

PROTECTION OF LIFE DURING PREGNANCY (HEADS OF) BILL 2013 - REQUEST FOR SUBMISSIONS

Submission by the Working Group of the Standing Committee of the Church of Ireland

Introduction

The Church of Ireland welcomes the invitation to contribute to the *PROTECTION OF LIFE DURING PREGNANCY (HEADS OF) BILL 2013*. As outlined in our submission to the Joint Committee on Health and Children on 10 January 2013 the Church of Ireland is a Synodical Church where the development of policy is guided by prayerful consideration and discussion of bishops, clergy and laity. The Standing Committee of the General Synod established a working group to make any submissions to the Government or an Oireachtas Committee should the need arise. This submission therefore is submitted in the names of the Working Group on behalf of the Church of Ireland.

The working group has considered the material in the *PROTECTION OF LIFE DURING PREGNANCY (HEADS OF) BILL 2013* and makes the following submission to the Oireachtas Joint Committee on Health and Children for consideration.

Following the Executive Summary this submission will comment on a ‘head by head basis’ as requested.

The introduction, Executive Summary, Comment on heads of Bill and the Addendum should be considered as one document.

The Church of Ireland as a province of the Anglican Communion of Churches affirms the report adopted at the Lambeth Conference, 1958 which states “In the strongest terms, Christians reject the practice of induced abortion ... which involves the killing of a life already conceived.... save at the dictate of strict and undeniable medical necessity”

The position of the Church of Ireland on abortion is summarised in the addendum to this paper which includes excerpts from previous submissions to Oireachtas Committees. We recognise, however, that the decision in the *AB & C v Ireland* case and the decision of the Government to progress the matter through a combination of legislation and regulation had ‘moved the issue on’ somewhat and thus we will confine most of our submission to the Heads of Bill as requested.

It will suffice to say that the Church of Ireland opposes abortion in principle but recognises that there are exceptional cases of ‘strict and undeniable medical necessity’ where it is and should be an option. There would be a wide variety of sincerely held and conscientious views within the Church as to what constitute such ‘exceptional cases’ but there would be agreement that these include cases where the continuation of the pregnancy poses a risk to the life of the mother.

In all cases the Church of Ireland affirms the importance of sensitive pastoral care for mothers, their partners and their unborn baby. We recognise that, when faced with the possibility of terminating a pregnancy, parents and medical professionals are involved with emotive and complex issues and wrestle with ethical values and principles concerning human life. As a Church, our care is modelled on the compassion and unconditional love that God in Jesus Christ offers to all. This love supports our position that cherishes the lives of all yet recognises that at times the complexities of life present us with difficult

choices and where such choices have to be made in cases of 'strict and undeniable medical necessity' that termination of pregnancy is sadly an option that must be considered. In addition to our care for parents and their unborn baby, our care also extends to all healthcare professionals who deserve support when faced with difficult decisions such as this.

Executive Summary

1. The Church of Ireland welcomes the invitation to contribute to the *PROTECTION OF LIFE DURING PREGNANCY (HEADS OF) BILL 2013* and welcomes the decision of Government to proceed towards legislation and regulation in this area.
2. The Church of Ireland emphasises the right to life and this includes the right of the unborn.
3. The Church of Ireland opposes abortion in principle but acknowledges that there are exceptional cases of 'strict and undeniable medical necessity' where it is and should be an option. There is a variety of opinion within the Church of Ireland on what constitutes 'exceptional cases' but agreement that it includes circumstances where the continuation of the pregnancy poses a real and substantial risk to the life of the mother.
4. In the context of the Church of Ireland's previous comments on abortion about the need for legal clarity, it is agreed that the position in the State at present is very unclear and unsatisfactory, and unfair to pregnant women and medical professionals who deserve to be able to make critical, clinical decisions in a secure and well regulated medical framework. Accordingly, the decision by the Government to seek to provide clarity on the issue is welcome.
5. It is agreed that where there is a strict and undeniable medical necessity requiring the ending of a pregnancy at a later stage, where possible, this should be done in a manner that preserves the life of the unborn, without compromising the life of the woman. This diagnosis should be made expeditiously and should be formally notified to the woman. This will require legislation as medical council guidelines on their own will not necessarily have this effect.
6. Special provision should be made for emergency situations where the continuation of the pregnancy occasions a risk to the mother's life that is real, substantial and imminent.
7. The Church has previously urged the Government to adopt a legislative and regulatory approach which will allow for easier alteration in the light of changes in medical science. Accordingly, the Government decision to do so is welcome.

