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Date: 22/10/2014

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Meeting: 1214 meeting (2-4 December 2014) (DH)

Item reference: Communication from the authorities (17/10/14) concerning the case of A, B & C against Ireland (Application No. 25579/05)

Information made available under Rule 8.2.a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

* * * * *

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Réunion : 1214 réunion (2-4 décembre 2014) (DH)

Référence du point : Communication des autorités (17/10/2014) concernant l'affaire de l'A, B & C contre Irlande (requête n° 25579/05) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 8.2.a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

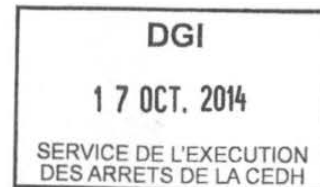
Buan Ionadaíocht
na hÉireann
chuig Comhairle na hEorpa



Permanent Representation
of Ireland
to the Council of Europe

Ms Genevieve Mayer
Head of Department
Department of the Execution of Judgments of the European Court of Human Rights
DGI : Directorate General Human Rights and Rule of Law

16 October 2014



Dear Ms. Mayer,

I refer to Mr. Frank Power's letter to you of 28 August 2014 and the additional information provided therewith with respect to the implementation of the ABC v Ireland judgement.

The information provided at that time referred to the Guidance Document for Health Professionals on the Implementation of the Protection of Human Life During Pregnancy Act 2013. This document has now been published, and a copy is attached herewith.

I would be grateful if you could arrange for this document to be circulated to Member States, for their information, in line with normal practice.

Yours sincerely,

Peter Gunning
Permanent Representative of Ireland to the Council of Europe

DGI

17 OCT. 2014

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



Implementation of the Protection of Life During Pregnancy Act 2013

Guidance Document for Health Professionals

2014

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1. Introduction

1.1 Background to the Act¹

Article 40.3.3° of the Irish Constitution states that

'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.'

The interpretation of Article 40.3.3° was considered by the Supreme Court in *Attorney General v X* (the X case²). The Supreme Court held that if it were established as a matter of probability that there was a real and substantial risk to the life, as distinct from the health, of the mother and that the real and substantial risk could only be averted by the termination of the pregnancy, such a termination is lawful.

Further, in December 2009, the European Court of Human Rights heard a case brought by three women in respect of the alleged breach of their rights under the European Convention on Human Rights in regard to abortion in Ireland (the *A, B and C v Ireland* case³).

Ireland was found to be in violation of the right of Applicant C to private and family life, contrary to Article 8 of the Convention. This is because Ireland had failed to provide an accessible and effective procedure to the applicant to enable her establish whether she qualified for a lawful termination in accordance to Article 40.3.3° or not.

1.2 The Protection of Life During Pregnancy Act 2013

The Protection of Life During Pregnancy Act 2013 was enacted in July 2013 and commenced in January 2014. The purpose of this Act is to restate the general prohibition on abortion in Ireland while regulating access to lawful termination of pregnancy in accordance with the X case and the judgment in the European Court of Human Right in the *A, B and C v Ireland* case.

The Act achieves this objective in the following ways:

- by providing a clear criminal prohibition on abortion;

¹ For a comprehensive discussion of the *A, B and C v Ireland* case and of the legal and historical background to the Act, please consult the *Report of the Expert Group in the A, B and C v Ireland* case. http://www.dohc.ie/publications/Judgement_ABC.html

² [1992] 2 IR 1.

³ [2010] ECHR 2032.

- by providing a sole exception to that prohibition – when there is a real and substantial risk to the life of the woman which can only be averted by a termination of pregnancy.

This exception applies only in three distinct and precise circumstances:

- when there is a real and substantial risk to the life of the woman arising from a physical illness – section 7 of the Act;
- when there is an immediate risk to the life of the woman arising from a physical illness – section 8 of the Act; or
- when there is a real and substantial risk to the life of the woman arising from suicide intent – section 9 of the Act.

The Act also creates procedures which apply to the lawful termination of pregnancy. The objectives of these procedures are to ensure that, where lawful termination of pregnancy is under consideration, the right to life of the unborn is respected where practicable, and, secondly, to ensure that a woman can ascertain by means of a clear process whether she requires this medical procedure or not.

The Act provides only for existing rights and does not confer any new substantive rights to termination of pregnancy.

Certain requirements are also considered appropriate in relation to the medical procedure due to the fundamental Constitutional rights at stake - the right to life of the pregnant woman, and the right to life of the unborn. Requirements provided for in the legislation include a process for assessment, the number of doctors required for assessment, the process of certification, the locations where terminations might take place, a formal medical review process, and a notification system. The aim of this document is to clearly set out these requirements to assist health professionals in operating the Act.

1.3 For whom the Guidance Document is intended

The guidance document has been developed to assist health professionals in operating the Act when providing care to pregnant women with life threatening conditions.

This document has been prepared by the Department of Health in collaboration with a multidisciplinary committee of experts in medicine, nursing and midwifery, and law. The Committee included nominees from relevant professional bodies including the Institute of Obstetricians and Gynaecologists, the College of Psychiatrists of Ireland, the Irish College of

General Practitioners, and the Royal College of Physicians in Ireland and the Health Service Executive (HSE)⁴.

This guidance should be followed in addition to any existing or future relevant professional and clinical guidelines.

Recommendation

A separate document in the form of a patient information leaflet should be produced by the Health Service Executive to enable pregnant women to understand how the Act relates to them and what they can do if they find themselves in applicable circumstances. The information leaflet should be widely disseminated and should be available at www.crisispregnancy.ie, www.positiveoptions.ie and www.hse.ie.

⁴ For further information on the Committee please see Appendix 1.

2. Referral Pathways

An underlying principle of the Act is that termination of pregnancy is a medical treatment and therefore, as in all medical cases, the provisions of the Medical Council's Guide to Professional Conduct and Ethics for Registered Medical Practitioners of the Medical Council⁵ will apply from the time a woman, or someone acting on her behalf with her consent, makes initial contact with the healthcare services through to referral, assessment, certification, review, treatment and post-treatment as appropriate.

If a health professional is of the opinion that the life of a pregnant woman might be at risk, and he/she does not feel qualified to treat her, he/she would be expected to make urgent referral to an appropriate medical practitioner for further assessment. The health professional who makes the initial referral will be responsible for the care of the patient until another appropriate doctor accepts this responsibility.

This process is not expected to interfere with current practice in the medical care of complex medical scenarios as this is usually delivered through multi-disciplinary teams working together and coming to a joint assessment and care plan. Figures 1, 2 and 3 show potential referral pathways for sections 7 and 9 of the Act.

2.1 Role of Obstetrician/Gynaecologists⁶

The role of obstetricians is central to the process of assessment, certification and treatment under the Act, and they are also likely to play a key role in the referral pathway, regardless of whether the risk arises from physical health risk or suicide intent.

2.2 Role of Psychiatrists

Under the Act, psychiatrists will be involved in the assessment and certification process in cases arising from suicide intent.

⁵ For further information on the *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* of the Medical Council, please see <http://www.medicalcouncil.ie/News-and-Publications/Publications/Information-for-Doctors/Guide-to-Professional-Conduct-and-Ethics-for-Registered-Medical-Practitioners.pdf> Following the commencement of the Act, the Medical Council has updated the provisions under paragraph 21 on Abortion.

⁶ For ease of reading, the word 'obstetricians' will be intended to mean 'obstetrician/gynaecologists' in this document.

2.3 Role of relevant specialities

Formal involvement of relevant specialities is only applicable in cases where the life of the pregnant woman is at risk due to physical illness.

Relevant specialities may include anaesthesia, cardiology, oncology, haematology, respiratory medicine, neurology, nephrology, gastroenterology, microbiology, etc., depending on the woman's physical condition.

Medical expertise relevant to the patient's condition should be sought as per normal practice.

2.4 Role of Nurses/Midwives

Nurses and midwives are key health care personnel but generally have no formal role in relation to the referral and certification process under the Act. They are expected to provide safe and holistic care and support by incorporating best available evidence.

A Midwife or Nurse could play a role in the referral pathway if they are the first point of contact for a woman who requires care, such as in community mental health services, GP practices or Advanced Nurse/Midwife Practitioners, and would be expected to refer the woman as per the process outlined in this document.

2.5 Role of GP/Other Primary Care Physicians and Referral Sources

GPs are often the first point of contact a pregnant woman has with the health service. Traditionally, GPs play key roles in supporting pregnant women, starting from the time a woman might suspect that she is pregnant through to confirmation of the pregnancy and continuing on to routine supports during the period of antenatal and post-natal care.

GPs hold medical records of their patients and may have vital knowledge regarding the physical and psychological health of the woman, which in many instances would extend over a number of years. This expertise is acknowledged in the Act, which seeks to involve a woman's GP in the assessment process where the woman consents to such consultation and it is practical to do so. The GP's opinion may assist the clinical decision-making process but is not required for it or for certification.

Therefore, a woman's GP may play a vital role in the assessment of risk. He/she may also facilitate the continuity of care for the woman after the treatment has been delivered.

Figure 1 overleaf provides a flowchart to assist GPs in the referral process. If a GP considers a pregnant woman's life to be at real and substantial risk from physical illness, she should be urgently referred to a consultant obstetrician in an appropriate institution or other relevant specialist. If a GP considers a pregnant woman's life to be at real and substantial risk from suicide, he/she should refer her urgently to the local consultant psychiatrist, or a consultant obstetrician in an appropriate institution or through the appropriate emergency pathway depending on her condition and how critical her situation is. Ordinarily such referrals should take place within two to three days.

If a GP experiences difficulty in accessing the local consultant psychiatrist, he/she can refer to the relevant Executive Clinical Director (Mental Health)⁷ to organise an appropriate assessment.

Local mental health services retain responsibility for the ongoing mental health care for persons living within their catchment area.

