by the Minister, Deputy Reilly, which was not correct. The state of being unborn is defined in the Bill as ending on the complete emergence of the life from the body of the woman. Therefore, until complete emergence occurs the unborn is in principle vulnerable to a lawful termination under the Bill. What the Minister, Deputy Reilly, stated this morning is wrong. It is completely wrong to state that partial birth abortions are not permitted by the Bill. He called it infanticide. It is permitted by the Bill. The definition on page 7 describes it as the complete emergence of the life from the body of the woman. The Bill before us allows partial birth abortions.

**Senator Colm Burke:** It does not.

**Senator Fidelma Healy Eames:** Technically speaking it does.

**Senator Ivana Bacik:** On a point of order, we have gone over this so many times-----

**Senator Fidelma Healy Eames:** Excuse me now-----

**An Cathaoirleach:** Senator Bacik-----

**Senator Fidelma Healy Eames:** Do I have the floor?

**Senator Ivana Bacik:** We need to-----

**Senator Fidelma Healy Eames:** Do I have the floor?

**An Cathaoirleach:** I ask Senator Bacik to resume her seat. We have been dealing with amendments, but Senator Healy Eames is now asking a question on the section and is within her rights to do so.

**Senator Ivana Bacik:** The question has been answered numerous times.

**Senator Fidelma Healy Eames:** This is my very first time to ask the question, and I absolutely abhor Senator Bacik jumping up and down every time-----

**An Cathaoirleach:** I ask Senator Healy Eames to stick to the section.

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**Senator Fidelma Healy Eames:** I am sticking to the question. Will the Minister correct the record? He stated the opposite to what the definition states. The Minister is completely wrong, based on the definition in the Bill, to state that partial birth abortions are not permitted by the Bill. He called it infanticide under the law. It is not infanticide according to the Bill. I would call it infanticide, but the Bill does not.

According to the Minister of State, Deputy White, the definition of “reasonable opinion” in sections 7, 8 and 9 is based on a direct quote from Article 40.3.3° of the Constitution, which he stated as “having regard to the need to preserve unborn life as far as practicable”, but this is not true, as the Article mentions having regard to the right to the life of the unborn and the need to preserve it as far as practicable and to defend and vindicate that right. The duty to respect by its laws the right to life of the unborn is not qualified by the words “as far as practicable”. There is a very important difference.

I would particularly like the Minister to correct the issue of the definition of “unborn” in the Bill. The Minister disputed the definition by stating that a partial birth abortion would be infanticide, but that is not the case, according to the definition in the Bill.

**Senator Labhrás Ó Murchú:** With regard to this and the previous debate - I made an intervention earlier - we should be allowed to make whatever point in which we genuinely believe. I get the feeling from some on the other side of the House that they do not accept our views being expressed and I am genuinely disappointed about that. Senator O’Brien is entitled to an individual view but it was not right for him to come in as leader of this group to express the view-----

**Senator John Gilroy:** That is a matter for the party.

**An Cathaoirleach:** Senator Ó Murchú, without interruption, please.

**Senator Labhrás Ó Murchú:** I understand why he was applauded but because of the procedures of the House, we were not given the opportunity to respond. For that reason, Senator O’Brien was wrong. Although I am being interrupted, I am speaking on a procedural point that does not seem to be acceptable.

**Senator Denis O’Donovan:** I have an interest in speaking on section 9 so will that be reached before the guillotine this evening at 10 p.m? It is the central plank of this Bill. We have spent almost seven hours debating two sections and I will be bitterly disappointed if I do not get to say a few brief words. At the rate we are going, it seems we will not get to section 9. Whatever side a Senator is on, section 9 is the kernel of the Bill and it would be unfair to many on both sides of the Bill if we do not get a fair debate on the issue of suicidal ideation.

**An Cathaoirleach:** That is entirely up to the House.

**Senator Denis O’Donovan:** I am expressing my concern.

**An Cathaoirleach:** Members should respect each other as well.

**Senator Rónán Mullen:** Quite frankly, I would rather be bringing home the turf but the issue is important and needs to be teased out properly. It would be a pretence of democracy to say Committee Stage must be completed by 10 p.m. as this is a life and death Bill. I am very disappointed that Senator Darragh O’Brien made those comments, as everybody must be allowed say his or her piece. Even if we do not choose that manner of communicating ourselves,

I regard Senator Walsh as a Senator of integrity. This is the second time that Deputy Martin and Fianna Fáil headquarters have tried to sabotage opposition to the Bill. On this occasion it is giving a propaganda victory to people willing to-----

**An Cathaoirleach:** The Senator should speak to section 2.

**Senator Rónán Mullen:** -----vote for something that is quite unconscionable. They just want a chance to applaud themselves in the Chamber, which is unedifying.

**Senator Darragh O'Brien:** On a point of order, charges are being made against me-----

**Senator Rónán Mullen:** May I speak to the section?

**Senator Darragh O'Brien:** I have put across a personal view. I respect my colleagues. I ask Senator Mullen to withdraw the comment.

**An Cathaoirleach:** We are not opening the debate. The Senator should speak to section 2.

**Senator Darragh O'Brien:** I am not being asked to say what I said by anyone. It is my personal view. I ask Senator Mullen to withdraw that remark.

**An Cathaoirleach:** Will Senator Mullen stick to section 2?

**Senator Rónán Mullen:** It is regrettable that the amendment relating to a definition of “viable” has not been accepted because other proposed amendments hinge on it. I emphasise and support what Senator Healy Eames has just said about the definition of “unborn” in the Bill. It illustrates again the dark reality that underlies the legislation. I would love to think it was a lack of attention by the Government but it is a lack of care, which is much worse.

**Senator Paul Bradford:** As part of his assurances earlier this morning that we should not fear the legislation, the Minister made a passing reference to section 22. I will refer to section 2 but section 22 indicates it would be an offence to intentionally destroy unborn human life. Will the Minister of State reflect very carefully on what is being presented by Senator Healy Eames? I hope this is a lack of care with regard to the language being used as part of the presentation of the Bill, as whether we like it or not we must deal not with fantasy but with reality. The definition of “unborn” in the Bill allows for partial birth abortion, which we all know is an absolutely horrific practice. Can we be assured that this is a poorly written definition or an oversight on the part of the Government and that it can be corrected? I would not like any of my colleagues to support this definition as written and to reflect in ten, 15 or 20 years on the dreadful events that would have occurred as a result of that definition. It is an exceptionally serious detail that has been brought to the floor of Seanad Éireann by Senator Healy Eames and I ask the Minister to be exceptionally careful in responding and explaining why the language is open and dangerous.

**Deputy Kathleen Lynch:** I have nothing to add.

**An Cathaoirleach:** As the Minister of State has nothing to add, I will put the question.

**Senator Fidelma Healy Eames:** Has she nothing to add?

**Senator Paul Bradford:** It is not acceptable for a Minister of State to say she has no response to the question raised by Senator Healy Eames and others. It is a fundamental danger at the centre of this Bill. At the very least the House could adjourn to allow the Minister of State to reflect on the issue. If the Minister of State cannot provide an answer, the Minister should

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come before us. We cannot walk away from this.

**An Cathaoirleach:** As the Senator knows quite well, it is up to the Minister of State whether to contribute.

**Senator David Cullinane:** This is my first time speaking on Committee Stage as we have not yet got to any of the amendments which Sinn Féin has tabled. I listened to the Minister for Health and he was asked some of the same questions. I reject absolutely the accusations that the Minister did not answer the questions, give explanations-----

**Senator Fidelma Healy Eames:** He answered but he was incorrect.

**Senator David Cullinane:** -----or the correct definitions. There are some people in the Chamber who do not want to accept those definitions, as is their right. It is unfair of the same Senators to accuse the Minister or a Minister of State of not giving a definition. I sat here for some of the debate and I have listened to it in my office. The Minister addressed all the questions that were asked *ad nauseam* and was then accused by a handful of Senators of not answering the questions. I have found this debate to be one of the most upsetting I have seen in this Chamber since I came here.

**Senator Aideen Hayden:** Hear, hear.

**Senator David Cullinane:** It has really been upsetting for me-----

**Senator Fidelma Healy Eames:** It is terrible.

**Senator David Cullinane:** -----as I have heard language used like “evil deeds”, “intentional killing of babies” and graphic explanations of procedures of which we are all aware, with no regard for humanity and compassion, as previous Senators noted. I am absolutely outraged as a man and individual that this is how some people are approaching the debate. It is absolutely appalling, and the quicker we proceed with taking a vote on this Bill, the better.

**An Cathaoirleach:** As the Minister of State has nothing further to offer, I am putting the question. The question is “That section 2 stands part of the Bill”.

**Senator Fidelma Healy Eames:** On a point of order-----

**An Cathaoirleach:** Those in favour say “Tá”.

**Senator Fidelma Healy Eames:** Sorry, on a point of order.

**An Cathaoirleach:** Those against say “Níl”

**Senator Fidelma Healy Eames:** On a-----

**An Cathaoirleach:** The question has been carried.

**Senator Fidelma Healy Eames:** -----point of order.

**An Cathaoirleach:** The question has been carried.

**Senator Jim Walsh:** It has not been carried. You know it has not been carried.

**Senator Fidelma Healy Eames:** It is not acceptable that the Minister of State does not

answer the question.

Question put and declared carried.

### SECTION 3

**Senator Jim Walsh:** I move amendment No. 9:

In page 7, lines 19 and 20, to delete “, or by another person pursuant to an arrangement entered into under section 38 of the Health Act 2004”.

We are making an absolute farce of this debate by moving on and not discussing fundamental issues in the Bill. I can understand why people pushing this through do not want to face reality but I can take whatever flak comes at me from the Opposition, my own party or the media. Any of that pales into insignificance when I consider the effect this Bill will have on innocent unborn life.

This amendment seeks to restrict the facilities and institutions that can be approved for carrying out these abortions. Section 3(1) states, “The Minister may by order, where he or she thinks it appropriate for the purposes of this Act, specify any institution managed by the Executive”. I am seeking the deletion of “, or by another person pursuant to an arrangement entered into under section 38 of the Health Act 2004”. If the amendment were accepted, there would never be a case where, for example, a Marie Stopes clinic or other strongly pro-abortion institution would be approved under this legislation. I ask that the Minister agree to deleting that provision.

**Deputy Kathleen Lynch:** This amendment aims to remove from the definition of “appropriate institutions” those hospitals that are not owned by the Health Service Executive, HSE. The affect of accepting this amendment would be to exclude the three maternity hospitals and the large public multidisciplinary hospitals in Dublin, which are not owned by the HSE, from the ambit of the operation of this legislation. This would have grave consequences for the safety of women in the Dublin region and beyond. I cannot, therefore, accept the amendment.

The Senator may wish to note, however, that the names of all institutions which will be permitted to lawfully carry out the medical procedure referred to in this legislation are listed in a Schedule to the Bill. Any changes to these provisions will require approval of the Houses of the Oireachtas.

**Senator Jim Walsh:** I thank the Minister of State for her reply. My intention was not to exclude any of the maternity hospitals. I note that they are listed. My intention was to ensure that a Marie Stopes clinic could not be approved by any future Minister as an institution that could lawfully carry out the medical procedure. I take on board the Minister of State’s point that the hospitals are listed in the Schedule. However, there is no reference to what I am seeking in the Schedule. Therefore, there is nothing in this Bill as drafted to prevent any future Minister approving other institutions in this regard, including as I mentioned earlier, a Marie Stopes clinic.

I will withdraw the amendment at this point but propose to resubmit it on Report Stage, excluding the hospitals referred to by the Minister of State. The Minister might in the meantime consider my proposal. If the intention is that clinics such as Marie Stopes will not be approved to carry out the relevant procedure, the Minister should have no difficulty accepting my amendment on Report Stage.

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**Senator Rónán Mullen:** I thank Senator Walsh for tabling this amendment and thank the Minister of State for her response. The Minister of State mentioned that the permitted hospitals are listed in the Schedule. Would any proposal to add further institutions be subject to a vote in either or both Houses of the Oireachtas.

**Deputy Kathleen Lynch:** Both.

**Senator Rónán Mullen:** I thank the Minister of State.

Amendment, by leave, withdrawn.

**Senator Jim Walsh:** I move amendment No. 10:

In page 7, between lines 27 and 28, to insert the following:

“(iv) facilities for the intensive care of newborns,”.

This amendment seeks to add to the required facilities to be provided in hospitals, facilities for the intensive care of newborns. We have heard evidence to the effect that 50% of babies delivered on reaching the stage of viability will die and that the remaining 50% will be disabled and in need of intensive medical care. This is akin to the perinatal issue we discussed earlier.

**Deputy Kathleen Lynch:** This amendment relates to the provision of facilities for the intensive care of newborns in appropriate institutions under the terms of the Bill. I do not propose to accept it as it is not necessary. I am confident that if a newborn infant requires intensive care facilities nothing in this Bill will prevent that child from accessing those facilities.

**Senator Jim Walsh:** Will the Minister of State confirm to the House how many of the hospitals listed have specialist intensive care units for newborns?

**Deputy Kathleen Lynch:** I do not have that information at this time but will communicate it to the Senator.

**Senator Jim Walsh:** I would welcome receipt of that information prior to Report Stage.

**Deputy Kathleen Lynch:** Yes.

**Senator Rónán Mullen:** The Minister of State mentioned that nothing in this legislation would prevent the availability of facilities. That does not mandate the availability of facilities. I would be very concerned about that.

**Deputy Kathleen Lynch:** That Senators would not trust a doctor to look after a newborn baby in need of intensive care is beyond me.

**Senator Jim Walsh:** I think that charge was made by Senator Mullen. I made no such charge. I am concerned not that doctors will not do their job but that doctors will have the resources and facilities to do their job.

The greatest concern of many during the hearings by the health committee on the risk to life of women in pregnancy was the lack of such resources.

**Senator Rónán Mullen:** I agree with Senator Walsh. I completely reject the language of our not trusting doctors and not trusting women, which language has been bandied around in this debate. The purpose of legislation is to provide for people's rights in an appropriation fash-

ion, which means one does not have to depend on having to trust every person. This amendment relates to the availability of facilities. Is the Minister of State willing to assure us that there will always be available facilities to fully vindicate the life of any child who emerges from one of these permitted procedures with the potential to live? This is the very least that could be provided for under legislation of this type.

**Senator Brian Ó Domhnaill:** I support the amendment. It would be useful to have the information in relation to the facilities in place at each of the hospitals listed in the Schedule available to us. I am particularly interested to know if the supports required are available at Sligo General Hospital and Letterkenny General Hospital.

There is no mention in the Bill of medical procedures to save a baby's life, such as, for example, caesarean section or induced labour which would provide the baby with an opportunity to live. The Bill deals solely with abortion and provides procedures and penalties if the laws in that regard are breached. If the Bill were focused on the protection of life, mention of protection of the baby would be referred to at each stage. If as stated the purpose of the Bill is protection of life, why then does it not include a mechanism to protect the life of the baby? I am confused by the Minister of State's swift reaction to not accept the amendment. Given the Title of the Bill, perhaps the Minister would reflect on the matter and come back with an amendment on Report Stage which could be supported.

**An Cathaoirleach:** Would the Minister of State like to respond?

**Deputy Kathleen Lynch:** I have nothing more to say on the matter.

Amendment, by leave, withdrawn.

**An Cathaoirleach:** Amendments Nos. 11 and 12 are related and may be discussed together by agreement. Is that agreed? Agreed.

**Senator David Cullinane:** I move amendment No. 11:

In page 7, line 35, after "Oireachtas" to insert " , and be notified to the Joint Committee on Health,".

As these are simple amendments, I do not propose to speak too long on them. As the Minister of State will be aware, the Dáil or Seanad can annul an order or resolution within 21 days. Generally, the only notification given of this would be to the Houses of the Oireachtas. The amendment seeks that the Joint Committee on Health and Children would also be notified. That is the logic of the two amendments.

**Deputy Kathleen Lynch:** I do not propose to accept the amendments but for good reasons. In addition, I do not believe they are necessary. Any orders or regulations made under this Bill will be laid before the Houses of the Oireachtas, which includes members of the Joint Committee on Health and Children. I agree with the Senator that it is important that this type of information is available. However, the Bill as drafted covers what the Senator seeks.

Amendment put and declared lost.

Section 3 agreed to.

#### SECTION 4

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**Senator David Cullinane:** I move amendment No. 12:

In page 8, line 11, after “Oireachtas” to insert “, and be notified to the Joint Committee on Health,”.

Amendment put and declared lost.

Question: “That section 4 stand part of the Bill”, put and declared carried.

## SECTION 5

Question proposed: “That section 5 stand part of the Bill.”

**Senator Rónán Mullen:** This section provides for the repeal of sections 58 and 59 of the Offences against the Persons Act 1861. It is worth noting - this is relevant in the context of this debate - that those sections still exist in the British jurisdiction.

*5 o'clock*

Despite the fact that abortion continues to be criminalised by that pre-Independence legislation, a coach and four has been driven through this over the years by various legislative measures. This makes the point that, where abortion in the Western world is concerned, there can be prohibition in name, but there is an utter disregard for the life of the unborn in practice. This is the answer to those who seek to reassure us that the general presence of Article 40.3.3° acts as protection against bad faith on the part of some care providers, pregnancy counsellors or whoever. It does not. Just as happened with the law in Britain, an interpretation of Article 40.3.3°, such as took place in 1992, has opened the exception so wide that it is difficult to see how we will not have abortion on request. This point is worth making in passing. Those sections prohibiting abortion continue to be the law in Britain, but sadly to no real effect.

**Senator Jim Walsh:** I concur with Senator Mullen. We have a good maternal health system and the outputs are exceptional. Occasionally, people will get sepsis caused by superbugs. Unfortunately, it leads to their demise and that of their babies. The neighbouring island has a liberal abortion regime, but some argue that this Bill is more liberal, in that any baby aged more than 24 weeks on the neighbouring island cannot be legally aborted, while we will permit it right up to 39 weeks. Leaving that aside, people there who incur complications in pregnancy, such as sepsis, also die.

The idea has been put abroad that this Bill is a panacea for all situations and complications in pregnancy. Sadly, that is not the case. As in all other medical situations, it is not possible to be in a position to obviate the risk to life.

At one of our hearings, much play was made of the penalty of penal servitude for life, which relates to sections 58 and 59 of the Offences Against the Person Act. Despite that claim, penal servitude is no longer allowed under our laws. It is a myth perpetrated in order to canvass a smooth transition for the Bill. For this reason, I have no intention of making it easy for the Minister of State or any Senator to pass this Bill. I disagree fundamentally with what it is about to do.

**Senator Brian Ó Domhnaill:** The question over this section is what value one places on

life. Sections 58 and 59 of the Offences Against the Person Act 1861, which have protected the life of the unborn child for many years, are being repealed. Nothing should interfere with the 1861 Act. A fine or 14 years in prison will be the penalty for deliberate destruction, but doctors will be exempt as long as they have filed the necessary paperwork. What if that paperwork is delayed or, worse, falsified due to people being overworked? Will it be fines for doctors and specialists and prison for nurses and midwives, depending on how easily they can be replaced in their workplaces? This question has been asked by health professionals across the country, particularly in the designated hospitals outlined in the Schedule. Even if it was found that a doctor deliberately ended the life of a baby in an avoidable scenario, he or she would probably only be fined. I am unsure whether the Health Information and Quality Authority, HIQA, would follow through and be keen to lose a doctor or specialist for 14 years, given the financial constraints within the health sector as well as the pressures stemming from the moratorium on recruitment.

What if a court case is taken years later when a mother who lost her baby decides to sue because she believes the course of action decided on by the doctor was not the best one? The baby could have lived had a different course been taken.

Has a financial analysis of the legislation been conducted as regards its cost to the State? A financial breakdown is not apparent.

The removal of the protection for unborn babies provided for by sections 58 and 59 of the 1861 Act is a step too far. I cannot leave this section of the Bill unchallenged. I would appreciate it if the Minister of State could reply to the points raised - for example, the taxpayer's exposure to cases. Inevitably, mothers will take cases against the State in years to come. Has the taxpayer's exposure been factored into the equation?

**Senator Paul Bradford:** I empathise with the concerns of Senator Ó Domhnaill. Regrettably, I must say that the removal of sections 58 and 59 of the 1861 Act will not bring about a fundamental change. Rather, the passing of the Bill will provide for a different type of culture. This is the matter that we will reflect upon with regret in years to come. After this legislation is passed, the sections are repealed and we move onto another issue, everyone inside and outside the House will need to reflect on why 4,000 to 5,000 Irish women go to Britain for abortions every year, why some others have abortions in Ireland and how we can deal with this problem from financial and societal perspectives. This challenge will face us all.

Without being overly repetitive, this is possibly the only so-called health care provision that will be introduced on a limited basis. That we as legislators are doing this is our public concession to the fact that we are doing something that we know to be wrong. We do not introduce limited heart surgery or hip replacement or limited medication or vaccination programmes. We only introduce limits on a matter that we know to be fundamentally wrong. That we all deem this to be limited legislation shows us what we actually think of the process of abortion as a solution to problems.

The Minister provided his reasons in the Lower House. The health committee debated why these sections should be repealed. Some, such as my friends across the way, believe that a repeal will lessen the protection of the unborn, but the legislation as a whole and the culture change that it will bring about will be the major problems facing us. As such, we must think long and hard about how to respond to the legislation.

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While there is a profound division in the House on the legislation and what is behind it, there must be a unity of purpose in the future. I hate to use the phrase “going forward”. We must determine what additional supports can be provided to people who view abortion as their only way forward. Tragically, history has shown that it is not a way forward.

**Senator Colm Burke:** Within the legal profession, there is a view that sections 58 and 59 of the 1861 Act may be unconstitutional - the 1861 Act was introduced prior to the Constitution - in light of the 1983 constitutional amendment. Were this found to be the case, and if this Bill were not in existence to replace sections 58 and 59, we would have no legislation at all to make terminations illegal. This is a further reason for the urgency of the Bill’s passage.

**Deputy Kathleen Lynch:** I have nothing to add.

**Senator Rónán Mullen:** In response to the last point, when it comes to worrying about whether legislation is unconstitutional, I believe it would enjoy the presumption of constitutionality. That is a bridge I would be happy to pass when I would reach it.

Question, “That section 5 stand part of the Bill”, put and declared carried.

#### SECTION 6

Question proposed: “That section 6 stand part of the Bill.”

**Senator Jim Walsh:** This section provides that all abortions will be paid for from taxpayers’ money. There is an issue of conscience here, particularly for pro-life people. They will be appalled that the hard earned money they submit to the State in tax would be used for section 9 abortions, in particular. I have concerns about that. Other jurisdictions do not do that. They recognise that there is an issue of conscience here. People would not have a difficulty in respect of sections 7 and 8 because they refer to medical emergencies like any other such emergencies. However, this is not a situation where, according to medical experts, an abortion has any evidence-based grounding.

**Senator Fidelma Healy Eames:** This section states: “The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.” I do not know if the Minister of State was following the debate this morning but I raised the issue of foetal pain, which is considerable. I decided not to press the amendment to give the Minister a chance to examine the evidence over the weekend and to give us an opportunity to reflect as well. However, one of the requests I made was that an anaesthetist would be present to administer pain relief to the unborn foetus at the point of ending his or her life. I would consider that a valid expense under this section. I ask the Minister to consider that. I do not know any Member of this House who would wish for an unborn baby to suffer pain when their life is being ended.

I wish to make another point. In other countries this is a huge industry. I do not have the figures to hand, but the Planned Parenthood Federation of America made approximately \$97 million last year from abortions. An issue has been raised with me and perhaps the Minister of State can allay my fears. The Minister has said we cannot impose term limits because of the X case. I have huge difficulty with that. In the course of the health committee hearings I asked the former Supreme Court Judge, Catherine McGuinness, if she thought it was right that we do not have term limits. She said the Government should give it a go. It is on the record. When I was speaking to her privately afterwards she said she did not know any Supreme Court judge who

would strike it down. However, this Bill does not provide for term limits. Every other country in the world has term limits. It has been put to me that Ireland will now become an attractive place for people from around the world to come to for late term abortions.

**An Cathaoirleach:** We are on section 6.

**Senator Fidelma Healy Eames:** I am speaking on section 6. It is about the expense on the taxpayer.

**An Cathaoirleach:** Yes.

**Senator Fidelma Healy Eames:** Will our taxpayers be funding abortions for people coming from other jurisdictions who qualify for late-term abortions because they find they are suicidal due to a personal circumstance but it is past the term at which they could get an abortion in their home countries? That is a very legitimate question and I look forward to the reply.

**Senator Brian Ó Domhnaill:** I agree with the sentiments expressed about section 6 and the expenses. I had intended asking the same question that Senator Healy Eames just asked. There are a few issues to consider. One is obviously the cost. Generally, although not always, when a Bill is brought before the House there is a breakdown of the additional cost to the Exchequer. In this case there is no breakdown of the cost the Bill will impose on the Exchequer. Obviously, it will depend on the number of abortions that take place on the ground of suicide, and nobody can predict that. Has the Department carried out any statistical or evidence-based prediction work in respect of the number of abortions that could occur and the cost associated with that?

If individual citizens of this country have a conscientious objection to abortion, particularly if it is a conscientious objection to abortion on the suicide ground, and they are paying taxes in this country to fund essential services, they would also have a huge conscientious objection to that tax being used to fund abortions in public hospitals. I am anxious to hear the Minister of State's response to that issue.

The other issue is whether the moneys that will be used will be competing with hip replacements, knee operations, disability procedures, cancer treatments and so forth. Will there be competing demands? In each HSE region, including Donegal, the HSE manager is given a budget and they must live within that budget. What will change in this case? Will a dedicated budget be made available by the Department of Public Expenditure and Reform just to fund abortions alone or will it come out of the budgets that are given to the various HSE managers?