HEADS OF BILL PROTECTION OF LIFE DURING PREGNANCY BILL 2013

HEAD 1 – INTERPRETATION

We welcome:

- that where termination of pregnancy is required “in strict and undeniable medical necessity” that it will be only allowed in the 19 public obstetric facilities in the State, except in cases of emergency.
- that there will be adequate regulation, registration, quality control and audit of each facility carrying out termination of pregnancy.
- that the decision to carry out a termination of pregnancy will be taken at a senior clinical level and through reasonable opinion that has due regard for both the life of a pregnant woman and her unborn baby.

HEAD 2 – RISK OF LIFE FROM PHYSICAL ILLNESS, NOT BEING A RISK OF SELF DESTRUCTION

Subhead 1

We suggest:

- that greater clarity is given as to how certification may come about and that Clinical Practice Guideline(s) are drawn up as a matter of urgency in this area by the professional medical colleges.

We welcome:

- that greater clarity would be given to medical practitioners concerning the timing of intervention in line with the X Case “that the risk to the woman’s life is inevitable or immediate”.
- that two senior clinicians would be involved in the assessment and certification process.

We welcome the protection given to the autonomy of the woman to refuse a termination.

We would like consideration to be given to the place of birth in situations where a baby is close to or beyond viability and believe that, notwithstanding an emergency, such situations should be referred to an obstetric unit that has a neonatal intensive care facility and that the expertise of a Consultant Neonatologist should be sought.

HEAD 3 – RISK OF LOSS OF LIFE FROM PHYSICAL ILLNESS IN A MEDICAL EMERGENCY

In order to give clarity to emergency situations we recommend that there is a specific Clinical Practice Guideline drawn up for this situation. This would be particularly important should the emergency occur outside one of the dedicated 19 Obstetric Units so that the same levels of supportive care would be provided for staff, a mother and her unborn baby.

HEAD 4 – RISK OF LOSS OF LIFE FROM SELF DESTRUCTION

In the X-case of 1992, the Supreme Court held that an abortion was constitutionally permissible under Article 40.3.3 in circumstances where the continuation of the pregnancy constituted a ‘real and

substantial risk' to the life (as distinct from health) of the mother and the risk can only be averted by the termination of a pregnancy. The circumstances of the case made clear that this included a credible risk of suicide.

While affirming the parity of both physical and mental health we acknowledge the complexity of trying to legislate for the area of suicidal ideation.

We welcome:

- the measures being suggested to make a clinical assessment in the situation of potential self-destruction
- the process of review in a situation of appeal

We recommend that termination is only a matter of last resort to save the life of a pregnant woman and in situations of "strict and undeniable medical necessity".

We would like consideration to be given to the place of birth in situations where a baby is close to or beyond viability and believe that such situations should be referred to an obstetric unit that has a neonatal intensive care facility and that the expertise of a Consultant Neonatologist should be sought.

HEAD 5 – MEDICAL OPINION TO BE IN FORM AND MANNER PRESCRIBED BY THE MINISTER.

We welcome a clear and auditable certification process.

HEAD 6 - FORMAL MEDICAL REVIEW PROCEDURES

We welcome the review process suggested and in particular that a review mechanism must be:

- independent
- competent to review (i) the reasons for the decision and (ii) the relevant evidence
- the procedures should include the possibility for the woman to be heard
- it should issue written opinion
- decisions must be timely

We suggest clarity is given to an appeal process in the cases where the pregnant woman is a minor and there is a conflict of opinion between the pregnant minor and their legal guardian and the review panel.

HEAD 7 – REVIEW WHERE RISK ARISES FROM PHYSICAL ILLNESS NOT BEING A RISK OF SELF DESTRUCTION

No further comment to make other than for Head 6.

HEAD 8 – REVIEW IN CASE OF RISK OF LOSS OF LIFE THROUGH SELF DESTRUCTION

No further comment to make other than for Head 6.