Women may also present to a variety of care providers such as crisis pregnancy services, public health nurses, counsellors, social workers or other members of the primary care team. Such services can either refer the woman to her GP or advise the woman to present as an emergency at a hospital where appropriate. All primary care providers should be aware of their own professional guidelines in relation to such cases.

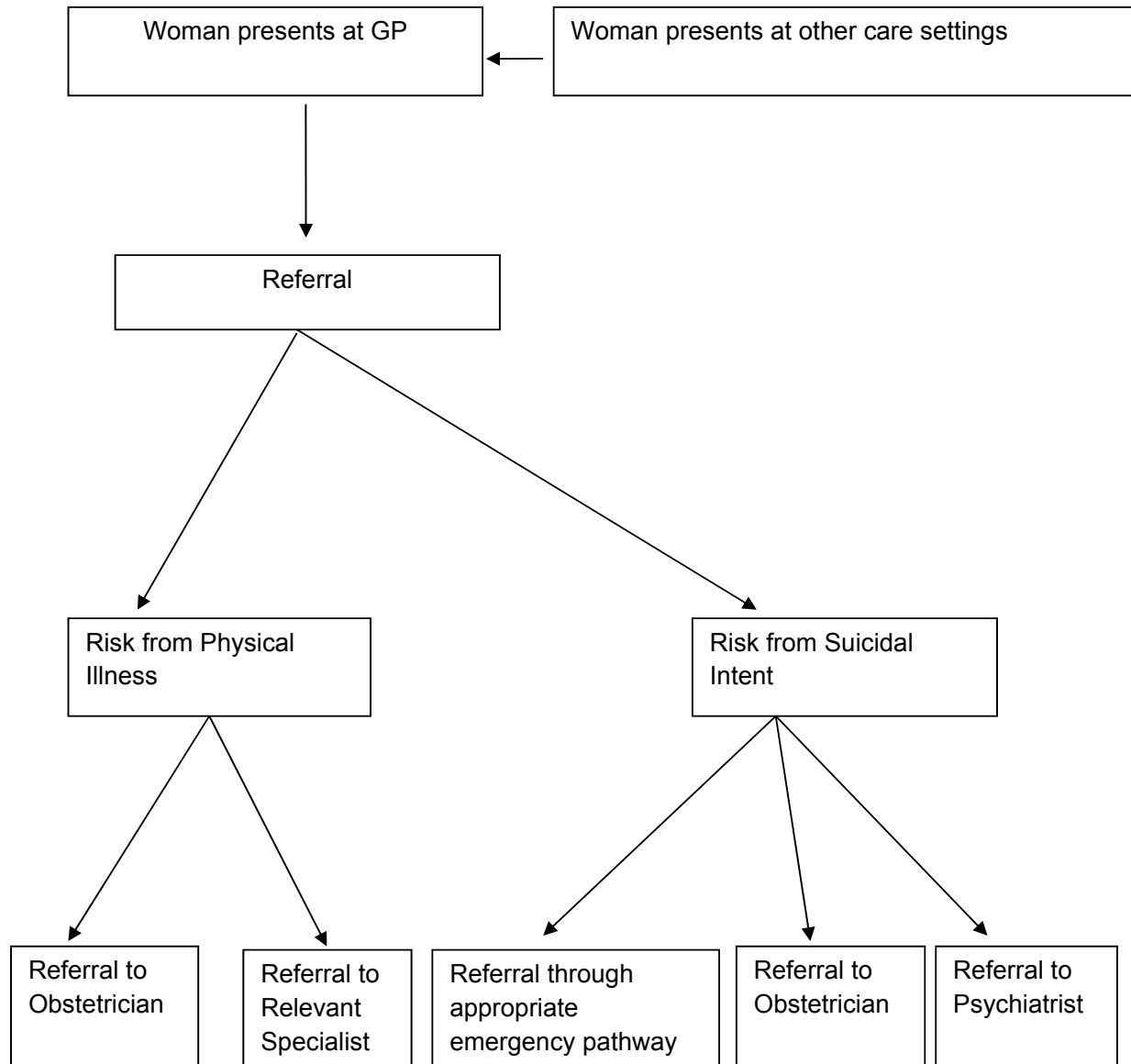
2.6 Referral to crisis pregnancy services

State-funded crisis pregnancy and post-abortion services are available nationwide. Referral to services providing post-abortion counselling might be appropriate in cases where certification is received under the legislation. Moreover, in cases where certification is not received, a woman should be offered referral to crisis pregnancy counselling services to explore her options further if appropriate⁸. Ordinarily such referrals should take place within two to three days.

⁷ Executive Clinical Directors (Mental Health) provide overall clinical and operational leadership for mental health services within their area, wherever located (see Appendix 8 for contact details).

⁸ For further information please consult www.positiveoptions.ie

Figure 1: Referral from General Practitioner or other care providers*



* Women may present to a variety of care providers such as crisis pregnancy services, public health nurses, counsellors, social workers or other members of the primary care team. Such services can either refer the woman to her GP or advise the woman to present themselves at an Emergency Department.

3. Clinical Assessment and Certification Process

This section sets out the key components of the process of clinical assessment required by the Protection of Life During Pregnancy Act 2013 when termination of pregnancy is under consideration, i.e. when there is a real and substantial risk to the life of the pregnant woman from a physical risk under Section 7, when there is an immediate risk to the life of the pregnant woman under Section 8 or when there is a real and substantial risk to the life of the pregnant woman from suicide intent under Section 9⁹. For check lists of requirements under each Section, please see Tables D, G and E on pages 23, 30 and 24 respectively.

3.a Terminology

For ease of reference some of the key terms employed in the Act are clarified below.

'Doctor/Medical practitioner' means a medical practitioner registered in any division of the Medical Council Register.

'Obstetrician' means a medical practitioner registered in the Specialist Division of the Medical Council Register under the specialty of 'Obstetrics and Gynaecology'.

'Psychiatrist' means a medical practitioner registered in the Specialist Division of the Medical Council Register under the speciality of 'Psychiatry'.

3.1 Risk to life from Physical Illness – Section 7 of the Act

Under this section, a number of requirements need to be fulfilled to render lawful a medical procedure in the course of which or a result of which an unborn human life is ended. These are:

- 1) two doctors who are registered in the Specialist Division of the Medical Council have examined the woman and have jointly certified in good faith that:
 - a. there is a real and substantial risk of loss of the woman's life from a physical illness¹⁰;
 - b. in their reasonable opinion, this risk is one that can **only** be averted by a termination of pregnancy, and

⁹ A checklist of all relevant legal requirements applicable to the process of certification is provided in the relevant sections.

¹⁰ This risk does not need to be immediate or inevitable – this scenario is covered by Section 8 of the Act on Emergencies at 3.2 in this document.

- c. in arriving at this opinion, the medical practitioners have, in good faith, had regard to the need to preserve unborn human life as far as practicable.
- 2) in addition the medical procedure must be carried out by an obstetrician registered on the Specialist Division of the Medical Council at an appropriate institution (see section 6.3 of this document and Appendix 6).

Points 1) a. to c. jointly form the 'test'. These are the requirements for a lawful termination that were identified by the Supreme Court in the *X* case judgment.

The requirements of point 1) c. and 2) are discussed in more detail in section 6 of this document as they apply directly to the carrying out of the medical procedure in question.

A summary of legal requirements for certification and medical procedure with regards to the risk of loss of life from physical illness is provided in Table A overleaf.

The Act does not specify that the two doctors have to examine the woman together or that they examine the woman in the same location. While only two doctors are required to certify the procedure, it may be appropriate for clinicians to consult with colleagues within a multi-disciplinary discussion in accordance with medical best practice.

However, the Act does set out very specific requirements as to the nature and level of expertise of the doctors involved in the certification process and these are that:

- one of them must be registered in the Specialist Division of the Medical Council Register under the specialty of 'Obstetrics and Gynaecology' and must practise at an appropriate institution (i.e. publicly-funded maternity or large general hospital - see section 6.3);
- one of them must be registered in the Specialist Division of the Medical Council Register under a relevant specialty.

Relevant specialty is defined in the Act as a specialty relevant to the care or treatment of the physical illness in question. These requirements do not prevent the second medical practitioner being an additional obstetrician if that is considered appropriate for the case at hand.

Figure 2 (see page 14) shows the referral pathway for risk of loss of life from physical illness (section 7 of the Act). Depending on the circumstances, the woman might be examined by either specialist first and then, if the first specialist deems that the requirements of the test have been met, he/she shall refer her on to the second specialist. If the first specialist deems that the requirements of the test have not been met, then section 5 in this document on 'Non-Certification' will apply.

