

Use Your Vote

Twenty-fifth Amendment of the Constitution
(Protection of Human Life in Pregnancy) Bill, 2001



An explanatory booklet published by the Referendum Commission

Introduction

On Wednesday 6th March, 2002 a referendum will be held on the Twenty-fifth Amendment of the Constitution (Protection of Human Life in Pregnancy) Bill, 2001. This booklet, which is published by the Referendum Commission, is designed to give you an understanding of what the referendum is about in as objective and straightforward a manner as is possible. The Commission is also running an information campaign in the press and on radio and television.

Use Your Vote

It is really important that you use your vote on the day so that your views on the subject help to decide the issue. If you do not vote, other people will make the decision.

The issues involved in this referendum are complex. Law is not a science. It is expressed in words which may be interpreted differently by different people and at different times. It is often not possible to be absolutely certain exactly what the effect of a new constitutional wording or a new law will be. However, in most cases it is possible to say what the likely effect will be.

If you are undecided about how to vote the arguments presented on television and radio programmes and in press articles may help you to make up your mind. You may consider that neither the present situation nor the proposed changes are perfect. If that is the case, you should decide which is the better situation and vote accordingly even if it is not perfect from your point of view.

What will I be asked when I go to vote?

When you go to vote on Wednesday 6th March, 2002 you will be asked to vote YES or NO to the following question:

**“Do you approve of the proposal to amend the
Constitution in the undermentioned Bill?**

*Twenty-fifth Amendment of the Constitution
(Protection of Human Life in Pregnancy) Bill, 2001.”*

This Bill contains the proposed changes in the Constitution and the proposed text of the Protection of Human Life in Pregnancy Act which, if passed, will be the law on abortion. The words of the Act itself will not be added to the Constitution but they will have the same status as words in the Constitution. This means that the Act may only be changed if the people agree to the change in another referendum.

What does the Constitution say about abortion at present?

The present subsection 40.3.3° of the Constitution states:

“The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.

This subsection shall not limit freedom to travel between the State and another State.

This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services available in another state.”

The first paragraph was put into the Constitution following a referendum in 1983. The other two paragraphs were put into the Constitution following referendums in 1992 which were held following the X case.

(All of this subsection 40.3.3° will remain in the Constitution whether or not the proposed changes are agreed in the referendum.)

The X case

The X case was the first case which required the courts to interpret the meaning of subsection 40.3.3°. At the time, only the first paragraph of the subsection was in the Constitution.

This case established that:

- a termination of pregnancy is lawful if it can be shown that there is a real and substantial risk to the life, as distinct from the health, of the mother which can only be avoided by terminating the pregnancy;
- a threat of suicide can amount to a substantial risk to the life of the mother.

What is the intention behind the Referendum?

The intention of the referendum is to:

- remove the threat of suicide as a ground for a legal termination of pregnancy;

- provide for a law on abortion that can only be changed by another referendum;
- give constitutional and legal safeguards to existing medical practices where interventions are made to protect the life of the mother.

What changes are proposed for the Constitution?

It is proposed that two new subsections would be added immediately after the existing subsection 40.3.3° These proposed new subsections are as follows:

Proposed subsection 40.3.4°

“In particular, the life of the unborn in the womb shall be protected in accordance with the provisions of the Protection of Human Life in Pregnancy, Act, 2002.”

Proposed subsection 40.3.5°

The text of the proposed new Article 40.3.5° is given in Appendix 1.

The effect of this proposed new article is that the Human Life in Pregnancy Act, 2002 may only be changed if the people agree to the change in another referendum.

The Protection of Human Life in Pregnancy Act, if passed within 180 days of the referendum, will effectively be part of the Constitution. The actual words of the Act will not be added to the Constitution but they will have similar status as the words of the Constitution – they cannot be amended except by referendum.

So, if a majority vote in favour, will these subsections be added to the Constitution?

Yes, provided the Human Life in Pregnancy Act (as outlined in Appendix 2) is passed by the Oireachtas within 180 days of the referendum. If it is not passed, then no change in the Constitution will occur. If an Act with that title is passed but it is not exactly the same as the Act which is included as Appendix 2 of this booklet, then no change will be made to the Constitution.

What is in the Protection of Human Life in Pregnancy Act?

The Protection of Human Life in Pregnancy Act defines the crime of abortion. If there is a majority Yes vote in the referendum and this Act is subsequently passed, then this new definition will replace the existing law on abortion.

The existing criminal law on abortion

The present law is contained in sections 58 and 59 of the Offences Against the Person Act, 1861. The wording reflects the time in which it was drafted. The word abortion is not used – the term used is to “procure a miscarriage”. Put simply, the effect of these sections is that it is a criminal offence for a woman to procure a miscarriage, or for any person to perform an abortion or aid or abet the woman in procuring the abortion.