HEAD 9 GENERAL PROVISIONS FOR THE COMMITTEE

No further comment to make

HEAD 10 FORMAL MEDICAL REVIEW REPORTS TO MINISTER

We welcome this review process.

HEAD 11 – NOTIFICATIONS

We welcome this notification process as an integral part of ongoing audit and monitoring.

In addition:

-we recommend that an independent confidential audit be enjoined on all facilities to submit detailed data on terminations for clinical audit and research purposes. One example would be the approach of the National Perinatal Epidemiological Centre or the Maternal Death Enquiry process.

HEAD 12 – CONSCIENTIOUS OBJECTION

We welcome the inclusion of a conscientious objection on the part of certain health professionals. Where a decision has been made to carry out a termination of pregnancy in accordance with the Heads above this should be available in every public obstetric facility.

HEAD 13 – TRAVEL AND INFORMATION

No further comment to make.

HEAD 14 – REGULATIONS

No further comment to make.

HEAD 15 – REGULATIONS RESPECTING CERTIFICATION OF OPINIONS REFERRED TO IN THIS ACT

No further comment to make.

HEAD 16 – REGULATIONS RESPECTING NOTIFICATIONS TO THE MINISTER

No further comment to make.

HEAD 17 LAYING OF REGULATIONS BEFORE THE OIREACHTAS

No further comment to make.

HEAD 18 REPEAL AND CONSEQUENTIAL AMENDMENTS

No further comment to make.

HEAD 19 OFFENCE

While we recognise the necessity for appropriate sanction, we express concern that sanctions should not deter people from seeking appropriate medical help. We welcome the repeal of Sections 58 and Section 59 of the 1861 Act .

HEAD 20 – COMMENCEMENT.

No further comment to make.

ADDENDUM

Submission by the Most Rev Dr Michael Jackson, Archbishop of Dublin and Mr Samuel Harper, Lay Honorary Secretary of the General Synod of the Church of Ireland to the Joint Oireachtas Committee on Health and Children in January 2013

Executive Summary

1. While welcoming the invitation to give evidence to the Committee, the Archbishop and Mr Harper express considerable disquiet at the timescale involved on a matter of such exceptional human complexity and sensitivity and the difficulty of involving the synodical structures of the Church. The Church of Ireland is a Synodical Church which develops policy guided by the prayerful consideration and discussion of bishops, clergy and laity. The time given to develop a written response to the Committee (de facto less than three working days) made this impossible. Accordingly, this document can only be considered a preliminary response.
2. The Church of Ireland emphasises the right to life and this includes the right of the unborn.
3. The Church of Ireland opposes abortion in principle but acknowledges that there are exceptional cases of 'strict and undeniable medical necessity' where it is and should be an option. There is a variety of opinion within the Church of Ireland on what constitutes 'exceptional cases' but agreement that it includes circumstances where the continuation of the pregnancy poses a real and substantial risk to the life of the mother.
4. In the context of the Church of Ireland's previous comments on abortion about the need for legal clarity, it is agreed that the position in the State at present is very unclear and unsatisfactory, and unfair to pregnant women and medical professionals who deserve to be able to make critical, clinical decisions in a secure and well regulated medical framework. Accordingly, the decision by the Government to seek to provide clarity on the issue is welcome.
5. It is agreed that where there is a strict and undeniable medical necessity requiring the ending of a pregnancy at a later stage, where possible, this should be done in a manner that preserves the life of the unborn, without compromising the life of the woman. This diagnosis should be made expeditiously and should be formally notified to the woman. This will require legislation as medical council guidelines on their own will not necessarily have this effect.
6. Special provision should be made for emergency situations where the continuation of the pregnancy occasions a risk to the mother's life that is real, substantial and imminent.
7. It is desirable that Review Panel group suggested by the Expert Group should include a lawyer.
8. The clauses of the 1861 Act should be amended or repealed.
9. The Church has previously urged the Government to adopt a legislative and regulatory approach which will allow for easier alteration in the light of changes in medical science. Accordingly, the Government decision to do so is welcome.