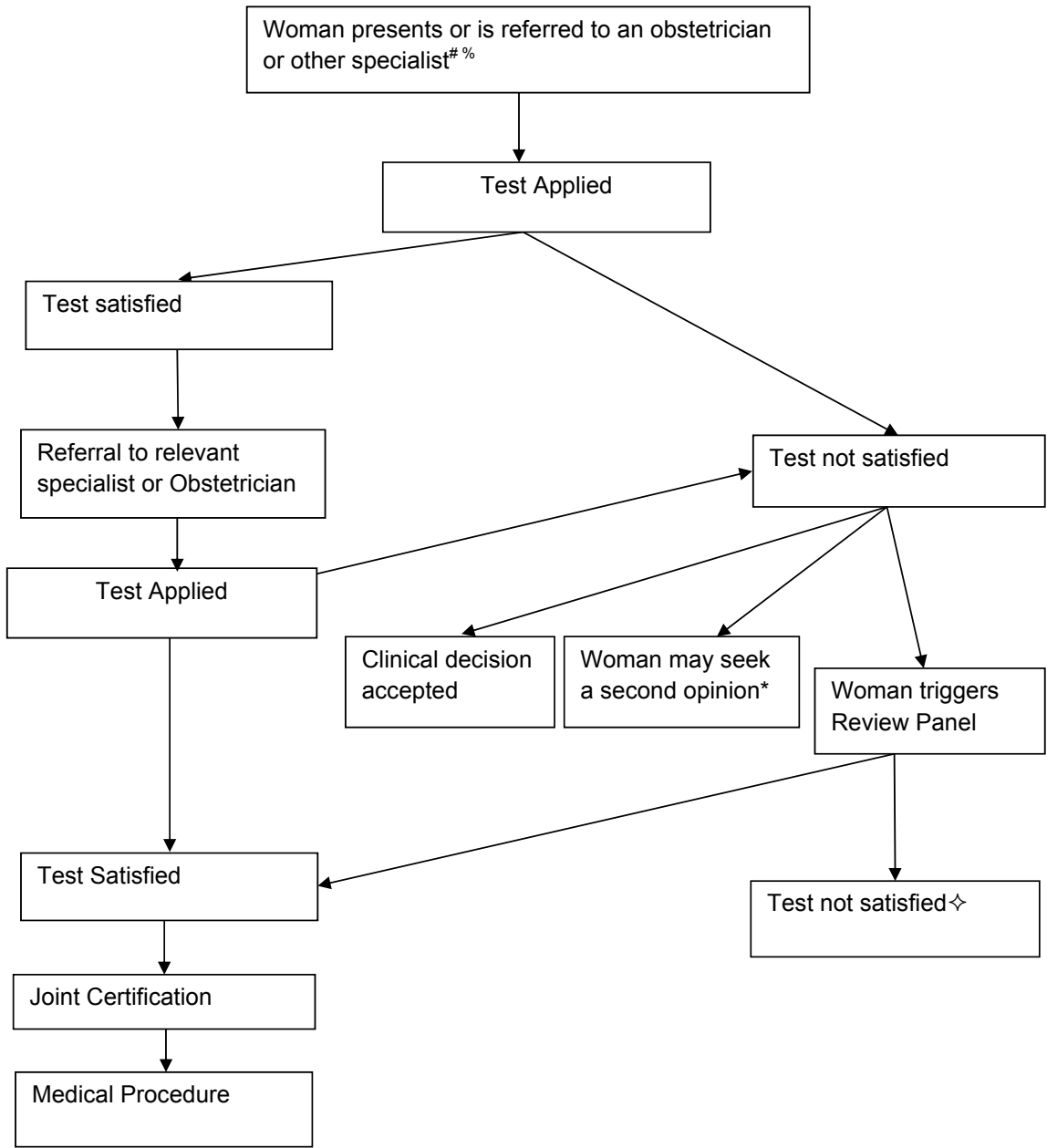
Each specialist should be responsible for the assessment in relation to his/her own specialty in accordance with existing medical best practice in relation to multi-disciplinary assessments.

Table A Risk of Loss of Life from Physical Illness (Section 7)
A Summary of Legal Requirements for Certification and Medical Procedure

Requirements for Certification	
Number of Doctors	<u>Two doctors</u> are required for certification
Qualifications of the Doctors	The two certifying doctors must be registered in the Specialist Division of the Medical Council
Nature and level of Expertise of the Doctors	At least one of the two doctors must be registered in the specialist division of the Medical Council Register, under the specialty of ' Obstetricians and Gynaecology' and must practise at an appropriate institution ¹¹ The other one must be registered in the Specialist Division of the Medical Council register under a relevant Specialty Relevant Specialty is defined in the Act as a specialty relevant to the care or treatment of the physical illness in question.
Test	Both doctors are to clinically assess the woman and jointly certify that <ul style="list-style-type: none"> i) There is a real and substantial risk of loss of the woman's life from a physical illness ii) In their reasonable opinion, this risk is one that can only be averted by the termination of the pregnancy iii) In arriving at this opinion, the doctors have, in good faith, had regard to the need to preserve unborn human life as far as practicable
Requirements for Medical Procedure	
Qualifications of the Treating Doctor	Medical procedure can only be carried out by an Obstetrician on the Specialist Division of the Medical Council
Certification	Certification must always precede medical procedure /treatment
Location	Medical procedure can only be carried out at an appropriate institution

¹¹ See Appendix 6

Figure 2: Referral Pathway for Risk of Loss of Life from Physical Illness (Section 7)



Test
 Two doctors are to clinically assess the woman and jointly certify that:
 i) There is a real and substantial risk of loss of the woman's life from a physical illness
 ii) in their reasonable opinion, this risk is one that can **only** be averted by the termination of the pregnancy
 iii) in arriving at this opinion, the doctors have, in good faith, had regard to the need to preserve unborn human life as far as practicable

% Each specialist should be responsible for the assessment in relation to his/her own specialty in accordance with existing medical best practice.
 # Specific requirements for the doctors who may certify a medical procedure under the Act as set out in the Guidance Document and Summary Tables
 * Process as per initial referral
 ◇ There is nothing to prevent a woman seeking a further specialist opinion if she so wishes. If the woman is unable to get an opinion she can apply for a formal review (see section 7)

3.1a. Consultation with the GP

The Act makes specific provisions in relation to consultation with GPs. If practicable, at least one of the two specialists involved in the assessment process must consult with the woman's existing GP for the purpose of obtaining information in respect of the woman that may assist the medical practitioners in their clinical decision. However, this consultation can only take place if the woman consents to it.

It is recommended that, prior to disclosing information, GPs should seek and document verbal consent from the woman or view her written consent.

3.1b Communication of decision reached

Decisions to certify or otherwise should be reached expeditiously and communicated to the woman. Patients should be informed of when to expect a decision.

3.2 Risk to life from Physical Illness in emergency – Section 8 of the Act

As a balancing measure, to ensure a woman's life is not jeopardised in the case of a medical emergency relating to a physical illness, section 8 of the Act lays out the requirements for a lawful termination of pregnancy in emergency situations, i.e. where the risk is immediate¹².

These are:

- 1) One doctor who is registered on the Register of the Medical Council has examined the woman and believes in good faith that
 - a. there is an immediate risk of loss of the woman's life from a physical illness
 - b. in his/her reasonable opinion, this risk is one that can **only** be averted by a termination of pregnancy, and
 - c. in arriving at this opinion, the medical practitioner has, in good faith, had regard to the need to preserve unborn human life as far as practicable.
- 2) in addition the medical procedure must be carried out by the medical practitioner who certifies the above.

Therefore in emergency circumstances, the reasonable opinion of one medical practitioner is sufficient to certify that the termination is necessary to save the woman's life, but the risk must be immediate. The certifying doctor must be registered on the Register of the Medical Council but does not need to be registered on the Specialist Division.

¹² There is no emergency provision for risk of suicide intent.

The requirements of point 1) c. and 2) are discussed in more detail in section 6 of this document as they apply directly to the carrying out of the medical procedure in question.

A summary of legal requirements for certification and medical procedure with regards to immediate risk of loss of life from physical illness is provided below in Table B.

**Table B Risk of Loss of Life from Physical Illness in Emergency (Section 8)
 A Summary of Legal Requirements for Certification and Medical Procedure in
 Emergencies**

Requirements for Certification	
Number of Doctors	<u>One doctor</u> is sufficient for certification
Qualifications of the Doctor	A certifying doctor must be registered on the Register of the Medical Council ¹³
Test	The doctor should clinically assess the woman and certify that <ul style="list-style-type: none"> i) There is an immediate risk of loss of the woman's life from a physical illness¹⁴ ii) In his/her reasonable opinion, this risk is one that can only be averted by the termination of the pregnancy iii) In arriving at this opinion, the doctor has, in good faith, had regard to the need to preserve unborn human life as far as practicable
Requirements for Medical Procedure	
Qualifications of the Treating Doctor	Medical procedure must be carried out by the same doctor who certifies the procedure.
Certification	Certification does not have to precede the medical procedure /treatment in emergencies. However, it must be provided within 72 hours of carrying out the procedure
Location	Medical procedure does not have to be carried out at an appropriate institution

Consultation with the GP is not required in emergencies.

¹³ The doctor, in the case of emergency, does not have to be registered on the Specialist Division of the Medical Council

¹⁴ There is no emergency provision for risk from suicide intent.

3.3 Risk to life from Suicide Intent – Section 9 of the Act

Section 9 of the Act deals with a risk to life arising from suicide intent. Under this section, a number of requirements need to be fulfilled to render lawful a medical procedure in the course of which or a result of which an unborn human life is ended. These are:

- 1) three doctors who are registered on the Specialist Division of the Medical Council Register have examined the woman and have jointly certified in good faith that
 - a. there is a real and substantial risk of loss of the woman's life by way of suicide
 - b. in their reasonable opinion, this risk is one that can **only** be averted by a termination of pregnancy, and
 - c. in arriving at this opinion, the medical practitioners have, in good faith, had regard to the need to preserve unborn human life as far as practicable.
- 2) in addition the medical procedure must be carried out by an obstetrician registered on the Specialist Division of the Medical Council at an appropriate institution.

Points 1) a. to c. jointly form the 'test'. These are the requirements for a lawful termination that were identified by the Supreme Court in the *X* case judgment.

The requirements of point 1) c. and 2) are discussed in more detail in section 6 of this document as they apply directly to the carrying out of the medical procedure in question.

The Act does not specify that the three doctors have to examine the woman together or that they examine the woman at the same location. While three doctors are required to certify the procedure, it may be appropriate for clinicians to consult with colleagues within a multi-disciplinary discussion in accordance with medical best practice.

However, the Act does set out very specific requirements as to the nature and level of expertise of the doctors involved in the certification process and these are that:

- one of them must be registered on the Specialist Division of the Medical Council Register under the specialty of 'Obstetrics and Gynaecology' and must practise at an appropriate institution (see section 6.3).
- two of them must be registered on the Specialist Division of the Medical Council Register under the specialty of 'Psychiatry', and:
 - o one must practise in an appropriate institution (i.e. maternity or large general hospital - see section 6.3)
 - o one must practise at a centre approved by the Mental Health Commission (see appendix 7), or for or on behalf of the HSE, e.g. in a community mental health team, or both.

