# - GENERAL SCHEME - Of A BILL TO REGULATE TERMINATION OF PREGNANCY

27 March 2018

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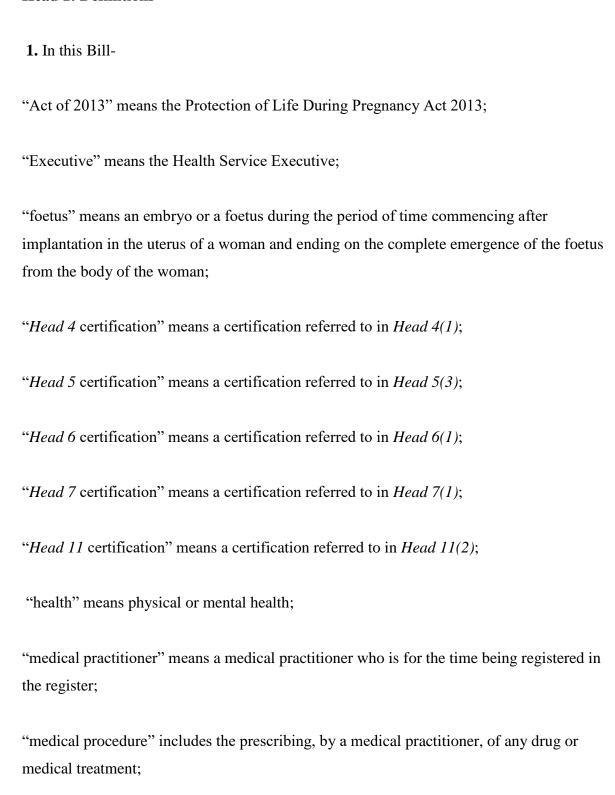
**Short title and commencement** 

**Head 22:** 

#### **Head 1: Definitions**

"Minister" means the Minister for Health;

"obstetrician" means an obstetrician and gynaecologist;



"obstetrician and gynaecologist" means a medical practitioner who is registered in the Specialist Division of the register under the medical speciality of "Obstetrics and Gynaecology";

"prescribed" means prescribed by regulations made under *Head 2*;

"register" means the register of medical practitioners established under section 43 of the Medical Practitioners Act 2007;

"relevant decision" shall be construed in accordance with *Head* 8;

"review" means a review under *Head 11* of a relevant decision;

"review committee", in relation to a relevant decision, means the committee established under  $Head\ 10(1)$  to review that decision;

"termination of pregnancy" means a medical procedure which is intended to end the life of the foetus;

"viability" means the point in a pregnancy at which, in the reasonable opinion of a medical practitioner, the foetus is capable of sustained survival outside the uterus;

"woman" means a female person of any age.

# **Head 2: Regulations**

- **2.** (1) The Minister may by regulations provide for any matter referred to in this Bill as prescribed or to be prescribed.
- (2) Without prejudice to any provision of this Bill, regulations under this Head may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Every regulation under this Bill shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

# **Head 3: Expenses**

**3.** The expenses incurred by the Minister in the administration of this Bill 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.

#### **Head 4: Risk to life or health**

- **4.** (1) It shall be lawful to carry out a termination of pregnancy in accordance with this Head where 2 medical practitioners certify that, in their reasonable opinion formed in good faith -
  - (a) there is a risk to the life of, or of serious harm to the health of, the pregnant woman.
  - (b) the foetus has not reached viability, and
  - (c) it is appropriate to carry out the termination of pregnancy in order to avert that risk.
- (2) Of the 2 medical practitioners referred to in *subhead* (1)-
  - (a) one shall be an obstetrician, and
  - (b) the other shall be an appropriate medical practitioner.
- (3) The termination of pregnancy to which the certification relates shall be carried out—
  - (a) by the obstetrician referred to in *subhead* (2)(a), or
  - (b) by another obstetrician, where the medical practitioners referred to in *subhead*(1) have made such arrangements as may be necessary for the carrying out of the termination of pregnancy by that obstetrician.
- (4) Nothing in this Head shall affect the operation of *Head 7*.

# **Head 5: Risk to life or health in emergency**

- **5.** (1) Notwithstanding the generality of  $Head\ 4$ , or any determination made or pending pursuant to  $Head\ 11$  of an application under  $Head\ 8(2)$ , it shall be lawful to carry out a termination of pregnancy in accordance with this Head, where a medical practitioner is of the reasonable opinion formed in good faith that -
  - (a) there is an immediate risk to the life of, or of serious harm to the health of, the pregnant woman, and
  - (b) it is immediately necessary to carry out the termination of pregnancy in order to avert that risk.
- (2) A termination of pregnancy referred to in *subhead* (1) shall be carried out by the medical practitioner referred to in that *subhead*.
- (3) Where a medical practitioner
  - (a) subject to *paragraph* (b), proposes to carry out a termination of pregnancy referred to in *subhead* (1), he or she shall, before carrying out termination of pregnancy concerned, certify the matters referred to in *subhead* (1)(a) and (b), or
  - (b) proposes to carry out the termination of pregnancy without first making such certification because it is not practicable to do so, he or she shall make such certification as soon as may be but, in any event, not later than 72 hours after the carrying out of the termination of pregnancy concerned.

