

## **THIRTY-SIXTH AMENDMENT OF THE CONSTITUTION Bill 2018**

**Dáil Éireann**

**Speech**

Mr Simon Harris TD, Minister for Health

9 March 2018

I move that the Thirty-sixth Amendment of the Constitution Bill be read a second time.

Today, we mark the introduction of a Bill which, if passed, will give the people of Ireland the chance to vote on one of the most debated sections in our Constitution - Article 40.3.3.

I'm conscious we're here sitting on a Friday which is not usual. I thank colleagues for being here when they might have imagined being somewhere else. But I ask, as we sit here in these comfortable seats in this somewhat abstract environment, that the somewhere else we imagine are the ports and airports, whether in Cork, Waterford, Dublin or Shannon, where a woman you could know is waiting to go to another country.

She might be sitting quietly next to the hen party, the businessman or woman, the honeymooners, seeming to be on a similar journey. But she's not. Even if she might have a girlfriend or a partner with her, her journey is a lonely one.

No matter what her circumstances, she cannot access the care she needs in her own country. She may have been raped. She may have words of congratulations and questions about when she is due ringing in her ears even as she knows she is carrying a baby with a fatal condition but feels she cannot say. Do we imagine that whatever her circumstances that this is a journey or a decision she is undertaking lightly? This is a reality today for at least 9 women in Ireland.

I introduce this Bill mindful of the impact of the Eighth Amendment over the 35 years since its insertion. In particular I am mindful of the women whose most painful, most personal stories we know because it forced them to court, to other countries, to courts in other countries.

We are here because of the courage of women like Amanda Mellet & Siobhán Whelan, and so many others, who publicly relived the worst moments of their lives to make us to think about why change is needed in this country.

We stand here knowing the tragedy which befell Savita Halappanavar and her family. We remember you, Savita. We remember Miss X. We remember A, B, C & D. We remember Miss Y. We remember Miss P.

We think, we must think, of all the thousands of women from every county in Ireland who have made those lonely journeys to other countries at times of crisis in their lives. We think of the women who now face these crises alone and unsafe with pills purchased online rather than with the safe, medical care they need. That will be a reality for at least three women today. I have heard from doctors that women are being harmed or at risk as I speak by taking unregulated abortion pills.

I cannot live with that. I cannot ignore that. If this Oireachtas facilitates a referendum I will be casting my ballot for repeal, and asking others to do the same, because I cannot live any longer with a law that

sees a woman or girl who has been brutally raped forced to continue a pregnancy or travel to another country if she cannot.

I cannot live any longer with a law that forces families devastated by a fatal foetal diagnosis to travel to another country and bring home the remains of their much-loved, much-longed for, but lost child in the boot of a car or by courier service.

I cannot live any longer in denial of the realities of the women travelling every day from every county in the country or buying that pill on the Internet.

The Thirty-sixth Amendment of the Constitution Bill is not just about giving the people of Ireland a say on how they believe we should now proceed. In fact it is about giving the people of Ireland a say on how Ireland treats women. It is about how our country treats our sisters, our wives, mothers, daughters, our friends and colleagues at a time when they most need our care.

I don't believe Irish people want their country to be a place that is cold, uncaring and neglectful towards women in crisis but that has been the legacy of the Eighth Amendment. And if we want to change things, we have to make the fundamental change of removing it from our Constitution.

A great proportion of the people who will vote on this proposal, once the Oireachtas passes the Bill before us today, have lived with Article 40.3.3 for their entire reproductive lives.

Many medical practitioners have had to practise under the shadow of Article 40.3.3 for their whole careers.

I think it is time - indeed, long past time - that we give all of those people, indeed all our people, the opportunity to make their voices heard. There will be those who have never had a say. There will be those who have changed their minds and would like to have another say.

There will be those who wish to strongly reaffirm their deeply held views. All of these people deserve a chance to have their voices heard and respected.

Ceann Comhairle, I believe the holding of this referendum is nothing less than a democratic imperative.

In my view, we have a duty as legislators to give the people of Ireland their voice and their vote.

#### Background

It was 1983 when Article 40.3.3<sup>o</sup> of the Constitution was inserted by the Eighth Amendment, with the Thirteenth and Fourteenth Amendments inserted in 1992, expanding the text.

In 1992, the Supreme Court decided in *Attorney General v X* that the Constitution permitted a termination of a pregnancy where there was a real and substantial risk to the life of a woman which could only be removed by terminating the pregnancy.

Yet it was another 21 years before lawful termination of pregnancy was placed on the statute books by the Protection of Life During Pregnancy Act 2013.

However, so many of the difficult and painful realities facing Irish women could not be addressed by that Act owing to the Constitutional block that is the Eighth Amendment.

Our law as it stands permits termination only in situations where a woman will otherwise die.