Finally, there is the issue of abortion tourism, for want of a better word, which has been raised with many Members of the Oireachtas. A woman who is seeking a late term abortion and whose own jurisdiction, be it the UK, Canada, France or Italy, has term limits, would be able to avail of a late term abortion in the Republic of Ireland due to there being no term limit on abortions in this country. Who will pay for that if it happens, or will the Government say it is only available to women who have Irish passports? Can that be clarified?

**Senator John Gilroy:** It is more relevant to section 9, but it probably has some relevance to this section as well. To deny that suicide is not a genuine risk to somebody's health and life, as some speakers appear to do, is to deny the facts of life. I have been a psychiatric nurse for 28 years. I have worked with groups in the community and I am rapporteur to the health committee on suicide prevention. I am not an expert, of course, but I have some knowledge about this. I have seen the effects of suicide, as has every Member of the House. We have discussed

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it many times in this Chamber, yet when it suits an argument the reality of it is denied. That must be challenged.

**Senator Colm Burke:** This Bill is about when there is a risk to the life of the mother. It is not correct to talk about medical tourism on this issue. It will not arise. If people come here from abroad, they are under their own country's jurisdiction and they must go back and deal with the medical advice there-----

**Senator Brian Ó Domhnaill:** I am seeking clarification of that point.

**Senator Colm Burke:** It is quite clear. The Bill is specifically dealing with a risk to the life of the mother. If people come here from abroad then they will have to go back to their own jurisdiction to have the matter dealt with in their own medical system. People have raised the possibility that we will suddenly have an influx of people but that is exaggeration.

**Senator Brian Ó Domhnaill:** On a point of order.

**An Cathaoirleach:** A point of order.

**Senator Brian Ó Domhnaill:** I sought clarification from the Minister on the matter.

**An Cathaoirleach:** That is not a point of order and I ask the Senator to resume his seat.

**Senator Brian Ó Domhnaill:** I want it read into the record of the House.

**An Cathaoirleach:** The Minister of State shall respond to the Senator. I call Senator Colm Burke.

**Senator Colm Burke:** With this issue we have lost sight of the Bill which deals with what happens when there is a risk to the life of the matter. That is the only issue that is being dealt with.

**Senator Paul Bradford:** Perhaps Senator Gilroy misheard us or we have misrepresented our views. I do not think that anybody in the House has, in any way, disputed that mental health is an issue-----

**Senator Fidelma Healy Eames:** And it is.

**Senator Paul Bradford:** -----and that suicide is an issue. Many of us differ on what is an appropriate-----

**Senator Fidelma Healy Eames:** Treatment.

**Senator Paul Bradford:** -----or evidence-based treatment but that is for section 9. I was going to ask the same question that Senators Ó Domhnaill and Healy Eames asked but Senator Colm Burke has answered it. Perhaps the Minister of State will be able to clarify, as indicated by Senator Colm Burke, that this piece legislation and its uses will only apply to Irish mothers.

I have a question on expenses incurred. Section expenses is a general heading in every legislation. However, a Munster-based consultant made an interesting observation about expenses at the hearings by reminding us that there would be a cost for training Irish nurses, doctors and hospital staff. It was stated on the record of the hearings that staff would have to be trained to carry out these procedures. Can the Minister of State tell me the training costs for the staff who

have never previously participated in abortions and, under this law, will be obliged to provide abortions in the distinct hospitals? One of the consultants at the hearings made the observation that training would have to be provided in the hospitals. Is it the Department or the hospitals who will pay the training costs?

**Deputy Kathleen Lynch:** We do that for everything. We do it for cardiologists, ophthalmologists, etc.

**An Cathaoirleach:** Senator Bradford please, without interruption.

**Senator Paul Bradford:** Will the hospital pay the training costs for its staff? Will the Department take on those costs as part of its central departmental budget heading?

**Deputy Kathleen Lynch:** It will be part and parcel of the general service plan that is put together every year.

**Senator Paul Bradford:** Is it paid for by the hospital or the Department?

**Deputy Kathleen Lynch:** The general service plan is paid for by the HSE, as is done for all other training.

**Senator Paul Bradford:** The observation was made by a very respected consultant who attended the hearings and asked us to reflect on the fact-----

**Deputy Kathleen Lynch:** What is the Senator's question? The only people that-----

**An Cathaoirleach:** The Minister of State can respond later to all of the Senators.

**Senator Paul Bradford:** The consultant asked us to reflect on the fact that the training costs would have to be taken into account.

**Senator Susan O'Keeffe:** That matter is quite clear. The Minister for Health has said here that we are legislating for what is already happening. Therefore, the many doctors, nurses, midwives who have had to deal with terminations for women whose lives were at risk have had the training. They will continue to have the appropriate training for that need. To suggest somehow that this is a whole new thing that is happening is scare mongering and Senator Ó Domhnaill indulged in that by suggesting that there would be "tourism" in this regard. Please excuse me using that very distasteful expression.

I wish to add to Senator Colm Burke's comments on women. It is not just when a woman's life is at risk, but a real and substantial risk. Senator Ó Domhnaill showed a lack of respect with his idea that any pregnant woman whose life is in danger would think of stepping on an aeroplane because, somehow or other, life here is better.

**Senator Brian Ó Domhnaill:** I asked a question and I ask the Senator not to twist my words.

**Senator Susan O'Keeffe:** I am twisting nothing.

**Senator Brian Ó Domhnaill:** Yes, she is.

**Senator Susan O'Keeffe:** The Senator has shown a lack of respect for women whose lives might genuinely be at a real or substantial risk. That is what we are legislating for.

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**Senator Brian Ó Domhnaill:** What about the life of the unborn?

**Senator Susan O’Keeffe:** We are not legislating for anything else.

**Senator Brian Ó Domhnaill:** What about the unborn?

**Senator Susan O’Keeffe:** Senator Ó Domhnaill knows what we are legislating for.

**An Cathaoirleach:** Through the Chair, Senator.

**Senator Susan O’Keeffe:** Senator Ó Domhnaill’s idea and use of the expression is a scare mongering tactic. It has no basis in reality, regarding the legislation, unless he did not listen to the Minister when he was here.

**Senator Aideen Hayden:** First, I am not aware, and I have read the Bill a number of times, that the word “abortion” is mentioned even once. When talking about the language used in the Chamber we ought to take that into account.

Second, I concur with Senator O’Keeffe. My understanding of the legislation is that it formalises the law as it stands and gives clarity on the law as it already stands. I ask the Minister of State to answer one quick question. Given that we are simply enshrining the law as it currently stands, is she aware of abortion tourism to Ireland?

Third, there has been talk of abortion tourism. That is a repulsive idea by Senator Ó Domhnaill.

**An Cathaoirleach:** Senator Hayden, through the Chair please.

**Senator Aideen Hayden:** Yes.

**An Cathaoirleach:** Does the Senator have a question for the Minister of State on section 6?

**Senator Aideen Hayden:** The idea is repulsive and scare mongering. Is Senator Ó Domhnaill aware that at least 4,000 Irish women leave this country every year to go to another jurisdiction for a termination of pregnancy?

**Senator Jim Walsh:** That does not make it right.

**Senator Labhrás Ó Murchú:** Senator Ó Domhnaill’s question was not hypothetical but about the law and it is important to get an answer.

I shall follow on from what Senator Colm Burke has said. His interpretation of the law is that a pregnant woman, who is a visitor to this country, presents herself at a hospital requiring an abortion because she has suicidal intent, should be returned to her own jurisdiction. It is important to get that point clarified.

**Senator Aideen Hayden:** It is.

**Senator Rónán Mullen:** A number of different and interesting issues have arisen from the debate on this section, perhaps more than I had expected. It is interesting the difference of analysis and prediction.

Senator Bradford confronted us with what one of the medical consultants and obstetrician said at the hearings. I did not hear his comments being contradicted by Government, at any

point, to provide further resources for further training. That person did not appear to think that it was going to be business as usual. We have been reassured by Senator O’Keeffe that it will be business as usual and that all we are doing is legislating for what is happening already.

**Senator Susan O’Keeffe:** It is.

**Senator Rónán Mullen:** It seems to me, given what Dr. Sam Counter Smith said about the significant ethical dilemmas that would confront some of his colleagues when asked to end the lives of children of healthy pregnancies, that at the very least a budget for counselling will have to be provided for some of the medical staff who may be implicated in all of this.

Senator Gilroy reflected on his experience of working as a psychiatric nurse. I can tell him that everybody who is opposed to the Bill that I have spoken to is fully apprised of the seriousness of the suicidal ideation in our society. They are fully apprised of the fact that when a person is suicidal there is a risk to his or her life. The question has always been as follows. Can it ever be legitimate for any medical professional, or anybody else, to say that a threat of suicide amounts to a risk to life of a kind that would allow the will of one person to determine whether another person lives or dies? That is an entirely separate question.

**An Cathaoirleach:** The Senator has strayed from discussing expenses.

**Senator Rónán Mullen:** I would be grateful if the Minister of State would rehearse for us what I believe has been supplied to some extent and given that we have been reassured that it is going to be just business as usual. What can she tell us about the involvement of psychiatry in the ending of pregnancies either in Britain or elsewhere but where the mother and child are Irish? What has the HSE’s role been in such a case? How often has it happened? Has psychiatry or the State played a role in procuring abortions either here or elsewhere? How often has it happened? Did it happen on foot of cases that were deemed to meet the X case test? Was it a case of the State acting *in loco parentis* and choosing to exercise, as it were, a right to travel? I would be grateful if she would put on the record here what has happened, to date and how often, since the Supreme Court decision on the X case in 1992.

**An Cathaoirleach:** I call Senator Healy Eames. She has already spoken on the section.

**Senator Fidelma Healy Eames:** I have. I want answers and that is the purpose of the debate. I am not standing here to scaremonger. I am standing here to get answers to questions.

**Deputy Kathleen Lynch:** The Senator will have to stop talking in order to get an answer.

**Senator Fidelma Healy Eames:** I will let the Minister of State answer, if she would.

**Deputy Kathleen Lynch:** I am serious. If the Senator wants an answer then she must stop talking.

**An Cathaoirleach:** Has Senator Healy Eames a question for the Minister of State?

**Senator Fidelma Healy Eames:** I shall wait to hear her answer. I have already asked the question.

**An Cathaoirleach:** Is Senator Healy Eames going to ask the same question?

**Senator Fidelma Healy Eames:** I notice the technique-----

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**An Cathaoirleach:** What is the Senator's question for the Minister of State, if she has not asked it already?

**Senator Fidelma Healy Eames:** I have asked a number of questions and I am waiting for an answer. I heard Senator Colm Burke introduce an answer, saying that it would not happen if someone from another jurisdiction came to Ireland as she would be sent back to her jurisdiction. There are loads of examples where that might not be right or humane. What about a foreign student studying in Ireland? A pregnancy is only nine months. What about a person on a longstay holiday? What about someone without habitual residency? They qualify for nothing. Are we saying that their mental health is not as important? Please answer the questions.

**Senator John Gilroy:** I want to comment on-----

**Senator Fidelma Healy Eames:** Gosh, we are off again.

**An Cathaoirleach:** Senator Gilroy has already spoken on this.

**Senator John Gilroy:** I have, very briefly, and I want to speak again with the indulgence of the Cathaoirleach. Senator Mullen has eloquently and articulately given a synopsis of my previous contribution. I listened with great care to his eloquence and knowledge of the area. He referred to the threat of suicide. The Bill talks not about the threat of suicide but about the risk of suicide. Any misunderstanding between the two terms fundamentally misunderstands the entire nature of section 9.

**Deputy Kathleen Lynch:** I will be brief because most of the debate has been on expenses. It has wandered to other areas and no amendments on section 6 concern expenses. If we were all to make decisions about how our taxes were spent, I am not sure we would have what we now see as a cohesive society. That is an issue for Government. If I was to decide, as an individual, how my taxes were spent, people would not like the choices. That is everyone's position

The Bill deals with women whose lives are at risk. They are going to die if they do not have the procedure. If, Senator Healy Eames, someone who is here on holiday, who is a foreign national or who does not have residency status arrives at a hospital in that condition, each and every one of our doctors would take in that person and treat her in the same way as if she was as fully fledged Irish citizen. The only thing I can do is have ultimate trust in it.

I spend most of my time in this Chamber talking about suicide. Some 500 people die by suicide every year and I think it is an underestimate. Is the Senator telling me that a woman, just because she is pregnant, cannot be suicidal? I do not believe it.

**Senator Paul Bradford:** No one is saying that.

**Senator Fidelma Healy Eames:** No one is saying that. The Minister of State should not introduce scaremongering.

**Deputy Kathleen Lynch:** It has happened. I was not going to comment but, listening to debate, I must ask what experiences Senators have had to make them distrust women in the way they do.

**Senator Rónán Mullen:** Shame.

**Senator Brian Ó Domhnaill:** That is a shameful comment. The Minister of State is representing all of the people.

**Deputy Kathleen Lynch:** Down through the centuries, if women were to do what Senator say they do then we would not be here.

**Senator Jim Walsh:** If the Minister of State cared about women-----

**An Cathaoirleach:** The Minister of State is responding on section 6.

**Senator Brian Ó Domhnaill:** I am sorry I was not born a woman. Should I be penalised because I was not born a woman?

**Deputy Kathleen Lynch:** There are some 100,000 women out there-----

**An Cathaoirleach:** The Minister of State on section 6.

**Senator Brian Ó Domhnaill:** I am sorry I was not born a woman. Is that the accusation the Minister of State is throwing at me?

**Senator Marie-Louise O'Donnell:** The Senator may be right.

**Deputy Kathleen Lynch:** Doctors and nurses are trained in the same way as they have always been trained. We are legislating for what is already in place. We cannot put an absolute price on life and I am amazed to hear it here.

**An Cathaoirleach:** This is the third time Senator Healy Eames has spoken on this.

**Senator Fidelma Healy Eames:** I am grateful for the answer the Minister of State has given. I agree with her that the mental health of a foreign student should count just as much as a citizen and the same goes for someone on holiday. The core of the issue is that, because there are no time limits and because there are time limits in other countries, our country will be attractive to women in difficulty needing late term abortions in other countries. The Minister of State is correct that they will be treated here. We are now going back to the point made by Senator Ó Domhnaill that we will have a new form of tourism in Ireland.

Question, "That section 6 stand part of the Bill", put and declared carried.

## SECTION 7

**An Cathaoirleach:** Amendments Nos. 13, 14, 24, 31 and 32 are related and will be discussed together. Amendment No. 14 is an alternative to amendment No. 13 and amendment No. 32 is an alternative to amendment No. 31.

**Senator Rónán Mullen:** I move amendment No. 13:

In page 8, line 29, to delete "is ended" and substitute "may be lost".

There are two interrelated problems with the legislation. One has been referred to by Senator Mary Ann O'Brien, among others, and concerns the lack of term limits. At a minimum evil, on foot of avoidable circumstances in situations provided for in section 9, a child at the cusp of viability, who is at viability or is later brought into the world in circumstances where, at best, the child may be extremely sick, the Minister said such children might have to be taken into care. We all accept that such an unfortunate outcome for a child is perfectly understandable

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and the process leading to it is perfectly legitimate, where doctors intervene to deal with the physical illness of the child's mother, and do so on the back of an assessment that the threat of suicide amounts to a risk of suicide, but it is unconscionable that should be allowed to happen to a child under the circumstances in section 9. I point out to Senator Gilroy that I talked about how a threat amounts to a risk to life but he can check the record on that point. The lack of term limits is one issue.

A related issue is whether there is a lack of protection for the child at cusp of viability or post-viability in the womb with regard to the procedures permitted. The Minister sought to reassure us when he said that if a viable baby is born, everything will be done to sustain the life of that baby. No one suggests at this point, although I have questions about how the eighth amendment might be interpreted in future cases, that care will not be taken once a child is alive having been delivered or brought out on foot of a procedure under section 9. However, there is a question about what ought to be done in terms of the child, what procedures the doctor is required to execute and whether the doctor is obliged to ensure a child at viability is protected in the course of the carrying out of a section 9 procedure or whether the obligation to preserve the life of the child arise only where the child emerges alive. That is at the core of the problem of the duty to the child prior to the procedure where the child is viable or near viability. It arises in two ways, one because the legislation does not confer a specific duty to protect the child in that situation and second because of the use of language and the word 'ended' in various sections of the Bill that I seek to amend. I am speaking to amendments Nos. 13, 24----

**An Cathaoirleach:** Amendments Nos. 13, 24, 31 and 32 are being discussed.

**Senator Rónán Mullen:** Amendment No. 32 is in the name of Senator Healy Eames so I will speak to amendments Nos. 13, 24 and 31.

Amendment No. 13 seeks to delete the words "is ended" and substitute "may be lost" from section 7 so it would refer to the lawfulness of procedures in the course of which, or as a result of which, an unborn human life may be lost. Amendment No. 24 proposes a similar change in the context of the emergency section 8 procedures, and amendment No. 31 refers to it in the context of what I might describe as the infamous section 9 procedures.

The word "ended" connotes a deliberate act whereby "lost" suggests the death of the child is a side-effect of the intended aim of the medical procedure. All along we have been reassured that what is being legalised are procedures which are not directed to the destruction of the unborn but to the saving of the life of the mother. I suggest the word "lost" provides greater legal reassurance to those practitioners not involved in the deliberate destruction of the unborn, namely practitioners operating according to sections 7 and 8.

In response to critics of the Protection of Life during Pregnancy Bill 2013 who have pointed out the Bill permits the directed intentional destruction of an unborn child even after the point of viability, it has been repeatedly claimed that no viable unborn child will be lawfully aborted pursuant to sections 7, 8 or 9, but instead any such child shall be delivered early with every effort made thereafter to sustain its life after delivery. It is relevant to critically evaluate this response in light of the actual wording of the Bill. Most importantly, the express definition of the medical procedure which sections 7, 8 and 9 provide shall be lawful leaves no doubt the Bill only makes lawful procedures which are fatal for the unborn. The wording used at the start of each of these sections is utterly unambiguous and speaks about where life is ended. Section 7(1) states: "It shall be lawful to carry out a medical procedure in respect of a pregnant woman

in accordance with this section in the course of which, or as a result of which, an unborn human life is ended...”. Thus it is only a medical procedure during, or as a result of, which unborn life is ended that is made lawful by the Bill.

It is necessary the plain legal consequences of this definition are understood. The Bill does not make lawful any form of termination of pregnancy which does not end an unborn human life. It does not confer any lawfulness on a procedure which disables or injures severely; it only confirms lawfulness on those procedures which actually end in the death of the unborn. It follows the Bill neither requires nor renders lawful the premature delivery of a potentially viable unborn child as an alternative to the medical procedure defined and made lawful by the Bill, a procedure in the course of which, or as result of which, unborn life is ended. There is no duty on the doctor to preserve life at that point or no protection from civil or criminal liability for the doctor who preserves life.

If the Government truly believed its own claim that when an unborn child is viable terminations of pregnancy under the Bill should not take the form of a procedure which ends the life of the unborn, which is the only procedure defined and made lawful by the Bill, but should take some other form such as premature delivery, one would expect the Government to be open to an amendment adding an express provision for confirmation that the Bill does not permit the lawful ending of the life of an unborn child which is reasonably deemed to be viable or potentially viable. It is very difficult to understand why the Government would oppose such an amendment if it is truly intended the Bill should operate in this way.

One would also expect to find provision in the Bill addressing the civil liability of a doctor who delivers a viable unborn child prematurely thereby causing injury to the child. As noted above, such procedure is neither mentioned nor made lawful by the Bill because it is not a procedure which ends an unborn human life and therefore falls outside the definition of the medical procedure made lawful by sections 7, 8 and 9.

It is no answer to the above criticisms to include an express reference in the Bill to a duty to make all efforts to preserve the life of a child after delivery. We are not speaking about after delivery; we are speaking about what happens before and during delivery. We are speaking about the procedure and not the post-emergent situation. There is no requirement that any such delivery must occur in the first place because there is no duty imposed on a doctor by the Bill. I can hardly believe I am reading these words but they are true. There is no requirement that any such delivery must occur in the first place, because no duty is imposed on a doctor by the Bill, either implicitly or expressly, not to end viable unborn human life. On the contrary, an obstetrician who chooses to terminate a pregnancy by a premature delivery of the unborn rather than by a procedure which ends the life of the unborn will not enjoy the protection of the Bill. Quite perversely, the obstetrician might be better off legally speaking from the point of view of his or her self-interest if the child died during or as a result of the premature delivery than if the child survived. If the child’s life is ended in the course of or as a result of the premature delivery, the delivery would fall under the definition of medical procedure in the Bill and would therefore be lawful, but if the child survives and suffers injury a result of the premature delivery the lawfulness of the procedure, at least in terms of civil liability, is left wholly undetermined by the Bill.

On Report Stage in the Dáil the Minister stated the purpose of the legislation is not to regulate procedures which do not constitute abortion or to dictate the practice of obstetrics, and to this end, using the word “is” as opposed to “may” and the phrase “may be ended” as opposed to “is ended” would lead to the inclusion of other procedures, for example amniocentesis, which

are not intended to be included, and that due to the unpredictability and complexity of these rare medical cases it was not desirable to provide legislation for a specific referral path. Such an answer causes concern. Only a contorted reading of the proposed amendment could view it as including procedures such as amniocentesis, since subsequent subsections clearly establish the only category of medical procedures contemplated by the Bill are those which respond to a real and substantial risk of loss of maternal life as a necessary means of averting such a risk and which take account of the need to preserve unborn human life as far as practicable. Thus only maternal life-saving medical procedures which threaten the survival of the unborn are contemplated.

Further, as the Bill stands, with the inclusion of “is” instead of “may be”, it is difficult to see the purpose of the phrase “has regard to the need to preserve unborn human life as far as practicable”. This phrase only comes in to protect people who end up ending the life. This is the wording of the Bill. Such a phrase is surely redundant where legal clarity is being offered to only those procedures which inevitably end the life of the unborn. It is not sufficient to suggest, as some have done, there is no need for these amendments since subsequent subsections enshrine the idea of a need to preserve unborn human life as far as practicable. The argument these people make seems to be that the incorporation of the “duty” ensures that the fact that the Bill contemplates only procedures ending the life of the unborn does not entail lesser protection for procedures which do not end unborn life. Yet, as previously stated, that duty to preserve unborn human life as far as practicable is rendered redundant by the exclusion from the Bill’s protection of procedures which do not end the life of the unborn. We are left with a Bill that clarifies and protects only those procedures resulting in the death of the unborn. Any other type of procedure is not protected and is not clarified, as I have said. If my amendment is not accepted, it seems clear that the Bill will have the unintended side effect - I hope it is unintended and that it will be changed - of incentivising for medical practitioners foetal destruction over foetus-saving procedures. That is the most logical deduction from the legal fact that the Bill only protects and clarifies the former category of the medical procedure. I look forward to hearing the Minister’s response.

**Senator Jim Walsh:** I will be brief, because Senator Mullen has covered much of what I wanted to say. I too have tabled this amendment, changing “is ended” to “may be ended” in the hope that it may provide some change to the intent of the Bill. I have a legal opinion which states that, most importantly of all, the expressed definition of “medical procedure” provided for by sections 7 to 9, inclusive, leaves no doubt that the Bill only makes lawful procedures that are fatal for the unborn. The wording used at the start of each of these sections is utterly unambiguous in this regard: “It shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended.” The Bill does not make lawful any form of termination of pregnancy which does not end an unborn life. One would expect the Minister to be open to some amendment in this area so that it is completely and totally unambiguous and does not give rise to a situation that occurs in many other jurisdictions.

People are being selective in picking up some of the points I am making. I am talking about other jurisdictions, but this is a first step and the first time we are introducing and legalising abortion in our legislation. Being aware of judicial activism, we need to ensure that the wording in these sections, as well as some later sections, is as tight as possible. Let me mention the situation in other countries in which a baby is born and technically the obstetrician may find himself or herself liable if a baby on the cusp of viability pulls through. All the medical evi-

dence given at the committee hearings was that only half of those babies born after a gestation period of 23 to 26 weeks will survive, and half of these will suffer cerebral palsy or some other brain injury and will be disabled. The issue facing the obstetrician is that if the baby dies, he or she is totally covered by the legislation, but if the baby survives there is nothing in the Bill specifically that will give the obstetrician confidence that he or she is covered in that situation. Some of the medical profession have sought legal advice independently on that. I am told that what happens in other countries as a result of the issue of liability is that obstetricians are under pressure from the authorities not to make strenuous efforts to save the life of the baby. I have been told by medical practitioners that in other countries, when the baby is in the process of being born, potassium chloride is injected into the heart and that terminates the life of the baby. Some have said that this lacuna and the fact there is no limit on the term of gestation in the Bill will make the situation worse than in England, where there is a cut-off point of 24 weeks for abortion. Therefore, the likelihood of such a situation occurring in England is lower than it is here.

I ask the Minister to give serious consideration to the amendment and, if he has a different viewpoint from the legal advice on medical liability that medical practitioners have received, I ask him to state precisely the position on liability should the baby survive, to assure medical practitioners with regard to their exposure to medical liability proceedings.

**Senator Fidelma Healy Eames:** My amendments are to sections 7 and 8. On the whole, I welcome these sections, which confirm current practice. The sections are useful in that they also clarify issues that some people did not know existed. In my amendment, I wish to substitute the word “may be” for the word “is”. Section 7, which deals with the risk of loss of life from physical illness, states: “It shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended”. Amendment No. 14 seeks to change “is ended” to “may be ended”. I understand it is not intentional that the baby’s life would be ended.