# Head 6: Condition likely to lead to death of foetus

- **6.** (1) It shall be lawful to carry out a termination of pregnancy in accordance with this Head where 2 medical practitioners certify that, in their reasonable opinion, there is present a condition affecting the foetus that is likely to lead to the death of the foetus either before birth or shortly after birth.
- (2) Of the 2 medical practitioners referred to in *subhead* (1)-
  - (a) one shall be an obstetrician, and
  - (b) the other shall be an appropriate medical practitioner.
- (3) The termination of pregnancy to which the certification relates shall be carried out—
  - (a) by the obstetrician referred to in *subhead* (2)(a), or
  - (b) by another obstetrician, where the medical practitioners referred to in *subhead*(1) have made such arrangements as may be necessary for the carrying out of the termination of pregnancy by that obstetrician.
- (4) Nothing in this Head shall affect the operation of *Head 7*.

# **Head 7: Early pregnancy (12 weeks)**

- 7. (1) It shall be lawful to carry out a termination of pregnancy in accordance with this Head where a medical practitioner certifies, that in his or her reasonable opinion formed in good faith, the pregnancy concerned has not exceeded 12 weeks of pregnancy.
- (2) It shall be necessary for 72 hours to elapse between the time of the certification referred to in *subhead* (1) and the termination of pregnancy being carried out.
- (3) The medical practitioner referred to in *subhead* (1) shall make such arrangements as he or she shall deem to be necessary for the carrying out of the termination of pregnancy as soon as may be after the period referred to in *subhead* (2) has elapsed but before the pregnancy has exceeded 12 weeks of pregnancy.
- (4) For the purposes of this Head, "12 weeks of pregnancy" shall be construed in accordance with the medical principle that pregnancy is dated from the first day of a woman's last menstrual period.

# Head 8: Application for review of medical opinion

- **8.** (1) Where a medical practitioner, who has been requested to give an opinion in respect of a pregnant woman in the circumstances referred to in  $Head\ 4(1)$  or 6(1) -
  - (a) does not give an opinion, or
  - (b) gives an opinion but not such as would be required for the purposes of a *Head 4* certification or *Head 6* certification, as the case may be,

(in this Bill referred to as a "relevant decision") he or she shall inform the pregnant woman in writing that she may make an application in accordance with *subhead* (2) to review the relevant decision.

(2) A pregnant woman, or a person acting on her behalf, may make an application in the prescribed form and manner to the Executive for a review of a relevant decision.

# Head 9: Establishment of a review panel, etc.

- **9.** (1) Subject to *subhead* (2), the Executive shall establish and maintain a panel of medical practitioners appointed for such term and on such conditions as the Executive determines.
- (2) The membership of the review panel shall consist only of medical practitioners and the Executive shall revoke the appointment of a member of the panel who ceases to be a medical practitioner.

# Head 10: Establishment of review committee, etc.

- **10**. (1) As soon as may be but, in any event, not later than 3 days from the date on which it receives an application under *Head 8(2)*, the Executive shall establish and convene (or cause to be convened) a committee, the membership of which shall, subject to *subheads (2)* and *(3)* be drawn from the review panel established under *Head 9(1)*, to review the relevant decision that is the subject of the application.
  - (2) A review committee shall consist of—
    - (a) an obstetrician, and
    - (b) an appropriate medical practitioner.
  - (3) A medical practitioner shall be disqualified from sitting on the review committee where he or she has previously been consulted by the pregnant woman in relation to the matter that is the subject of the relevant decision to be reviewed by the committee.
  - (4) For the purposes of this Bill, a relevant decision which falls within *paragraph* (a) of *Head* 8(1) shall be treated as if it were a refusal to give an opinion such as would be required for the purposes of a *Head* 4 certification (where the circumstances referred to in *Head* 4 (1) apply) or a *Head* 6 certification (where the circumstances referred to in *Head* 6 (1) apply).

#### Head 11: Review of relevant decision

- 11. (1) The review committee shall complete its review of a relevant decision as soon as may be but, in any event, not later than 7 days from the date on which the review committee was established and convened under Head 10(1).
  - (2) Where the review committee has completed its review of the relevant decision and is satisfied that in its reasonable opinion formed in good faith—
    - (a) (i) there is a risk to the life of, or of serious harm to the health of, the pregnant woman,
      - (ii) the foetus has not reached viability, and
      - (iii) it is appropriate to carry out the termination of pregnancy referred to in Head 4(1) in order to avert that risk, or
    - (b) there is present a condition affecting the foetus that is likely to lead to the death of the foetus either before birth or shortly after birth,

the committee shall jointly certify that it is so satisfied and, as soon as may be, give notice in writing of its determination to the woman (or, if the application under Head 8(2) concerned was made by another person on behalf of the woman, to that other person) and the Executive.