No one has been charged with a criminal offence under these sections since the 1950s.

Proposed new definition of abortion

The proposed new legal definition is that abortion means the “intentional destruction by any means of unborn human life after implantation in the womb of a woman”.

However, it does not include;

“the carrying out of a medical procedure by a medical practitioner at an approved place in the course of which or as a result of which unborn human life is ended where that procedure is, in the reasonable opinion of the practitioner, necessary to prevent a real and substantial risk of loss of the woman’s life other than by self-destruction”.

One clear consequence of this is that the threat of suicide will not be a valid reason to seek an abortion.

Medical Procedures

The crime of abortion does not include necessary medical procedures as set out in the Act. Medical procedures which meet the conditions set out will be lawful even if they result in the termination of the pregnancy.

These medical procedures must be carried out by a medical practitioner at an approved place. The government will make orders setting out what are approved places and it is expected that these will be the main maternity hospitals and other hospitals. These orders must be approved by both Houses of the Oireachtas (the Dáil and the Seanad).

The medical practitioner must form a reasonable opinion that the medical procedure in question is necessary to save the life of the mother. This means that the doctor must form the opinion in good faith and must take into account the need to preserve the life of the unborn where that is practicable.

The practitioner must also make and sign a written record of the basis for the opinion. Orders may be made setting out detailed rules about the making, keeping and confirmation of these records – these orders must be passed by both Houses of the Oireachtas (the Dáil and Seanad).

There will be no obligation on anyone to carry out or assist in carrying out a procedure which may result in the death of the child even if it is considered necessary to save the life of the mother. This is designed to provide for conscientious objectors who may not want to ever be involved in the termination of a pregnancy.

The crime of abortion

The Act will make abortion, as defined, an offence in Ireland. This means that if a person has an abortion in Ireland, attempts to have an abortion, carries out an abortion or aids, abets or procures anyone to carry out an abortion, he/she may be prosecuted and convicted of a crime in Ireland. The penalty will be a maximum of 12 years imprisonment or a fine or both.

Can this law ever be changed?

Yes, but only if the change is agreed in another referendum. Most Acts of the Oireachtas may be changed by the Oireachtas but this Act will be exceptional. It may only be changed if the people agree in another referendum.

What will be the effect of a Yes vote?

If people vote Yes in the referendum and if, subsequently, the Human Life in Pregnancy Act is passed, then:

- the present right of a pregnant woman to avail of abortion if she is suicidal will end;
- there will be a new legal definition of abortion;
- medical procedures necessary to save the life of the mother will not be considered to be abortion in its criminal sense.

So, will it be possible for women to have pregnancies legally terminated in Ireland?

It will not be possible to have pregnancies legally terminated in Ireland unless the specific conditions outlined are met i.e. medical procedures which are necessary to save the life of the mother will be legally possible even if they involve the death of the child.

The law does not specify precisely what those medical procedures are. Effectively, this will be a decision for doctors to make.

It will not be legally possible to have a pregnancy terminated if there is a threat of suicide or if the pregnancy results from rape or incest.

Will medical ethics affect these decisions?

Yes. The Medical Council has responsibility for drawing up ethical guidelines for doctors. The Medical Council recently agreed the following guidelines on the issues relevant to the referendum.

“The Council recognises that termination of pregnancy can occur when there is real and substantial risk to the life of the mother and subscribes to the views expressed in Part 2 of the written submission of the Institute of Obstetricians and Gynaecologists to the All-Party Oireachtas Committee on the Constitution.”

The relevant extract from that submission is:

“In current obstetrical practice rare complications can arise where therapeutic intervention is required at a stage in pregnancy when there will be little or no prospect for the survival of the baby, due to extreme immaturity. In these exceptional situations failure to intervene may result in the death of both mother and baby. We consider that there is a fundamental difference between abortion carried out with the intention of taking the life of the baby, for example for social reasons, and the unavoidable death of the baby resulting from essential treatment to treat the life of the mother.”

Will the proposed new law affect items such as the morning after pill?

Whether the current criminal law outlaws the morning after pill (and similar devices) is open to question. It is clear that using the morning after pill is not abortion in the criminal sense under the Human Life in Pregnancy Act.

The present constitutional position of these devices is also open to doubt. However, the acceptance or rejection of the proposal will not change their constitutional status.

What about abortions carried out abroad?

The crime of abortion as defined in the Act will apply in the State of Ireland. Abortions which take place in other countries (including Northern Ireland) are governed by the laws of those countries. A person may not be prosecuted in Ireland for having or carrying out an abortion in another country.