**An Cathaoirleach:** Is the Senator speaking on amendment No. 14?

**Senator Fidelma Healy Eames:** Yes, I am.

**An Cathaoirleach:** I am sorry, Senator; I see it is grouped with amendment No. 13.

**Senator Fidelma Healy Eames:** The word “is” makes it dangerous. Up to now the practice has been that should the mother’s life need to be saved, that is the goal, but it may mean the unintentional taking of the baby’s life. I understand that everybody is fine with that. What worries me about the wording in the section is that it makes clear that an unborn human life is ended. This is actually worse than the current practice. Doctors practise, at the moment, with a duty of care to mother and child. For that reason, we should leave it at “may be”. The word “is” makes it dangerous for the unborn, but the words “may be” gives hope that the life of the unborn might be saved. This does not take away from the overall thrust of section 7. There is every reason a doctor will intervene to save the life of the mother, because there is real evidence of a physical illness. Why not just leave the words “may be”? This puts the duty of care in the doctor’s hands, and he or she can also save the baby’s life, which is the current practice.

The aim of this amendment is to allow medical practitioners to intervene to save a mother’s life in a manner that allows them to attempt to save the baby’s life also. The current wording, with “is” instead of “may be”, presumes that the baby’s life will be ended. That is dangerous,

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and in fact does not render lawful the saving of the baby's life. There is no reason for the current wording to remain other than to pave the way for situations in which no attempts will be made to save the baby's life. I ask the Minister to reflect on this amendment, given that the intention is to clarify existing practice.

I will now address my second amendment, amendment No. 32 in this grouping. Amendment No 32 seeks to amend section 9, which deals with the risk of loss of life from suicide. Section 9(1) states: "It shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended". Again, in this amendment I wish to delete the word "is" and substitute "may be", because it gives a chance to the baby. In both of these sections we are stating that the mother's life is the primary reason for the intervention, but with these amendments, I am requesting that we do not use the phrase "is ended", as under this wording the baby's life will definitely be taken, but the words "may be" give a chance for the baby to be also saved.

*6 o'clock*

I want to add that I am concerned about another inference that may be drawn from the Minister's decision not to include the words "may be" as we have proposed. Senators Mullen and Walsh referred to this. I have tabled another amendment that makes this point. If the word "is" is retained in the Bill, a doctor who saves a baby may end up being liable if that baby ends up with an injury. That might mean there is less of a reason for the doctor to want to save the baby. This is a very serious issue and we need to tease it out here. Much of what I am saying might be uncomfortable. We need to do it here so that doctors, mothers and babies do not have to face these situations somewhere else. We are framing the law now. I look forward to hearing the Minister's answers.

**Senator Thomas Byrne:** It is often claimed that no Government has done anything on this issue for 21 years. In fact, the Minister did not have to look very far when he was drawing up the text of this section. Much of the same language was used in the legislation drawn up by Fianna Fáil in advance of the 2002 referendum. The same language was used in respect of saving the woman's life, for example. The difference is that this Government has added on a doctor. If the 2002 referendum had been passed, there would have been a requirement for just one medical practitioner. I mention this to highlight some of the exaggerations we are hearing during this debate. I think everybody on this side of the House supported the referendum we proposed in 2002. The point I am making does not relate to section 9, obviously. That is separate. The provisions of section 9 were not included in the 2002 referendum.

**Senator Rónán Mullen:** That is a key point.

**Senator Thomas Byrne:** It may be, but we are talking about section 7 at the moment, which relates to the risk-----

**An Cathaoirleach:** We are on specific amendments at the moment.

**Senator Thomas Byrne:** We are talking about amendments to section 7. I am pointing out that I feel-----

**An Cathaoirleach:** We are on amendments to sections 7, 8 and 9.

**Senator Thomas Byrne:** Yes.

**An Cathaoirleach:** The amendments in question are Nos. 13, 14, 24, 31 and 32.

**Senator Thomas Byrne:** I am talking about section 7.

**An Cathaoirleach:** We are not on the section.

**Senator Thomas Byrne:** There are amendments to section 7 before us. I am making the point that the amendments to sections 7 and 8, at least, are unnecessary. The provisions of those sections were considered okay when they were included in the 2002 legislation. I do not think the debate has moved on to the extent that those sections need to be amended to provide for even stricter laws, as people are suggesting. I just do not understand it.

**An Cathaoirleach:** Senator Mullen has already spoken at length on these amendments.

**Senator Rónán Mullen:** Yes.

**Senator Paschal Mooney:** Can I ask that the Minister be allowed to respond at this point?

**Senator Jillian van Turnhout:** I have a comment I would like to make.

**Senator Paschal Mooney:** Some of those who are indicating have already contributed.

**An Cathaoirleach:** I call Senator van Turnhout.

**Senator Jillian van Turnhout:** I asked for the floor when Senator Mullen was last speaking. I wonder how he managed to get ahead of me on the list. I would like to respond to some of the things that have been said about these amendments. Like other Senators, I attended all six days of hearings. I listened to the testimonies of the medical professionals, particularly the obstetricians. Some charges have been made this afternoon. I think we need to be careful in our language. The medical professionals clearly said they work to ensure foetal maturity and foetal viability. That is what they are about. Article 40.3.3° is a clear constitutional provision that protects unborn life. It is clear, therefore, that one cannot intentionally end that life if it is possible to pursue another option while vindicating the woman's right to life. I would like to clear up one of the many claims that have been made. A great deal has been said about the term limits in the UK. This is relevant in the overall context of the use of facts in this debate. It is correct to say that section 1(1)(a) of the UK Abortion Act 1967 provides for a 24-week limit. One should also refer to section 1(1)(c) of that Act, however, because it does not impose a time limit on abortion in Britain where "the continuance of the pregnancy would involve risk to the life of the pregnant woman". That is a fact.

**An Cathaoirleach:** Does Senator Mullen have a further question for the Minister?

**Senator Rónán Mullen:** I have a further comment to make.

**Senator Paschal Mooney:** Let us hear the Minister.

**Senator Rónán Mullen:** I am happy to wait for the Minister.

**An Cathaoirleach:** If the Senator has a question for the Minister-----

**Senator Rónán Mullen:** I do not have a question for the Minister.

**An Cathaoirleach:** -----he should ask it now, rather than coming back in again.

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**Senator Rónán Mullen:** I have a further comment to make, but I am happy to yield to the Minister for now.

**An Cathaoirleach:** The Senator should make it now and let the Minister respond to it.

**Senator Rónán Mullen:** I have only indicated my desire to speak. I am not gagging to speak before the Minister. If the Minister wants to speak, I will wait.

**Deputy James Reilly:** I am quite happy for the Senator to make his comment.

**Senator Rónán Mullen:** I am happy to do so. I will deal with one or two of the issues that have been raised. Senator van Turnhout was absolutely right when she mentioned one of the circumstances in which no time limit is provided for in British law. Of course the other circumstance in which there is no limit is where there is any kind of disability. Under British law, the threat to life is not deemed to include any mental health grounds, as far as I am aware. The term limit that applies to abortions that are carried out on the basis of the mental health element is 24 weeks. I would like to raise two issues in response to what Senator Byrne has said.

**An Cathaoirleach:** The Minister will deal with those issues. Does the Senator have any questions for the Minister?

**Senator Rónán Mullen:** I do not. I have a comment to make. I said I would wait until the Minister had answered.

**Deputy James Reilly:** The amendments we are discussing - Nos. 13, 14, 24, 31 and 32 - would change the wording of sections 7, 8 and 9 of the Bill. The Bill as currently drafted reflects the policy requirement to implement the judgment in the case of *A, B and C v. Ireland*, which relates to accessible and effective procedures in relation to abortion only. The proposed change would not be desirable as it would bring a greater number of medical procedures under the Bill. The Senator read them out. One such procedure would be amniocentesis. Another such procedure could be the administration of a general anaesthetic.

The words “may be” would cause major problems. Senator Walsh has his legal advice. The Attorney General has taken the best advice available and given it to the Government. She has advised that the word “is” should not be replaced by the words “may be”. I hope that clarifies things. I appreciate from what Senator Mullen has said that it will not be acceptable to him. I have to take the legal advice the Government gets from the highest legal officer in the land.

I would like to respond to Senator Walsh’s contention regarding the exposure of doctors. It is very simple. If the doctor is acting within the law, he or she is protected under the law. If the doctor is acting outside the law, he or she will be subject to the law.

I would like to comment on what Senator Mullen said. I say this without rancour. The contention that a doctor would not do everything in his or her power to save a life is not really worthy of a response. It casts a slur on the doctors of this country who provide such sterling service and who come from a tradition of centuries - not just generations - of care and compassion for their patients. It is just not tenable. In fact, it is quite shocking.

I regret that I will not be able to accept the amendments proposing the replacement of the word “is” with the words “may be”. I considered those words myself. I put the very points that have been made this afternoon to the Attorney General. She made it very clear that the use of the words “may be” would be most unwise legally, because it would have unintended

consequences in the areas-----

**Senator Fidelma Healy Eames:** Is the Minister addressing my amendments as well?

**Deputy James Reilly:** It relates to the same thing. Is it not the case that the Senator is also proposing the replacement of the word “is” with the words “may be”?

**Senator Fidelma Healy Eames:** Yes. Why is such a change not acceptable?

**Deputy James Reilly:** I have just explained it.

**Senator Jim Walsh:** I thank the Minister for his response, particularly with regard to the proposal to replace the word “is” with the words “may be”. His comments are not in accordance with the legal advice I have read. He said he had received advice from the Attorney General. I asked him this morning whether it would be possible for that advice to be made available in writing. I heard what the Minister said about medical operatives who act within the law being covered and those who act outside the law not being covered. I fully respect that. I think it is a good principle. The point I was canvassing is that the wording of the Bill obviously covers the doctor or the obstetrician in a situation in which the baby’s life is ended, but does not seem to cover them in a situation in which the baby survives. They have got separate legal advice. The Minister will have to concede that at this level - where the baby has a disability - serious liability issues could arise. I ask the Minister again to specifically point out the part of the Bill that covers issues related to doctors’ liability and provides that doctors are operating lawfully in cases where a baby survives an abortion and is disabled. This would arise around the cusp of viability period we discussed.

**Senator Rónán Mullen:** I am deeply disappointed with the Minister’s response. While he may pretend otherwise, it is not really a response to hide behind yet another mantra that he is relying on advice from the Attorney General. The Attorney General has been used, possibly as an unwitting battering ram, in this debate for months, during which the purported rationale for the Attorney General’s supposed advice has not been shared with us. This is a disgrace to the parliamentary process and an indictment of the Government’s attitude to the Legislature. It is much too easy to invoke the advice of the Attorney General when one does not have a credible answer.

**Senator Colm Burke:** On a point of order, it is standard procedure in all legislation for Government Ministers to rely on the advice of the Attorney General.

**An Cathaoirleach:** That is not a point of order.

**Senator Jim Walsh:** It is a point of disorder.

**An Cathaoirleach:** Senator Mullen should continue without interruption.

**Senator Rónán Mullen:** I am sure the Minister will regard Senator Burke’s point of order as very helpful.

I dealt with the Minister’s objection that the incorporation or use of the words “may be” would somehow encompass other procedures. Bizarrely, he chose to cite amniocentesis but did not illustrate what harm such unintended inclusivity would do. It should be remembered that we are discussing rendering lawful a procedure that may result in the unborn child’s life ending. The reason for inserting the words “may be” is to cover circumstances in which the

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unborn child's life does not end. There would not be any actual mischief even if, as the Minister claimed, using these words would include cases such as amniocentesis, even if the latter was not the offence. If that were to be the case, there would be no harm done. It is, however, ridiculous to suggest it would include such things. The most basic understanding of the rules of statutory interpretation - the Attorney General certainly has such an understanding - would allow a court to understand that when one is interpreting legislation, one does not only interpret matters literally, certainly not if to do so would lead to an absurdity. Various rules of statutory interpretation include, for example, what is called the purposive approach where the courts examine what is the intent of legislation and what it is designed to achieve. Clearly, the amendment is designed to achieve the protection - at this point it is not a duty - of doctors who might carry out a procedure which did not result in the death of the child. As the Minister pretends and insists, albeit without reassuring legislative support, this is supposedly being done under section 9. There are supposed to be cases where a child might be brought out alive and its life preserved because it has reached a point of viability. However, the Minister does not confer any protection in the relevant section 9 for a doctor in such circumstances because the only thing being made lawful is a procedure that ends the life of the child. There is a massive lacuna there.

To respond to Senator Thomas Byrne-----

**An Cathaoirleach:** It is not necessary to respond to other Senators.

**Senator Rónán Mullen:** The issue the Senator raised contributes to a potential misunderstanding of what I have proposed.

**An Cathaoirleach:** The only answer that matters is that of the Minister.

**Senator Rónán Mullen:** While I do not propose or desire to speak for the entire evening, I want to address a criticism that has been made of my point. The difference is that section 9 changes everything because sections 7 and 8 involve necessary medical interventions-----

**An Cathaoirleach:** As the Senator is well aware, we are discussing amendments, not sections 7 and 8.

**Senator Rónán Mullen:** Sections 7 and 8 deal with necessary medical interventions to save the life of the mother. In such circumstances, there would be no desire to end the life of the child. Section 9 is a horse of a completely different colour, however, owing to the nature of the suicide issue.

**Senator Marie-Louise O'Donnell:** On a point of order, is the House being given a law lesson or is Senator Mullen asking a question?

**An Cathaoirleach:** Please allow Senator Mullen to continue without interruption.

**Senator Rónán Mullen:** Senator O'Donnell seems to be under the impression that the role of the Legislature is to ask questions of the Minister.

**Senator Marie-Louise O'Donnell:** I am under the impression that since I entered the Chamber, all I have heard is the truth as defined by Senator Mullen.

**An Cathaoirleach:** Please allow Senator Mullen to make his point.

**Senator Rónán Mullen:** Rather than trying to demonise, the Senator should note that the

role of the Legislature is to propose amendments.

**Senator Marie-Louise O'Donnell:** I am not here to listen to the Senator's definition of the role of the Legislature. I know exactly what it is.

**An Cathaoirleach:** Please allow Senator Mullen to make his point.

**Senator Rónán Mullen:** Under section 9, there may be and will be circumstances where what is sought is the end of the pregnancy in circumstances that will entail the death of the child. The Minister has reassured us that a doctor will be under a duty, if the child is capable of being kept alive, to save the life of the child.

**An Cathaoirleach:** The Senator is being repetitive.

**Senator Rónán Mullen:** It is extremely serious that I am being barracked in this manner when I am trying to explain a point, as we are all entitled to do.

Section 9 makes it necessary that a doctor be protected and mandated, as other amendments propose, to ensure that a child capable of being born alive is not destructively aborted. It is for this reason that the words "may be" matter so much.

For the sake of consistency, it is important to answer Senator Thomas Byrne's point that sections 7 and 8 would confer a similar protection on doctors. Were it only about section 7 or 8, it would not be such a problem because under these two sections there would be no question of an intent to take the life of the child as a doctor helping a mother in a medical emergency also wants to save the baby. That is the answer to Senator Thomas Byrne's objection and it is relevant to our understanding of the amendment I have proposed.

**Senator Jillian van Turnhout:** I share Senator Mullen's frustration at not being given access to the Attorney General's advice. I have spoken on many other Bills where it would have been wonderful to have access to such advice. The position, however, is that we cannot do so on this or any other legislation.

**Senator Fidelma Healy Eames:** Why not?

**Senator Jillian van Turnhout:** That is not a matter for today's debate, although having discussed it many times previously, perhaps the issue should be the subject of a separate debate. I understand the frustration this creates.

I will clarify a matter for Senator Mullen related to the UK Abortion Act of 1967. Where time limits do not apply, the Act does not expressly deal with whether the threat to life is physical or otherwise. The provision relates to a threat to the life of the woman, whereas the 24 week term limit applies where there is a risk of injury to physical or mental health.

**Senator Paschal Mooney:** Why is the Senator discussing UK legislation?

**Senator Jillian van Turnhout:** Several Senators misquoted the UK Act.

**Senator Paschal Mooney:** With all due respect, it had nothing to do with the amendments.

**An Leas-Chathaoirleach:** With all due respect, Senator van Turnhout is entitled to make a point, although perhaps we should move on.

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**Senator Jillian van Turnhout:** I have seldom spoken in this debate. However, having listened to a great deal of misinformation, I decided to correct the record.

**Senator Paschal Mooney:** This has nothing to do with the UK legislation.

**Senator Rónán Mullen:** I am interested in Senator van Turnhout's point.

**Senator Jillian van Turnhout:** I thank Senator Mullen for his understanding.

**Deputy James Reilly:** While we are clarifying the record, Senator Jim Walsh has, on a number of occasions, described particular procedures in the context of the termination of pregnancy. He challenged me this morning to make a statement that these procedures will not be used under this legislation. I have spoken to the master of Holles Street and I am assured, as of this afternoon, that the practices Senator Walsh describes do not take place in this country. There is no dilation and evacuation of the remaining contents of a partially ended pregnancy in cases where a termination must take place and is carried out more than 12 weeks into a pregnancy. In pregnancies of under 12 weeks, while surgical options are available, the procedures used are primarily medical. In cases where the pregnancy is more than 12 weeks, the baby is induced and if it is viable, it will be looked after and saved. Sadly, this cannot be done if it is not viable.

Senator Mullen seems to describe every line he dislikes as a mantra. That is his prerogative but it rings hollow after a while. There is no lacuna in the Bill in relation to what he described because sections 7, 8 and 9 all state unequivocally that the medical practitioner may perform the medical procedure based on his or her reasonable opinion, "being an opinion formed in good faith, which has regard to the need to preserve unborn human life as far as practicable". It could not be clearer.

**An Leas-Chathaoirleach:** Does Senator Mary Ann O'Brien wish to contribute? I apologise that I allowed the Minister in before her, I did not see her indicating on time.

**Senator Mary Ann O'Brien:** I thank the Leas-Chathaoirleach and the Minister for his response. I wish to clarify the gestational term. As we are aware there is no gestational term in the Bill. I am heartened by the Minister's last response where he said he spoke to the master of the Rotunda or Holles Street this afternoon. We are clarifying that after 12 weeks the baby is induced and delivered and if the baby's life is viable it will be saved. That is what we are going to do in this country as provided for in sections 7, 8 or 9.

**Senator Fidelma Healy Eames:** It cannot be saved after 12 weeks.

**Senator Mary Ann O'Brien:** I know but we said this morning that 23, 24, 25 weeks is the cusp of viability. We all want to know that if there is a chance for this little baby, for every single doctor who is ever going to be involved in saving the life of a mother, under sections 9 or 7, that the baby will be given every opportunity to have a viable life and to live to its potential. That is what I understood from what the Minister has just said.

**An Leas-Chathaoirleach:** I call Senator Colm Burke.

**Senator Colm Burke:** I support what the Minister has said. I have spoken to three practising obstetricians in this country today. They are incensed by what was said in this House yesterday as regards the procedure that was described. All three advised that the procedure described here yesterday is pre-1975. It is important that full clarification is provided on this matter as so

much incorrect information has been given out here.

**Senator David Cullinane:** Hear, hear.

**Senator Colm Burke:** These are three practising consultants, one of whom is Professor Robert Harrison. He asked that he be specifically quoted. He worked in England from 1973 to 1979. The procedure which was described here yesterday was not carried out in England in the time period he worked there. It is important that clarification is given.

**Senator Fidelma Healy Eames:** The Minister's answer is very helpful. My question is very simple. There are two stages to this issue, there is post 12 weeks and post-viability. We know that a baby at 12 weeks will not be viable. We are talking about probably 22 weeks plus. I am fortunate to be the aunt of little twins who were born at 24 weeks and are now six years old. We know in my family what is possible. We did not see those little babies for four months after they were born because they could not be visited except by their parents. The fundamental question is this: if the Minister is saying that a baby will be delivered on the cusp plus post-viability and everything will be done to save that baby's life why does he not put that wording in the Bill? I want the Minister to specifically answer that question. Why does the Minister not put that wording in the Bill? I heard Senator van Turnhout say that we always hear "It was the Attorney General who told me". We get tired hearing this when we do not know what the Attorney General is actually saying. I will return to the second question which concerns pre-viability. The Minister mentioned from 12 weeks to viability, so there is a potential ten weeks. What will happen to that baby? As they are not viable, what will happen from 12 weeks to the viable stage which is 22 weeks?

**Senator Jim Walsh:** I am glad the Minister took on board the question and that he sought clarification from, presumably, one of the masters of the hospital on that issue. I note that the Minister said "is" - in other words the present tense. I fully accept that in Ireland today any procedure that is done is to treat the mother and the mother's life threatening condition and, therefore, an indirect consequence of that is that the baby is lost. However, this Bill changes from that position. I am concerned about section 9. Like Senator Colm Burke I have spoken with obstetricians in this country.

**Senator Colm Burke:** Name them.

**Senator Jim Walsh:** The reference I made on Second Stage was to what happens in the US. I made clear what I was dealing with. I spoke today about procedures and the Minister has confirmed that both medical and surgical interventions will be required if one is to abort a baby. I accept what he said. I ask the Minister to correct me if I am wrong, that the medical procedure would be in the first six weeks and from six to nine weeks one would have the surgical procedure.

**Senator Colm Burke:** Incorrect.

**Senator Jim Walsh:** I am not asking the Senator. After that, my understanding is that one is into the medical procedure again, which the Minister described, but in all instances the baby does not survive. It is the killing of the baby. That is the situation. That is my fundamental substantive objection to the Bill. In this instance I would like the Minister to clarify the cusp of viability which is what I focused on with this amendment. I accept what the Minister has said in relation to the amendment. On the cusp of viability, I am told by the people working within the medical profession, who are the people who will be charged with the responsibility

to carry out these procedures, that their legal advice is that they are exposed or, at best, that it is ambiguous and that they do not have liability cover and, therefore, that the clarity surrounding their position will be better, should the baby not survive the procedure. Will the Minister tell the House how and where the liability issue for a baby who survives covers the medical profession, the practitioner involved?

**Deputy James Reilly:** Yes.

**Senator Jim Walsh:** I accept the Minister may not have that answer to hand. With due respect, he does not. If he has, I ask him to repeat it, but I certainly did not pick up on it. What he did say was that if they act outside the Act they are unlawful. This deals with a situation where the life is ended. Where a life is not ended but the baby is seriously injured and disabled, what is the position? In other words, the baby survives the procedure but in a way that would give rise to a fairly substantial claim on the baby's behalf because of the disability. Where is the cover for that in the Bill? I would be grateful if the Minister could clarify that issue and, if not now, I will be happy to accept it on Report Stage.

**Senator Aideen Hayden:** I will repeat what I said earlier. My understanding of the legislation we are discussing relates to formalising the law as it currently stands in this country and to give clarity to the current legal position. There are about 50,000 live births in this country every year. For every 50,000 live births here every year there are approximately 14,000 miscarriages. A considerable number of those miscarriages take place between 14 and 16 weeks, though the majority take place at a much earlier stage. That figure should have been 70,000 births and 14,000 miscarriages. A hell of a lot of muddying of the waters has been going on here with regard to this issue. It seems there is an attempt being made to distinguish children who are born into the world as an unfortunate consequence of the efforts to try to save the life of the mother from children who are born prematurely in the natural way. Having sat through many days of hearings, I understand there is no difference between these two categories. The medical professionals engaged at the forefront of obstetrics and gynaecology in this country do not differentiate between these, but do everything they can to save the lives of those children.

With regard to negligence and who is responsible, an unwanted child who, for the sake of argument, is born to a drug addict in one of our Dublin hospitals is in the same position and needs the same care as a child who may be born because there is a threat to the life of the mother. It does not matter how the child comes into the world; the State's responsibility is the same. Either that child is cared for by parents who are capable of caring for it or the State cares for it. I do not see a difference. It surprises me that we are going over and over these issues. I have lost track of the number of times we have gone over it.

I understand that all children who are born must be cared for by the State, irrespective of the situation in which they are born. The State has a responsibility. It does not matter whether the child is born due to the fact an effort is being made to save the life of the mother. If that child is viable, it will be protected by the State. I am at a complete loss to understand the point being made by the Senator.

**Senator Rónán Mullen:** With great respect to Senator Hayden, she seems to be talking about the situation once the child is born. What is at issue here is what protection a doctor has to ensure that if he or she acts in a way that does not take the life of the child but brings the child into the world alive, he or she will be protected in light of the criminal law in that regard and that he or she is not perversely incentivised to act in a more destructive way. That is the

core of the issue.

We all agree that once a child is born alive, the duty is there. I think the Minister has revealed he does not understand the legislation. I say this -----

**Senator John Gilroy:** We do not understand what the Senator is saying. It is illogical and meaningless. That is why we do not understand it.

**Senator Marie-Louise O'Donnell:** Put it down to the Senators not understanding the law lecture of Senator Rónán Mullen and we are not going to pass his exam and that we do not have to pass an exam and interpret the law the way he does.

**An Leas-Chathaoirleach:** Senator Mullen may not agree with the Minister, and I understand that. I ask Senator O'Donnell to allow the Senator continue. I have listened to and chaired much of this debate and there have been a lot of interventions, with one side having a go at the other and never the twain shall meet. Obviously there are opposing views. Though the Senator may differ in his view, it is inappropriate for him to say the Minister does not understand the legislation.

**Senator Marie-Louise O'Donnell:** And he suggests the rest of us do not understand it.

**An Leas-Chathaoirleach:** Senator O'Donnell's interventions sometimes only prolong the debate. She may mean well, but she should allow Senator Mullen continue before I ask the Minister to respond.

**Senator Marie-Louise O'Donnell:** In comparison with Senator Mullen, I could not be accused of prolonging the debate. He has been speaking for hours.