- (3) The certifying obstetrician shall make such arrangements as may be necessary for the carrying out of the termination of pregnancy to which the certification under this Head relates.
- (4) Where the review committee has completed its review of the relevant decision and is not satisfied as referred to in *subhead* (2), it shall, as soon as may be, give notice in writing of its determination to the pregnant woman (or, if the application under *Head* 8(2) concerned was made by another person on behalf of the woman, to that other person) and the Executive.

#### (5) In this Head-

"certifying obstetrician", in relation to a certification, means the obstetrician who made the certification; "jointly certify", in relation to the review committee, means that all of the members of the committee make the certification concerned.

#### **Head 12: Procedures of review committee**

- 12. (1) The pregnant woman shall be entitled to be heard by the review committee and, where the woman or a person acting on her behalf informs the committee that she wishes to be heard, the committee shall make such arrangements as may be necessary in order to hear the woman or a person acting on her behalf.
  - (2) The review committee may, for the purposes of its review of a relevant decision, by direction in writing require a medical practitioner or former medical practitioner at such time and place as may be specified in the direction—
    - (a) to produce to the committee such documents or other records in his or her possession or control as may be so specified, or
    - (b) to attend before the committee and to give to the committee such assistance and answer such questions as it may require.
  - (3) The review committee may, subject to the provisions of this Bill, determine its own procedures.
  - (4) The Executive shall provide, or arrange for the provision of, such administrative facilities as may be necessary to enable the review committee to perform its functions.
  - (5) A member of the review committee shall be paid by the Executive out of funds at its disposal such remuneration and such allowances for expenses as the Minister may, with the approval of the Minister for Public Expenditure and Reform, determine.
  - (6) A person who attends the review committee pursuant to a direction under *subhead* (2) shall be paid by the Executive out of funds at its disposal such remuneration and such allowances for expenses as the Minister may, with the approval of the Minister for Public Expenditure and Reform, determine.
  - (7) A person who fails to comply with a direction under *subhead* (2) shall be guilty of an offence and shall be liable on summary conviction to a class C fine.

by the Executive			

# **Head 13: Report by Executive on operation of reviews**

- 13. (1) The Executive shall, not later than 30 June in each year, prepare and submit to the Minister a report on the operation of reviews under this Bill in the immediately preceding year, and the Minister shall, as soon as may be after receiving the report, cause copies of the report to be laid before each House of the Oireachtas.
  - (2) Notwithstanding the generality of *subhead* (1), a report under this Head shall, in respect of the year that is the subject of the report, include information on—
    - (a) the total number of applications for review received by the Executive,
    - (b) the number of reviews carried out,
    - (c) in the case of the reviews carried out, the reason why the review was sought,
    - (d) the outcome of the reviews.
  - (3) In preparing a report under this Head, the Executive shall exclude from the report information that identifies, or that could reasonably lead to the identification of—
    - (a) a woman who has made an application under  $Head \ 8(2)$  or in respect of whom such an application has been made by a person acting on her behalf, or
    - (b) a medical practitioner who has
      - (i) made a relevant decision,
      - (ii) carried out a review, or
      - (iii) carried out a termination of pregnancy following a review.
  - (4) The Executive shall arrange for a report laid before both Houses of the Oireachtas in accordance with *subhead* (1) to be published in such form and manner as it thinks appropriate as soon as practicable after copies of the report are so laid.

# **Head 14: Consent**

**14.** Nothing in this Bill shall operate to affect any enactment or rule of law relating to consent to medical treatment.

# **Head 15: Conscientious objection**

- **15.** (1) Subject to *subheads* (2) and (3), nothing in this Bill shall be construed as obliging any medical practitioner, nurse or midwife to carry out, or to assist in carrying out, a termination of pregnancy referred to in  $Head\ 4(1)$ , 6(1) or 7(1) to which he or she has a conscientious objection.
- (2) Subhead (1) shall not be construed to affect any duty to participate in a termination of pregnancy referred to in *Head 5(1)*.
- (3) A person who has a conscientious objection referred to in *subhead* (1) shall, as soon as may be, make such arrangements for the transfer of care of the pregnant woman concerned as may be necessary to enable the woman to avail of the termination of pregnancy concerned.

#### (4) In this Head-

"Act of 2011" means the Nurses and Midwives Act 2011;

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

"nurse" means a person whose name is for the time being registered in the nurses division of the register of nurses and midwives established under section 46 of the Act of 2011.