The Act does not limit a person's freedom to travel to another country to have an abortion. It does not change the current rules about the availability of information on abortion.

What will be the effect of a No vote?

A No vote means that the present Constitutional wording and the present law will remain in place. The Oireachtas could subsequently pass a law dealing with abortion but it would have to accord with the present interpretation of the Constitution. This would mean a threat of suicide would be a ground for a legal abortion but the Oireachtas could regulate the circumstances.

Where can I get more information?

There is extensive information on the issues involved in the following publications;

- Green Paper on Abortion 1999
- The All-Party Oireachtas Committee on the Constitution – Fifth Progress Report – Abortion.

These publications can be bought in bookshops or from the Government Publications Sales Office or can be downloaded from the Referendum Commission's website: www.refcom.ie

Appendix 1 – Proposed new article 40.3.5°

“The provisions of section 2 of Article 46 and sections 1, 3 and 4 of Article 47 of this Constitution shall apply to any Bill passed or deemed to have been passed by both Houses of the Oireachtas containing a proposal to amend the Protection of Human Life in Pregnancy Act, 2002, as they apply to a Bill containing a proposal or proposals for the amendment of this Constitution and any such Bill shall be signed by the President forthwith upon his being satisfied that the Bill has been duly approved by the people in accordance with the provisions of section 1 of Article 47 of this Constitution and shall be duly promulgated by the President as a law.”

Appendix 2 – Text of the Human Life in Pregnancy Act, 2002

AN ACT TO PROTECT HUMAN LIFE IN PREGNANCY, TO REPEAL SECTIONS 58 AND 59 OF THE OFFENCES AGAINST THE PERSON ACT, 1861, AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Abortion.

1. (1) In this Act, “abortion” means the intentional destruction by any means of unborn human life after implantation in the womb of a woman.
- (2) Notwithstanding *subsection (1)* of this section, abortion does not include the carrying out of a medical procedure by a medical practitioner at an

approved place in the course of which or as a result of which unborn human life is ended where that procedure is, in the reasonable opinion of the practitioner, necessary to prevent a real and substantial risk of loss of the woman's life other than by self-destruction.

- (3) In this section-
- “approved place” means a place in the State approved for the time being by order as being suitable for the purposes of this section;
 - “medical practitioner” means a person permitted by law for the time being to practise as a registered medical practitioner in the State;
 - “reasonable opinion” means a reasonable opinion formed in good faith which has regard to the need to preserve unborn human life where practicable and of which a written record has been made and signed by the practitioner;
 - “woman” means a female person.

Prohibition of abortion.

2. (1) No person shall carry out or effect an abortion in the State.
- (2) For the purposes of this section, a person shall be presumed to have intended the natural and probable consequences of his or her conduct; but this presumption may be rebutted.
- (3) A person who contravenes *subsection (1)* of this section, or attempts to do so, or aids, abets or procures any other person to do so, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 12 years or a fine or both.
- (4) A prosecution for an offence under this section may be brought only by or with the consent of the Director of Public Prosecutions.

Conscientious objections.

3. Nothing in this Act shall be construed as obliging any person to carry out, or to assist in the carrying out of, any medical procedure referred to in *section 1* of this Act.

Travel and information.

4. (1) This Act does not limit freedom to travel between the State and another state or freedom to obtain or make available in the State, in accordance with conditions for the time being laid down by law, information relating to services lawfully available in another state.
- (2) This Act does not operate to restrict any person from travelling to another state on the ground that his or her intended conduct there would, if it occurred in the State, constitute an offence under *section 2* of this Act.

Orders.

5. (1) In this Act (other than in *section 7*), “an order” means an order made by a member of the Government authorised in that behalf by the Government.
- (2) An order may make such provision relating to the making, keeping and confirmation of records (including records of opinions) of medical procedures referred to in *section 1* of this Act as may be considered by the member of the Government concerned necessary or appropriate for the purposes of this Act.
- (3) The Government shall ensure that such orders are made from time to time as are necessary to enable this Act to have full force and effect.

- (4) An order may be amended or revoked by order.
- (5) Where an order is proposed to be made, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made unless a resolution approving of the draft has been passed by each such House.

Repeals.

6. Sections 58 and 59 of the Offences against the Person Act, 1861, are hereby repealed.

Short title and commencement.

7. (1) This Act may be cited as the Protection of Human Life in Pregnancy Act, 2002.
- (2) This Act shall come into operation on such day not earlier than 2 months after the date of its passing as the Taoiseach may appoint by order.

Referendum Commission
18 Lower Leeson Street
Dublin 2

Tel: (01) 639 5695

Fax: (01) 639 5684

Email: refcom@ombudsman.irlgov.ie

Website: www.refcom.ie