It does not permit termination, for example, in the heartbreaking cases where there is a diagnosis of a foetal condition likely lead to death before or shortly after birth. It does not allow termination where a woman has been raped. And it does not permit termination where a woman's health may be permanently damaged by the pregnancy.

It has become clear that the Oireachtas can do nothing to help these women without Constitutional change.

Citizens' Assembly & Joint Oireachtas Committee

When this Government took office we put a process in place to work through that needed Constitutional change.

The Citizens' Assembly Report and the Report of the all-party Joint Committee on the Eighth Amendment of the Constitution provide the thorough and considered basis on which the Government now proceeds and I repeat again here my thanks to those who participated for the substantial contribution they have made.

#### Purpose of the Bill

As a result of their work and the further detailed consideration by Government, the Thirty-sixth Amendment of the Constitution Bill proposes to delete Article 40.3.3 in its entirety, and to substitute an article in the Constitution, the object and effect of which would be to articulate clearly the principle that laws may be enacted to provide for the regulation of termination of pregnancy.

I want to reassure members of the Oireachtas and the public that this clause would not oust the jurisdiction of the courts, or restrict rights of access to the courts. Any legislation that may be enacted post-referendum would rightly remain subject to review by the courts, like any other legislation. Such legislation would also be subject to the normal legislative process and scrutiny in the Houses of the Oireachtas, the same as any other legislation.

If the amendment is approved at a referendum of the people, it would have the effect of deleting the Eighth, Thirteenth and Fourteenth Amendments of the Constitution. This would mean that the substantive law on the termination of pregnancy, which is currently provided in both the Constitution and in statute law, would henceforth be provided by way of statute law.

#### Overview of the Bill

I will now take you through the Bill section by section to clarify its provisions.

The Bill consists of 2 sections and a Schedule-

Section 1 provides that Article 40 of the Constitution will be amended by the substitution for subsection 3 of section 3, the text of which is set out in Parts 1 and 2 of the Schedule in Irish and English, respectively.

Section 2 is the citation provisions and states that the Constitutional amendment shall be called the Thirty-sixth Amendment of the Constitution.

This section also provides for the Act to be cited as the Thirty-sixth Amendment of the Constitution Act 2018.

The Schedule consists of two parts.

Part 1 sets out the wording of the proposed constitutional amendment in Irish.

Part 2 sets out the wording of the proposed constitutional amendment in English.

The English text is as follows:

'Provision may be made by law for the regulation of termination of pregnancy'

Ancillary recommendations

Before I turn to other matters, I would like to return to the recommendations made by the Joint Committee on the Eighth Amendment.

A majority of members of the Joint Committee accepted the five ancillary recommendations set out by the Citizens' Assembly in its final report. They also made recommendations of their own focusing on decriminalising women, free access to contraception, comprehensive sex education, and obstetric care and counselling.

These recommendations are extremely important to me as Minister for Health and to my commitment to ensuring that all women accessing maternity services should receive the same standard of safe, high quality care.

We have published Ireland's first ever National Maternity Strategy. The HSE has developed National Standards for Bereavement Care following Pregnancy Loss and Perinatal Death and bereavement teams are being established in each maternity unit. HIQA now has National Standards for Safer Better Maternity Services.

Every woman, from every corner of Ireland should expect, and be able to access, the maternity services she needs. In 2018 our priorities include improving quality and safety, developing community midwifery teams and increasing access to anomaly scans.

We know that there are challenges, but we intend to build capacity in our ultrasound services, and additional funding has been provided to the National Women and Infants Health Programme this year to develop a more equitable and consistent antenatal screening service.

The Joint Committee also made important recommendations in relation to counselling and support facilities for women during and after pregnancy.

I want to inform the Dail that the Government has agreed that I will return to it in the coming weeks seeking approval for a series of measures to further support women and improve access to counselling, contraception and perinatal care.

I have established a group, under the chairmanship of the Chief Medical Officer, to address the recommendations and formulate an effective and comprehensive response to the issues raised by the Committee in their ancillary recommendations.

Work is under way to consider the nature and scope of a free contraception service and what the introduction of such a service would involve.

This work has so far established that provision of free access to contraception methods, which are currently limited to those with eligibility through the Primary Care Reimbursement Services, would require enabling primary legislation. Work to consider costs and other implications is continuing.

If our underlying principle is that abortion should be safe, legal, and rare, then we must do all we can to reduce the number of crisis pregnancies and to support women in every way. This will be the focus of the proposals I will bring back to Government in around a month's time.

## Policy Proposals

Putting in place a legislative framework for the regulation of termination of pregnancy is a serious and challenging undertaking. But it needs to be done because we cannot deal with the complexities of women's health and women's lives through a few rigid lines in Bunreacht na hÉireann.