- One must have provided mental health services to women in relation to pregnancy, childbirth or post-delivery before but he/she does not need to be a perinatal psychiatrist.

A summary of legal requirements for certification and medical procedure in a case of risk of loss of life from suicide is provided in Table C.

Figure 3 (see page 21) shows the referral pathway for risk of loss of life from suicide (section 9 of the Act). Depending on the circumstances, the woman might be examined by any of the three specialists first and then, if the first specialist deems that the requirements of the test have been met, he/she shall refer her on to the second specialist, and so on. If the first specialist deems that the requirements of the test have not been met, then section 5 in this document on 'Non-Certification' will apply.

While it is not possible to outline all possible clinical scenarios that may arise, it is recommended that assessment for the purpose of section 9 of the Act may proceed as described below.

When a woman completes her first assessment with a psychiatrist and that psychiatrist is of the opinion that her condition satisfies the requirement of the Act, he/she will certify on the prescribed form and seek a second psychiatric assessment for the patient as per current practice. If the psychiatrist has difficulty in accessing a second psychiatrist, then she/he can contact an Executive Clinical Director¹⁵ who will assist in ensuring the woman is seen in a timely manner.

When a woman completes her first assessment with a psychiatrist and that psychiatrist is of the opinion that her condition does not satisfy the requirements of the Act or does not give an opinion then he/she must inform the woman in writing that she has a right to apply for a formal review of her case, see section 7 of this document.

If a woman has completed her first assessment with a psychiatrist and found to satisfy the requirements of the Act, but the second psychiatrist disagrees or does not give an opinion, then the second psychiatrist must inform the woman in writing that she has a right to apply for a formal review of her case, see section 7 of this document.

Where two psychiatrists have conducted an assessment and sign the relevant certification

¹⁵ Executive Clinical Directors (Mental Health) provide overall clinical and operational leadership for mental health services within their area, wherever located (see Appendix 8 for contact details).

form (see section 4.1 of this document), the woman should be referred to a consultant obstetrician at an appropriate institution for assessment.

Local mental health services retain responsibility for the ongoing mental health care for persons living within their catchment area.

Each specialist should be responsible for the assessment in relation to his/her own specialty in accordance with existing medical best practice in relation to multi-disciplinary assessments.

3.3.a Consultation with the GP

The Act makes specific provisions in relation to consultation with GPs. If practicable, at least one of the two specialists involved in the assessment process must consult with the woman's existing GP for the purpose of obtaining information in respect of the woman that may assist the medical practitioners in their clinical decision. However, this consultation can only take place if the woman consents to it.

It is recommended that, prior to disclosing information, GPs should seek and document verbal consent from the woman or view her written consent.

3.3.b Communication of decision reached

Decisions to certify or otherwise should be reached expeditiously and communicated to the woman. Patients should be informed of when to expect a decision.

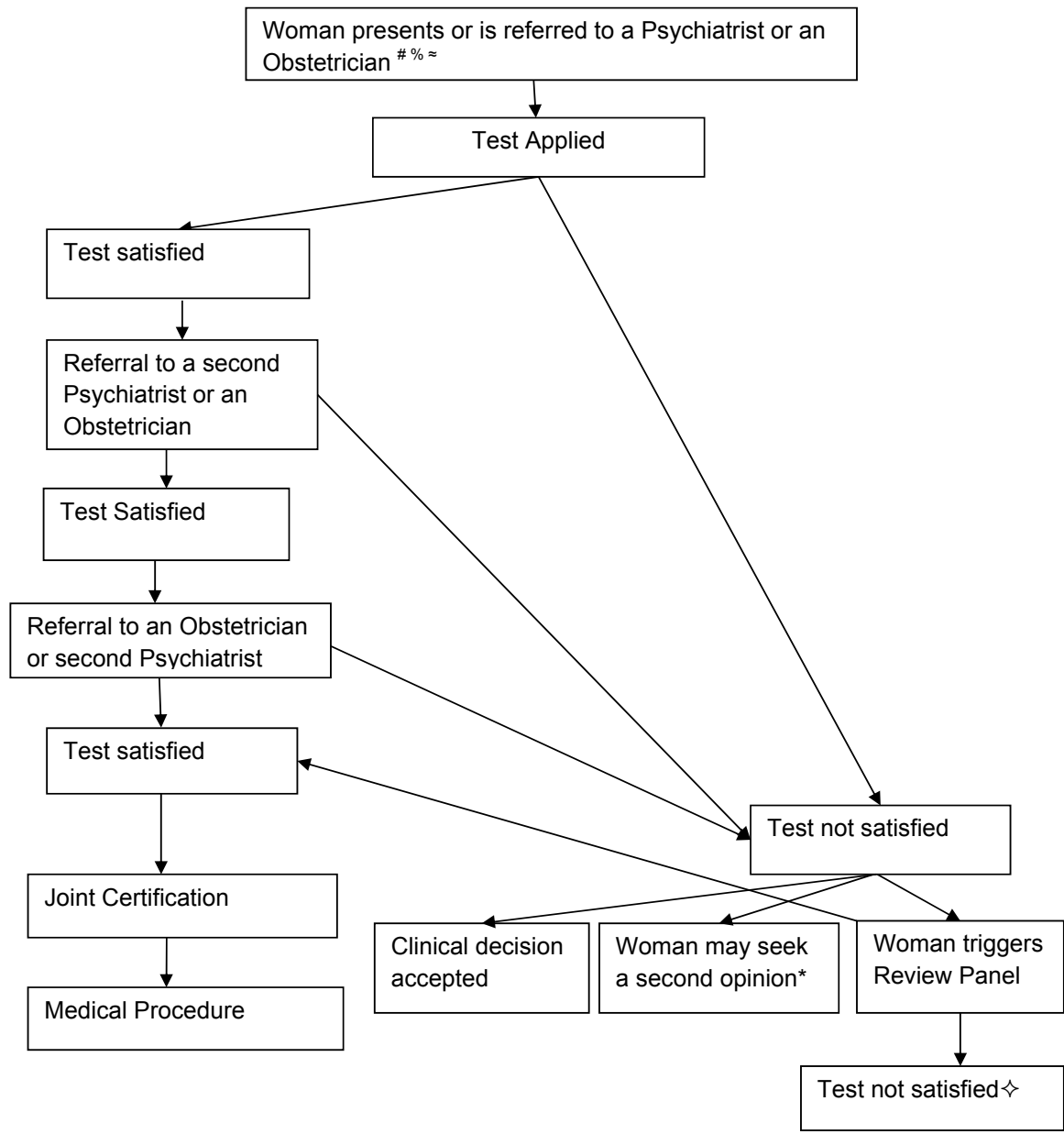
The certifying doctors should agree how the decision should be communicated to the patient.

Table C Risk of Loss of Life from Suicide (Section 9)

A Summary of Legal Requirements for Certification and Medical Procedure

Requirements for Certification	
Number of Doctors	Three doctors are required for certification, an Obstetrician and two Psychiatrists
Qualifications of the Doctors	Certifying doctors must be registered on the Specialist Division of the Medical Council Register.
Nature and level of Expertise the Doctors	<p>i) The certifying Obstetrician must be registered in the Specialist Division of the Medical Council register under the specialty of 'Obstetrics and Gynaecology' and must practise in an appropriate institution</p> <p>ii) The two Psychiatrists must be registered on the Specialist Division of the Medical Council register under the specialty of 'Psychiatry', and:</p> <ul style="list-style-type: none"> - One of the psychiatrists must practise in an appropriate institution - Either of the two must practise at an "approved centre" (see Appendix 7), or for / on behalf of the HSE - Either of the two must have provided mental health services to women in relation to pregnancy, childbirth or post-delivery before but he/she does not need to be a perinatal psychiatrist
Test	<p>All three doctors are to clinically assess the woman and jointly certify that</p> <p>i) There is a real and substantial risk of loss of the woman's life by way of suicide</p> <p>ii) In their reasonable opinion, this risk is one that can only be averted by the termination of the pregnancy</p> <p>iii) In arriving at this opinion, the doctors have, in good faith, had regard to the need to preserve the life of the unborn human life as far as practicable</p>
Requirements for Medical Procedure	
Qualifications of the Treating Doctor	Medical procedure can only be carried out by an Obstetrician on the Specialist register of the Medical Council
Certification	Certification must always precede medical procedure /treatment
Location	Medical procedure can only carried out at an appropriate institution

Figure 3: Referral Pathway for Risk of Loss of Life from Suicide (Section 9)



Test:
 Three doctors are to clinically assess the woman and jointly certify that:
 i) There is a real and substantial risk of loss of the woman's life by way of suicide
 ii) in their reasonable opinion, this risk is one that can **only** be averted by the termination of the pregnancy
 iii) in arriving at this opinion, the doctors have, in good faith, had regard to the need to preserve the life of the unborn human life as far as practicable

Specific requirements for the doctors who may certify a medical procedure under the Act as set out in the Guidance Document and Summary Tables.
 % Each specialist should be responsible for the assessment in relation to his/her own specialty in accordance with existing medical best practice.
 ≈ If a referring doctor has difficulty accessing a psychiatrist for an opinion, he/she can refer to the relevant Executive Clinical Director (Mental Health), (see section 2.5).
 * Process as per initial referral
 ◇ There is nothing to prevent a woman seeking a further specialist opinion if she so wishes. If the woman is unable to get an opinion she can apply for a formal review (see section 7)

4. Certification

4.1 Certification for non-emergency physical health risk and suicide intent

If the requirements for the process of assessment have been fulfilled and the relevant specialists have deemed that the woman satisfies the test, they shall then proceed with the act of certification, i.e. they shall jointly sign a prescribed form entitled Protection of Life During Pregnancy Act 2013 (Certification) Regulations 2013¹⁶; with the prescribed information.

These include the following:

- general details on the patient;
- clinical grounds for the certification;
- whether the consultation with the GP has taken place and if not, why not;
- details on the certifying doctors;
- name of appropriate institution to which the certificate is to be forwarded.

