

Appendix 2

Policy Paper

Regulation of Termination of Pregnancy

Approved and published by Government on 8th March 2018

Introduction

The Joint Oireachtas Committee published its **Report on the Eighth Amendment of the Constitution**, on Wednesday 20th December 2017. The Committee's Report reflected the majority position of its membership with dissenting positions and voting records set out on Appendix 4 of the Committee's Report.

On the 29th of January 2018, the Government approved the holding of a referendum on Article 40.3.3 before the end of May 2018, subject to the timely passage of a Constitutional Amendment Bill on the matter by the Houses of the Oireachtas.

It will be a matter for the Irish people to consider and determine by way of Referendum whether or not to amend the Constitution. This paper outlines policies which the Government decided it would seek to give effect to in a General Scheme of a Bill regulating termination of pregnancy in Ireland should the proposed referendum be passed. The policies outlined in this paper would only be relevant in the event that the proposed referendum on Article 40.3.3 is passed.

In order to transform these policies into a General Scheme, these policies will require further scrutiny, refinement and definition taking account of legal advice from the Office of the Attorney General.

Policy issue: Termination of pregnancy on the grounds of a risk to health

Policy 1: That termination of pregnancy on the grounds of a risk to the health (which would include risk to the life) of a pregnant woman would be provided for in the General Scheme.

Policy 2: That the General Scheme would make no distinction between a risk to the physical or mental health of a woman.

Policy 3: That two appropriate (i.e. appropriate to the clinical circumstances) medical practitioners would be required to assess access to termination of pregnancy on the grounds of a risk to the health of a pregnant woman.

Policy issue: Termination of pregnancy on the grounds of a risk to health in an emergency

Policy 4: That the General Scheme would make provision for one medical practitioner to terminate a pregnancy where an emergency risk to health arises.

It is noted that section 8 of the Protection of Life During Pregnancy Act, 2013 makes provision for termination of pregnancy by one medical practitioner where a medical practitioner believes in good faith that there is an immediate risk to a woman's life, and, in his or her reasonable opinion, termination is immediately necessary in order to save the woman's life.

Policy issue: Fetal condition likely to lead to death before or shortly after birth

Policy 5: That termination of pregnancy on the grounds of a fetal condition which is likely to lead to death before or shortly after birth would be provided for in the General Scheme.

Policy 6: That two appropriate (i.e. appropriate to the clinical circumstances) medical practitioners would be required to enable access to termination of pregnancy on the grounds of a fetal condition which is likely to lead to death before or shortly after birth.

Policy issue: Termination before 12 weeks of pregnancy

Policy 7: That termination of pregnancy up to 12 weeks of pregnancy without specific indication would be provided for in the General Scheme.

Policy 8: That a time period would be required to elapse between the initial assessment by a medical practitioner and the a termination of pregnancy being carried out.

Policy issue: Gestational limits for termination of pregnancy

Policy 9: That termination of pregnancy for a fetal condition likely to lead to death before or shortly after birth or for maternal health should not have a gestational limit in the General Scheme.

Policy issue: Definition of medical practitioners

Policy 10: That the definition of appropriate medical practitioners in the General Scheme would include all registered medical practitioners on the Medical Council register.

Policy issue: Certification of termination of pregnancy

Policy 11: That the General Scheme would require that termination of pregnancy should be certified by the appropriate medical practitioner(s) in all cases.

It is noted that section 7, 8 and 9 of the Protection of Life During Pregnancy Act, 2013 each set out a certification process to be undertaken by the appropriate medical practitioner

Policy issue: Notification of termination of pregnancy to Minister for Health

Policy 12: That the General Scheme would require that termination of pregnancy be notified to the Minister for Health by the appropriate medical practitioner.

It is noted that Section 20 of the Protection of Life During Pregnancy Act, 2013 requires that each termination of pregnancy carried out under the Act be notified to the Minister for Health.

Policy issue: Ensuring timely access to termination of pregnancy services

Policy 13: That the General Scheme would include provision for a formal review process for a woman in certain defined circumstances.

It is noted that Section 10 of the Protection of Life During Pregnancy Act, 2013 established a formal mechanism whereby a woman can seek a review of the clinical assessment made by the original treating medical practitioner or team where their assessment is that the woman does not require a termination, or when the woman has been unable to obtain an opinion in this regard.

Policy issue: Conscientious objection

Policy 14: That the General Scheme would provide for conscientious objection in line with that provided for in the Protection of Life During Pregnancy Act, 2013.

It is noted that Section 17 of the Protection of Life During Pregnancy Act, 2013 provides a right to conscientious objection for medical and nursing personnel.

Policy issue: The right to travel and to information

Policy 15: That the General Scheme would include a clause confirming that nothing in the legislation would limit or interfere with the right to travel or to information.

It is noted that Section 18 of the Protection of Life During Pregnancy Act, 2013 confirms that nothing in that Act shall operate to limit the freedom to travel and freedom to obtain and make available in the State, in accordance with law, information relating to services lawfully available in another state.

Policy issue: Offences and penalties in the General Scheme

Policy 16: That termination of pregnancy would be lawful in the circumstances set out in the grounds provided for in the General Scheme. The General Scheme would retain the offence of intentional destruction of the unborn in defined circumstances.

It is noted that Section 22 of the Protection of Life During Pregnancy Act, 2013 specifies that the intentional destruction of unborn human life is an offence.

Policy 17: A woman who procures or seeks to procure a termination of pregnancy for herself would not be guilty of an offence.

Policy issue: Annual reports by the Minister for Health on notifications

Policy 18: That the Minister for Health would publish an Annual Report of terminations of pregnancy in the preceding year, in line with the provisions of the Protection of Life During Pregnancy Act, 2013.

It is noted that Section 20 of the Protection of Life During Pregnancy Act, 2013 requires the Minister to prepare and publish an Annual Report on the notifications received under the Act in the preceding calendar year.

Policy issue: Annual reports by the HSE on reviews

Policy 19: That there would be a requirement for the HSE to prepare a report each year of reviews undertaken in the preceding year in defined circumstances.

It is noted that Section 15 of the Protection of Life During Pregnancy Act, 2013 requires the Health Service Executive (“HSE”) to submit a report each year to the Minister to cover the operation of the reviews undertaken in accordance with the Act in the preceding year, including the number of reviews carried out and the outcomes of the reviews. These reports are submitted to the Minister for Health for publication.

Policy issue: Consent

Policy 20: That provision for consent similar to that contained in the Protection of Life During Pregnancy Act, 2013 would be provided in the General Scheme.

It is noted that Section 16 of the Protection of Life During Pregnancy Act, 2013 states that that Act does not affect any current legal provisions relating to consent to medical treatment.

Policy Issue: Repeal of 2013 Act

Policy 21: That the Protection of Life During Pregnancy Act, 2013 would be repealed in full.