It's understandable that as we embark on any debate to replace a Constitutional provision with a legislative framework that people would want to know what follows that change. However, I do want to re-emphasise the point that any discussion about legislation is merely hypothetical unless a referendum to remove the Eighth Amendment is passed.

This morning, I am publishing a short policy paper which the Government approved at its meeting yesterday. This document updates members and the public on the work being done in my Department on the recommendations of the all-party Committee.

It affirms the intention to permit termination of pregnancy in cases where the life or health of the pregnant woman is at risk, without a distinction between risk from physical or mental health.

It confirms that a process similar to that set out in the 2013 Act would be required, whereby in such cases assessments would be made by two appropriate medical practitioners.

It proposes to make provision for access to termination of pregnancy on an emergency basis, on the assessment of one medical practitioner.

It proposes to permit termination of pregnancy on the grounds of a foetal condition which is likely to lead to death before or shortly after birth. In these cases, two appropriate medical practitioners would be involved in the assessment, recognising that these complex medical cases are currently managed by multi-disciplinary teams.

Women in these awful, heartbreaking situations will consider different options, and many will choose to continue with the pregnancy. But others may not. In these cases, the people best placed to make such a decision are the woman and her doctors, and I trust them to do so.

It is proposed, in line with the all-party Committee's recommendation, to permit termination up to 12 weeks of pregnancy without specific indication, but I am proposing to introduce a time period that is required to elapse between the assessment by a medical practitioner and the procedure being carried out.

Contrary to some assertions which are being made, such provisions would not make Ireland an outlier internationally. But I accept they represent a quantum leap from our position on the spectrum today where we have one of the most restrictive regimes.

The proposed legislation is not without restriction.

I believe it is reasonable that there would be a brief period of time after the woman has had her first consultation with her doctor for all the options to be considered, to allow informed consent. This is not an unusual medical principle.

Only medical practitioners on the Medical Council's register would be permitted to assess and, where appropriate, carry out the procedure.

Such medical practitioners are subject to the professional and ethical standards of the Medical Council, and are governed by the provisions of the Medical Practitioners Act 2007.

I think this is a really important point, Ceann Comhairle. Doctors operate in a regulated profession so when considering any structure that may be put in place to operate termination of pregnancy in Ireland it's important to understand that the same normal medical ethics and best practice, which we highly value, will apply.

Where there is a foetal condition likely to lead to death before or shortly after birth, or where maternal life or health is at risk, it is proposed that a gestational limit would not be included.

Attending medical practitioners are best placed to make assessments and decisions on how to best proceed based on each individual clinical situation. I want to say the spectre of late or full term abortions is not the reality. It's important to be clear and truthful that in cases where the foetus is viable early delivery and the full range of neonatal care are the reality.

While termination of pregnancy would be lawful in the circumstances set out, it is proposed to retain the offence of intentional destruction of the unborn in defined circumstances. Abortion will be unlawful outside of these defined circumstances.

However, a woman who procures or seeks to procure a termination of pregnancy for herself would not be guilty of an offence. We should not seek to criminalise women in these situations.

It is also proposed to provide in legislation for a number of other issues not covered by the Joint Committee in its recommendations.

These would include setting out provisions similar to those in the 2013 Act on consent and permitting conscientious objection.

In line with the 2013 Act, it would also be proposed to require certification by the appropriate medical practitioners in all cases of termination of pregnancy, and notification of each procedure by the medical practitioner to the Minister for Health. Similarly, it would be proposed that provision would be made for a formal review process for a woman in certain defined circumstances. Reports on notifications and reviews would be published annually by the Minister and the HSE respectively, as is currently the case for the 2013 Act.

Conclusion

I have just outlined the Government's position on the issue, but I want to be clear again that the Thirty-sixth Amendment of the Constitution Bill is not about what provisions we think legislation on termination of pregnancy should contain.

This Bill is about giving the citizens of Ireland the opportunity to exercise their democratic right to determine what is in our Constitution, the founding principles of our State.

I know there are people who wish to see the Eighth Amendment retained. I do not doubt their motivations. In fact, I don't doubt there are some we share.

I don't like labels but I consider myself pro-life. I don't know anyone who isn't. I don't know any woman who isn't. I don't know any doctor who isn't. I share the desire to see the unborn protected in every way possible. But that desire does not negate reality. And retaining the Eighth Amendment does not negate the fact that abortion is already a reality in this country. Retaining the Eighth Amendment will not prevent it from happening.

In this country, whether we like to hear it, denying reality has been a bad habit. Denying realities does not make them go away. Instead it just leads to hurt and harm. Not only is the reality of abortion not going away, it is one that is now risking more hurt and harm to our women. We have to address that reality and it is possible to do so with compassion, with consideration and with care.

I now commend the Thirty-sixth Amendment of the Constitution Bill to the House. I look forward to the debate we will have in these Houses but most of all I look forward, with hope, to the people having this debate and making their decision.