Certification in these circumstances has to precede the medical procedure carried out under the Act.

It is then the mandated responsibility of the certifying obstetrician to make whatever arrangements are necessary for the procedure to take place and it is recommended that he/she shall forward the completed form to the Master/Clinical Director of the appropriate institution where the procedure is due to be carried out.

Table D and E (overleaf) provide a detailed checklist of requirements for certification based on the risk of loss of life from physical illness (section 7 of the Act) and the risk of loss of life from suicide (section 9 of the Act).

¹⁶ All prescribed forms can be seen at Appendix 3, 4 and 5. These will be widely circulated and will be available on the Department of Health website (www.doh.ie) and HSE website (www.hse.ie).

**Table D Risk of Loss of Life from Physical Illness (Section 7)
 Detailed Checklist of Requirements for Certification**

S/N	Requirements	Tick (√)
1	<p>i) Two doctors must clinically assess the woman and record the date(s) of examination(s)</p> <p>ii) Certifying doctors must be registered on the Specialist Division of the Medical Council Register.</p> <ul style="list-style-type: none"> - At least one of the two doctors must be registered under the specialty of 'Obstetrics and Gynaecology' and must practise at an appropriate institution - The other doctor must be registered under a relevant Specialty <p>Attending Obstetrician who meets the requirements in Step 1(ii) above is now regarded as the Certifying Obstetrician provided Steps 2-4 below are also satisfied</p>	
2	T Is there a real and substantial risk of loss of the pregnant woman's life from a physical illness?	
3	E Based on the reasonable opinion of the doctor, is this risk one that can only be averted by a termination of pregnancy?	
4	S In arriving at this opinion, has the doctor had due regard to the need to preserve the life of the unborn as far as practicable?	
5	T The first specialist should refer the woman for a second assessment in line with Step 1 above	
6	E The second doctor must follow steps 1-4	
7	S The woman's GP must be consulted with her consent if practicable	
8	T Both doctors must jointly certify for the medical procedure to be lawful under the Act	
	The "Protection of Life During Pregnancy Act 2013 (Certification) Regulations 2013" form ¹⁷ must be completed for this purpose	
9	Location: Note that medical procedure can only be carried out at an appropriate institution The woman's preference in relation to choice of appropriate institution should be sought and considered where practicable	
10	Certifying Obstetrician must: i) make arrangement for procedure to take place, and ii) forward the certification to the Master / Clinical Director of the appropriate institution where the procedure will be carried out	
In Case of Non- Certification		
1	In cases where the woman's condition does not satisfy the test criteria, the Obstetrician or the relevant specialist should inform the woman of their decision	
2	The Obstetrician or the relevant specialist must inform the woman in writing of her right to apply for a formal medical review ¹⁸	

¹⁷ See Appendix 3

¹⁸ See Section 7 of this Guidance document for the Review Process.

**Table E Risk of Loss of Life from Suicide (Section 9)
 Detailed Checklist of Requirements for Certification**

S/N	Requirements	Tick (✓)
1	i) <u>Three doctors</u> comprising an Obstetrician and two Psychiatrists must clinically assess the woman and record the date of examination ii) Certifying doctors must be registered on the Specialist Division of the Medical Council Register. iii) The two Psychiatrists must be registered on the Specialist Division of the Medical Council register under the specialty of 'Psychiatry', and: <ul style="list-style-type: none"> - One of the Psychiatrists must practise in an appropriate institution - Either of the two must practise at an "approved centre" (see Appendix 7), or for / on behalf of the HSE - Either of the two must have provided mental health services to women in relation to pregnancy, childbirth or post-delivery before but he/she does not need to be a perinatal Psychiatrist iv) A certifying Obstetrician must be registered on the Specialist Division of the Medical Council Register under the specialty of 'Obstetrics and Gynaecology' and must practise in an appropriate institution.	
2	If the first specialist is an Obstetrician, he/she shall refer the woman to a Psychiatrist for assessment.	
3	T Is there a real and substantial risk of loss of the woman's life by way of suicide?	
4	E Based on the reasonable opinion of the doctor, is this risk one that can only be averted by a termination of the pregnancy?	
5	T In arriving at this opinion, has the doctor had due regard to the need to preserve the life of the unborn as far as practicable?	
6	If the woman's condition meets the requirements in steps 1-5, she should be referred to a second Psychiatrist for second assessment.	
7	The second Psychiatrist must follow steps 1-5	
8	The woman should be referred to an Obstetrician or back to the referring Obstetrician for a third assessment. The Obstetrician must practise in an appropriate institution	
9	The woman's GP must be consulted with her consent if practicable	
10	The three doctors should jointly certify for the medical procedure to be lawful under the Act. The "Protection of Life During Pregnancy Act 2013 (Certification) Regulations 2013" form must be completed for this purpose	
11	Location: Note that medical procedure can only be carried out at an appropriate institution The woman's preference in relation to choice of appropriate institution should be sought and considered where practicable	
12	Certifying Obstetrician: i) must make arrangement for procedure to take place, and ii) forward the certification to the Master / Clinical Director of the appropriate institution where the procedure will be carried out	
In Case of Non- Certification		
1	In cases where the woman's condition does not satisfy the test criteria, one of the Psychiatrists and /or the Obstetrician shall inform the woman of their decision.	
2	One of the Psychiatrists or the Obstetrician must inform the woman in writing of her right to apply for a formal medical review ¹⁹	

¹⁹ See Section 7 of this Guidance document for the Review Process

4.2 Certification for emergency physical health risk

In emergency situations only, certification can follow the carrying out of the medical procedure, but needs to take place no later than 72 hours after the intervention.

In line with current medical practice, the obligation to maintain proper medical records will apply in emergency situations. The certification form must be sent to the Master/Clinical Director of the appropriate institution²⁰ where the medical procedure took place. If the procedure did not take place in an appropriate institution, the form must be retained with the woman's medical records and sent to the person in charge of the facility providing direct and/or aftercare to the patient.

²⁰ For a definition of 'appropriate institution' see section 6.3 of this Guidance document.

5. Non-Certification

If the relevant specialist(s) does not believe that the requirements for certification have been fulfilled, he/she shall inform the woman of their decision and explain to her the remaining options. These are:

- explore other treatment options under the care of the existing treating team;
- seek a referral to another specialist for a further clinical opinion; or
- apply for a formal medical review under Chapter 2 of the Act (see section 7).

In relation to seeking a second option, the Act does not preclude women from seeking a second or subsequent medical opinion in relation to the outcome of the clinical decision made by any/all members of their treating team, as per standard medical practice.

In relation to the formal review process, specialists/doctors responsible for assessments under the Act also have a duty to inform the woman of this option in writing (for further information, see section 7).

Specialists should keep GPs/referring doctors informed of any clinical decision as per normal medical practice.

A doctor should offer the woman referral to crisis pregnancy counselling services to explore her options if appropriate²¹ (see section 2.6).

²¹ See www.positiveoptions.ie

6. Medical Procedure

6.1 Medical Procedure – Non Emergencies

One of the requirements for a termination to be lawful in non-emergency circumstances is that, following certification, it must be carried out by an obstetrician on the specialist register of the Medical Council at an appropriate location (see section 6.3). A list of the current appropriate institutions for the purpose of the Act is provided at Appendix 6.

The medical procedure does not have to be carried out in the same appropriate institution where the certifying obstetrician has examined the woman, or where he/she practises. The woman's own preference in relation to the appropriate institution where the procedure is due to be carried out should be sought and adhered to whenever possible.

Appropriate follow up should be offered by the consultant obstetrician who carried out the procedure at the hospital where the procedure took place.

The table overleaf provides a detailed checklist of requirements for medical procedure under the Act based on risk of loss of life from physical illness and from suicide (Table F).

**Table F Risk of Loss of Life from Physical Illness (Section 7) or Suicide (Section 9)
 Detailed Checklist of Requirements for Medical Procedure**

S/N	Requirements	Tick (✓)
1	Medical procedure can only be carried out by an Obstetrician	
2	<p>Certification must always precede medical procedure /treatment</p> <p>The Obstetrician should have sight of the “Protection of Life During Pregnancy Act 2013 (Certification) Regulations 2013” form and he/she must ensure that the specified information is fully provided and the form is duly signed before proceeding further.</p> <p>The certification form must be sent to the Master/Clinical Director of the appropriate institution where the procedure will be carried out</p>	
3	<p>Location: Obstetricians should ensure that the medical procedure is carried out only at an appropriate institution</p> <p>The woman’s preference in relation to choice of appropriate institution should be sought and considered where practicable</p>	
4	Masters/Clinical Directors/CEOs of appropriate institutions must ensure that notification of the procedure is sent to the Minister for Health within 28 days of the procedure being carried out the using Part B ²² of the “Protection of Life During Pregnancy Act 2013 (Section 20) (Notifications) Regulations 2013” form	

²² Part A must be retained by the appropriate institution with the patient’s records.

6.2 Medical Procedure – Emergencies

Where the real and substantial risk to the life of the woman is immediate i.e. in emergencies, any registered medical practitioner may carry out the procedure. However, the medical practitioner who certifies the procedure must be the one who carries it out. It is recommended that an obstetrician carry out the procedure. If this is not practicable, the most senior appropriate clinician on duty should do so. A multidisciplinary approach should be considered.

A detailed checklist of requirements for certification and medical procedure in emergencies is provided in Table G overleaf as follows.