**An Leas-Chathaoirleach:** With all due respect, I will decide when the vote is called. I am trying to be fair to everyone.

**Senator Marie-Louise O'Donnell:** I stand corrected.

**Senator Rónán Mullen:** I thought I was being kind. What we cannot get away from is that there is new legislation on the block and as we all know, this new legislation changes the existing situation.

**Senator John Gilroy:** It does not confer any further rights.

**Senator Rónán Mullen:** By definition, this will be the legislation referred to in the context of any litigation. Therefore, we have a changed situation, whether Senator Gilroy likes it or not.

**Senator John Gilroy:** It clarifies the existing situation.

**An Leas-Chathaoirleach:** I ask Senators not to interrupt because that only encourages further debate. There should be less goading, which is what is happening. Senator Mullen has a right to make his point and when he has concluded, I will ask the Minister to respond and then put the question.

**Senator Rónán Mullen:** The legislation is not about whether we trust doctors or not or about whether a particular doctor will set out to do wrong things. Legislation should be about putting an issue beyond doubt. I trust doctors, but I am not so sure I trust all doctors.

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We have not heard an argument against including protection for a doctor who intervenes in a way that leaves the child alive. By way of justification for his approach - this is why I question his understanding - the Minister pointed to the provision that there must be a reasonable opinion formed in good faith which has regard to the need to preserve unborn human life, and some amendments have been submitted in this regard, because there are problems with the definition of "reasonable opinion". Let us be clear, this does not say it shall be lawful to carry out a medical procedure where human life is ended, where the person has regard to the need to preserve unborn human life. It does not say that.

**Senator John Gilroy:** It could not possibly say that.

**Senator Aideen Hayden:** It is in the Constitution already.

**Senator Rónán Mullen:** What it says is that it is lawful to end a human life where the people who have certified that the abortion or procedure is called for have "had regard" - whatever that means - to the need to preserve unborn human life. Therefore, it is the people who certify the abortion who must have regard to the need to preserve human life, but the only protection for the doctor is if he or she carries out a procedure that ends human life. Therefore, what is being said in this section does not add up and is not an adequate argument. I appeal to my colleagues to understand this reasonable point. The provision does not add up because it does not require that the person who carries out the abortion has regard to the need to preserve unborn human life. Rather, it requires that the people who certify the need for an abortion form an opinion that the abortion is necessary and that they have regard to the need to protect human life. The person carrying out the procedure is the person being protected in this legislation, but only in cases where he or she ends the life. That is the problem and that is the lacuna.

I apologise. What I have argued is certainly not an attempt at any kind of legal snobbery. I was not sufficiently long practising at the bar to even have the right to claim experience. However, I would like to have the Attorney General here to hear what she has to say, because the argument made by the Minister does not stand up.

**Deputy James Reilly:** I will give a brief response. In regard to legal advice, apart from the fact there is no tradition of the Attorney General sharing his or her advice, even on discovery of documents the advisers of one's attorney are not open to discovery. If I tell the Senator what I say is the advice of the Attorney General, he can be sure it is. If it was not, she would be very quick, and right, to correct me.

We are going around the houses here on this point, so I will not add further to it. The doctor acts within the law and is protected by the law. In regard to compensation claims, etc., all our obstetricians and gynaecologists are covered by a State indemnity scheme, but I do not believe there would be a claim because the doctor is acting within the law.

**An Leas-Chathaoirleach:** There has been substantial debate on amendment No. 13, but obviously we will not get agreement on it. Is the Senator pressing the amendment?

**Senator Rónán Mullen:** Yes.

Question, "That the words proposed to be deleted stand", put and declared carried.

Amendment declared lost.

**An Leas-Chathaoirleach:** Amendment No. 14 cannot be moved.

**Senator Fidelma Healy Eames:** I put forward amendment No. 14 and would like a response from the Minister before deciding whether to press it.

**An Leas-Chathaoirleach:** The Minister for Health has already said what he can say on this section, so we will move on to amendment No.15.

**Senator Fidelma Healy Eames:** Then I am going to move my amendment.

**An Leas-Chathaoirleach:** It cannot be moved. That is the ruling. Amendments Nos. 15, 33 and 54 are related and may be discussed together.

**Senator Fidelma Healy Eames:** I wanted to move it.

**An Leas-Chathaoirleach:** It cannot be moved because it has already been discussed with amendment No.13. That is the procedural agreement.

**Senator Fidelma Healy Eames:** Why can it not be moved?

**An Leas-Chathaoirleach:** Amendment No.13 has been dealt with. Amendments Nos. 13 and 14 are related and so it cannot be moved as it has already been dealt with under amendment No.13. That is my ruling. I call on Senator Mullen.

Amendment No. 14 not moved.

**Senator Rónán Mullen:** I move amendment No. 15:

In page 8, line 31, to delete “have jointly certified in good faith that” and substitute “and having regard to the relevant clinical evidence, have jointly certified that”.

These issues are somewhat fite fuaite, but in a way they follow directly and logically from what we have been talking about for the last while. Whereas what we are talking about for the last while related to the question of the protection for doctors who carry out a procedure that did not take the life of the unborn - it is no consolation to me to think that doctors might none the less risk not taking the life of the child on the basis that they would be covered by their professional indemnity; I found that a very worrying sop - this amendment relates to the last issue to which I referred, namely, the certification as distinct from the carrying out of the procedure. This does not relate to the emergency procedures. A good faith certification does not arise in that situation, but it does relate to the section 7 procedure and the section 9 procedure, and it also relates to the issue of the review of the relevant decision. In the situation where abortion is not certified at first instance, the review committee has to apply the same test and ask whether there is a real and substantial risk of loss of life, and whether “in their reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) that risk can only be averted by carrying out the medical procedure,” that risk can only be averted by carrying out a medical procedure referred to in section 7(1) or section 9 (1), as the case may be.

We have a distinction here between the role of the person carrying out the procedure and the people who certify the procedure in the first place. As I pointed out to the Minister, it is the people who certify the procedure that must have regard to the need to preserve the life of the unborn as far as practicable, and not the people who carry it out. Let us look at the quality of that certification, given the far-reaching consequences for the unborn child, in the context of section 9. In any situation where medical professionals are asked to certify that a procedure

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resulting in the death of the unborn is the only way by which a risk to life can be averted, it is reasonable to expect that they would be informed by the relevant clinical evidence. There are problems with the good faith test because of its subjective nature.

My amendments provide that having examined the pregnant woman, instead of “having jointly certified in good faith”, they would be required to “have regard to the relevant clinical evidence and jointly certify”. Therefore, we are not talking about a requirement of good faith, which is subjective. We are talking about a requirement of having regard to the relevant clinical evidence, which is something that can be judged more objectively.

There were hardly any medical negligence cases in Ireland until 1989. In that year, the case of *Dunne v. National Maternity Hospital* came before the Supreme Court and remains the seminal case in medical negligence to the present day. Two of the principles set down by former Chief Justice Finlay for establishing medical negligence are as follows:

The true test for establishing negligence in diagnosis or treatment on the part of a medical practitioner is whether he has been proved to be guilty of such failure as no medical practitioner of equal specialist or general status and skill would be guilty of if acting with ordinary care.

If the allegation of negligence against a medical practitioner is based on proof that he deviated from a general and approved practice, that will not establish negligence unless it is also proved that the course he did take was one which no medical practitioner of like specialisation and skill would have followed had he been taking the ordinary care required from a person of his qualification.

These principles helped found the test of a reasonable standard of care, which is the main test for establishing liability in medical negligence cases. Medical professionals have to act with ordinary reasonable care. If the diagnosis or treatment were reasonable, then there can be no finding of negligence. At our hearings, Dr. Ciarán Craven pointed out that there is a higher test applying in the case of negligence. He stated:

In so far as the law of tort is concerned, it used to be dealt with in the context of whether one followed, adhered to or subscribed to a general and approved practice, in other words one which was followed by a responsible, reputable or respectable body of professional opinion. That was the classical test and the classical formulation.

He pointed out that this has undergone something of a transformation in recent years, especially since *HM v. the HSE* and a decision of Mr. Justice Charleton from July 2011. The key point from that decision is that evidence-based professional guidelines were deemed to be incorporated into the appropriate standard of care, and Dr. Craven stated that “seemed to represent something of a shift in so far as the courts are concerned from this deference to clinicians in terms of what is or is not appropriate.” He went on to state:

A further issue has also arisen. In its decision in the case of *Kearney v. McQuillan*, the Supreme Court went further in stating that health care professionals owe and always have owed a duty to patients to protect their constitutional rights.

Underscoring both of these cases seems to be the requirement for some evidence in terms of one’s evidence. In order to fulfil ethical and legal obligations, there must be some evidence in terms of what medical practitioners do, and that is about the only way the ethical injunction

*primum non nocere*, or “first, do no harm” can be fulfilled.

When it comes to the question of certifying certain opinions in sections 7, 8, 9 and 13, in each case there is a requirement that the opinion be formed in good faith only. When one is relying on the good faith safety justification, that justification will always succeed. Trying to demonstrate *mala fides*, bad faith, or even improper motivation in this area, is virtually impossible. There is a whole series of cases where this has arisen under the old mental health legislation over the past 40 years. With respect, it seems what is happening in this Bill represents a very old fashioned approach which is inconsistent with the ethical and now the legal and constitutional duty that the courts have elaborated on over the past two years. A good faith opinion, which is accepted without any reference or is unsupported by any reference to evidence-based practice, is regressive or potentially dangerous. That is the point.

**Senator John Gilroy:** It is not good faith, by definition.

**Senator Rónán Mullen:** It is subjective.

**An Leas-Chathaoirleach:** Senator Gilroy, your interventions might be unhelpful to the debate.

**Senator Rónán Mullen:** If only a good faith opinion is required but there is no reference to evidence-based practice, we are going backwards and not forwards. The primary reason for the changes I am proposing in these amendments is that any reasonable opinion be based on medical grounds alone, and not on any extraneous non-medical considerations. In the Bill in its current form, there is a remarkable lack of any requirement that medical practitioners should have clinical reasons for their decisions. There is a reference to clinical grounds, but it appears there is a related incongruity. Section 19 requires a certification to contain the clinical grounds for carrying out the medical procedure without any provision in the Bill that requires the medical practitioners involved to have clinical grounds. They must form a reasonable opinion. In a way this makes a nonsense of the use of the word “reasonable” when it is being made subject to a rather out-of-date subjective test, namely, that of perceived good faith. I will leave it at that.

**Senator Fidelma Healy Eames:** I see a good deal of merit in what Senator Mullen has said. There is a danger in relying on a good-faith opinion. How can we ethically justify the taking of a life of a baby without clinical markers? The Minister has given us many assurances, but, to be fair, once this law is passed they will carry no weight. There is nothing in the legislation to prevent two psychiatrists from signing away the life of an unborn child once they claim it is in their reasonable opinion. Since there are no clinical markers to judge whether the intervention is necessary, they are free to sanction as many abortions as they wish and the absence of that objective standard concerns me greatly. Will the Minister comment on why there are no clinical markers?

I have before me a letter from a doctor. She has given her Medical Council registration number. She has spoken about her experiences working in the United Kingdom although she is now working here. She said to me that a consultant in obstetrics in the United Kingdom with whom she worked some nine years ago advised her at the outset that he would do any abortion on any patient who requested it. He said that he could rely on like-minded colleagues in psychiatry and general practice to sign the necessary legal forms. The justification offered for this policy was that no doctor could be certain that a woman with an unwanted pregnancy would not complete suicide.

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The Minister of State at the Department of Health, Deputy Alex White, justified the need for the Bill on the same grounds. This is the danger of relying on a good-faith opinion. The rate of suicide among women in pregnancy in Ireland is of the order of between one in every 250,000 and one in every 500,000. Thank God, it is a rare event. However, we know that women experience suicidal thoughts in pregnancy. In fact, approximately 15% of pregnant women experience suicidal thoughts, but this does not mean that they complete suicide.

I return to my original question. How can we ethically justify the taking of a baby's life without reliable clinical markers? How can we rely on good faith when we know there is boundless evidence to show that after several years this becomes common practice? There are even pre-signed forms in the United Kingdom such has been the abuse of the system in time. If the Minister could answer those questions I would be delighted.

**Senator John Gilroy:** I have no wish to prolong the debate but I wish to make some comments on this amendment and the section. Senator Mullen speaks of the test of reasonableness. He quotes from the Dunne case of 1989. However, the precedent of reasonableness was established long before that. If memory serves me correctly, it dates back to 1856. *Blyth v. Birmingham Waterworks Company* is the test case during which the Lord Justice at the time described reasonableness as the standard of the man on the Clapham omnibus or the man on the street. That is what is considered reasonable. Let us consider reasonableness and juxtapose it with the other term in the section, that is, good faith. There is no possibility of any reasonable person acting in good faith while ignoring the medical evidence. Senator Mullen's concerns are entirely and completely unfounded. They are selective and perhaps even amount to a misunderstanding of the intention of the legislation.

Senator Healy Eames made a point about there being no markers for suicide. She absolutely and fundamentally misunderstands the nature of suicide. There are many objective markers. If we are to say that our consultant psychiatrists are unable to diagnose suicide to within the standard of reasonableness which is required under this legislation, then we might as well say that there is no such thing as suicide or mental illness or the psychiatric profession. That is what we suggesting if we say what Senator Healy Eames has said.

I made the point to Senator Mullen some time ago that it is not the threat of suicide that we are legislating for, but the risk of suicide. The risk of suicide sometimes, but only sometimes, includes the threat of suicide. Other markers include the formulation of a plan, suicidal ideation or perhaps some last final acts. There are many markers that are absolutely, 100% objective and any psychiatrist who says there is none should not be a psychiatrist. It is as simple as that. It would be like a cardiologist being unable to diagnose heart failure. To say or suggest otherwise is to move into an area that is extraordinarily dangerous and amounts to denying that suicide and suicidal ideation are medical emergencies. If we accept that suicide and suicidal ideation and intent are not medical emergencies, then we are in trouble. Further, I believe we are in real trouble by making this argument in the first place.

I started work as a psychiatric nurse in 1984. The stigma associated with mental illness and suicide in 1984 was appalling. We have made, or, we appear to have made, great strides in reducing that stigma. I believe that the conversation in the Chamber and the use of the threat of suicide by opponents of the legislation has set back that work to pre-1984 levels. It is an absolute disgrace.

**Senator David Cullinane:** Hear, hear.

**Senator John Gilroy:** People are speaking from a position where they simply do not know what they are talking about. They do not know the harm they are causing to the mental health services of the country. I am furious about it, because it is a fallacious argument and it is absolutely wrong. No one can convince me that there is any shade of wrongness about it. It is 100% wrong. I call on the Senators to have cognisance in their comments for the stigma reduction measures that we have been trying to put in place in the country for the past 30 years.

**Senator Colm Burke:** Senator Mullen raised a particular issue. It is important to note that the level of litigation in medical negligence is highest in the area of obstetrics and gynaecology. Obstetricians are always remarkably careful in how they manage their patients and that will continue. The level of litigation is high in this area not because people intentionally go out to cause a problem but because of the difficulties in the job that they must deliver on and the work they must do. Unfortunately, there is a high degree of litigation as a result. It is something that they must live with.

Reference was made to the area of obstetrics and gynaecology. I understand that the life expectancy of a consultant obstetrician is 63 years because of the stress levels associated with the job.

If I understood Senator Mullen correctly, he said that medical negligence really only took off after 1989. However, medical negligence claims were around long before 1989. While the rules may have changed somewhat in 1989, it was not the case that there was no medical negligence pre-1989. Perhaps I picked up the comments of Senator Mullen wrongly in that regard.

In fairness to every consultant and doctor in the country, they intend and will continue to protect the life of the mother and the life of the unborn. I emphasise that this legislation will change nothing in the way they will manage their patients from here on in. Their priority is to do the best for both and that is what will continue to happen.

**Senator Brian Ó Domhnaill:** I have been listening to the debate on the three amendments and I believe they are reasoned amendments. They bring me back to when the Animal Health and Welfare Bill was before the House. At the time all main farming organisations were lobbying intensively to have the powers of officers working for the Department changed from operating on reasonable grounds to operating on evidence-based grounds.

*7 o'clock*

To be fair to the Minister for Agriculture, Food and the Marine, he was sympathetic to the cause and did bring about changes in that Bill which was to do with animal welfare.

We are now talking about human beings and basing decisions on good faith. That is not to question in any way the professional conduct of members of the medical profession but we must bring evidence-based medicine into the decision-making process for abortion where the life of the mother is in danger through the risk of suicide. I draw the attention of the House to a report by Dr. Eleanor Corcoran from County Donegal, a consultant psychiatrist of 27 years' experience in the area of suicidal behaviour, its management and prevention. She states that in 2011 there were 525 suicides in Ireland. Of those only 100, or approximately one in five, were women. Approximately one in five of all suicides in Ireland, as I understand from the Department's figures are young men. When we are debating suicide we should not narrow or demean the debate by saying that it pertains only to women because it is a major problem in our country due to the financial pressures and burdens on people. If we really want to deal in a societal way

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with the scourge of suicide we would take a more holistic approach than the knee-jerk reaction of introducing the Bill before us now. Let us never narrow the debate-----

**Senator John Gilroy:** Does the Senator call 21 years a knee-jerk reflex? That is a long reflex.

**Senator Brian Ó Domhnaill:** Does abortion reduce the risk of suicide in pregnancy? There is no suggestion in any of the core psychiatry or peri-natal psychiatry text books that abortion is a treatment on its own or as part of the risk reduction measure for suicidality in pregnancy.

**An Leas-Chathaoirleach:** That is more appropriate to section 9.

**Senator Brian Ó Domhnaill:** I am happy to defer to the section by all means if the House considers that is more appropriate.

**An Leas-Chathaoirleach:** That is the critical section on the whole area of suicide, to avoid repetition.

**Senator Brian Ó Domhnaill:** When we are legislating on a health Bill - and this is a health Bill, one which will define Irish history in the years to come, whether people get the chance to live or whether they will be aborted - we should make sure that the legislation is evidence-based. All of the medical evidence coming from pro-life and pro-choice psychiatrists suggests that it is almost impossible to determine whether an individual would carry out a suicide-----

**Senator John Gilroy:** The Senator cannot make that statement.

**Senator Brian Ó Domhnaill:** -----when she presents in the manner outlined in the Bill because it is very difficult to pre-empt what people would do.

If the Government and the Minister are serious about dealing with the issue then why confine it to good faith, why not look at the evidence-based medical practice? Why not include medicine-based best medical practice? Why confine it to good faith? Good faith is very wide. That is not to question the good faith of clinical professionals or doctors but it leaves a very wide umbrella under which decisions can be made.

If we are serious about protecting and supporting women through what is potentially the most difficult time in their lives we should make sure that decisions are based on the best medical evidence and not just on good faith. That is why I support these amendments.

**An Leas-Chathaoirleach:** I wish to remind Members that we are dealing with the risk of loss of life from physical illness and that the suicide issue is confined to section 9. I would like to remind Members who are maybe of an opposing view not to concentrate on that because it is ultra vires the issue before us now.

I call Senator Mullen.

**Senator Rónán Mullen:** The Minister has not had a chance to respond to me yet.

**An Leas-Chathaoirleach:** Senator Cullinane has not spoken yet. He should try to avoid the suicide issue which is in section 9. There are a lot of other amendments on that issue.

**Senator David Cullinane:** I have no intention of raising that issue at all. I am very reluctant to speak but I want to make one comment on these amendments. The previous speaker

said that he was not happy with the words “good faith”. Several Senators have said this several times. They then go on to say that they do not want to call into question the decision-making capacity of any medical professionals but that is exactly what they are doing. That is the point. I believe that the wording here is very clear. It states:

It shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended where—

...

(b) subject to section 19, two medical practitioners, having examined the pregnant woman, have jointly certified in good faith that—

(i) there is a real and substantial risk of loss of the woman’s life from a physical illness, and

(ii) in their reasonable opinion,...

This is based on good faith. To me it could not be any clearer. It is crystal clear. The argument being put forward by some people, who are allowing themselves very deliberately be wrapped up in linguistic arguments for their own purposes, is that they do not believe that even where there is a risk of loss of life from physical illness a termination should be allowed. There are people who hold that view. One could argue that they are entitled to hold that view.

**Senator Fidelma Healy Eames:** Nobody here holds that view.

**Senator David Cullinane:** There are people who hold that view and they are entitled to hold that view but that is what is at the heart of some people’s arguments here. This is very clear-cut and page 8 of the Bill carries the heading “Risk of loss of life from physical illness”. That is what we are talking about in these amendments and the words are very clear.

**Deputy James Reilly:** I am astonished that we have spent so long on this section. It is utterly superfluous. Senator Cullinane has put his finger on it, concisely. What other way would a doctor form an opinion except using the clinical evidence in front of him or her? I am not accepting these amendments. They make no sense at all. They are utterly unnecessary. I do not think I need even read my note. I have made the point quite clear.

**An Leas-Chathaoirleach:** Is Senator Mullen pressing the amendment?

**Senator Rónán Mullen:** I would like to make a comment and respond to that response. I want to point out as well that I have not questioned anybody’s integrity here today. I might have shown my asperity with the quality of some of the responses that have been given but I have not questioned anybody’s good faith. There have been several implications about my good faith in bringing forward amendments and I would ask those who have made those implications whether by way of hissing or booing or direct statement to desist.

If the Minister does not mind my saying, and he can correct me if I am wrong, his last response struck me as slightly contemptuous of the amendments.

**Senator Aideen Hayden:** He was clear on the point.

**Senator Rónán Mullen:** I would like to address it. First, I accept Senator Gilroy’s good

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faith in his desire to prevent suicide and to do everything to address the problem of suicide.

**Senator John Gilroy:** That is not my point.

**An Leas-Chathaoirleach:** Senator Mullen has tabled this amendment. I accept that he has done so in good faith and he is entitled to expand on it. At the same time I think that it is unwise and foolish to-----

**Senator Rónán Mullen:** Could I ask the Leas-Chathaoirleach to make a ruling? When Senator Gilroy says something that I feel is unjust to me I may shake my head sadly. I make a little note and I prepare to rebut it when I get a chance because I think that is the more courteous thing to do. Senator Gilroy has not let me expand on what I was going to say. I know what he means. He suggests that by raising these questions-----

**An Leas-Chathaoirleach:** There is one issue on which I have ruled, and that is that the suicide clause is dealt with in section 9 and Senator Gilroy probably wandered into that section unintentionally or otherwise.

**Senator John Gilroy:** I did.

**An Leas-Chathaoirleach:** For the merit of Senator Mullen's amendments, he is quite capable of dealing with them without going down the road of the suicide clause.

**Senator Rónán Mullen:** There is a difficulty because my amendment No. 15 which is in the group of amendments to which I am speaking is an amendment to section 9.

**An Leas-Chathaoirleach:** The other amendments relate to different sections.

**Senator Rónán Mullen:** Section 9 is the key provision. I hope the Leas-Chathaoirleach will allow me to clarify a few issues.

First, no suicide prevention expert has said that what is in this Bill is a good thing. In fact, we heard one very eminent suicide prevention expert, Professor Kevin Malone, warn about the dangers of foregrounding suicidal feelings in the way the Bill does. Although I am not an expert, I believe I am on very safe ground in warning about the wider collateral dangers of the legislation. However, my primary focus is on the danger to the unborn child of allowing abortion in situations where there is a real and substantial risk to the life of the mother originating in the threat of suicide. I certainly am on safe and accurate ground in so characterising it. We have heard all about the incidence of false positives and so. There are clinical markers for suicide, but they are very uncertain. The reality is that psychiatrists find it extremely difficult to know whether a threat of suicide is likely, tragically, to materialise. We heard other psychiatrists saying it should not be a matter for their profession to determine this issue at all. Senator John Gilroy is not doing me justice in this instance, because there is a clear problem here.

**Senator Fidelma Healy Eames:** Yes.

**Senator Rónán Mullen:** Senator Gilroy also raised the question of reasonableness. He seems to be suggesting that in the case of a certification under section 9 that there is a real and substantial risk to the life of the mother which can only be averted by this procedure, the opinion of the practitioners in question must be reasonable and must be in good faith. However, that is not what the legislation says. In fact, the notion of a reasonable opinion is actually turned up-side down in the legislation because it defines for us what a reasonable opinion is. It is defined

as an opinion formed in good faith which has regard to the need to preserve unborn life as far as is practicable. It is entirely subjective.

**Senator John Gilroy:** The standard of reasonableness is a well accepted and well established legal precept.

**Senator Rónán Mullen:** The standard of reasonableness for the purpose of this legislation is defined in the legislation. With respect, that is the point which has been missed. The Bill does not require that an opinion be reasonable and in good faith. Rather, it tells us what “reasonable” means for the purpose of this legislation. It is not an objective test but a good faith test which is entirely subjective. As I said in my opening comments, it is extremely difficult to make a finding of mala fides. What I am proposing here as being desirable and necessary given the life and death issues at stake is a more objective test which would require that the certification be jointly certified and have regard to the relevant clinical evidence. In other words, if people have their evidence right, we need not worry about good faith or bad faith because they will have to do what is right according to the evidence. That is safer from the point of view of protecting all the lives involved.

Senator Colm Burke referred to medical negligence and the likelihood or otherwise of litigation. The point here is that the victim will not be around to litigate, which is why we have to ensure there is a safe and objective test. I already pointed out that the clinical grounds are not actually mentioned, although they are referenced in another section.

