

GENERAL SCHEME OF A BILL ENTITLED
HEALTH (REGULATION OF TERMINATION OF PREGNANCY) BILL
2018

ARRANGEMENT OF HEADS

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Head 1: Definitions

1. In this Bill-

“Act of 2007” means the Medical Practitioners Act 2007;

“Act of 2013” means the Protection of Life During Pregnancy Act 2013;

“appropriate medical practitioner”, in relation to a medical practitioner and his or her assessment of the risk to the life, or of serious harm to the health, of a pregnant woman, means a medical practitioner appropriate to the care or treatment of the woman in respect of the risk;

“Executive” means the Health Service Executive;

“foetus”, in relation to a pregnancy, means an embryo or a foetus during the period of time commencing after implantation in the uterus of a woman and ending on the complete emergence of the foetus from the body of the woman;

“*Head 4* certification” means a certification referred to in *Head 4(1)*;

“*Head 5* certification” means a certification referred to in *Head 5(3)*;

“*Head 6* certification” means a certification referred to in *Head 6(1)*;

“*Head 7* certification” means a certification referred to in *Head 7(1)*;

“*Head 11* certification” means a certification referred to in *Head 11(2)*;

“health” means physical or mental health;

“medical practitioner” means a medical practitioner who is for the time being registered in the register;

“medical procedure” includes the prescribing, by a medical practitioner, of any drug or medical treatment;

“medical specialty” means a medical specialty recognised by the Medical Council under section 89 of the Act of 2007;

“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 specialty 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 Act of 2007;

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

“relevant specialty”, in relation to a medical practitioner and his or her assessment of the presence of a condition affecting a foetus that is likely to lead to the death of the foetus either before, or within 28 days of, birth, means a medical specialty –

- (a) in respect of which the medical practitioner is registered in the Specialist Division of the register, and
- (b) relevant to the diagnosis, care or treatment of such a condition;

“review”, in relation to a relevant decision, means a review under *Head 11*;

“review committee”, in relation to a relevant decision, means the committee established under *Head 10(1)* to review that decision;

“review panel” means the panel established under *Head 9(1)*;

“termination of pregnancy”, in relation to a pregnant woman, means a medical procedure which is intended to end the life of a foetus;

“viability” means the point in a pregnancy at which, in the reasonable opinion of a medical practitioner, the foetus is capable of survival outside the uterus without extraordinary life-sustaining measures;

“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) A termination of pregnancy may be carried out 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, or of serious harm to the health, of the pregnant woman,
- (b) the foetus has not reached viability, and
- (c) it is appropriate to carry out the termination of pregnancy in order to avert the risk referred to in *paragraph (a)*.

(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.

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)*, a termination of pregnancy may be carried out in accordance with this Head by a medical practitioner who is of the reasonable opinion formed in good faith that –

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

(2) Where a medical practitioner proposes to carry out a termination of pregnancy referred to in *subhead (1)*, he or she shall certify the matters referred to *paragraphs (a) and (b)* of that subhead -

- (a) before carrying out the termination of pregnancy concerned, or
- (b) where it is not practicable to do so before carrying out the termination of pregnancy, as soon as may be but, in any event, not later than 3 days after the carrying out of the termination of pregnancy concerned.

Head 6: Condition likely to lead to death of foetus

6. (1) A termination of pregnancy may be carried out in accordance with this Head where 2 medical practitioners certify that, in their reasonable opinion formed in good faith, there is present a condition affecting the foetus that is likely to lead to the death of the foetus either before, or within 28 days of, birth.

(2) Of the 2 medical practitioners referred to in *subhead (1)*-

(a) one shall be an obstetrician, and

(b) the other shall be a medical practitioner of a relevant specialty.

(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.

Head 7: Early pregnancy

7. (1) A termination of pregnancy may be carried out 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) A termination of pregnancy shall not be carried out in accordance with this Head unless a period of not less than 3 days has elapsed from the date of certification referred to in *subhead (1)*.

(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) Nothing in *Head 4, 5 or 6* shall affect the operation of this Head.

(5) For the purposes of this Head, “12 weeks of pregnancy” shall be construed in accordance with the medical principle that pregnancy is generally dated from the first day of a woman’s last menstrual period.