Submission by the Most Rev Dr Michael Jackson, Archbishop of Dublin and Mr Samuel Harper, Lay Honorary Secretary of the General Synod to the Joint Committee on Health and Children on the Implementation of the Government Decision following the publication of the Expert Group Report into matters relating to AB & C v Ireland.

Introduction

We are grateful for the invitation extended to make a submission to the Joint Committee on Health and Children on the issue of abortion and wish to express our gratitude to the Chairman and members for the opportunity afforded. However, we must express considerable disquiet at the timescale given for a response on a matter of this exceptional human complexity and sensitivity.

The Church of Ireland is a Synodical Church and has extensive structures and procedures to allow the policies of the Church to be guided by the prayerful consideration and discussion of bishops, clergy and laity. It was not remotely possible in the short timeframe allowed (de facto less than three working days) to undertake such a procedure and this is totally inappropriate in light of the complexity of the moral, ethical and legal issues involved. Accordingly this paper can only be considered a preliminary response. Some of what appears here expresses the personal opinions of the representatives of the Church (though guided by previous Church discussions) and where this is so, this has been highlighted. Obviously, we intend to convey the report and some of the issues raised to the appropriate bodies within the Church for their own consideration.

The position of the Church of Ireland on abortion is summarised on an addendum to this paper including excerpts from previous submissions to Oireachtas Committees. We recognise, however, that the decision in the AB & C v Ireland case and the decision of the Government to progress the matter through a combination of legislation and regulation had ‘moved the issue on’ somewhat and thus we will confine most of our submission to the issues raised by the Expert Group report. It will suffice to say that the Church of Ireland opposes abortion in principle but recognises that there are exceptional cases of ‘strict and undeniable medical necessity’ where it is and should be an option. There would be a wide variety of sincerely held and conscientious views within the Church as to what constitute such ‘exceptional cases’ but there would be agreement that these include cases where the continuation of the pregnancy poses a risk to the life of the mother.

The Current Legal Situation

In the X-case of 1992, the Supreme Court held that an abortion was constitutionally permissible under Article 40.3.3 in circumstances where the continuation of the pregnancy constituted a ‘real and substantial risk’ to the life (as distinct from health) of the mother and the risk can only be averted by the termination of a pregnancy. The circumstances of the case made clear that this included a credible risk of suicide.

The Church of Ireland welcomed the judgment at the time as the wording ‘real and substantial risk to the life of the mother’ was very similar to the ‘strict and undeniable medical necessity’ criterion which the Church has generally held to be appropriate. However, the legal situation has not been clarified and statutory provisions; particularly sections 58 and 59 of the Offences Against the Person Act 1861, remain in effect, and provide for severe criminal sanctions for both women and those who assist unlawful abortions.

In the context of the Church of Ireland's previous comments on the issue of abortion, we would agree that the position at present is very unclear and that this is unsatisfactory and unfair to pregnant women and medical professionals who deserve to be able to make critical, clinical decisions in a secure and well regulated legal and medical framework. We therefore strongly welcome the decision by the Government to seek to provide clarity on this issue.

Expert Group Report & Implementation

Introducing the principles behind its paper, the expert group said that 'there is an existing constitutional right as identified and explained in the X case judgment of the Supreme Court. The State is entitled and, indeed, obliged to regulate and monitor the exercise of that right so as to ensure that the general constitutional prohibition on abortion is maintained. However, the measures that are introduced to give effect to this constitutional right should not act as obstacles to any woman who is legitimately entitled to seek a termination on lawful grounds.'

We would agree with this general approach.

The expert group went on to highlight the sensitive issue of what should happen in the event that a foetus is viable (or potentially viable) but the continuation of the pregnancy poses a 'real and substantial risk' to the life of the mother. We feel that this highlights the need for an effective decision making procedure.

With regard to Chapter 6 of the Expert Group report, the report outlines the tests to be applied in the light of the Supreme Court decision in the X-case and that this should include the question of whether it is practicable to preserve the life of the unborn in the process of terminating the pregnancy without compromising the right to life of the woman. The Church of Ireland submission in 1998 to the Interdepartmental working group on abortion makes clear the Church's position on the right to life of the unborn. We would therefore, agree with the approach outlined and with the requirement that the diagnosis needs to be made expeditiously and should be formally notified to the woman. Such a device needs the protection of legislation as medical council guidelines on their own will not necessarily have this effect.