On the point raised by Senator David Cullinane, there is no contradiction between having problems with a good faith test and also saying one has a problem with, as he put it, the decision-making capacity of some medical professionals. To be clear on this, we all trust women and we all trust doctors. Sometimes, however, there are doctors who perhaps cannot be trusted and that is why we have legislation. The whole problem with the abortion on grounds of suicide provision is that it opens up what many of us see as the likelihood of an abortion-on-request scenario, as we set out on Second Stage. The problem is that not all doctors believe they have a duty of care to the unborn. In that sense, I have to say in all honesty that I do not trust all doctors. I do not trust those doctors who came into this House and said abortion should be available as a matter of choice. I do not see how those doctors can be trusted to protect unborn children under this legislation. I do not think it makes me a bad person to say there are doctors out there who cannot be trusted in this regard. As I said yesterday, there are doctors in Britain trained to save lives as obstetricians who are skilled in the destruction of life as abortionists. That is the reality of the Western world.

It is a little unfair to say to those of us who have concerns about this legislation that we do not trust certain people. The whole point of good legislation is that one does not have to rely on trust. If we trusted everybody we would all be angels and there would be no need for legislation at all. Let us make credible arguments and be fair to each other. I certainly trust doctors. Sadly, I do not think it is possible to trust all doctors. That is probably why we have a fitness to practise committee at the Medical Council and why there are occasionally cases of breach of good practice which sometimes result in practitioners being struck off the medical register. That is the world we are living in, not a perfect world in which everybody acts ethically. It is why we need law and it is why I am proposing the tightening up of this unfortunate legislation.

**An Leas-Chathaoirleach:** Does the Senator wish to press the amendment?

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**Senator Rónán Mullen:** Yes.

Question put: "That the words proposed to be deleted stand."

**An Leas-Chathaoirleach:** As there are no tellers on the Níl side, the vote will not proceed, and so I declare the question carried.

Question declared carried.

Amendment declared lost.

**An Cathaoirleach:** Amendment No. 16 is in the name of Senator Walsh, amendments Nos. 16, 17, 20, 22, 25 to 28, inclusive, 35, 36, 41 and 55 are related, amendment No. 17 is an alternative to amendment No. 16, amendment No. 26 is an alternative to amendment No. 25, and amendment No. 36 is an alternative to amendment No. 35. Therefore, amendments Nos. 16, 17, 20, 22, 25 to 28, inclusive, 35, 36, 41 and 55 may be discussed together by agreement. Is that agreed? Agreed.

**Senator Jim Walsh:** I move amendment No. 16:

In page 8, to delete line 34, and in page 9, to delete lines 1 and 2 and substitute the following:

"(ii) in their reasonable opinion (being an opinion formed on reasonable grounds and in good faith which has regard to the right to life of the unborn), that risk can only be averted by carrying out the medical procedure,".

This is an important amendment. It proposes the deletion of section 7(1)(a)(ii) and its replacement with the words "in their reasonable opinion (being an opinion formed on reasonable grounds and in good faith which has regard to the right to life of the unborn), that risk can only be averted by carrying out the medical procedure". My amendment proposes two changes to the wording of the subsection. I am including an additional ground for the reasonable opinion. I understand that reasonable opinion, where one qualifies it as formed on reasonable grounds, tightens any legal interpretation of it. Where subsection (1)(a)(ii) states "which has regard to the need to preserve unborn human life as far as practicable", I propose the insertion of the words "which has regard to the right of life of the unborn". My motivation for doing that is that I am using the words that are in the Constitution, namely, "the State acknowledges the right to life of the unborn". I seek to have those changes made for the reasons I mentioned.

**An Cathaoirleach:** Does any other Member wish to speak on the other amendments?

**Senator Fidelma Healy Eames:** I wish to speak to amendment No. 20. It proposes:

In page 9, between lines 5 and 6, to insert the following:

"(c) where the unborn is sixteen weeks gestation or older, an effective anaesthetic for pain relief shall be administered to the foetus before the medical procedure is commenced, provided this does not increase the risk of the loss of life of the pregnant woman.".

The Minister will note I discussed this earlier today and I raise it again to let him know that I have agreed to defer it until Report Stage. I did that for the express reason that I hope that when we come back here on Monday to discuss it again the Minister will be able to discuss foetal pain

and how he proposes that would be addressed. I will leave further comment on this until then.

**Deputy James Reilly:** The first number of amendments in this grouping, amendments No. 16, 17, 25, 26, 35, 36 and 55 are around the issue of reasonable opinion. These amendments would have the effect of deleting the words “as far as practicable”. In regard to the latter, the words “as far as practicable” are taken directly from Article 40.3.3o of the Constitution, which states: “The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, in far as practicable, by its laws to defend and vindicate that right.”

In relation to the amendment to change the definition of “reasonable opinion”, section 7(1)(a)(ii) provides that a termination can only be carried out where the medical practitioners have formed an opinion described in the following terms, “in their reasonable opinion ... that risk can only be averted by carrying out the medical procedure”. Section 7(1)(a)(ii) further provides the reasonable opinion must be “formed in good faith” and one “which has regard to the need to preserve unborn human life as far as practicable”. These two requirements place further obligations on the medical practitioners before they arrive at a view that in their reasonable opinion the risk can only be averted by carrying out the medical procedure. These requirements and obligations are expressed in a language that follows very precisely the test laid down in the X case. That is why as part of the certification process where there is a real and substantial risk to a pregnant woman’s life, doctors are required specifically to consider whether it is practicable to preserve the unborn human life.

The language put forward in the amendments is not expressed in the terms required by Article 40.3.3o of the Constitution and as interpreted by the Supreme Court in the X case and could have unintended consequences. However, in practical terms, the Bill, as currently drafted, places a clear obligation on medical practitioners to ascertain whether it is possible to deliver the unborn, or indeed take other measures, that would enable the foetus to be brought to the point of viability before the pregnancy was ended in order to save the mother’s life. For those reasons I cannot accept the amendments proposed.

I will deal with the second theme, that of viability, in this group of amendments under amendments Nos. 20, 22, 27, 28 and 41. Again as I pointed out previously, the Bill makes reference to a medical practitioner’s reasonable opinion in this regard, which places a statutory duty on each medical practitioner required to form an opinion for the purposes of the legislation to have regard to the need to preserve unborn human life as far as practicable. This imposes a clear duty on medical practitioners to make every effort to preserve the life of a foetus. Not to do so would mean a medical practitioner would be in breach of the proposed legislation and subject to its penalties.

I must point out that the purpose of the legislation is not to regulate obstetric procedures, which do not constitute termination of pregnancy, or to dictate practice of obstetrics. Standard medical practice will provide appropriate mechanisms for assessments of both the woman and the unborn and it would not be appropriate to include this, or other details of medical treatments, in legislation. Therefore I will not and cannot accept the amendments proposed.

On some of the comments made earlier today, to which Senator Healy Eames alluded again, on the issue of pain, I have talked to a number of experts today, including my chief medical officer, and the thalamus which is a very important part in terms of pain experience, does not really develop until the 21st week. As we mentioned earlier, none of the techniques described

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by Senator Walsh are used. Medical induction of labour and delivery is what is used after the 12th week. There is no instrumental termination used after 12 weeks. It would be considered to be far too dangerous for the life of the woman. Consequently, while the Senator has some information indicating some possibilities of pain being experienced by a foetus of 17 weeks plus, I would be grateful to have sight of that research and to hand it on to the medical people concerned. As I stated earlier, at all times, care and compassion in respect of safety and as much pain control as possible is what is used in all procedures in hospitals from the point of view of all patients.

**Senator Fidelma Healy Eames:** On the pain issue, I am grateful for the Minister's answer. I will be happy to supply the Minister with the information I have and will try to do so this evening in the course of the debate but simply need to get a break to obtain it. In a final question on the pain issue, can instrumental procedures be used after 12 weeks?

I also have three other amendments in this grouping, namely, amendments Nos. 22, 28 and 41, all of which relate to the same issue. I must make a small correction to amendment No. 22, which should read as:

In page 9, between lines 21 and 22, to insert the following:

“(5) Where the medical practitioner believes in his or her reasonable opinion that the unborn child is capable of surviving outside the womb with appropriate medical support, that that medical practitioner, where practicable, shall deliver the unborn and take all necessary measures to sustain the life of the born infant.”.

This is instead of the wording, “sustain the life of the unborn infant”.

**An Cathaoirleach:** Senator, are you proposing to make a change to the amendment?

**Senator Fidelma Healy Eames:** Yes, if I could just-----

**An Cathaoirleach:** Senator, you cannot do it on this Stage but must do it on Report Stage.

**Senator Fidelma Healy Eames:** Okay, then I will leave it as it is, because the meaning is fully clear. In other words, the word “unborn” becomes the word “born”.

As for the effect of this amendment, there is no requirement in the Bill as it stands to place a duty on medical professionals to sustain the life of the baby where that is possible. I acknowledge Members have received assurances from the Minister but again, once the Minister, Deputy Reilly, has left office - no one stays here forever - such assurances from him will no longer apply. However, the wording of the Bill will remain in the Act. The refusal to accept this amendment during the Dáil debate is extremely troubling and is completely at odds with the Minister's comments regarding delivering the baby at the cusp of viability. One must remember that as currently presented, this Bill does not render lawful the delivery of a live baby. I plead with the Minister to take on board this amendment, as a failure to include it-----

**An Cathaoirleach:** Senator Keane, do you wish to raise a point of order?

**Senator Cáit Keane:** I have a question.

**An Cathaoirleach:** Senator, I cannot take a question.

**Senator Cáit Keane:** Okay, I have a statement.

**An Cathaoirleach:** I cannot take a statement either. Have you a point of order?

**Senator Cáit Keane:** What doctor would not leave a child alive at this point?

**An Cathaoirleach:** Senator, resume your seat please.

**Senator John Gilroy:** It is amazing.

**Senator Cáit Keane:** It is crazy.

**Senator Fidelma Healy Eames:** I agree, but the point is it is not in the Bill.

**Senator Cáit Keane:** There are medical ethics.

**An Cathaoirleach:** Senator Healy Eames, without interruption.

**Senator Fidelma Healy Eames:** The entire point is it is not contained in the Bill. Were this provision included in the Bill, it would make all the difference. The Bill as it stands does not render lawful the delivery of a live baby. I understand the concept of good faith and I understand that each obstetrician who came before the joint committee stated his or her duty was to preserve life. While I accept that, this should be included in the Bill. I plead with the Minister to take on board this amendment, as a failure to include it will show conclusively the Bill is life-ending and not life-saving. The Bill is entitled the Protection of Life During Pregnancy Bill and Members have a great opportunity to show the Bill is life saving and not life ending simply by including these words. I again plead with the Minister to take that on board.

**Senator Rónán Mullen:** I thank the Minister for getting in touch with his chief medical officer and whoever else on the question of foetal pain. I certainly anticipate there will be further debate on this subject on Report Stage. It is noteworthy that the issue did not arise until the Seanad raised it. It also is noteworthy that despite being the subject of amendments of which the Minister and his team would have been aware, the information was not available to the Minister this morning. While I thank him for going to the trouble of finding out what he did, I do not believe it disposes fully of all the issues because thus far, the Bill is silent as to what may happen or, more to the point, what may not happen to a child who has arrived at the state of viability.

I seek clarification from the Minister on an issue that has confused me but perhaps can be cleared up. I believe the Minister himself mentioned this in the Dáil in the context of a section 9 abortion or procedure when he stated there would be no question of waiting until the child could be delivered safely because he would not have it on his conscience that a person with suicidal ideation might endanger her life. As the Minister is leaving the Chamber and will not be present to respond to it, I will postpone this question until he returns.

My amendments in this group are amendments Nos. 17, 26, 36 and 55, which basically provide a definition of reasonable opinion, “being an opinion which respects the equal right to life of the unborn, and which has regard to the duty to deliver the viable unborn alive where practicable”. The Minister stated the words “as far as practicable” are taken directly from Article 40.3.3o. That much is true but they are taken in a different context and in a different way from which they are used in Article 40.3.3o, because what must be done, as far as practicable in this Bill, is to have “regard to the need to preserve unborn human life”, whereas in Article 40.3.3o, it is “to defend and vindicate” that life, as far as practicable. The express language of Article 40.3.3o is absent from the current Bill, which instead defines reasonable opinion as including “regard to the need to preserve unborn life as far as practicable”. There is no mention

whatsoever of the equal right to life of the unborn or of respecting, vindicating or defending that right. The Bill merely requires that regard be had to the need to preserve unborn human life, a need immediately qualified through the addition of the clause “as far as practicable”. Yet, the constitutional guarantee in Article 40.3.3o that laws respect the right to life of the unborn is not qualified in any way. Furthermore, a need to “preserve... life” is a much more amorphous and much less legally established concept than a full-blown constitutional right to life. Consequently, the Bill grants a lesser level of respect to the equal right to life of the unborn than does Article 40.3.3o, which I believe to be a significant question hanging over this Bill from the perspective of the Constitution.

There is a further equivocation in the Bill regarding the equal right to life of the unborn in that the aforementioned reasonable opinion is not a reasonable opportunity at all, because it merely requires an opinion formed in good faith. Consequently, the Bill requires a significantly lower standard of mental element than that of an objective reasonable opinion, which in turn greatly undermines the supposed safeguards offered by section 9, as well as the criminal provisions of section 22. Since the medical opinion need not take heed of relevant medical evidence in ordinary practice, the good faith test also is out of touch with the development of the tort of medical negligence from *Dunne v. National Maternity Hospital* onwards, as I noted previously. It should also be noted that the entirety of the medical evaluation adheres to a good faith standard, including certification of a real and substantial risk to the woman’s life. Further, and perhaps crucially, whether due regard is had to the need to preserve unborn human life as far as practicable is, according to the Bill, entirely a matter of subjective good faith. I cannot discern how anyone could reconcile the Bill’s provisions with the constitutional duty for laws to respect the equal right to life of the unborn, a duty that is framed in a categorically objective manner. The subjective good faith standard pervading the Bill’s provisions for medical assessments reflects the subjective grounds of suicidal ideation upon which the Bill provides for abortion. Consequently, in the complete absence of empirical evidence that abortion makes women less suicidal, this Bill does not require that a medical opinion sanctioning an abortion on this very basis be based on anything more concrete than a subjective opinion.

Further, the good faith test does not incorporate a duty to deliver a viable child from the womb alive. In other words, a reasonable opinion required, as in the Bill, imposes no duty to ensure that where practicable, a viable child should be delivered alive, rather than aborted. This will not really affect the operation of sections 7 and 8, which pertain to necessary interventions in cases of physical illness and a mother in that position will want everything done for herself and for her child. In practice, and as a matter of law, the Bill permits a section 9 medical procedure to effortlessly subordinate the need to preserve unborn human life to the statutory right to abort that child even where the preservation of unborn life is achievable as a matter of routine medical practice. It is extremely difficult to equate all this with a guarantee to respect the equal right to life of the unborn, especially since it may, in fact, incentivise a medical practitioner to opt for an abortion instead of an early inducement so as to avoid questions over civil liability on foot of the disablement of a child, as we stated earlier.

Sections 7 to 9, inclusive, and 13 continue to permit a termination of pregnancy to be carried out up to and including delivery and in a manner that ends the life of the unborn at a stage in its development where, if that termination was to be carried out otherwise, the unborn would be capable of surviving. Reasonable opinion can be anything but reasonable under this Bill provided it is formed in good faith. This Bill does not leave the normal meaning of reasonable in place. It tells us what a reasonable opinion is and it does not include the word “reasonable”.

The courts will have to go on whether it is in good faith and as I stated earlier, it is extremely difficult to prove *mala fides*.

The definition of “reasonable opinion” in the sections here, sections 7 to 9, inclusive, and 13, involves giving a purely artificial meaning to the term and provides for a subjective rather than an objective test. The current definition will make the reasonableness or otherwise of the opinion completely irrelevant, and this surprising result is achieved by giving the term a definition that has nothing to do with the ordinary meaning of the word “reasonable”.

This has major implications for the operation of section 7 - risk of loss of life from physical illness - section 8 but, particularly, sections 9 and 13, as it governs the second opinion that must be formed in those sections, that is, that the risk of the loss of life can only be averted by carrying out that medical procedure - that is the second opinion in the sense of the second issue to be decided. It is a classic example of the Legislature turning the meaning of ordinary words on their head and case law confirms the right of the Legislature to do just that. By juxtaposing the word “reasonable” with the word “opinion” in the term defined, the unsuspecting reader is seduced into believing that the term “reasonable opinion” must be based on reasonable grounds but nothing could be further from the truth. On a close examination of the precise wording of the definition, it becomes clear that the opinion in question, that is, that the risk of loss of the woman’s life “can only be averted by carrying out the medical procedure”, must only be formed in good faith - an entirely subjective test. There is no onus whatsoever on the medical practitioner, when forming his or her reasonable opinion, to base that opinion on reasonable grounds.

On Report Stage in the Dáil, the Minister, Deputy Reilly, stated:

To be clear, it will only allow a pregnancy to be terminated in circumstances where it is expected that the woman will otherwise die. It has been suggested that the legislation should include a clear provision to that effect and also an explicit reference to viability. I reassure all Deputies that, as currently drafted, the Bill prohibits the killing of a viable foetus.

As previously stated, the Bill makes reference to a medical practitioner’s reasonable opinion. This places a statutory duty on each medical practitioner required to form such an opinion for the purpose of legislation to have regard to the need to preserve unborn human life as far as practicable. This imposes a clear duty on medical practitioners to make every effort to preserve the life of a foetus that may be viable. The amendments to sections 7 to 9, inclusive, and 13 would express this in the body of the Bill. Sections 7 to 9, inclusive, are structured in such a way as to provide for a balancing of the rights of the unborn and those of a pregnant woman.

Against what the Minister stated, there is nothing in the Bill to support his contention that it, specifically, in the context of section 9 which is where the controversy is, prohibits the killing of a viable foetus. There is nothing in the Bill to support that contention.

The Minister supports his viewpoint with reference to reasonable opinion but there are a number of problems. First, as currently drafted, the Bill only protects those procedures that will end the life of the unborn.

Second, reasonable opinion requires that the relevant opinion, it should be remembered, a good-faith opinion, has regard to the need to preserve unborn human life as far as practicable, and that last clause is the crucial one. A woman who seeks a section 9 certification almost certainly does so on account of the child’s existence, not simply because she is physiologically

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pregnant. As such a medical procedure that does not involve ending the life of the unborn, whether viable or otherwise, is not a procedure that averts the real and substantial risk to the woman's life by way of suicide and, in a double sense, it is not a procedure protected and clarified by the Bill. To be an efficacious and legally protected procedure under the Bill's provisions, it necessarily must involve the death of the unborn.

Third, all this helps make clear how redundant the phrase, "have regard to the need to preserve unborn human life as far as practicable", really is. It adds nothing of substance to the Bill. One must remember it is at the certification stage that such is required; it does not affect what the practitioner does. The practitioner is protected in carrying out a procedure that ends the life of the child. There is no good reason, finally, to refuse an amendment clarifying that a viable child, under section 9, will not be aborted.

**Senator Jim Walsh:** I listened to what the Minister, Deputy Reilly has to say with regard to the wording of the amendment. I am still not persuaded by the explanation he has given. I acknowledge that he has gone to check some of the points that were made here,-----

**Senator Fidelma Healy Eames:** That was useful.

**Senator Jim Walsh:** -----which is useful. I am surprised that these issues were not anticipated and that he had to go outside his Department to get that information.

**Senator Fidelma Healy Eames:** That is why there is the Seanad.

**Senator Mary Ann O'Brien:** That is why there are checks and balances.

**Senator Jim Walsh:** I accept fully the point he made about the procedures in Ireland and that the ones I described are not applying here. I accept that current medical practice in Ireland is not something in this area with which I would have difficulty.

My problem is that by not defining medical procedures, the Minister is wide open to those procedures falling in line with those that are happening internationally. I have checked, because of Senator Colm Burke's comments earlier, with three different medical professionals who told everything I have described is, in fact, in practice in different parts of the world, and particularly in the United States. One of them stated, "Jim, you do not have to go further than looking back at the Gosnell trial". I do not anticipate that will happen here but by not defining medical procedures, we as a Legislature are not stating what is allowed and what is not allowed, and that is my fundamental objection to it.

**Minister of State at the Department of Health (Deputy Alex White):** I have nothing further to add.

Amendment, by leave, withdrawn.

Amendments Nos. 17 and 18 not moved.

**Senator Rónán Mullen:** I move amendment No. 19:

In page 9, line 4, after "obstetrician" to insert "or a medical practitioner of another relevant speciality, not being a psychiatrist,".

I discussed this with Senator Crown.

The Bill provides, in the case of section 7 procedures, that the procedure must be carried out by an obstetrician at an appropriate institution. I understand that at an earlier stage, the heads of Bill stage, the original proposal was that it would be capable of being carried out by a registered medical practitioner at an appropriate location. Perhaps the Minister of State can clarify that for me and maybe, for the benefit of the House, explain the reason for the change.

*8 o'clock*

My amendment proposes that the medical procedure be carried out by an obstetrician or “medical practitioner of another relevant specialty, not being a psychiatrist”. Obviously, the explicit exclusion of psychiatrists would be necessary to ensure there would be no ambiguity permitting the interpretation of the section to include suicidal ideation as a physical illness.

During the course of the Oireachtas health committee hearings, written and oral submissions were made by both medical and legal experts to the effect that head 2(1) was deficient in restricting the carrying out of the medical procedures in question to public obstetric units. It was pointed out that these life-saving medical procedures might need to be carried out at a general hospital where the patient might, at the time, be under the care of another medical specialist, such as an oncologist. In an apparent response to those submissions - I realise section 7 provides for the change - an appropriate institution is defined in the Bill as essentially any public general hospital and any further institution specified by the Minister. My issue relates to the change from “registered medical practitioner” to “obstetrician”. It will be noted that not only has the location at which a medical procedure may be carried out been changed in the implementation of head 2(1) by section 7 of the Bill but also that the qualification of person by whom it may be carried out has been changed. Head 2 specifies that any registered medical practitioner may carry out the relevant life-saving medical procedure, but section 7 states only an obstetrician may carry out the procedure.

Is a relevant medical specialist who is not an obstetrician permitted to carry out a life-saving medical procedure? I have asked Senator Crown about this and he agrees – I do not want to put words in his mouth – that there may be a lacuna that ought to be addressed. I would like to hear what the Minister of State has to say about it. What about the case of a cancer patient in a general hospital under the care of an oncologist who wishes to prescribe or administer a medical procedure such as radiation therapy or chemotherapy in the course of which or as a result of which the pregnant woman will be at risk of losing her unborn child? If the oncologist proceeds and the unborn child dies in the course of or as a result of the medical procedure prescribed or administered, or is perhaps stillborn, will the oncologist have any protection from the law under section 7?

We all know what we would like to see happen. Good medical practice in the State has always distinguished between direct and indirect effect. It is well-established and universally accepted that good medical practice, as in cancer care, may sometimes result in the undesired death of the unborn child. Our doctors are very good at managing the care of patients in consultation with them and ensuring that care is given in a way that is least noxious to the unborn child. However, it is not always possible to save an unborn child or to prevent danger, damage or death to the unborn child when a pregnant woman needs necessary medical treatment.

Under this legislation, irrespective of what anybody else says we will have a new law stipulating it is an offence to destroy unborn human life intentionally. In the law, one is presumed to intend the natural and probable consequences of one’s actions. It is a rebuttable presumption.

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A person who may foresee the death of a child as a result of necessary medical treatment, such as cancer treatment, might feel vulnerable in such circumstances. What is lawful is the carrying out of a medical procedure in the course of which, or as a result of which - indirect effect would seem to be provided for - an unborn life is ended, but a procedure rendered lawful by this Bill, which does not mention abortion but which criminalises the intentional destruction of unborn life, is one that can be carried out only by an obstetrician. There may be other examples that I do not know about. Perhaps the Minister of State has examined this and can assist us. Are practitioners other than obstetricians who are in the business of providing necessary life-saving medical treatment covered by this Bill when they have to carry out a medically sound procedure, in good faith, but which has the foreseeable effect of taking the life of the unborn?

This is far from an academic matter because the case of *C* in the case of *A, B and C v. Ireland* in the European Court of Human Rights involved a person in remission from cancer when she became pregnant. Is it possible that this Bill, which is intended to offer her or somebody in a similar position adequate clarity and protection, does not offer that? Could it be that section 7, as currently drafted, would have the effect of putting women's lives at risk? I do not ask this in any declamatory fashion but I am seeking clarification for the Government.

**An Cathaoirleach:** The Senator is moving away from amendment No. 19, which is specific.

**Senator Rónán Mullen:** I am not. Amendment No. 19 is all about the question of whether we ought to widen the category of persons permitted to carry out procedures under section 7 to include non-obstetricians such as oncologists. Currently any relevant medical practitioner acting in accordance with current medical guidelines is protected by the law from criminal sanction under sections 58 and 59 of the Offences against the Person Act. Under this Bill, if enacted, will he or she, if not an obstetrician, be vulnerable, through some unintended lacuna, to possible criminal prosecution under section 22? I very much hope not. I ask the Minister of State to address that.

**Deputy Alex White:** Amendment No. 19 proposes widening the list of medical practitioners permitted to carry the medical procedure at issue in the legislation. However, other than in an emergency, a termination of pregnancy should be carried out only by an obstetrician or gynaecologist. This strict provision is to ensure that the procedure will be carried out only by highly skilled, qualified and relevant medical personnel in order to secure the best possible care for the woman whose life is at risk and for the unborn. For that reason, I cannot accept the Senator's amendment.

I am sure the Houses is aware that the restriction to an obstetrician or gynaecologist does not, for very good reasons, apply to section 8 in respect of emergencies. That is clear. I believed the Senator was positing an emergency at some point in his contribution but perhaps he was not.