**Table G Risk of Loss of Life from Physical Illness in Emergency (Section 8)
 Detailed Checklist of Requirements for Certification and Medical Procedure in
 Emergencies**

S/N	Requirements	Tick (✓)
1	i) <u>One doctor</u> must clinically assess the woman and record the date of examination ii) The certifying doctor must be a medical practitioner registered on the Register of the Medical Council.	
2	T E S T	Is there an <u>immediate risk</u> of loss of the pregnant woman's life from a physical illness?
3		Based on the reasonable opinion of the doctor, is this risk one that can only be averted by a termination of pregnancy?
4		In arriving at this opinion, has the doctor had due regard to the need to preserve the life of the unborn as far as practicable?
5	Medical procedure can only be carried out by the medical practitioner who certifies it.	
6	Certification must be provided within 72 hours of carrying out the procedure. The certifying practitioner should ensure that the "Protection of Life During Pregnancy Act 2013 (Certification) Regulations 2013" form is completed for this purpose; with the specified information fully provided and the form is duly signed	
7	Submission of the Certification form <ul style="list-style-type: none"> - The certification form must be sent to the Master/Clinical Director of the appropriate institution where the medical procedure took place. - If the procedure did not take place in an appropriate institution, the form must be retained with the woman's medical records and sent to the person in charge of the facility providing direct and/or aftercare to the patient. 	
8	Location: Medical procedure does not have to take place in an appropriate institution	
9	Submission of the Notification form Masters/Clinical Directors/CEOs of appropriate institutions or medical practitioners themselves depending on circumstances must ensure that notification of the procedure is sent to the Minister for Health within 28 days of a procedure being carried out using Part B ²³ of the "Protection of Life During Pregnancy Act 2013 (Section 20) (Notifications) Regulations 2013" form.	

²³ Part A must be retained by the appropriate institution with the patient's records.

6.3 Appropriate institutions

Appropriate institutions are listed in Appendix 6.

These are the locations currently specified under the Act for the provision of the treatment. Therefore, to be lawful all terminations (except in cases of emergencies due to physical illness) must take place in an appropriate institution.

Locations for the provision of this medical procedure are limited to publicly-funded obstetric units or, where needed, large publicly-funded multi-disciplinary hospitals with intensive and critical care services.

6.4 Gestational Age

An important consideration in relation to the carrying out of the medical procedure is the issue of the gestational age of the unborn.

There is no time limit imposed by the Act in carrying out the medical procedure. However, the Act legally requires doctors to preserve unborn human life as far as practicable without compromising the woman's right to life. Therefore, there is no specific stage of pregnancy below which the certifying doctor will not have to consider the possibility of preserving the life and the dignity of the unborn where practicable without compromising the life of the mother.

Once certification has taken place, a pregnant woman has a right to a termination of pregnancy as soon as it can be arranged. The clinicians responsible for her care will need to use their clinical judgment as to the most appropriate procedure to be carried out, in cognisance of the constitutional protection afforded to the unborn, i.e. a medical or surgical termination or an early delivery by induction or Caesarean section.

Following certification, if the pregnancy is approaching viability, it is recommended that a multi-disciplinary discussion takes place to ascertain the most appropriate clinical management of the case.

6.5 Data Collection

Clinical data will continue to be collected through existing systems, e.g. Hospital In-Patient Enquiry Scheme and National Perinatal Reporting System. These are being examined in relation to the Act and any necessary adjustments to data collection systems will be communicated to appropriate institutions in the usual way.

The notification system is the process by which all medical procedures will be recorded for the purpose of the Act. The collection of clinical data does not satisfy the notification requirements of the Act.

7. Review Process

The Act makes provision for a formal clinical review. The purpose of this formal review process is to provide a mechanism for the woman, where she so requests, to have access to a review within a defined time period of the clinical assessment being made by the original clinical team. The formal review process is also open to any woman who has been unable to obtain an opinion from a doctor, either because the doctor was unable or unwilling to provide such opinion.

As indicated earlier, this formal review pathway is in addition to, and not in substitution for, the option of the woman seeking a second opinion as occurs in normal medical practice. Specialists/Doctors responsible for assessments under the Act are required by the legislation to inform the woman in writing of the review option and to provide her with the necessary information so that she or someone on her behalf can submit an application in this regard²⁴.

To avail of the review process the woman or someone acting on her behalf must apply in writing. The required form for this purpose is specified in regulations and is entitled Protection of Life During Pregnancy Act 2013 (Section 10) (Application of review of medical opinion) Regulations 2013 (see Appendix 4).

The Act names the HSE as the delegated authority for the establishment and implementation of the review process and the HSE must provide any necessary administrative facilities that may be required in this regard.

The HSE, as mandated by the Act, has established a Review Panel of at least 10 medical practitioners that would be considered appropriate to certify under the Act, i.e. registered in Specialist Division of the Medical Council under specialties relevant to the Act.

When the designated officer in the HSE receives an application for a formal review, he/she will immediately commence the process of establishing a Review Committee for the case²⁵.

²⁴ There are no restrictions on who that person may be, e.g. spouse, relative, friend, doctor, crisis pregnancy counsellor, etc.

²⁵ The National Director for Quality and Patient Safety is the designated officer for the receipt of applications. Applications should be forwarded to him by post (Quality and Patient Safety, HSE, Dr. Steevens' Hospital, Dublin 8) and marked 'Strictly Private & Confidential and to be opened by addressee only' or by email (poldpa@hse.ie)

He/she will establish this Committee as soon as possible but no later than 3 days²⁶ from receipt of the application.

The composition of this Committee will depend on whether the case relates to a risk arising from physical health or suicide intent, i.e. either two or three specialist doctors. The compositional requirements for the Committee mirror exactly those mandated in sections 7 and 9 of the Act and are laid out in sections 3.1 and 3.3 of this document respectively.

A medical practitioner who has previously been consulted in the case is disqualified from sitting on the Review Committee.

Recommendation

The HSE should develop a standard letter for the purpose of informing a woman of her right to apply for a formal clinical review.

7.1 Clinical Assessment and Certification Process for the Review

The functions of the Committee are to review the case and decide whether the pregnant woman in question satisfies the requirements for a lawful termination of pregnancy in accordance with the Act (for details in this regard, see sections 3.1 and 3.2 of this document).

The Committee has to complete its review as soon as possible but no later than 7 days²⁷ from its establishment.

The Act provides that the Committee can determine its own procedures and, therefore, it is likely that the most suitable approach will depend on each case. However, the Act does make a number of specific provisions in relation to the workings of the Committee.

The members of the Committee must examine the woman, not just her medical records. However, no further requirements are imposed in relation to the manner or location of this examination.

The woman in question and/or a person on her behalf²⁸ are entitled to be heard by the Committee.

²⁶ This timeframe is inclusive of weekends and bank holidays.

²⁷ This timeframe is inclusive of weekends and bank holidays.

²⁸ There are no restrictions on who that person may be, e.g. spouse, relative, friend, doctor, crisis pregnancy counsellor, etc.

The Review Committee may require doctors to produce such documents or other records in his or her possession or control, as may be specified, or to appear before the Committee. A doctor who fails to comply with such directions without reasonable cause can be liable to a fine of up to €2,500.

The Committee's decision must be unanimous since all members need to jointly certify the need for the procedure to be lawful (i.e. 2 specialists in relation to physical health and 3 in relation to suicide intent).

The Committee is required to give its decision in writing to the patient, or the person who applied on her behalf, and to the HSE as soon as possible after the review has taken place.

If a woman's condition becomes an emergency pending a formal review, the procedure can go ahead once the requirements of section 8 in relation to emergency situations have been fulfilled. The HSE designated officer should be informed as a matter of urgency to avoid unduly establishing a Committee or prolonging their work.

7.2 Certification

If the Committee has deemed that the woman satisfies the test, they should then proceed with the act of certification, i.e. they should jointly sign a prescribed form entitled Protection of Life During Pregnancy Act 2013 (Certification) Regulations 2013; with the prescribed information (for further information see section 4).

Following certification by the Committee, the steps to be followed are the same as in relation to an initial section 7 or section 9 certification (see sections 4 and 6).

7.3 Non-Certification

If the Committee does not believe that the requirements for certification have been fulfilled, it is required to give its decision in writing to the patient, or to the person who applied on her behalf, and to the HSE as soon as possible after the review has taken place. The woman can then review her options as generally indicated under section 5 of this document. In addition, the woman also has a constitutional right of access to the Courts.

7.4 Professional Indemnity

Members of the Review Panel will be indemnified by the State against the costs of defending legal actions in cases of alleged negligence in the performance of their work and against any damages awarded as a result of such action provided their duties are carried out in a bona fide manner.

While the indemnity does not provide automatic cover on a collective basis for members of the Review Panel for complaints made under Part 7, 8, or 9 of the Medical Council Practitioners Act 2007, any such complaint will be considered for potential cover on a case-by-case basis as part of their work on the Review Panel.

7.5 Payment / Expenses

Section 6 of the Protection of Life During Act allows for approved expenses associated with the administration of the Act to be paid to members of a Review Committee or medical practitioners called to attend a Review Committee from public funds. The HSE is responsible for the remuneration of personnel participating in the review process.

8. Notification

Section 20 of the Act provides for a notification system in relation to all terminations of pregnancy carried out under the Act. Specifically, it requires that the Minister for Health be notified of each termination of pregnancy no later than 28 days after it has taken place, without disclosing the name of the woman.

The notification must be recorded in the form entitled "Protection of Life During Pregnancy Act 2013 (Section 20) (Notifications) Regulations 2013" and must include the information below:

- Medical Council registration number of the medical practitioner who carried out the procedure;
- relevant section under the Act, i.e. section 7, 8 or 9, under which it was carried out;
- Medical Council registration numbers of the certifying doctors
- name of the appropriate institution where it was carried out or the name of the location if carried out elsewhere in an emergency;
- date when the procedure took place.

It is recommended that the Master/Clinical Director/CEO of the appropriate institution where the procedure was carried out will be responsible for ensuring that Part B²⁹ of the notification form is duly completed and sent to the Minister for Health. Any correspondence for this purpose must be marked confidential.

If the medical procedure is not carried out in an appropriate institution because of an emergency scenario, notification will be the responsibility of the Clinical Director of the medical setting where it was carried out, or of the medical practitioner who carried out the procedure him/herself.

The Minister will publish a yearly report by 30th June to cover the operation of the Act in the previous calendar year and lay it before the Houses of the Oireachtas. The report will exclude any identifying information on the women or doctors involved.

