

NWCI Information Brief

Protection of Life during Pregnancy Bill 2013

The General Scheme of the Protection of Life during Pregnancy Bill 2013 was published on April 30th 2013. The publication of the Bill is the response of the State to its obligations arising from the European Court of Human Rights Judgement in the case of A, B and C v. Ireland in 2010.

The following is an outline of the main elements of the Bill. The NWCI will provide an analysis of the Bill for all members in the coming weeks.

Head 1 Interpretation

Head 1 provides an interpretation of the key terms associated with the Bill. Key ones are:

- **Appropriate location** – outside of emergencies, all abortions will take place in ‘appropriate locations’. These are the 19 public obstetric units across the country – 16 of which are managed by the HSE and three of which are voluntary maternity hospitals;
- **Unborn** as it relates to human life, stating that it means following implantation until such time as it has completely proceeded in a living state from the body of the women;
- **Reasonable opinion** – doctors are required to formulate a reasonable opinion based on good faith and having regard to protect and preserve unborn human life where practicable.

Head 2 Risk of loss of life from physical illness, not being a risk of self-destruction

Head 2 provides that it is not an offence to carry out a medical procedure that results in unborn life being ended where:

- That procedure is carried out by a registered medical practitioner at an appropriate location, and
- The procedure is jointly certified by **two** medical practitioners that
 - There is a real and substantial risk of loss of the pregnant woman’s life (other than by self-destruction); and
 - In their reasonable opinion, this risk can only be averted by the procedure.

One of the medical practitioners has to be an obstetrician/gynaecologist employed at the location. If possible, one of the medical practitioners has to consult with the woman’s GP. It will always be a matter for the woman to decide whether she wants to proceed.

It is not necessary for the medical practitioners to be of the opinion that the risk to the woman’s life is immediate or inevitable – as this approach insufficiently vindicates the pregnant woman’s right to life.

Medical guidelines from the relevant professional Colleges for their members on the operation of the legislation will be required to guide this and the other circumstances..

Head 3 Risk of loss from physical illness in a medical emergency

Head 3 allows for one doctor to certify the need for a medical procedure as a result of which unborn human life is ended where the procedure is carried out by a medical practitioner and he/she believes there is an immediate risk of loss of the pregnant woman’s life other than by way of self-

destruction and the medical procedure is (in her/his reasonable opinion) necessary to save the life of the woman.

The notes state that doctors should not be prevented from saving a woman's life in a situation of acute emergency because, for example, the required number of doctors are not available to certify or the woman is in a facility that is not deemed to be an appropriate location.

Head 4 Risk of loss of life from self-destruction

Head 4 deals with the issue of suicide (self-destruction is the term used). In these circumstances, a woman presenting must be assessed by **three medical practitioners**, one obstetrician/gynaecologist who must be employed at the appropriate location and two psychiatrists, one of whom must be attached to the institution where such a procedure is carried out. The three must jointly (unanimously) certify in good faith that:

- There is a real and substantial risk of loss of the pregnant woman's life by way of self-destruction, and
- In their reasonable opinion, this risk can be averted only by that medical procedure.

At least one of the three doctors should consult with the woman's GP if practicable. As above, it is **not necessary for the medical practitioners to be of the opinion that the risk to the woman's life is immediate or inevitable** – as this approach insufficiently vindicates the pregnant woman's right to life.

Heads 6 - 9 Formal Medical Review Procedures

If a woman wants to appeal against a decision she (or a person acting on her behalf) will have to apply in writing to the HSE to have her case reviewed. The HSE will establish and maintain a panel of appropriate medical practitioners. A committee to be drawn from this panel will be convened within 7 days. No later than 7 days after being convened, the committee will review the case and form an opinion in good faith. This decision will then be communicated to the woman and the HSE.

Where the risk arises from physical illness (not self-destruction), the committee will consist of an obstetrician/gynaecologist and one other approved medical practitioner.

Where the case relates to loss of life through self-destruction, the appeals committee will consist of an obstetrician/gynaecologist and two psychiatrists.

The committee will be empowered to obtain whatever manner of clinical evidence it deems necessary (failure to provide the evidence can be punished by a fine of up to €2,500) and to call any medical personnel to give evidence. The woman appealing (or someone authorised to act on her behalf) will have the right to address the committee.

Head 12 Conscientious Objection

No medical practitioner, nurse or midwife will be forced to carry out or assist in procedures against which they have a conscientious objection. However this right is allocated to individuals and not institutions and an institution cannot refuse to provide lawful termination to women on these grounds. Health professionals will have a duty to ensure that another colleague takes over the care of the patient.

Head 18 Repeal and Consequential Amendments

Head 18 provides for the repeal of Sections 58 and 59 of the Offences Against the Person Act 1981.

Head 19 Offence

Head 19 restates the general prohibition of abortion in the State in 'clear, modern' terms. It provides that it shall be an offence for a person to do any act with the intent to destroy unborn human life and a person who is guilty under this head will be liable on conviction to a fine or imprisonment for up to 14 years or both.

The penalty of up to 14 years imprisonment may apply to any person, including the pregnant woman. It is thought to be inequitable to have a penalty for the person performing the termination but none for the woman undergoing the procedure.

Other Heads:

- require that medical records are maintained and there are annual reports to the Department of health;
- Reaffirm the right to travel;