**Senator Rónán Mullen:** No.

**Deputy Alex White:** The Senator is incorrect if he believes that, in an emergency, the ability to carry out the procedure would be restricted to an obstetrician and gynaecologist. Section 8 provides that the procedure should be carried out by medical practitioner.

Oncologists, respiratory physicians and others who may be involved in the care of the pregnant woman were mentioned. Nobody should be concerned about any constraint on those

professional people carrying out their function in a professional way, as they always have done. There is no suggestion that they would be constrained. The provision concerns the person who carries out the procedure. There is no restriction, nor should there or could there be any restriction, on the professional people involved in the care and treatment of a pregnant woman, such as an oncologist, respiratory physician or heart specialist.

Sections 7 and 9 provide for the involvement of the second medical practitioner in the certification process. I refer to somebody with a relevant specialty. If an issue arises, perhaps relating to cancer, the oncologist might well be the second medical practitioner with the relevant specialty. It could be a cardiologist or one of any number of professional people involved in the certification process. They would be required to certify jointly and be present and involved.

The provision in question is concerned with the actual carrying out of the procedure. It makes it lawful. It is appropriate that the procedure be carried out by a highly skilled medical practitioner. I am not saying that medical practitioners in general are not highly skilled, but that they have specific and different skills. Notwithstanding what was contained in the heads of the Bill and earlier drafts, the Government is clear that the appropriate provision in the legislation should be that the procedure itself should be carried out by an obstetrician. For that reason, I respectfully say that we do not propose to accept the amendment.

**Senator Rónán Mullen:** I thank the Minister of State for his answer. I will reflect on it and study it carefully. The medical procedure is defined as including the prescribing by a medical practitioner of any drug or medical treatment. As was pointed out earlier, the legislation does not specifically mention abortion. It provides for the lawfulness of carrying out a medical procedure, including the provision of a drug which is the type of thing that I imagine an oncologist might do when treating a pregnant woman with cancer. Where that might happen and where the child's life might be ended as a result of, or in the course of it, that would be lawful but that is where an obstetrician does it.

The concern remains. I recognise that if there were a negative consequence for obstetricians, it would be unintended. However, I would ask the Minister of State to reflect further on it to ensure that there is no unintended exclusion of the necessary medical care that we would all expect an obstetrician and other professionals to give in circumstances which have nothing to do with procuring an abortion.

Amendment, by leave, withdrawn.

**An Cathaoirleach:** Amendment No. 20 has already been discussed with amendment No. 16. Is the amendment being pressed?

**Senator Fidelma Healy Eames:** No. I will re-submit it on Report Stage.

Amendment No. 20 not moved.

**An Cathaoirleach:** Amendments Nos. 21, 39, 50 to 52, inclusive, and 71 are related and may be discussed together by agreement. Amendment No. 52 is an alternative to amendment No. 51. Does any one wish to speak to those amendments?

Amendment No. 21 not moved.

**An Cathaoirleach:** We can discuss the other amendments, that is, Nos. 39, 50 to 52, inclusive, and 71 - when we get to them.

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Amendment No. 22 has already been discussed with amendment No. 16. Is the amendment being pressed?

**Senator Fidelma Healy Eames:** No.

Amendment No. 22 not moved.

**An Cathaoirleach:** Amendments Nos. 23, 29 and 42 are related and may be discussed together by agreement.

**Senator Fidelma Healy Eames:** I move amendment No. 23:

In page 9, between lines 21 and 22, to insert the following:

“(5) No procedure as defined herein where the result of such procedure is the delivery of a viable infant shall expose any medical practitioner to civil or criminal liability for negligence.”.

Amendments Nos. 23, 29 and 42 all relate to the issue of doctors’ criminal or civil liability. On the basis that medical practitioners are taking this on board and that they will in good faith carry out all procedures where a viable infant is delivered in the course of such a procedure, I believe it is absolutely necessary that those doctors are indemnified against any criminal or civil proceedings against them. They will be saving two lives, rather than one. The risk - even if it is very small - of them being exposed to any liability in this regard is unacceptable. We want doctors to be able to carry out these procedures in the full knowledge that they will not be at risk of liability. There should be no ambiguity in the Bill whatsoever as to whether a doctor who saves both mother and child is exposed to liability.

Will doctors be indemnified against any criminal or civil proceedings against them in the context of such a procedure? We live in the real world. If a doctor is not indemnified against liability it may be easier for him or her if the baby died. We do not want that situation to occur because it would make the whole situation fraught. We want doctors to be able to practice in good faith under the oath that most doctors have taken, to do no harm. I look forward to the Minister of State’s response.

**Deputy Alex White:** The purpose of the Bill is not to regulate obstetric procedures, such as the delivery of a viable premature infant, or to change the law of negligence in relation to the practice of obstetrics. I cannot accept the proposed amendments. However, I would observe that normal cover for medical practitioners, through their professional regulatory mechanisms, would apply in such situations.

I am not prepared to proceed other than on the basis that medical professionals will act professionally, in accordance with the best professional standards and in accordance with this legislation. I am not remotely prepared to take as any kind of a working assumption the proposition that they may take the view that it would “be easier for them if the baby dies”. I am not prepared to proceed on the basis of that presumption.

**Senator Fidelma Healy Eames:** I do not want to proceed in any other way either, but the Minister of State mentioned normal medical indemnity. Are the doctors indemnified or not, yes or no?

**Deputy Alex White:** That question is not germane to this legislation. Most doctors are

covered by professional medical insurance. I presume they all have it, so that is the position. I do not know whether the Senator is seeking a broader discussion on medical negligence and professional medical cover but it is not germane to this legislation. It is a general topic of interest but it is not a matter that comes up for decision in this legislation.

**Senator Jim Walsh:** On the contrary, it is very germane to this legislation. If the medics are not covered, then it creates a situation where liability occurs. Liability insurance is costly. While the State may pick up the tab for that cover, what we have found in other jurisdictions is clear. Medics are softly pressurised - and hopefully we will get to the conscience stage because it will come up as well - by people who come from a different disposition. Within the Department and within the HSE we have people who are ideologically wedded to the idea of being pro-choice - that the woman should have a choice to determine if the baby lives or dies. Earlier today, I have spoken to people in the medical profession about this. I am concerned that unless people are reassured, I do not want to see a situation where they will either feel real or imagined pressure on them to ensure that the outcome is one which totally safeguards their position. Under this Bill it is clear that if the baby's life is ended, they are absolutely in the clear. I would seriously question anything that leaves ambiguity surrounding the fact that the baby - who may be seriously disabled - is not delivered, and that not all attempts are made to save that baby's life.

**Senator Fidelma Healy Eames:** I am not inventing these situations; doctors have put them to me. We are going into a whole new area here. Doctors may deliver babies earlier than they should because of what we say is a real and substantial risk to the life of a mother. The baby is not looking to be born at that point. We may create a situation where there is injury. There is at least a danger that an obstetrician who chooses to terminate a pregnancy by a premature delivery of the unborn child rather than by a procedure which ends the life of that child will not enjoy the protection of the Bill. That is what is being said to me. If that is so, we could end up with an invidious situation where it might be safer for the doctor if the child died. God forbid that this would be the case. If the child survives and suffers injury as a result of premature delivery, the lawfulness of the procedure cannot be determined by reference to the Bill. That is the issue I want the Minister to address.

This is a time when litigation on matters of medical negligence and the cost of insuring against it is a growing cause of concern for doctors, particularly those in the field of obstetrics. It is important to ensure the Bill does not make this situation any worse. We say we are interested in providing clarity to doctors. If we are truly interested in providing them with clarity, we should ensure that any doubt on this point is removed. I ask the Minister to take what I have just said on board and address the point.

**Senator Cáit Keane:** It seems that this will be a different field in medical negligence involving insurance and hospital and doctor liability. If blanket cover was provided for everything on medical negligence, it might do a disservice to all persons involved. The aspect of it is outside the remit of the Bill. I ask the Minister to correct me if I am wrong. If blanket immunity from liability is provided, some situations will be missed. How can one provide for every situation? The Bill is about ensuring doctors have more authority and confidence in what they are doing and are covered legally.

**Senator Colm Burke:** The Bill sets out clearly the procedures doctors must follow in sections 7 to 9, inclusive. The State Claims Agency deals with claims of medical negligence. The insurance is there for all of those involved who are working for the HSE or maternity hospitals. There is an insurance scheme in place. It is not just one person who is involved in the manage-

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ment of a patient. There are consultants, registrars, junior doctors, nursing staff, support staff and anaesthetists. It is a team effort. Everyone on the team intends at all times to do their best for the patients. There is no way the Bill exposes people to any greater degree of liability. It is important that a false impression is not given that the Bill exposes doctors to greater liability. Their job at all times is to do the best for a patient. Doctors will only arrive at a decision on a procedure under sections 7 to 9, inclusive, in a case involving protecting and saving the life of the mother.

**Senator Rónán Mullen:** There is a real irony here. If I heard it once, I must have heard it a hundred times from Government spokespersons. I cannot remember if the Minister of State, Deputy White, said it, but I would be surprised if he did not. Part of the background to all this was a criticism by the late Mr. Justice Niall McCarthy that we had failed to legislate. The criticism was made in the X case. Now, the Government is failing to legislate again. It is putting in place legislation which changes the pitch. It establishes the tone and also the rules while omitting the question of what a doctor ought to do in circumstances where a child is at viability and may be saved. The certifying psychiatrist and obstetrician, who may or may not be the person required to carry out the procedure, are only required to have regard to the need to preserve the life of the child as far as practicable. They have to have regard to that while making a decision on certification in subjective good faith. The person who carries out the procedure is governed by the law which says it shall be lawful to carry out a medical procedure in the course of which, or as a result of which, an unborn human life is ended. The silence on giving comfort to a doctor that he or she might lawfully carry out a procedure where the life of the child might not be ended is just as bad as any failure to legislate.

In the context of legislation, we have a lacuna. In one way, the lacuna serves not to protect the doctor who might want to act. The failure to impose a duty to protect the child who is at viability gives comfort to the type of doctor, who may exist, who may have an ideology or to a careless doctor of the type who end up in front of the fitness to practice committee of the Medical Council. The Minister said earlier that he would not proceed on the basis that doctors would not act well. The whole point of law is to ensure that one does not depend on the good intentions and best practice of 100% of any population, be it the citizenry, medics or legal professionals. We must, therefore, ask the Minister to proceed on the basis that there might be people out there who do not have the best interests of unborn children at heart. They exist and might be medically qualified and within the zone of applicability of the legislation. I submit that there is a very serious failure to legislate on the lacuna I have mentioned.

**Senator Jim Walsh:** I agree with Senator Burke. We heard here that the medical profession has to date done everything to save the lives of both patients in these scenarios. Above all, they seek to do no harm. However, we are changing the culture of the medical profession. We are asking them now to kill the unborn. It is a significant cultural change and it has taken place in every single country where abortion has been introduced.

I am somewhat persuaded by Senator Keane's point that giving *carte blanche* indemnity to everybody is not a good principle, although we are probably doing it anyway. We will continue to have for a decade and perhaps beyond significant pressures on public expenditure, in particular in the health area. Hospitals are under pressure now and will be under increased pressure. That creates a situation in which people will not wish to incur liability claims. That leads me to one conclusion with regard to the application of the Bill and it worries me, in particular when the culture of the medical profession is being changed.

**Senator Brian Ó Domhnaill:** The Bill gives the mother priority over the baby's life. The baby is treated as something that can become a medical procedure if the baby becomes a danger to the mother. In sections 7 to 9, inclusive, only the mother's life is protected. The baby's life is not. Members of the medical profession have raised concerns with me. I have been informed by obstetricians that it is the area of medicine in which insurance premiums are highest. There is a high risk.

**Senator Colm Burke:** They do not pay insurance premiums unless they are in private practice.

**Senator Brian Ó Domhnaill:** This is what they are saying.

**Senator Jim Walsh:** Do not be such a know-all.

**Senator John Gilroy:** Is Senator Ó Domhnaill afraid of the facts?

**An Cathaoirleach:** The Minister of State will answer all the questions. Allow Senator Ó Domhnaill without interruption.

**Senator Brian Ó Domhnaill:** If it is covered by public insurance, then the taxpayer is exposed, so it is even worse. The Members opposite cannot have it both ways.

**Senator John Gilroy:** No, that is not the case. Will Senator Ó Domhnaill get his facts right?

**Senator Brian Ó Domhnaill:** We know many of these consultants operate private practices in public hospitals and have their own private insurance in addition to any public cover they have in public hospitals.

According to obstetricians who require insurance to cover the work they carry out, they fear, with the legislation as drafted, that in so far as practicable and possible that if they save the life of the child that it could result in their insurance premia being increased. I expect the Minister will give a guarantee that this will not be the case. If so, it should be put on the record of the House and ensure the myth is put to bed. Otherwise, if such a guarantee cannot be given tonight, we know it is not a myth. Obstetricians, who are doing this country some service, deserve to know if new legislation which introduces the abortion of children will mean their insurance premia will be increased because they will be forced to take certain actions against their better judgment. That is what Senator Healy Eames is trying to ascertain.

**Senator Fiach Mac Conghail:** On a point of order, the first casualty in war is language. We are not talking about the abortion of children.

**Senator Terry Leyden:** We are.

**An Cathaoirleach:** That is not a point of order.

**Senator Brian Ó Domhnaill:** This is abortion. One can dress it up whatever way one likes but it is the abortion of vulnerable and innocent children.

**An Cathaoirleach:** I call Senator Cullinane.

**Senator David Cullinane:** The previous comment reaffirms my earlier point that there are a small number of Senators who are entitled to their view but who believe under no circum-

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stances should a termination be permissible even if a woman's life is in danger.

**Senator Jim Walsh:** That is not true.

**Senator Brian Ó Domhnaill:** Who said that?

**Senator David Cullinane:** That is my interpretation of what some Senators have said.

**Senator Brian Ó Domhnaill:** On a point of order, that is very unfair and disingenuous. Will Senator Cullinane point out where I have said that?

**Senator David Cullinane:** It is through the use of your language.

**An Cathaoirleach:** That is not a point of order.

**Senator Brian Ó Domhnaill:** It is a point of order. I am being quoted out of context and it is very disingenuous of Senator Cullinane.

**An Cathaoirleach:** Will Senator Ó Domhnaill resume his seat?

**Senator David Cullinane:** That is my interpretation from the contributions I have heard.

**Senator Fidelma Healy Eames:** On a point of order, I am the Member who tabled the amendments. I accept under sections 7 and 8 that there can be an intervention.

**An Cathaoirleach:** The Senator has spoken on the issue already. Senator Cullinane without interruption.

**Senator Fidelma Healy Eames:** Senator Cullinane has misrepresented me. That is the second time he has done that. It is very disingenuous and is absolutely out of order.

**Senator David Cullinane:** It is not disingenuous at all.

There is a lot of smoke and mirrors being played here. Members are referring to lacunae, creating the impression there is some hidden agenda in the Bill with no legal protections for medical practitioners. I have so far listened for three hours to the debate on this issue. The Minister has said umpteen times that there is no hidden agenda. The Bill is explicitly clear. When dealing with medical procedures lawful under the legislation, it states clearly, "it shall be lawful". It cannot be any clearer than that.

When Members, however, come in with all sorts of other arguments about lacunae and hidden agendas, using inflammatory language, I then question their motives. They cannot in all seriousness argue there are no legal protections for medical professionals in this Bill when everyone knows that is what the Bill is about. It only formalises existing law. That has already been said a million times in this debate. We are going around the houses over and over again. How many times have we heard the same argument from the same people? It is about time we moved on to section 9 which many Members want to debate.

Someone said we are trying to change the culture. No one is trying to change the culture. This Bill-----

**An Cathaoirleach:** We are on amendments Nos. 23, 29 and 42.

**Senator David Cullinane:** I am responding to some of the comments made.

**An Cathaoirleach:** There is no need for the Senator to respond to them. The Minister will respond to them.

**Senator Brian Ó Domhnaill:** One policy in the North and another in the South. That is Sinn Féin all over, recognising the Border.

**An Cathaoirleach:** Please Senator Ó Domhnaill. I call the Minister of State.

**Senator John Gilroy:** It is better than having two groups in the one party, like the one opposite.

**Senator Terry Leyden:** At least we have freedom of conscience.

**Senator John Gilroy:** Is that what it is?

**Deputy Alex White:** As Senator Keane said, if one looks at the way these amendments are worded, they constitute a blanket exclusion of civil or criminal liability for negligence in respect of circumstances where a viable infant is delivered. It is an extraordinarily severe and strong blanket exclusion of liability that one could conceivably not adopt. Adopting this amendment would also exclude liability in circumstances where there was negligence. The amendment is unstatable and unsustainable.

Senator Cullinane is correct that we cannot legislate for every exigency of the clinical environment. All we can do as legislators in good faith is set a legislative set of standards, principles and requirements. It is not even a question of me proposing we should rely on the professionalism of doctors. We have to rely on it as we always have. They do not let us down. They have standards. I am not prepared to proceed otherwise than on the basis that standards will be high and upheld.

I disagree with Senator Mullen's test that he is proposing which is essentially the opposite, that we have to make a presumption that bad things will be done. He said a doctor may have an ideology. That is the basis upon which the Seanad is being asked to deal with this.

**Senator Rónán Mullen:** I did not say that

**Deputy Alex White:** Those are the Senator's words.

**Senator Rónán Mullen:** It is all about just one in 1,000 children dying.

**Deputy Alex White:** It is not a good idea to support the kind of presumption inherent in this proposal that doctors would act otherwise than in accordance with best professional standards.

**Senator Rónán Mullen:** You are so simplistic.

**Deputy Alex White:** These are standards upon which we rely and are upheld by the professional colleges. They have been upheld in a way that gives us good reason to rely on them over many generations.

At the risk of inflaming some of the points made again and again regarding the overall thrust of this Bill, I must say it is manifestly untrue to state it gives the mother priority over the baby and that only the mother's life is protected. I spoke on this issue in this Chamber yesterday. I will not put it in quite the same terms again for fear of offending people but I will state that nobody who had read this Bill could possibly come up with such a conclusion.

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Amendment, by leave, withdrawn.

Question proposed: "That section 7 stand part of the Bill."

**Senator Paschal Mooney:** The only reason I am rising is to put on the record what I indicated in my Second Stage contribution, namely, that I fully support 90% of the legislation. I have absolutely no difficulty with section 7. I have every trust in the medical profession in this country and I believe it has acted in the best interests of the mother and the unborn baby in distressed situations. I am aware, like everybody else, that sadly the baby's life has been lost in situations in hospitals in which medical personnel have been faced with the awful dilemma of deciding life-and-death issues. I would never wish to be in that situation. This Bill, in common with the 2002 legislation, gives the legal clarity the medical profession has sought. I hope this is the end of the argument in respect of the seeking of any further clarification by the medical profession, that it will just get on with it and incorporate the legislation we are passing here, including this section, into its own ethical code, and that the Medical Council will act accordingly and will be satisfied with the decision.

**Senator Terry Leyden:** I concur with Senator Mooney. This section gives certainty in situations that are there at the moment. Let us be quite clear about this. I am voting against the Bill only because I have an issue with section 9. As far as I recall, section 7 or something very similar relating to the protection of the pregnant woman's treatment in hospital was in the Bill introduced in 2002 by the former Minister Micheál Martin. Let us not misrepresent anyone in this regard. Most of this Bill is very satisfactory. It gives certainty and protection, which is what any reasonable person wants. As a parent, that is what I would expect.

Some people think that if one votes against this Bill, one is voting against all sections. That is not true. One has no choice. If one disagrees with a full section, unfortunately, one must in conscience vote against the Bill. One cannot vote against each section. When we come to section 9, we can discuss our reservations about it, which I have. Other than that, I know the intentions of the Minister and the Department of Health, in which I served for a number of years. I know the feeling that exists with regard to this particular situation. There might be a difference of opinion in respect of sections and I respect my colleagues' opinions. I feel that women will feel far more secure when section 7 is made law.

**Senator Mary Ann O'Brien:** We all want to get onto section 9. That is the good news. In response to Senator Cullinane, who has brought the matter up twice, none of us ever wants to deny a woman in this country who is physically in trouble and whose life is at risk treatment that will save her life.

**Senator David Cullinane:** Some people do. The Senator may not.

**Senator Mary Ann O'Brien:** This morning we discussed foetal pain, of which I was not aware and on which I will not dwell because I am slightly out of order. We have found that Senator Healy Eames has proof regarding foetal pain and the Minister for Health wants to see that evidence and consider it over the weekend. If this is all that comes out of this morning's deliberations - I apologise, and I hope we will get on to section 9 now - when the Minister reads that evidence, he will want to consider it and bring it to Report Stage.

**Senator Rónán Mullen:** I thank Senator Mary Ann O'Brien and echo what she has just said. Like her, I fully support, for the avoidance of doubt, the protections that sections 7 and 8 seek to confer. The issue has always been that if the absence of legal clarity up to now means

legislation is needed to reassure doctors that what they are doing is protected, is that not as true where their actions unavoidably injure the child as it is where their actions take the life of the child? That is all that this is about, and it is perfectly reasonable.

**An Cathaoirleach:** Does the Minister of State have anything to add?

**Deputy Alex White:** I have nothing to add.

Question put and agreed to.

## SECTION 8

Amendments Nos. 24 to 29, inclusive, not moved.

Question proposed: “That section 8 stand part of the Bill.”

**Senator Paschal Mooney:** I again wish to put on the record remarks similar to those I made regarding section 7. I fully support the contents of section 8.

Question put and agreed to.

## SECTION 9

**An Cathaoirleach:** Amendments Nos. 30, 34 and 40 are alternative and may be discussed together by agreement. Is that agreed? Agreed.

**Senator Fidelma Healy Eames:** I move amendment No. 30:

In page 10, between lines 3 and 4, to insert the following:

“9. (1) Any pregnant woman who presents as suicidal at her general practitioner or at an accident and emergency department shall be entitled to a Care Pathway which shall comprise the following steps—

(a) a full psychiatric assessment and an assessment of capacity within two hours of presenting at her general practitioner or at an accident or emergency department,

(b) a suicide prevention algorithm shall be formulated by the psychiatrist to assess the need for hospital admission, day hospital care or care at home as appropriate,

(c) a full psycho-social assessment of her needs shall take place within 24 hours of presenting at her general practitioner or at an accident or emergency department,

(d) an integrated multi-disciplinary care plan for the woman will be formulated between the psychiatrist, an obstetrician (if she is already under the care of an

obstetrician), her general practitioner, a social worker, and her family,

(e) if the woman is still expressing suicidal ideation, she shall be entitled to focused therapy which, based on the evidence, should include dialectical behaviour

therapy, in her home if necessary,

(f) day hospital care, and/or pharmacological treatments will be concurrently made available within 24 hours of the request for same, depending on need,

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(g) the psychiatrist shall evaluate the woman twice weekly during the crisis stage of her treatment and thereafter depending on the consideration of the psychiatrist and the perspective of the woman and her family, based on clinical need,

(h) thereafter the woman's interdisciplinary care team will meet at least once in every 14 days to assess her progress.”.

Section 9 is the crucial section, as everybody has said. It concerns the risk of loss of life through suicide. I want to correct matters because I may have been misunderstood earlier in respect of the way I presented my points. We wandered into the section on suicide by accident and came out of it. What I am saying here is that everyone agrees, and psychiatrists have clearly put it on the record, that they are really good at assessing pregnant women at risk of suicide but that they are really poor at predicting suicide. In fact, up to 15% of women express suicidal feelings but may not go on to take their lives. Psychiatrists have been very clear that while they are skilled at identifying patients at high risk of suicide, even in the high-risk group, they are likely to predict incorrectly 97 times out of 100.

As there is no reliable body of evidence that access to abortion reduces suicide rates or improves women's mental health, it is not possible to develop clinical practice guidelines based on medical evidence to clarify where it is justifiable to certify a woman as eligible for abortion. The Oireachtas was informed that none of the three consultant perinatal psychiatrists in Ireland, in their collective experience of 40 years, had seen a woman for whom termination of pregnancy was the only suitable treatment. In the context of this, 113 psychiatrists produced a statement explaining and outlining their huge difficulty with the notion that abortion was a suitable treatment for suicidal feelings or intent. That is where this care pathway is coming from.

Before I look at the exact wording of the care pathway, I would like to share with the House an e-mail I received from a young woman only two days ago. She asked me to share this story with the House because she had an abortion for mental health reasons. Here are her words:

I remember going into the theatre hoping that the [doctor] would ask me would I like to change my mind but he never did. Straight afterwards, not only was the life and soul of my child suctioned out of me but a crucial part of me had died as well.

I felt it [deeply]. It was a feeling that I could not shake off and hence I used prescription medications daily and weekend binge drinking to numb and block out the horror of killing my baby. I desperately tried to forget what I did and tried to convince myself that it was the best decision. I slowly [turned] from being a caring nurse into an impatient and sometimes cold and cynical nurse. I became withdrawn and depressed and at times I entertained suicidal thoughts after the abortion as this brought hope to me, because my life was not worth living, I was just existing. I worked extremely hard maybe 60 to 70 hours a week, a lot of night shifts. This has been the worst decision of my life.

I implore of you and your colleagues to appreciate your privileged position to be aware that your elected post has not been by chance and that you are in this role at this time and that the fate of the unborn is now in your hands and you are in a position of power to choose life or death.

This young woman clearly states the critical role of the doctor, who at that moment might have been able to change her mind. She is also explaining that she is under incredible pressure. This is why this care pathway is so critical. I know many people have much to say on this.