²⁹ Part A must be retained by the appropriate institution with the patient's records.

9. Professional Issues

9.1 Consent

The general principles of informed consent apply to procedures carried out under this Act in the same way as for any other medical procedure. This means that before a termination of pregnancy is carried out under the terms of the Act, the obstetrician must engage in a process of communication of information, explanation of the risks of the procedure and seek consent from the woman, in accordance with normal clinical practice. This does not have to be in writing but, if verbal, should be clearly recorded. In an emergency under section 8 where there is an immediate risk of loss of life, consent is not required.

The HSE National Consent Policy³⁰ applies to all health and social care services carried out by or on behalf of the HSE. Further detailed guidance is available in the policy on all aspects of the informed consent process. Medical Practitioners should also take cognisance of the relevant section of the current Guide to Professional Conduct and Ethics for Registered Medical Practitioners³¹ as well as hospital policies and guidelines on consent.

As per current medical practice, it will always be a matter for the patient to decide if she wishes to proceed with a medical procedure under this Act. Difficult issues may arise in practice where there are concerns about the age or capacity of the woman to give consent (See Appendix 10 for further details on Capacity and Consent. This appendix was prepared by the Committee).

9.2 Freedom of Information and Confidentiality

At all stages of the process patient confidentiality must be paramount for all health personnel involved.

Existing guidance on confidentiality in medical practice shall apply. For detailed guidance on Confidentiality, see the relevant section of the current Guide to Professional Conduct and Ethics For Registered Medical Practitioners³².

³⁰ http://www.hse.ie/eng/about/Who/qualityandpatientsafety/nau/National_Consent_Advisory_Group/NationalConsentPolicy.pdf

³¹ For further guidance, please see the *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* of the Medical Council, <http://www.medicalcouncil.ie/News-and-Publications/Publications/Professional-Conduct-Ethics/Guide-to-Professional-Conduct-and-Behaviour-for-Registered-Medical-Practitioners-pdf.pdf>

³² As above.

In addition, the HSE will put in place procedures to ensure the confidentiality of the process and to protect the anonymity of the woman, person acting on her behalf, and the doctors involved, including the members of the Review Panel.

The relevant sections of the Freedom of Information Act will be applied to protect the interests of patients and health professionals as far as is practicable in line with the legislation. See Appendix 11 for further details on the Freedom of Information Act.

The Data Protection Acts will also apply, as the relevant information is sensitive personal information.

9.3 Child Protection Issues

Health professionals will need to be mindful of child protection issues when dealing with minors and especially any requirements under Children First: National Guidance for the Protection and Welfare of Children. The Guidance deals with the recognition, reporting and management of child safety concerns.³³

In addition, under the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012 it is now an offence for anybody to withhold information relating to the commission of a serious offence, including a sexual offence, against a child.

³³ For further information, please see Children First: National Guidance for the Protection and Welfare of Children at <http://www.hse.ie/eng/services/Publications/services/Children/cf2011.pdf> and the recently published Children First Bill 2014 at <http://dcya.gov.ie/viewdoc.asp?DocID=3143>. The proposed Bill places obligations on certain professionals and other people working with children to report suspected child protection concerns to the HSE/Child and Family Agency and also for certain relevant professionals to assist the HSE/Child and Family Agency in the assessment of any reported cases. Organisations will also have legal obligations relating to child safety planning.

9.4 Conscientious Objections

Provision for conscientious objections is made in Section 17 of the Act.

Medical practitioners, nurses and midwives will not be obliged to carry out, or to assist in carrying out medical procedures under the Act if they have a conscientious objection.

A doctor who has a conscientious objection shall arrange for the transfer of care of the pregnant woman concerned as may be necessary to enable the woman to avail of the medical procedure concerned. Conscientious objection is not applicable in emergencies where the woman's life is at immediate risk³⁴.

³⁴ For further guidance on conscientious objection, see the relevant section of the current *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* (2009) published by the Medical Council. The Nursing and Midwifery Board of Ireland is also developing a Code of Professional Conduct and Ethics which is under consultation at the time of writing, see www.nmbi.ie.

10. List of Appendices

- Appendix 1 Terms of Reference of the Committee and Objectives
- Appendix 2 Protection of Life During Pregnancy Act 2013
- Appendix 3 Protection of Life During Pregnancy Act 2013 (Certification) Regulations 2013
- Appendix 4 Protection of Life During Pregnancy Act 2013 (section 10) (Application of review of medical opinion) Regulations 2013
- Appendix 5 Protection of Life During Pregnancy Act 2013 (Section 20) (Notifications) Regulations 2013
- Appendix 6 List of Appropriate Institutions
- Appendix 7 List of Mental Health Commission Approved Centres
- Appendix 8 List of Executive Clinical Directors for Psychiatry
- Appendix 9 Protection of Life During Pregnancy Act Review Committee Process
- Appendix 10 Capacity and Consent
- Appendix 11 Relevant Excerpts from FOI Act
- Appendix 12 List of Useful Contacts

Appendix 1 Term of Reference of the Committee and Objectives

Terms of Reference

The Terms of Reference of this Committee are as follows:

- To prepare high-level inter-professional guidance to direct the implementation of the Protection of Life During Pregnancy Act 2013.

The purpose of the Act is to confer procedural rights on a woman who believes she has a life-threatening condition, so that she can have certainty as to whether she requires this treatment or not. Due to the unpredictability and complexity of these medical cases it was undesirable to provide in legislation for a specific referral pathway or other matters. Rather, guidance would be developed through an inter-professional committee to assist doctors in operating the Act and help women to understand how it will relate to them.

Key Objectives:

- To clarify the provisions of the Act
- To develop operational guidelines for its implementation
- To identify referral pathways to fulfil the requirements of the Act

Membership

S/N	Field	Name	Title	Organisation
1	Independent Chair	Dr Declan Bedford	Specialist in Public Health Medicine	Independent
2	Obstetrics	Dr Geraldine Gaffney	Consultant Obstetrician Gynaecologist, Galway University Hospital	Nominee: Institute of Obstetricians and Gynaecologists
3	Obstetrics	Prof Michael Turner	National Clinical Lead in Obstetrics and Gynaecology	HSE
4	Mental Health	Dr Joanne Fenton	Consultant Psychiatrist, Coombe Women & Infants University Hospital	Nominee: HSE Clinical Programme in Mental Health
5	General Practice	Dr Miriam Daly	Director Women's Health Programme	Nominee: The Irish College of General Practitioners
6	General Practice	Dr Joe Clarke	National Clinical Lead in Primary Care	HSE
7	Nursing and Midwifery	Ms Sheila Sugrue	National Lead Midwife / Adjunct Senior Lecturer, School of Nursing, Midwifery and Health Systems UCD	HSE
8	Law	Dr Deirdre Madden	Senior Lecturer in Law	University College Cork
9	Psychiatry	Dr Anthony McCarthy	President College of Psychiatrists in Ireland	Nominee: College of Psychiatrists in Ireland
10	Physical Health	Dr Kathleen McGarry	Consultant Physician, Senior Council Member of RCPI, Our Lady's Hospital Navan	Nominee: The Royal College of Physicians of Ireland
11	Senior Executive (Corporate)	Dr Cate Hartigan	Head, Health Promotion and Improvement	HSE
12	Policy	Ms Geraldine Luddy	Principal Officer, Social Inclusion Unit	Department of Health

DH-DD(2012)1283: Communication from Ireland / Communication de l'Irlande

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers. / Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Appendix 2 Protection of Life During Pregnancy Act 2013



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Protection of Life During Pregnancy Act 2013

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PROTECTION OF LIFE DURING PREGNANCY ACT 2013

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[2013.]

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Health Act 2007 (No. 23)

Medical Practitioners Act 2007 (No. 25)

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Nurses and Midwives Act 2011 (No. 41)

Offences Against the Person Act 1861 (24 & 25 Vict., c.100)

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[No. 35.]

Protection of Life During Pregnancy Act 2013.

[2013.]



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PROTECTION OF LIFE DURING PREGNANCY ACT 2013

An Act to protect human life during pregnancy; to make provision for reviews at the instigation of a pregnant woman of certain medical opinions given in respect of pregnancy; to provide for an offence of intentional destruction of unborn human life; to amend the Health Act 2007; to repeal sections 58 and 59 of the Offences Against the Person Act 1861; and to provide for matters connected therewith. [30th July, 2013]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Protection of Life During Pregnancy Act 2013.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

Interpretation

2. (1) In this Act—
 - “Act of 2007” means the Medical Practitioners Act 2007;
 - “Act of 2011” means the Nurses and Midwives Act 2011;
 - “appropriate institution” means—
 - (a) an institution that is specified in the *Schedule*, or
 - (b) an institution that is specified in an order under *section 3*;
 - “approved centre” has the meaning it has in section 63 of the Mental Health Act 2001;
 - “certification” means a *section 7* certification, *section 8* certification, *section 9* certification or *section 13* certification, and includes a copy of any such certification;
 - “certifying obstetrician”, in relation to a certification, means the obstetrician who made the certification;

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- “Executive” means the Health Service Executive;
- “general practitioner”, in relation to a pregnant woman, means a medical practitioner who provides a general practitioner medical service to the pregnant woman;
- “medical practitioner” means a medical practitioner who is for the time being registered in the register;
- “medical procedure” includes the prescribing, by a medical practitioner, of any drug or medical treatment;
- “medical speciality” means a medical speciality recognised by the Medical Council under section 89 of the Act of 2007;
- “mental health services” has the meaning it has in the Mental Health Act 2001;
- “midwife” means a person whose name is for the time being registered in the midwives division of the register of nurses and midwives established under section 46 of the Act of 2011;
- “Minister” means the Minister for Health;
- “nurse” means a person whose name is for the time being registered in the nurses division of the register of nurses and midwives established under section 46 of the Act of 2011;
- “obstetrician” means an obstetrician and gynaecologist;
- “obstetrician and gynaecologist” means a medical practitioner who is registered in the Specialist Division of the register under the medical speciality of “Obstetrics and Gynaecology”;
- “pregnant woman”, in relation to a review, means the pregnant woman to whom the review relates;
- “prescribed” means prescribed by regulations made under *section 4*;
- “psychiatrist” means a medical practitioner who is registered in the Specialist Division of the register under a medical speciality of “Psychiatry”;
- “register” means the register of medical practitioners established under section 43 of the Act of 2007;
- “relevant decision” shall be construed in accordance with *section 10*;
- “relevant speciality”, in relation to a medical practitioner and his or her assessment of the risk of the loss of a pregnant woman’s life, means a medical speciality—
- (a) in respect of which the medical practitioner is registered in the Specialist Division of the register, and
 - (b) relevant to the care or treatment of the physical illness in respect of which the risk of such loss arises;
- “review” means a review under *section 13* of a relevant decision;
- “review committee”, in relation to a relevant decision, means the committee

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Protection of Life During Pregnancy Act 2013.