The Expert Group also raised the issue of whether there should be special provision for the rare occasions where the risk to a woman's life is real, substantial and imminent (IE Emergency provisions). Our view is that there should be special provision for such circumstances in the light of the provisions of the 1861 Act which makes the termination of pregnancy subject to severe criminal sanction. We do not feel that it is appropriate for a medical professional faced with an emergency situation where a woman's life is in danger to be constrained from giving necessary treatment in good faith by the risk of criminal conviction. We would emphasise, however, that the synodical bodies of the Church have not taken an official position on this issue.

As to the Review panel, we would agree with the general approach outlined by the Expert Group and of the two options given, we believe that Option 1 (including a lawyer on the panel) would be the preferred approach, although we would again add the caveat that there has not been an official decision on this within the Church of Ireland.

Turning to Chapter 7 and the options for implementation, as a group we welcome the Government's decision to seek to implement by means of Legislation and Regulations which is in keeping with the statement made by the Church in 1998. This approach allows for easier alteration as developments in medical science alter the context of decision making. Similarly we feel there is a strong argument for the abolition and replacement of the clauses of the 1861 Act with a more up to date legal framework but we cannot offer an official Church of Ireland position on this point.

Summary

Without entering into the issue of whether abortion should be available in circumstances beyond those outlined in the X-case (on which there are a variety of opinions within the Church of Ireland), we agree that legal clarity is required to enable women and medical professionals to make informed decisions where the continuation of a pregnancy poses a 'real and substantial risk to the life of the mother' and as such the Expert Group report and the Government's decision to provide a legislative and regulatory framework are overdue and welcome.

ADDENDUM

Church of Ireland's Position on Abortion

In 1958, the Lambeth Conference (a decennial conference of Anglican Bishops Worldwide) adopted a resolution stating:

‘In the strongest terms, Christians reject the practice of induced abortion or infanticide, which involves the killing of a life already conceived (as well as a violation of the personality of the mother) save at the dictate of strict and undeniable medical necessity’.

While Lambeth Conference resolutions are only binding on individual Churches when formally incorporated into the internal legal systems of those Churches, the Church of Ireland has generally used this resolution as its starting point in previous submissions to Oireachtas Committees on the issue of abortion beginning in 1982. The phrase ‘strict and undeniable medical necessity’ clearly carries with it the implication that there are circumstances where abortion is a medical necessity.

In 1982, the Standing Committee of the General Synod sent an official comment on behalf of the Church of Ireland to the then Taoiseach, Mr Haughey which said that ‘we cannot emphasise too strongly the right to life and this includes the right of the yet unborn.’ After quoting the Lambeth Council resolution referred to above and highlighting the words ‘strict and undeniable medical necessity’ the statement went on to add, ‘we greatly doubt the wisdom of using constitutional prohibitions as a means of dealing with complex moral and social problems.’

In 1998, the Church's Role of the Church Committee made a submission to the Interdepartmental working group on abortion which said inter alia:

‘The deliberate termination of an intra Uterine life cannot be right but many in our church believe that exceptional cases may arise which mean that abortion ought to be an option and may even be a necessity in a few very rare cases. No abortion is ever desirable – at most it can only be described as the lesser of two evils, and always undertaken with a profound sense of sadness and regret. The legal framework should allow for such exceptional cases so that the tragedy is not compounded by public debate.’

It is fair to say that there are different opinions amongst Church of Ireland members at all levels, as to what constitute ‘exceptional cases.’ For example, in 2000, a Church of Ireland Medical Ethics Working Group proposed that these should include (amongst others) ‘lethal or severe congenital abnormality in the foetus’. After some debate at the General Synod, this paper was withdrawn on a vote of 166 votes to 164.

The Church of Ireland's position can be summed up as recognising that there are (regrettably) exceptional circumstances of strict and undeniable medical necessity where an abortion should be an option (or more rarely a necessity) whilst also a concern to avoid a situation whereby legislating for such exceptions provides a ‘back door’ to widespread abortion, to which the Church is strongly opposed.