Amendment No. 30 states:

In page 10, between lines 3 and 4, to insert the following:

“9. (1) Any pregnant woman who presents as suicidal at her general practitioner or at an accident and emergency department shall be entitled to a Care Pathway which shall comprise the following steps—

(a) a full psychiatric assessment and an assessment of capacity within two hours of presenting at her general practitioner or at an accident or emergency department,

(b) a suicide prevention algorithm shall be formulated by the psychiatrist to assess the need for hospital admission, day hospital care or care at home as appropriate,

(c) a full psycho-social assessment of her needs shall take place within 24 hours of presenting at her general practitioner or at an accident or emergency department,

(d) an integrated multi-disciplinary care plan for the woman will be formulated between the psychiatrist, an obstetrician (if she is already under the care of an obstetrician), her general practitioner, a social worker, and her family,

(e) if the woman is still expressing suicidal ideation, she shall be entitled to focused therapy which, based on the evidence, should include dialectical behaviour therapy, in her home if necessary,

(f) day hospital care, and/or pharmacological treatments will be concurrently made available within 24 hours of the request for same, depending on need,

(g) the psychiatrist shall evaluate the woman twice weekly during the crisis stage of her treatment and thereafter depending on the consideration of the psychiatrist and the perspective of the woman and her family, based on clinical need,

(h) thereafter the woman’s interdisciplinary care team will meet at least once in every 14 days to assess her progress.”

The underlying intention here is to provide care for someone who is expressing suicidal feelings in pregnancy and is carrying another life. There is a great intention here of the very best care for mother and child. The psychiatrists who have proposed this have requested that this would be designed by the college of psychiatry. How could we wish against this? It is wholesome, holistic and caring. It proposes to give life every chance and mind the woman whose life may be at risk. I ask the Minister of State to strongly consider accepting the amendment on the basis of the previous testimony I have presented from just one young woman who had to have an abortion.

**Senator Paschal Mooney:** I am speaking on my amendment No. 40. In tabling the amendment I was motivated by evidence from the United States where in several states abortion clinics have a legal obligation that a pregnant woman presenting herself for an abortion is shown a scan of the unborn baby prior to any procedure being carried out. I am grateful to Senator Ó Domhnaill who gave me a statistic based on evidence that in 90% of such cases, the pregnant woman changed her mind and the baby was saved. My sole motivation in drafting this amendment was in the hope that at the very latest stage of the process under which section 9 operates, a life could be saved and in fact the two lives could be saved.

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However, I have further reflected and spoken to a large number of women because I believed women could give an insight into the matter. I have no wish nor was it ever my intention to inflict any further emotional or psychological pain on an already distressed mentally ill pregnant woman, who has gone through the legal processes, has been reviewed and assessed by a team of psychiatrists and an obstetrician, has arrived at the point of certification, and is at the institution where the procedure is to be carried out. I would not wish for one second to add in any way to the distress that is obviously there anyway. For that reason I will more than likely withdraw the amendment. However, I wish to put on record my reasons for drafting it in the first place.

**Senator Rónán Mullen:** This is obviously the central issue in the entire debate. Senator Healy Eames has spoken very eloquently and I will not speak for very long. I was particularly taken by Senator Mooney's proposed amendment and it is a matter for him as to whether he presses it.

Good care for a mother should always be and by definition has to be completely compatible with good care for her unborn child. Our understanding of caring based on everything we have heard and learned through this long process is that women are not well served by abortion. As we know from the famous but perhaps not sufficiently discussed Ferguson studies, abortion is not associated with any improved mental health outcomes for women and is associated with a low to moderate risk of negative mental health *sequelae* for women. That is not just in the case of women with prior mental health issues but it is a more general proposition.

During the committee hearings we heard and the Minister has pointed out that it would be impossible to do a specific study of women presenting as suicidal and requesting an abortion that would distinguish between those who were given it and those who were not. The drift of knowledge in this area is to associate abortion with negative rather than positive mental health outcomes. It would therefore seem entirely appropriate that, in the context of a caring protective engagement between any woman and her medical expert, guide and carer, the possibility of negative mental health outcomes associated with abortion would be canvassed in truth - that is called informed consent.

If in that context and in an appropriate way some reflection on the reality of the unborn child were suggested, that would seem entirely compatible with good care for both the woman and the child. We need to bear in mind as we have been constantly told there is a constitutional architecture that refers to the equal right to life of the unborn and also bearing in mind what the legislation we are told requires which is the formation of a reasonable opinion that the risk to life brought about by the threat of suicide and suicidal ideation can only be averted by carrying out the medical procedure.

*9 o'clock*

In an ideal world of the kind where there are only good doctors and pregnancy counsellors - we are being invited to believe such a world exists - no abortions would be carried out under section 9 because, by definition, one would not have to be a psychiatrist to conclude that abortion could not be the only means by which the risk of suicide could be averted in view of the fact that there would always be a possibility that the person involved, by an act of will, would opt against abortion. In that sense, it could always be truthfully stated that abortion could not be the only way to avert the risk. This would apply in the circumstances to which I refer in a way in which it would never apply to section 7 or section 8 procedures because there is an objective

risk to life which could only be remediated by medical intervention.

We live in the real world and we all know what section 9 means. We also know how difficult it is for psychiatrists to make decisions in respect of this matter. There are no experts present but I heard Senator Gilroy's comments and I respect them.

**Senator John Gilroy:** I stated that I am not an expert.

**Senator Rónán Mullen:** I am giving the Senator credit, not criticising him.

**Senator John Gilroy:** Which is strange.

**Senator Rónán Mullen:** The Senator should not jump all over me. The joint committee heard from the experts and Professor Kevin Malone, a suicide prevention expert, was extremely concerned with regard to the impact this would have, not just on women but on young men, particularly in the context of their mental health. Approximately 113 psychiatrists signed a statement indicating that they believe they are being wrongly drawn into a process which they do not regard as medical. Dr. John Sheehan, a perinatal psychiatrist, stated that under the legislation, psychiatrists are being asked to be the gatekeepers and that he could not predict what would be the outcome in this regard.

The joint committee also heard from other psychiatrists such as Dr. Anthony McCarthy who did not provide any reassurances in respect of numbers, other than the fact that he thought there would be very few. Dr. McCarthy did not provide any understanding on this matter and he never highlighted any circumstances in which a psychiatrist might decline an abortion on the grounds of suicide. It must be remembered that one is always rightly supposed to believe someone who states that he or she is suicidal. We were never really provided with an explanation as to how we might extricate ourselves from that morass.

For all of those reasons, I welcome Senator Healy Eames's amendment. Amendment No. 34 in my name provides a much more abridged version of what is contained in amendment No. 30. The basic point I am seeking to make with the amendment is that the good-faith standard contained in section 9 is extremely subjective and does not confer a duty upon psychiatrists to make a genuinely reasonable attempt to avert the risk of suicide by methods other than abortion. As a result, amendment No. 34 proposes that an objectively reasonable attempt should be made to "avert the risk of suicide via psychiatric treatment and/or engaging the patient with psychotherapy or counselling services". At an earlier point and in another context, the Minister stated that there would be a possibility of delaying a procedure where a child is on the cusp of viability. It seems, therefore, that there ought to be time to do this.

I also know what was stated in this Chamber by Dr. Maria Cahill during the joint committee's hearings in respect of the judgment in the Cosma case. The argument Dr. Cahill put forward was not, in my view, effectively rebutted by the Minister for Justice and Equality. In its judgment relating to that case, the Supreme Court appeared to lay down a clarification on how the X-case test might be applied when a person presents as suicidal. None of the Cosma case requirements has been imported into the legislation before us.

As already stated, amendment No. 34 refers to a reasonable attempt to "avert the risk of suicide via psychiatric treatment and/or engaging the patient with psychotherapy or counselling services" and in that context I recognise that every case turns on the facts relating to it and on the experience of the particular patient involved. The amendment also refers to the need

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for one of the medical practitioners involved to inform the woman of her “legal right to place her unborn for adoption after birth”. During this debate, the idea of adoption has been almost completely neglected. This amendment, if accepted, would place no onerous duty - everyone should note those words carefully - on medical practitioners and nor would it place any kind of obstacle in the path of a woman. I am merely seeking here to defend and vindicate the right to life of the unborn by conferring a duty upon medical practitioners to consider all non-lethal means of avoiding a risk to the woman’s life via suicide and to inform her of her rights.

**Senator Paul Bradford:** In political and ideological terms, this issue lies at the core of the legislation we are proposing to pass. We are dealing with the suicide clause and the Minister, his colleagues in the Government and the proponents of the Bill put forth a strong response regarding our obligation to introduce it. The Lower House was informed that if such a clause were not introduced, we would basically be overturning the entire Supreme Court judgment and that we cannot go down that particular route. Obviously, I do not have any of the legal qualifications of which the Minister of State is in possession. However, I am sure that he will acknowledge - as was acknowledged by all of the experts who came before the joint committee and former Supreme Court Justice Catherine McGuinness - that the Oireachtas is under no obligation to legislate as per the X case. The Supreme Court handed down a judgment in respect of that case but we are under no legal obligation to legislate in respect of it.

I am sure the Minister of State will also acknowledge that the Supreme Court judgment on the X case, as it relates to the suicide clause-----

**An Cathaoirleach:** We are dealing with amendments Nos. 30, 34 and 40.

**Senator Paul Bradford:** Absolutely. Amendment No. 30 in the name of Senator Healy Eames would, if accepted, give rise to section 9 - as currently constituted - being removed from the Bill. The Minister of State and, as we have been informed, all first year law students are aware that the Supreme Court’s judgment in the X case in respect of suicide was uncontested and, therefore, places no binding in law upon us.

I am of the view that I can stand over the two arguments I have just offered. Notwithstanding that fact, however, and if it were so disposed, the House could pass the legislation minus the suicide clause and defend itself fully for doing so in the Supreme Court on the basis of all of the medical and psychiatric evidence from across the globe that has become available in the 20 years since that court made its decision in the X case. The evidence to which I refer clearly shows - without any doubt or possibility of contradiction - that abortion is absolutely not a treatment in respect of the threat of suicide and that it may actually pose a significant risk to the long-term health of women.

I will park that legal argument, because it is a matter for another day, and reflect on the proposal which has been put forward by Senator Healy Eames. The Minister of State knows better than I - this is becoming one of the mantras used in this debate - that the clause in question will only apply where abortion is the only possible treatment. It is quite clear that it is not the only treatment and during hearings of the joint committee held over two days, successive witnesses stated that it is not a treatment. As something of a political scholar, I am of the view that it is amazing that we are enshrining in law as a treatment something which we have been informed is not a treatment.

**Senator Ivana Bacik:** We are not stating that it is a treatment.

**Senator Paul Bradford:** How does that stand up to scrutiny? We are in the process of seeking to enshrine in law abortion as an entitlement in circumstances where it is the only treatment. Senator Healy Eames has presented an alternative view. There were many interruptions earlier as Senators sought to jump ahead to discuss matters relating to section 9. Some appear to be inclined to the view that people on my side of the argument wish to ignore or dismiss the fact that suicide, suicidal ideation and psychological problems do not occur during pregnancy. Everybody fully acknowledges that pregnant women can be suicidal. Everybody also fully acknowledges the scale of the problem and the fact that a solution is required. What we are asking is that a solution based on evidence and fact - and which is based on the premise that it will actually work - should be put in place. We are outlining our deep concerns about the prospect that a so-called treatment which is not a treatment at all will be enshrined in Irish law.

**Senator Ivana Bacik:** It is not a treatment.

**Senator Paul Bradford:** This matter was debated in the Lower House. It is fair to say that I know where this proposal first entered the public debate. Almost immediately, Ministers and people on the medical side reacted and claimed why it could not happen. I am sorry that the Minister is not present. Yesterday, he and I clashed - purely in a political way and no more - when I raised some of the interventions of Dr. Anthony McCarthy. The Minister reminded me of how Dr. McCarthy had entirely dismissed this concept. However, I would remind the Minister of what said gentlemen stated on "Morning Ireland". I say this in the context of what the Minister of State's party colleague, the Minister of State, Deputy Kathleen Lynch, charged us with this afternoon when she asked what price we were putting on women's health. I agree with her, as I hope the Minister of State present does. It should be priceless. As a Government, a House and a nation, we should provide whatever money and services are required to look after women.

When Dr. McCarthy was asked whether he was dismissive of this amendment because it was somehow wrong, he replied that he was dismissive of it because it could not work and was "totally impractical". He stated:

I would love it if it were practical [but] mental health services in Ireland ... have always been under-resourced and cut back. The idea that, around the country from Dublin to Caherciveen to Drumshanbo, there would be the availability in emergency departments of psychiatrists who would do comprehensive suicide assessments within two hours ... [when] we don't have them on call at weekends.

Listening to that interview, I heard a gentleman clearly outline the problem facing us, that being, resources. I ask colleagues, particularly my party colleagues, to reflect on this. We claim that this suicide option - as I would call it, this abortion treatment for suicide - would only apply when all other prospective treatments had been exhausted. However, a leading psychiatrist who some like to claim supports some of their arguments has put it firmly on the record that most of the so-called supports are not available.

As I stated on Second Stage, our ambition for the women and mothers of this country must be high, honourable and proud and contemplate more than just abortion. Women in pregnancy who are suicidal need every possible support. We should be willing to break the bank fiscally at budget time to live up to our responsibilities. We should be able to provide evidence-based treatments that have a history of working globally. Instead, we are being asked to include in law a treatment or solution-----

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**Senator Susan O’Keeffe:** It is not a treatment.

**Senator Paul Bradford:** -----that will result in problems, not solve them. This is the issue on which we must reflect.

I look forward to the Minister of State’s comments on the constitutional side. It will be a lengthy, weighty and substantive debate and I respect his opinion, as he has expressed it strongly in the Lower House.

There has been so much interest in this section because it is at the core of the ideology behind this debate. No perfect amendment has ever been produced in either House, but Senator Healy Eames has produced a view of how we can help the presumably many mothers who may have suicidal tendencies and ideation in pregnancy. She has proposed a formula that works.

We are being asked to inscribe in our law forever a scheme that witness after witness at our two sets of hearings claimed would not work. One can never base judgments purely on how many people write to one saying “Yes” or “No”. One must do a little bit of deeper thinking. We all know that, to date, the majority of psychiatrists in Ireland who have let their opinions on this legislation be known have appealed to us not to enact section 9.

**Senator David Cullinane:** It is disingenuous to assert that people’s support for this section is because of ideology. Many Senators who have different social and political ideologies on a range of issues support this section because it is concerned with the reality for women. This situation happens and we have a responsibility to deal with those women’s circumstances.

I wish to provide some clarity about what the section does and what the amendment would do if accepted. I will seek clarity from the Minister of State, but my understanding is that this issue relates to the Supreme Court judgment, which was made on the back of a referendum in which a clear proposition was put to the people, who described what they wanted.

The Bill is also clear in that it refers to a real and substantial risk to the life of a mother, including suicide. Are we claiming that suicide is any less of a risk than any other medical illness that a woman may have, for example, a heart problem? This is the nub of the problem. We must also be deeply conscious of the impact our opinion has on the issue of suicide, as discussed by many Senators when they touched on it. The section formalises existing law on the basis of the Supreme Court judgment and a referendum expressing the will of the people.

Accepting the amendment would make the Bill unconstitutional, as we would be removing the provision covering a real risk to the life of a mother. The legislation would fail a constitutional test.

Not a single person inside or outside the Seanad believes that abortion is a suitable treatment for suicide. To claim otherwise is deeply offensive to Senators who support the section and the Bill. It is simply not true. A range of options are available to medical professionals if a woman presents as suicidal. To claim that we are offering abortion as the only solution is disingenuous and wrong.

Everyone accepts that suicide is an extremely emotive issue. In some way, we have all been touched by suicide. I doubt there is a person in this Chamber who does not know someone who has died from suicide, be it a relative, close friend or someone in the community. We have been brought down many culs-de-sac by the Bill’s opponents. When I hear arguments to the effect

that, if accepted, the Bill would open up the floodgates to abortion on demand, they devalue the issue of suicide as well as women. To propose that tens of thousands of women will queue up for obstetricians and psychiatrists and use the threat of suicide to get abortions is disingenuous. For this reason, I question the motives of some of those who have made this argument.

Many people have genuine concerns about the question of suicide. I accept that. I have spoken to many people who support the Bill but have concerns about the suicide aspect of it. The core purpose of this Bill is the protection of women. While it also seeks to protect the unborn its main purpose is the protection of women where there is real and substantial risk to their lives. There are circumstances wherein a woman is suicidal and medical professionals have to make the judgment that a termination may be necessary. That is the reality which we as legislators must face up to. I propose to do so by supporting the Bill this evening.

**An Cathaoirleach:** I must ask Senators to be brief.

**Senator Jim Walsh:** I agree with those Senators who have spoken about suicide that it is a major problem in our society. Like others, I know of many families who have been devastated by it. We know from the hearings that approximately 1 in 500,000 women who are pregnant commit suicide. I agree that we should do everything we can to prevent suicides. We know also from the evidence that women who have had abortions are more prone to committing suicide. I am minded by the case in England of Emma Beck who was expecting twins and was coerced into having an abortion-----

**Senator Susan O’Keeffe:** There is no evidence of that.

**Senator Susan O’Keeffe:** -----and as a consequence committed suicide six months later. She left a note saying why she had committed suicide.

**Senator John Gilroy:** That is very uncommon.

**Senator Jim Walsh:** It is not uncommon. It has happened in many instances.

The most eminent expert on suicide in Ireland, and recognised internationally, is Professor Kevin Malone. During the hearings, he told us that there was a real risk that legislating for the small number of women who commit suicide could have an adverse affect on women of child bearing age who are suicidal but not pregnant and also on young males. Professor Malone stated that 2 in 1 million women in pregnancy and 350 in 1 million young males will commit suicide. These are real and genuine concerns.

All of the psychiatrists who appeared before the hearings, some of whom were on the pro-choice side and others of whom were on the pro-life side, stated that there is no way of being accurate in predictions. We were informed that a study in Britain found that of 100 people predicted to commit suicide 97% did not. The expert advice is that any person who presents with suicidal ideation should be treated in accordance with best practice in the psychiatric field.

Another issue that arose towards the end of the debate, for which I am sure the Minister of State was present, is the presentation of women with suicidal intent who are mentally ill. A psychiatrist assesses the predicament of women in this regard. It was also stated by some experts that in their judgment the number of women who will present with suicidal intent and do not have a mental illness will be high and that because of our mental health legislation these women will be offered treatment but are entitled to refuse it. Therefore, the only treatment remaining, if

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the woman requests it, will be the abortion she seeks. This presents real dangers. The experts believe the largest number of cases will be in this area.

People have spoken about trusting women and so on. While many groups with different perspectives took part in the hearings, it is a pity more people did not engage in the process. One woman who has had an abortion was in touch with me yesterday to confirm what she said during the meeting in the AV Room. The woman concerned is an Irish woman who was pregnant and in the British Army. She was advised by people in the British forces who are senior to her that there would be adverse consequences of her not having an abortion and that it would affect her career. Her boyfriend, who is also in the Army, was adamant that she should have the abortion. When she sought advice, she was told that she should in her interest seek the abortion on the grounds of being suicidal because it would fast-track her abortion.

During the hearings I quoted at length from Bernard Nathanson's book, *Aborting America* (Double Day 1979). It states that the supposed threat of suicide was the logical battering ram and, that "It was a question of finding a squad of complacent psychiatrists". Many people have written books on this issue. We also met with Women Hurt who told of the advice they had been given in order to secure an abortion. They told us that because of the pressure they were under, the distress they were in and their unwanted pregnancy they would have said or done anything to secure that abortion. I believe them. I have no reason not to. I also have no reason to disbelieve that there will be other women in the future who will find themselves in similar positions and will take the same route.

The late Dr. Anthony Clare who was pro-choice at the time of the 1992 referendum supported the 2002 amendment to the Constitution, having changed his opinion. He is on record as saying that suicide was the wedge through which liberal abortion regimes were introduced.

**Senator John Gilroy:** That is a misquotation of Dr. Clare.

**Senator Jim Walsh:** That is what he said.

**Senator John Gilroy:** He said "mental health" not, "suicide".

**Senator Jim Walsh:** Assuming this legislation is passed, we will need to be able to analyse the detail of why abortions are carried out here. I am not happy with sections 15 and 20. The reports to be laid before the House will not give adequate information to evaluate the position. I hope when we reach those sections we will be able to change that situation.

I am opposed to this section. I have little difficulty with the remainder of the Bill. I am concerned that this legislation, because judicial activism intervenes and hard cases are presented by people who are pro-choice, as happened in the C and X cases and in other countries, will be broadened. Judges, because they come from a particular disposition, will take a view.

I am hugely concerned about the application of this section. I have concerns around the disposition of staff in the Department and HSE to the issue, many of whom do not share my perspective. Any honest assessment of the hearings would be that those who appeared before them were either pro-life or pro-choice. Therein lies a problem from the point of view of having objective, clear, independent evaluations. That worries me. Unfortunately, I predict this section will lead to a situation whereby abortion will be more liberally available here in the next five years than it has been for the past 30 years.

**Senator John Gilroy:** I would like first to speak to amendment No. 40, which I do not support. I am taken by the very obvious note of compassion in the comments of the person who moved the amendment. It is commendable, which should be noted, as some of the other comments we have heard have not been as compassionate as they could have been.

With regard to amendment No. 34, I should read the following so there can be no misunderstanding, wilful or otherwise, of what I am saying. Section 9(1)(a)(ii) states: “in their reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) that risk can only be averted by carrying out the medical procedure”. The word “only” has been omitted from the debate throughout this day, and if that word is removed, one can interpret sections 7 and 8 to say anything one wishes. When we include the word “only” and read it in the context in which it is plainly written, it is quite clear that the intent of the Bill is limiting.

There are very few women who die by suicide while pregnant, with studies showing two in three years in this country. I believe - Senator Crown may confirm this - that this is the same number that have died from cancer in the same time. It is a very rare occurrence, with one in every 500,000 being the rate in the UK. However, the fact that it is rare does not mean it does not exist. We have heard the soundbite that abortion is not a treatment for suicide. Whoever said this - I do not know who said it-----

**Senator Rónán Mullen:** Suicidal feelings.

**Senator John Gilroy:** I see. Now there is a change, when the soundbite does not work.

**Senator Rónán Mullen:** It was said-----

**Senator John Gilroy:** I have heard it said by Senator Bradford; he said it clearly. Many people on this side of the House said “Abortion is not a treatment for suicide.” It has been said a hundred times. Who-----

**Senator Jim Walsh:** It was said at the health hearings by psychiatrists.

**Senator John Gilroy:** Name a person, or a consultant psychiatrist, who said that. I would challenge such a person to resign, as he or she does not know what he or she is talking about. There is no treatment for suicide. It is as simple as that.

**Senator Fidelma Healy Eames:** The reference is to suicidal ideation.

**Senator John Gilroy:** We are not considering suicidal ideation. We are considering suicide risk. Suicidal ideation is one element that is often but not always present in suicide risk. It is as simple as that, mostly. There are other clear markers for suicide risk, and it is only suicide risk that psychiatrists are being asked to analyse. It has been said as recently as four minutes ago that there is no predictor, once suicide risk has been determined, that it will actually be carried out, but that it is not the intent of this Bill. It clearly states that what we are looking at is risk - not prediction, not ideation, not a threat to health. We are talking about a clear threat to life. Surely I am missing something in the debate, as the point seems so obvious to me. I cannot understand how it can be obscured with the arguments here. It seems that some of the arguments have tied their proponents into certain positions that they cannot retreat from. I am not pointing the finger at anybody. I have said all along that I am not an expert, although I worked as a nurse in the area throughout my career.

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Those who say they are able to support sections 7 and 8 but are unable to support section 9 are drawing a distinction between our response to medical emergencies on one side and psychiatric emergencies on the other. It is a false dichotomy which denies the reality that these are equal risks. A heart attack can be diagnosed and if untreated it can lead to death, but suicidal risk, if untreated, can also result in death. Both are equal emergencies, so I cannot understand how we can support sections 7 and 8 and not support section 9.

I will speak on amendment No. 30. Although it may appear reasonable at first glance, there is no way this could be incorporated into the law of the land. The idea is for a full psychiatric assessment and assessment of capacity within two hours of admission, but a first year student nurse can tell us that a proper risk assessment takes several days. There is no possible way we could have a proper, comprehensive and accurate risk assessment in two hours.

I presume the reference to a “suicide prevention algorithm” refers to a strategy which can be formed by a psychiatrist to assess the need for hospital admission, day hospital care or care at home as appropriate. This is a key element. What if somebody presents with a risk of suicide without a mental illness or a diagnosable mental disorder, which is required under section 7 of the Mental Health Act? A diagnostic tool is the WHO’s *ICD-10 Classification of Mental and Behavioural Disorders*, of which chapter V lists all diagnosable mental disorders, one of which must be present for involuntary detention of anybody in any of our psychiatric hospitals. If somebody who has been adjudicated as having a risk of suicidal ideation - which is not a mental disorder, according to the terms of the Mental Health Act - is pregnant and presents to a hospital, or, more likely, is brought by gardaí, do we have the power to detain them? Should we change the section of the Mental Health Act that offers protection against unlawful detention in a psychiatric facility, which we have seen much abused even in my own time? In the 1930s, 1940s and 1950s, our psychiatric hospitals were places to incarcerate people rather than treat them. One section of the Mental Health Act dealing with diagnosable mental disorders offers protection against that, so are we now looking to repeal that section? The logic of the argument for the amendment means we must do so. There is another type of logic which would create a position that is unbelievable or even farcical. The only other option we have is to reclassify pregnancy as a mental disorder. These are the only two options we have. How stupid does that sound? It sounds appallingly farcical.

If a person does not wish to avail of treatment for suicidality - if there is treatment at all, and I do not think there is - there is no pathway. I have heard about the idea of pathways.