# **Head 16: Certification**

- **16.** (1) A certification shall—
  - (a) be made in the prescribed form and manner, and
  - (b) contain the prescribed information (which shall include the clinical grounds for carrying out the termination of pregnancy to which the certification relates).
  - (2) In this Head, "certification" means a *Head 4* certification, *Head 5* certification, *Head 6* certification, *Head 7* certification or *Head 11* certification and includes a copy of any such certification.

#### **Head 17: Notifications**

- **17.** (1) Where a termination of pregnancy referred to in *Head 4*, 5, 6 or 7 is carried out in respect of a pregnant woman the medical practitioner who carried out the termination of pregnancy shall—
  - (a) keep a record, in the prescribed form and manner, of-
    - (i) the carrying out of the termination of pregnancy, and
    - (ii) the information specified in *subhead* (2), and
  - (b) not later than 28 days after the termination of pregnancy has been carried out, forward, or cause to be forwarded, a copy of that record, or such part of that record as may be prescribed, to the Minister in such manner as may be prescribed.
- (2) The following information is specified for the purposes of *subhead* (1)(a):
  - (a) the Medical Council registration number attached to the registration of the medical practitioner who carried out the termination of pregnancy referred to in *Head* 4(1), 5(1), 6(1), or 7(1), as the case may be, in respect of the pregnant woman concerned;
  - (b) whether the termination of pregnancy was carried out in respect of the pregnant woman pursuant to a *Head 4* certification, *Head 5* certification, *Head 6* certification or *Head 7* certification and the Medical Council registration number attached to the registration of each of the medical practitioners who made the certification concerned;
  - (c) the county of residence, or in the case of a woman who resides outside the State, the place of residence, of the pregnant woman who had the termination of pregnancy;
  - (d) the date on which the termination of pregnancy was carried out in respect of the pregnant woman.
- (3) The Minister shall, not later than 30 June in each year, prepare a report on the notifications received by him or her under this Head during the immediately preceding year, and shall, as soon as may be after preparing the report, cause copies of the report to be laid before each House of the Oireachtas.

- (4) The Minister shall arrange for a report laid before both Houses of the Oireachtas in accordance with *subhead* (3) to be published in such form and manner as he or she thinks appropriate as soon as practicable after copies of the report are so laid.
- (5) In preparing a report under this Head, the Minister shall exclude from the report information that identifies, or that could reasonably lead to the identification of—
  - (a) a woman who is the subject of a notification under this Head,
  - (b) a medical practitioner referred to in subhead (2)(a), and
  - (c) a medical practitioner referred to in subhead (2)(b).
- (6) In this Head, "notification" means a copy of a record, or a part thereof, that is forwarded or caused to be forwarded to the Minister under *subhead* (1).

#### **Head 18: Offences**

- **18.** (1) It shall be an offence to intentionally end the life of a foetus otherwise than in accordance with the provisions of this Bill.
- (2) Subhead (1) shall not apply to a pregnant woman in respect of her own pregnancy.
- (3) A person who is guilty of an offence under this Head shall be liable
  - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or to both, or
  - (b) on indictment to a fine or imprisonment for a term not exceeding 14 years, or to both.
- (4) A prosecution for an offence under this Head may be brought only by or with the consent of the Director of Public Prosecutions.

# **Head 19: Offence by body corporate**

- **19.** (1) Where an offence under this Bill is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (2) Where the affairs of a body corporate are managed by its members, *subhead* (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

# **Head 20: Repeals**

# **20.** The following are repealed:

- (a) section 16 of the Censorship of Publications Act 1929;
- (b) section 7(b) of the Censorship of Publications Act 1946;
- (c) the Regulation of Information (Services Outside the State for Termination of Pregnancies) Act 1995;
- (d) the Act of 2013.

# **Head 21: Transitional provisions**

- **21.** (1) Notwithstanding the repeal of the Act of 2013 by *Head 20(d)*-
  - (a) a review committee established under section 12 of that Act before the commencement date which, on that date, has not completed a review of a relevant decision within the meaning of that Act shall continue in operation as if it had been established under *Head 10* and, for that purpose, *Heads 11* and *12* shall apply and have effect in relation to the review by the committee,
  - (b) the Executive shall, in accordance with section 15 of that Act, not later than 6 months after the commencement date, prepare and submit to the Minister a final report on the operation of Chapter 2 of Part 2 of that Act in respect of such period as has not already been the subject of a report to the Minister.
- (2) In this Head, "commencement date" means the date on which  $Head\ 20(d)$  comes into operation.

# **Head 22: Short title and commencement**

- 22. (1) This Bill may be cited as the Regulation of Termination of Pregnancy Bill 2018.
- (2) This Bill shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.