Head 8: Application for review

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 an application may be made 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 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 for the purposes of the establishment of a review committee in relation to a relevant decision.

(2) The membership of the review panel shall consist of -

(a) appropriate medical practitioners who are registered in the Specialist Division of the register, and

(b) medical practitioners of relevant specialties.

(3) The Executive shall revoke the appointment of a member of the panel who ceases to be a medical practitioner referred to in *subhead (2)*.

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 to review the relevant decision that is the subject of the application.

(2) A review committee shall consist of—

(a) an obstetrician, and

(b) in the case of —

(i) a review of a relevant decision which relates to the circumstances referred to in *Head 4(1)*, an appropriate medical practitioner, or

(ii) a review of a relevant decision which relates to the circumstances referred to in *Head 6(1)*, a medical practitioner of a relevant specialty.

(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.

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 in respect of a pregnant woman and is of the reasonable opinion formed in good faith that —

(a) (i) there is a risk to the life, or of serious harm to the health, of the pregnant woman,

(ii) the foetus has not reached viability, and

(iii) it is appropriate to carry out a termination of pregnancy in order to avert the risk referred to in *subparagraph (i)*, or

(b) there is present a condition affecting the foetus that is likely to lead to the death of the foetus either before, or within 28 days of, birth,

the committee shall jointly certify the matters referred to in *paragraph (a)* or *(b)*, as the case may be, 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 obstetrician who made the certification shall make such arrangements as may be necessary for the carrying out of the termination of pregnancy to which the *Head 11* certification 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, “jointly certify”, in relation to the review committee, means that both of the members of the committee make the certification concerned.

Head 12: Procedures of review committee

12. (1) 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 the committee may reasonably require and 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 reasonably require.

(2) Where a pregnant 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.

(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 (1)* 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 without reasonable excuse to comply with a direction under *subhead (1)* shall be guilty of an offence and shall be liable on summary conviction to a class C fine.

(8) Summary proceedings for an offence under *subhead (7)* may be brought and prosecuted 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 under *Head 8(2)* 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, and
- (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 for review under *Head 8(2)* or a person who has made an application on her behalf, or
- (b) a medical practitioner who has –
 - (i) made a relevant decision,
 - (ii) carried out a review,
 - (iii) complied with a direction under *Head 12(1)* or otherwise assisted a committee in a review, or
 - (iv) 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 participate in carrying out, a termination of pregnancy in accordance with *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 in accordance with *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.

Head 17: Notifications

17. (1) Where a termination of pregnancy is carried out in accordance with *Head 4, 5, 6* or 7, 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)(ii)*:

- (a) the Medical Council registration number attached to the registration of the medical practitioner who carried out the termination of pregnancy in accordance with *Head 4(1), 5(1), 6(1), or 7(1)*, as the case may be;
- (b) whether the termination of pregnancy was carried out 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 in respect of whom the termination of pregnancy carried out;
- (d) the date on which the termination of pregnancy was carried out.

(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 medical practitioner referred to in *subhead (2)(a)* or *(b)*, and

(b) a woman referred to in *subhead (2)(c)*.

(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: Prohibition against receiving certain payments or rewards or agreeing to do so

18. (1) A person who engages in or holds himself or herself out as giving information, advice or counselling to members of the public in relation to termination of pregnancy shall not receive or agree to receive, in consideration of the termination of a pregnancy within or outside the State or the making of any arrangements in relation to the termination of a pregnancy within or outside the State, any payment or other reward.

(2) *Subhead (1)* shall not apply to a person in respect of reasonable costs and expenses related to their functions, including reasonable fees paid as remuneration for professional services.

(3) A person who contravenes *subhead (1)* shall be guilty of an offence.

(4) A person who is guilty of an offence under *subhead (3)* shall be liable on summary conviction to a class A fine.

Head 19: Offences

19. (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 20: Offence by body corporate

20. (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 21: Repeals

21. The following are repealed:

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

Head 22: Transitional provisions

22. (1) Notwithstanding the repeal of the Act of 2013 by *Head 21(e)*-

- (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 21(e)* comes into operation.

Head 23: Short title and commencement

23. (1) This Bill may be cited as the Health (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, and for the repeal of different enactments or provisions of enactments effected by *Head 21*.