**An Cathaoirleach:** The Senator should be fair to the rest of the House.

**Senator John Gilroy:** It has been said that suicidality is an act of will, but it is not. Most people who die by suicide have a very ambivalent view of whether they want to live or die, and that is a well-established fact.

Paragraph (e) of the amendment prescribes dialectical behaviour therapy, and although this sounds good, it is not without its critics. To enshrine something in our law-----

**Senator Fidelma Healy Eames:** Nothing is without its critics.

**Senator John Gilroy:** Why would we enshrine this therapy in our law rather than cognitive behavioural therapy, counselling or any kind of psychotherapy? Why would we choose one rather than another?

**Senator Fidelma Healy Eames:** This is the recommendation of a psychiatrist.

**An Cathaoirleach:** Senator Gilroy without interruption.

**Senator John Gilroy:** Why should one be chosen over another? Would Professor Crown enshrine into law one treatment for cancer? Of course he would not, and nobody should think of doing that. Why would we enshrine one therapy when several therapies might be available to treat the underlying cause of suicidality?

**Senator Fidelma Healy Eames:** It is on a needs basis.

**Senator John Gilroy:** We are talking about treating the underlying cause of suicidality; we are not treating suicidality, because there is no treatment for it. The amendment also contains a provision for a psychiatrist to evaluate a woman twice weekly during the crisis stage of her treatment, but how do we do this if she refuses to co-operate? The idea is clearly not thought out. Do we give people who are suicidal for one reason priority over those who are suicidal for another reason? I do not believe that is equitable or that one can do that in a republic or in medicine. When one has a close look at this type of nice, woolly, seemingly well thought-out prescription to deal with the issue, it turns into a ball of smoke and is unworkable. It appears to be plucked out of the air.

I could speak until midnight, a Chathaoirligh, but I will not.

**An Cathaoirleach:** You could, but I call Senator Higgins.

**Senator Lorraine Higgins:** Since 1992 the Legislature has been obligated-----

**Senator Terry Leyden:** That is two Government speakers.

**An Cathaoirleach:** I am calling on Members as they have indicated.

**Senator Lorraine Higgins:** -----to legislate for the X case. That is the reality. It has been ignored by successive Governments since then but this Government has taken the bull by the horns to sort out this sorry situation.

We must be clear about what the situation was and is under the X case before this Bill becomes law. I will put myself in the situation. At present, if I happen to be suicidal by virtue of my pregnancy, I could go to the High Court after getting a report or an assessment from an unregistered individual or somebody who might have completed a three month or six month course and I could apply to have the court direct the HSE to find a doctor to perform an abortion on me. That is the law as it stands. This legislation provides that somebody in this situation must see a gynaecologist, an obstetrician and a psychiatrist. In addition, an appeal is also a basis-----

**An Cathaoirleach:** Senator, we are discussing the amendments, not the section.

**Senator Lorraine Higgins:** It is a very important point. There has been a great deal of scaremongering in the House about this section. There has been a great deal of *faux* philosophising also. The suggestion that we are liberalising the regime must be put to bed. Outlining the scenario as it is and as it will be is very important.

There is also the suggestion that was made earlier today that abortion tourism will become the norm on foot of this legislation. That is ludicrous.

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**An Cathaoirleach:** We are discussing the amendments.

**Senator Brian Ó Domhnaill:** The Minister confirmed it.

**Senator Susan O’Keeffe:** The Minister did not confirm it.

**An Cathaoirleach:** I call Senator van Turnhout.

**Senator Jillian van Turnhout:** If the Senator wishes to look at the record, he will see that I clarified that issue earlier.

We have heard a great deal about what happened at the committee hearings. Having attended the six days of the hearings, I can say there was contrary opinion. This suggestion that everybody agreed is regrettable. There was contrary opinion, as I pointed out in my speech on Second Stage. We should be very careful about making sweeping statements.

In regard to the amendments, Members have questioned why we are doing this. Article 40.3.3° states that the State “guarantees in its laws”. We do not always uphold our constitutional obligations in our laws, but we must and I believe we must do so clearly for the X case. The Cosma case was raised, which surprised me. It was said that the Minister, Deputy Alan Shatter, did not deal with it effectively, but I watched it in the Dáil. During the committee hearings, however, a senior counsel and a former Supreme Court judge dismissed that. I do not need to study law to know that a High Court ruling on an asylum case does not gazump - I do not have the legal terminology - a Supreme Court ruling. I do not need to study law to know it is the Supreme Court.

The issue here is suicide in pregnancy. I spoke on this on Second Stage and I will not repeat what I said as I am conscious that other Members wish to speak. However, I have a difficulty with this section because we are separating it from section 7. This is about risk to life. Throughout this debate I have had the feeling - and “feeling” is the right word - that this is about a woman who has certain feelings or thoughts. That is not what we are talking about. We were given some very real examples at the committee hearings. We heard about the woman who is anorexic and wants to get rid of the pregnancy. She had taken three overdoses. This is not somebody who has gone to a psychiatrist and said she was not feeling great. We also heard about the woman who is pregnant due to incestuous abuse and about the growth inside her. We heard about the woman who is in an abusive relationship. There are reports which show that when women in an abusive relationship get pregnant, the violence very often escalates. We heard about a woman being kicked repeatedly in the stomach. She did not want this for her child and wanted to kill herself. This is not about a woman who has this idea to circumvent the law. That woman is on the aeroplane and is gone. This is about a risk to life. There are very rare cases, and the wording deals with that.

People talk about clinical markers. How do we commit people involuntarily if there are no markers or no way to diagnose? How do the doctors make that decision? It is a medical practice. There is an idea that mental health is not medical. Physical and mental health are interlinked.

I will conclude because I am conscious that other Members wish to speak. As we clearly heard at the committee hearings from obstetricians and many of the psychiatrists, they will always work towards saving both lives. They will work to secure foetal maturity, which is the ideal, and viability, which is the second option if the first cannot be achieved. We are talking

about the exceptional cases here.

There are other issues I would have liked to raise, such as the establishment of the review committee and the penalties in section 22 for the destruction of the unborn. However, I will raise them on Report Stage as there is a long list of speakers.

**Senator Terry Leyden:** The amendment tabled by Senator Fidelma Healy Eames is an effort to change section 9. I do not agree with it. I have no wish to amend the section as I would prefer if the section was not in the Bill. Most of the Bill is well crafted by the Department of Health, and most people accept that. Nobody doubts the bona fides of the Department in this regard. However, this is a very important issue. The evidence was given to the committee but nobody seems to be reading that. Eminent psychiatrists have said that termination is not a treatment for suicidal ideation. The Bill is not evidence-based.

**Senator Ivana Bacik:** We dealt with that.

**Senator Terry Leyden:** Dr. Sam Coulter Smith, master of the Rotunda Hospital, a wonderful hospital, said there is no evidence to indicate that abortion prevents suicide, as did Dr. John Sheehan, consultant psychiatrist in the Mater Hospital and a lecturer in UCD. They are very eminent people.

There appears to be a complete denial of the fact that section 9 will allow the abortion of a healthy child. That is what this is about. Having looked at the evidence and heard all the views, I believe that a woman who would have an abortion on the basis of a threat of suicide would possibly be more suicidal as a result of having the abortion. I admire Senators Fidelma Healy Eames and Paul Bradford. They have a real conscience about this and have put everything at risk. They are not enjoying this. It is a very difficult period for them politically.

**An Cathaoirleach:** The Senator should speak to the amendment.

**Senator Terry Leyden:** I make that point because Senator Healy Eames tabled the amendment. I will not delay because others wish to speak. The architect of Britain's liberal abortion laws, Lord David Steel, has said the Irish Government will be making a mistake if it goes ahead with plans to legalise termination on the grounds of a threat of suicide. There were 185,000 abortions in England last year. Can one imagine the number of people who have died because abortion is permitted in England?

**Senator John Gilroy:** It is for a different reason.

**Senator Terry Leyden:** Once that started, it continued. Let us be quite honest about this. We are talking about potential Irish boys and girls who will never experience life. That is the reality, although one can dress it up any way one wishes. I know this is a political decision. The members of the Fine Gael Party, in their hearts, did not want this Bill. They gave a commitment before the election that they would not legislate for abortion, but the Labour Party-----

**Senator Ivana Bacik:** How is this relevant?

**Senator Terry Leyden:** I have dealt with the Labour Party in the Council of Europe.

**An Cathaoirleach:** It is section 9, Senator Bacik. Acceptance of this deletes section 9.

**Senator Terry Leyden:** I do not know why the Labour Party has an obsession with abor-

tion. I cannot understand it.

**Senator John Gilroy:** That is a desperate statement, even by Senator Leyden's standards.

**An Cathaoirleach:** Senator Gilroy, you have spoken already.

**Senator Terry Leyden:** It is not. I know, because I was in the Council of Europe when a proposal was brought forward to extend abortion on a liberal basis in Europe. Deputy Joe Costello abstained on the vote. He would not vote against it but I did and can prove it. Let us be quite honest about the matter. That has been the ideology of the Irish Labour Party for some time. That is fact and the party is proud of it. Do not worry. Senator Bacik has promoted the idea all of the time and is always doing so.

**Senator Ivana Bacik:** A Chathaoirligh, there have been enough personal attacks so let us stick to facts.

**Senator Terry Leyden:** I wish to make a final point. There is no provision in section 9 to consult the person responsible or father. We do not know the circumstances so I ask Senators not to jump to claims of rape, incest and everything else. Natural situations do arise and I will not mention the court case that is taking place. There is no regard for the person, whatever the circumstance, who is responsible for conceiving the foetus. He could be very suicidal if the child is aborted but the Government side may not like to hear that point. At the end of the day, they are all glad to be here and glad to be alive. They are all very glad to have experienced life so please do not deprive somebody else of life.

**Senator Marie Moloney:** What about the mother?

**Senator Terry Leyden:** There should be equal rights for the mother and the child. Equal rights.

**Senator John Crown:** I am very disappointed to hear that we will finish at 10 p.m. and that all of the amendments will not be heard. That is very regrettable.

I shall try to speak to the amendment at hand. Again, we have heard a great deal about evidence-based medicine and the fact there is no evidence basis in medicine, allegedly, for abortion ever being a treatment for a pregnant woman with suicidal intent. I hasten to add, and some of my colleagues have touched on the matter, evidence-based medicine is not something that is decided by legislators. Evidence-based medicine is decided by teams and panels of health care professionals and clinicians after synthesising the data and breached guidelines. Some evidence-based medicine comes from a very high level of evidence derived from large randomised trials. The default position when such evidence is not available is that the best evidence available is the evidence which there is and it may be anecdotal.

The other critical matter about evidence-based medicine is that it is not immutable, it changes. As I pointed out earlier, there are things that I do now that I did not do one month ago. There are things that I did one month ago that I have stopped doing now. It is not because a legislator told me what I should or should not do but because the evidence has evolved. We are in the a situation where if, in theory, there is no evidence-based medicine for ever - and I mean ever - doing an abortion on a suicidal woman in an attempt to prevent her going through with self-harm it will not happen. One will not get three doctors to agree to do this if they follow evidence-based medicine. Clearly, the subtext here is that there will be deliberate malfeasance

by doctors in collusion with malfeasant women.

**Senator John Gilroy:** Yes.

**Senator John Crown:** No other interpretation can be put forward for this fear that a non evidence-based practice will become widely pursued other than the fact that doctors, uniquely in this circumstance, will suspend their sense of obligation and rigour in interpreting data. We are not talking about doctors flown in to some little fly by night clinic. We are talking about people who are consultants. Trust me, I have said often enough in here that one of the several strengths in our mediocre health system is the people who work in it. We have the best trained nurses and doctors in the world. At senior consultant level in all of the specialties we have an unbelievable winnowing process and only people who have gone through an extraordinary level of selection get to a position where he or she can make decisions. We need to trust them.

What then is the problem? As Senator Gilroy has pointed out, maternal death is extraordinarily rare in all western countries. I stand to be corrected on the following. There have been years in Ireland, and during the ones that I have been here, when there were no maternal deaths in the whole country. None. It is impossible to make the kind of statistical assumptions one needs to make to define an evidence basis for a procedure like this. We have clear evidence - I am sorry but I have tried to stay away from the sad case of Savita Halappanavar and I understand the nuance of the multiple factors that contributed to her tragic death. However, one thing must be said. It was partly an attempt by politicians, judges etc. to give an opinion on what would be the right medical care meant that led to a group of doctors who, I believe, would otherwise have interpreted what would have been the evidence basis feeling constrained from doing so. On the Monday of that poor lady's illness I believe that most doctors, in most parts of the world, would have said she someone who was having an inevitable miscarriage, that the pregnancy could not survive, that the foetus or baby and her precious first born baby would be dead within a matter of hours or days because it could not be saved when the cervix was dilating. I do not want to go into all of the details but Members will know what I mean. It could not have been stopped. The decision was not made to do the manoeuvre which might have resulted in a lesser risk of a potentially fatal infection for her. The understanding of the doctors, on the basis of the legal ambiguity in which they worked, was that they might be breaking the law. That was that, clear and simple. I am not saying that was the only reason. I ask all of those who have told us about evidence-based medicine to please understand that if the doctors had been left alone to practise evidence-based medicine without the fear that was imposed on them by medical amateurs, through a faulty legislative process, the situation may well have been avoided.

I must saying something else because I do not believe that I will get a chance to say it later.

**An Cathaoirleach:** We can only deal with the amendments.

**Senator John Crown:** With the greatest of respect for my dear friend and colleague, Senator Paschal Mooney, whose absolute sincerity on this issue I appreciate, I am delighted that he will withdraw his amendment. The idea that showing any kind of an X-ray or scan to a suicidal person would change him or her from being suicidal is the least evidence-based proposal that I have ever heard. To illustrate what evidence-based medicine is about, people need to understand this point. I am delighted that, wisely and humanely, Senator Mooney took counsel on this matter and decided to withdraw the amendment.

No one who supports the Bill, which includes the suicide clause, claims that doctors must

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consider abortion as a treatment for suicide. Rather, it is saying that if the evidence base at the time the decision must be made – evidence bases change - suggests that it may be appropriate, the doctor will not face prosecution. The only logical reason that people of good faith could be opposed to the Bill was if they believed that it was a licence for deliberate malfeasance. It is on this question that those who oppose the inclusion of the suicide provision need to say whether they believe that women will lie and not one but a whole panel of doctors will collectively and unprecedentedly suspend every critical faculty they have and make the wrong decision for reasons that are wholly malfeasant, not based on their training and clinical evidence.

Various people who have spoken on the Bill have been quoted repeatedly. I will not mention names but the number of Members in this House and the Lower House on the airwaves and in the print media who have expressed opinions is extraordinary. I will stray into the legalities, as everyone else is straying in to the medicine-----

**An Cathaoirleach:** As many Senators still wish to contribute, I cannot allow Senator Crown to move away from the amendments.

**Senator John Crown:** They have ignored the fact that people voted 65:35 in the most clearly worded referendum in the history of the State, on the twelfth amendment to the Constitution, to the effect that we should not exclude suicide.

**Senator Brian Ó Domhnaill:** I have listened carefully to Senator Crown and others. We are nearing the end of the debate, but I oppose the legislation for a simple reason. I have listened to the psychiatrists who gave evidence and contacted me. I have read written observations that clearly outlined that alternative methods to abortion exist for dealing with suicide ideation.

**Senator John Gilroy:** Where they are available.

**Senator Brian Ó Domhnaill:** I will share what Senator Leyden outlined. I have grave reservations about section 9 and am unsure as to whether it can be improved. Senator Healy Eames is genuinely endeavouring to do so in the form of her proposal.

*10 o'clock*

If I gather correctly from Senator Gilroy, everything he said supports where Senator Healy Eames is coming from.

**Senator John Gilroy:** I said the exact opposite.

**Senator Ivana Bacik:** Senator Ó Domhnaill could not have been listening to what Senator Gilroy said.

**Senator Brian Ó Domhnaill:** He outlined there is treatment and other ways of dealing with it and that abortion is a last resort. Why, therefore, is there nothing in the legislation-----

**An Cathaoirleach:** As it is now 10 p.m.,-----

**Senator Brian Ó Domhnaill:** It is giving only one option. It is disgraceful that we are guillotining a Bill that is a matter of life and death.

**An Cathaoirleach:** -----I am required to put the following question in accordance with the Order of the House: “That amendment No. 30 is hereby negatived, that sections 9 to 23, inclusive, the Schedule and the Title are hereby agreed to in Committee and the Bill is, accordingly,

reported to the House without amendment.”

Question put:

The Committee divided: Tá, 33; Níl, 14.	
Tá	Níl
Bacik, Ivana.	Bradford, Paul.
Brennan, Terry.	Daly, Mark.
Burke, Colm.	Healy Eames, Fidelma.
Clune, Deirdre.	Leyden, Terry.
Coghlan, Eamonn.	MacSharry, Marc.
Coghlan, Paul.	Mooney, Paschal.
Conway, Martin.	Mullen, Rónán.
Crown, John.	O'Brien, Darragh.
Cullinane, David.	O'Brien, Mary Ann.
Cummins, Maurice.	O'Donovan, Denis.
D'Arcy, Jim.	Ó Domhnaill, Brian.
D'Arcy, Michael.	Ó Murchú, Labhrás.
Gilroy, John.	Walsh, Jim.
Harte, Jimmy.	Wilson, Diarmuid.
Hayden, Aideen.	
Henry, Imelda.	
Higgins, Lorraine.	
Keane, Cáit.	
Kelly, John.	
Landy, Denis.	
Moloney, Marie.	
Moran, Mary.	
Mulcahy, Tony.	
Mullins, Michael.	
Noone, Catherine.	
O'Donnell, Marie-Louise.	
O'Keeffe, Susan.	
O'Neill, Pat.	
O'Sullivan, Ned.	
Ó Clochartaigh, Trevor.	
Reilly, Kathryn.	
Sheahan, Tom.	
van Turnhout, Jillian.	

Tellers: Tá, Senators Paul Coghlan and Aideen Hayden; Níl, Senators Brian Ó Domhnaill and Diarmuid Wilson.

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Question declared carried.

**An Cathaoirleach:** When is it proposed to take Report Stage?

**Senator Maurice Cummins:** On Monday, 22 July 2013.

Report Stage ordered for Monday, 22 July 2013.

**An Cathaoirleach:** When is it proposed to sit again?

**Senator Maurice Cummins:** Tomorrow at 10.30 a.m.

### **Adjournment Matters**

**Acting Chairman (Senator Lorraine Higgins):** I welcome the Minister of State at the Department of Jobs, Enterprise and Innovation, Deputy John Perry, to the House.

### **Official Languages Act**

**Senator Trevor Ó Clochartaigh:** Gabhaim buíochas leis an Aire Stáit as ucht teacht anseo. Tá aiféala orm é a choinneáil ó Shligeach. I apologise for keeping the Minister of State away from Sligo.

I raise an issue that was brought to my attention recently. The Official Languages Act, which has been in place since 2003, places obligations on semi-State bodies and Departments to introduce language schemes to ensure that citizens who wish to conduct business through the medium of Irish can do so. The 650 bodies covered by the Act include larger organisations such as An Garda Síochána, the Revenue Commissioners, Departments, local authorities and so forth and smaller entities such as the Leader companies and the organisation for the registration of co-operatives, etc. The process to be followed is that the Minister for Arts, Heritage and the Gaeltacht must write to each of the organisations covered by the Act requesting that it implement a language scheme. Once a scheme has been drawn up by the relevant body, it is submitted to the Department for ratification. Once ratified, the Language Commissioner may then proceed to police the scheme, as it were.

This Official Languages Act is important legislation for those who try to do their work through the medium of Irish. It has become clear, however, that there is a significant deficit in the number of bodies which have implemented a scheme. At this point, the Minister has ratified 95 schemes covering 181 public bodies, which means more than 450 organisations have not yet been asked to submit a draft scheme since 2003. Some of the bodies concerned are large, and include the Health Service Executive, RTE and An Post, with which people interact as Gaeilge on a daily basis, and two Departments, namely, An Roinn Caiteachais Phoiblí agus Athchóirithe agus An Roinn Leanaí agus Gnóthaí Óige Phoiblí.

It has been more than seven years since some organisations were asked to submit a draft scheme. It is shocking to learn that of the 95 schemes ratified to date, 71 are out of date, some for three, four and five years. To summarise the position, of the more than 650 public bodies in the State, 450 have not been asked to draft an Irish language scheme and of the 95 language schemes ratified by the Department, 71 or 75% are out of date. If such disregard were to be shown for any other Act, there would be a national outcry.

Strange as it may seem, the specific issue I raise tonight was brought to my attention by a person who has investments with the National Treasury Management Agency, which falls within the remit of the Act. The individual in question has tried to conduct some business with the NTMA. From what I can discern, the Department has not asked the agency to produce a draft Irish language scheme. When does the Minister intend writing to the NTMA requesting that it draft a scheme? When does he expect such a scheme to be ratified and when will ordinary citizens be able to interact as Gaeilge with this State sponsored body?

**Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy John Perry):** I thank Senator Ó Clochartaigh for the opportunity to address the Seanad on the subject of the Official Languages Act 2003. I express my gratitude to Senators for the interest they have shown in this matter.

The Official Languages Act was signed into law on 14 July 2003. This was the first time that the provision of State services in general through Irish was placed on a statutory footing. The aim of the Act is to increase and improve over a period the quantity and quality of services in Irish that public bodies, designated under the Act, provide. In addition to the general obligations on public bodies under the Act regarding communications, publications, stationery, signage, etc., it is as a result of language schemes that are agreed with public bodies that a system is in place to improve the number and standard of services available to the public through Irish. In addition to the general obligations on public bodies under the Act regarding communications, publications, stationery, signage etc., it is as a result of language schemes agreed with public bodies that a system is in place to improve the number and standard of services available to the public through Irish. Some 109 language schemes have been agreed with public bodies since the Official Languages Act came into effect. These schemes cover 194 public bodies in total. Although approximately 600 public bodies come under the Act, the schemes that are in place cover those bodies that have most contact with the public. It should be noted that the provisions of each scheme remain in force until a new scheme is agreed.

To date, the National Treasury Management Agency has not been asked to prepare a scheme under section 11 of the Act. This is because the focus has primarily been on agreeing schemes with bodies that have the most contact with the public. I hope the Senator will appreciate that the National Treasury Management Agency would not fall into that category.

The system of language schemes is a central part of the Act and I understand the Department of Arts, Heritage and the Gaeltacht is committed to operating and improving the system so that it operates effectively across the entire public sector. I understand that staff restructuring was undertaken in the Department of Arts, Heritage and the Gaeltacht earlier in the year, as a result of which extra staff are now dealing specifically with the Official Languages Act.

It should be noted, of course, that there has been a considerable change in the State's economic circumstances since the Act was enacted and there have been large reductions in the budgets provided to public bodies in addition to the moratorium on recruitment. These difficult

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circumstances pose particular challenges for public bodies, particularly with regard to increasing the quality and quantity of the Irish language services they are able to commit to under their language schemes.

Clearly, the language scheme system under the Official Languages Act is not without its faults, and it should be acknowledged that it is a complex process to agree and confirm schemes, particularly in the challenging economic environment we are currently facing. Notwithstanding these difficulties, five schemes have been confirmed to date this year, and approximately 120 draft schemes from public companies are being considered currently. Therefore, I hope there will be an increase in the number of schemes that will be confirmed in the future.

As the Senator will be aware, the Department of Arts, Heritage and the Gaeltacht is currently conducting a review of the Official Languages Act, in accordance with the commitments given in the programme for Government. The review covers all the provisions of the Act, including those relating to language schemes. The objectives of the review are to ensure that the Act is an effective mechanism to support the development of Irish in a cost-effective manner, and that the obligations arising from the Act are appropriate to ensure the satisfactory provision of services in Irish by public bodies which are in line with demand.

A comprehensive review of the legislation has been undertaken by the Department of Arts, Heritage and the Gaeltacht which included a public consultation process, as a result of which approximately 1,600 replies were received. In accordance with the Government's legislative programme, it is hoped that the official languages (amendment) Bill will be published this year, in which provision will be made for the amendments to the Act arising from the review. The appropriate steps are being taken by the Department of Arts, Heritage and the Gaeltacht to draft the heads of Bill and it is hoped that the draft heads will be submitted to the Government as soon as possible. The results of the recommendations received through the consultation process have been analysed and they will be published in due course on the Department's website along with the heads of Bill. The Bill will provide for amendments to the legislation arising from the review. In addition, it will provide for amendments arising from the decision to merge the Office of the Irish Language Commissioner with the Office of the Ombudsman, as specified in the Government's public service reform plan. I trust that this provides sufficient information to the House on the steps that are being undertaken by the Department of Arts, Heritage and the Gaeltacht under the Official Languages Act 2003.

**Senator Trevor Ó Clochartaigh:** I am concerned with part of the answer that indicates that due to budgetary constraints any State body is allowed not to implement the law of the land. The Official Languages Act is the law of the land, whether we like it or not. I cannot think of any other law that any semi-State body would be allowed or ordered not to implement because of budgetary constraints. The use of the phrase "there has been a considerable change in the State's economic circumstances since the Act was enacted" by the Minister of State indicates that the Government is willing to allow semi-state bodies and Departments to turn a blind eye to the law of the land. That is a matter of serious concern and I ask the Minister of State to convey that message to his Cabinet colleagues.

**Deputy John Perry:** I am not overstating the reply. The Minister stated clearly that a new legislative programme is coming on stream. I will certainly bring to the attention of the Minister the concerns expressed by the Senator.

The Seanad adjourned at 10.15 p.m. until 10.30 a.m. on Friday, 19 July 2013.