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established under *section 12(1)* to review that decision;

“review panel” means the panel established under *section 11(1)*;

“*section 7* certification” means a certification referred to in *section 7(1)(a)*;

“*section 8* certification” means a certification referred to in *section 8(2)*;

“*section 9* certification” means a certification referred to in *section 9(1)(a)*;

“*section 13* certification” means a certification referred to in *section 13(3)*;

“unborn”, in relation to a human life, is a reference to such a life during the period of time commencing after implantation in the womb of a woman and ending on the complete emergence of the life from the body of the woman;

“woman” means a female person of any age.

- (2) A *section 13* certification shall be deemed to be—
- (a) a *section 7* certification where *section 12(2)* applies, and
 - (b) a *section 9* certification where *section 12(3)* applies,
- and the other provisions of this Act shall be construed accordingly.
- (3) A reference in this Act to physical illness includes a reference to a physical injury but does not include a reference to suicide.

Appropriate institutions for purposes of Act

3. (1) The Minister may by order, where he or she thinks it appropriate for the purposes of this Act, specify any institution managed by the Executive, or by another person pursuant to an arrangement entered into under section 38 of the Health Act 2004—
- (a) at which in-patient services are provided under the direction of medical practitioners from not less than 3 medical specialities and which is wholly or partly used for the care and treatment of women in relation to any one or more of the following:
 - (i) pregnancy;
 - (ii) childbirth;
 - (iii) post-partum care,or
 - (b) at which in-patient services (including intensive and critical care services) are provided under the direction of medical practitioners from not less than 7 medical specialities,
- and any institution so specified shall be an appropriate institution for the purposes of this Act.
- (2) Every order made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the

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order is passed by either such House within the next 21 days on which that House sits after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Regulations

4. (1) The Minister may by regulations provide—
- (a) for any matter referred to in this Act as prescribed, or
 - (b) for any matter that appears to the Minister to be necessary or expedient for bringing this Act into operation.
- (2) Without prejudice to any provisions of this Act, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Repeals

5. Sections 58 and 59 of the Offences Against the Person Act 1861 are hereby repealed.

Expenses

6. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

PART 2

MEDICAL PROCEDURES LAWFUL UNDER ACT

CHAPTER 1

Risk of loss of life of pregnant woman

Risk of loss of life from physical illness

7. (1) It shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended where—
- (a) subject to *section 19*, two medical practitioners, having examined the pregnant woman, have jointly certified in good faith that—

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- (i) there is a real and substantial risk of loss of the woman's life from a physical illness, and
 - (ii) in their reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) that risk can only be averted by carrying out the medical procedure,
- and
- (b) that medical procedure is carried out by an obstetrician at an appropriate institution.
- (2) Of the 2 medical practitioners referred to in *subsection (1)(a)*—
- (a) one shall be an obstetrician who practises as such at an appropriate institution, and
 - (b) the other shall be a medical practitioner of a relevant speciality.
- (3) If practicable, at least one of the medical practitioners referred to in *subsection (1)(a)* shall, with the pregnant woman's agreement, consult with the woman's general practitioner (if any) for the purposes of obtaining information in respect of the woman from that general practitioner that may assist the medical practitioners in their decision as to whether or not to make a *section 7* certification in respect of the woman.
- (4) Subject to *section 19*, the certifying obstetrician shall—
- (a) forward, or cause to be forwarded, the *section 7* certification to an appropriate institution, and
 - (b) make such arrangements as may be necessary for the carrying out of the medical procedure to which the *section 7* certification relates at the appropriate institution.

Risk of loss of life from physical illness in emergency

8. (1) Notwithstanding the generality of *section 7*, or any determination made or pending pursuant to *section 13* of an application under *section 10(2)*, it shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended where—
- (a) a medical practitioner, having examined the pregnant woman, believes in good faith that there is an immediate risk of loss of the woman's life from a physical illness,
 - (b) the medical procedure is, in his or her reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) immediately necessary in order to save the life of the woman, and
 - (c) the medical procedure is carried out by the medical practitioner.

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- (2) Subject to *section 19*, where a medical practitioner—
- (a) subject to *paragraph (b)*, proposes to carry out a medical procedure referred to in *subsection (1)*, he or she shall, before carrying out the medical procedure, certify the matters referred to in *subsection (1)(a)* and *(b)*,
 - (b) proposes to carry out the medical procedure without first making such certification because it is not practicable to do so, he or she shall make such certification as soon as may be but, in any event, not later than 72 hours after carrying out the medical procedure.

Risk of loss of life from suicide

9. (1) It shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended where—
- (a) subject to *section 19*, three medical practitioners, having examined the pregnant woman, have jointly certified in good faith that—
 - (i) there is a real and substantial risk of loss of the woman's life by way of suicide, and
 - (ii) in their reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) that risk can only be averted by carrying out the medical procedure,and
 - (b) that medical procedure is carried out by an obstetrician at an appropriate institution.
- (2) Of the 3 medical practitioners referred to in *subsection (1)(a)*—
- (a) one shall be an obstetrician who practises as such at an appropriate institution,
 - (b) one shall be a psychiatrist who practises as such at an appropriate institution, and
 - (c) one shall be a psychiatrist who practises as such—
 - (i) at an approved centre, or
 - (ii) for, or on behalf of, the Executive,or both.
- (3) Of the 2 psychiatrists referred to in *subsection (2)*, at least one shall be a psychiatrist who provides, or who has provided, mental health services to women in respect of pregnancy, childbirth or post-partum care.
- (4) If practicable, at least one of the medical practitioners referred to in *subsection (1)(a)* shall, with the pregnant woman's agreement, consult with the woman's general practitioner (if any) for the purposes of obtaining information in respect of the woman from that general practitioner that may assist the medical practitioners in their decision as to whether or not to make a *section 9* certification in respect of the

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woman.

- (5) Subject to *section 19*, the certifying obstetrician shall—
- (a) forward, or cause to be forwarded, the *section 9* certification to an appropriate institution, and
 - (b) make such arrangements as may be necessary for the carrying out of the medical procedure to which the *section 9* certification relates at the appropriate institution.

CHAPTER 2

Reviews

Application for review of medical opinion

- 10.** (1) Where a medical practitioner, who has been requested to give an opinion in respect of a pregnant woman in the circumstances referred to in *section 7(1)* or *9(1)*—
- (a) does not give an opinion, or
 - (b) gives an opinion but not such as would be required for the purposes of a *section 7* certification or *section 9* certification, as the case may be,
- (in this Act referred to as a “relevant decision”) he or she shall inform the woman in writing that she may make an application in accordance with *subsection (2)* to review the relevant decision.
- (2) A pregnant woman, or a person acting on her behalf, may make an application in the prescribed form and manner to the Executive for a review of a relevant decision.

Establishment of review panel, etc.

- 11.** (1) Subject to *subsection (2)*, the Executive shall establish and maintain a panel consisting of at least 10 medical practitioners appointed for such term and on such conditions as the Executive determines.
- (2) The membership of the review panel shall consist only of medical practitioners and the Executive shall revoke the appointment of a member of the panel who ceases to be a medical practitioner.
- (3) The Executive shall, in addition to appointing medical practitioners duly identified by it for appointment to the review panel, request—
- (a) the Institute of Obstetricians and Gynaecologists,
 - (b) the College of Psychiatrists of Ireland,
 - (c) the Royal College of Surgeons in Ireland, and
 - (d) the Royal College of Physicians of Ireland,
- to nominate medical practitioners for appointment to the panel.

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- (4) The Executive may, if it considers it appropriate to do so, appoint to the review panel one or more of the medical practitioners nominated under *subsection (3)*.

Establishment of review committee, etc.

- 12.** (1) As soon as may be but, in any event, not later than 3 days from the date on which it receives an application under *section 10(2)*, the Executive shall establish and convene (or cause to be convened) a committee, the membership of which shall, subject to *subsections (2) to (5)*, be drawn from the review panel, to review the relevant decision that is the subject of the application.
- (2) In the case of a relevant decision which relates to the circumstances referred to in *section 7(1)*, the review committee shall consist of—
- (a) an obstetrician who practises as such at an appropriate institution, and
 - (b) a medical practitioner of a relevant speciality.
- (3) In the case of a relevant decision which relates to the circumstances referred to in *section 9(1)*, the review committee shall consist of—
- (a) an obstetrician who practises as such at an appropriate institution,
 - (b) a psychiatrist who practises as such at an appropriate institution, and
 - (c) a psychiatrist who practises as such—
 - (i) at an approved centre, or
 - (ii) for, or on behalf of, the Executive,or both.
- (4) Of the 2 psychiatrists referred to in *subsection (3)*, at least one shall be a psychiatrist who provides, or who has provided, mental health services to women in respect of pregnancy, childbirth or post-partum care.
- (5) A medical practitioner shall be disqualified from sitting on the review committee where he or she has previously been consulted by the pregnant woman in relation to the matter that is the subject of the relevant decision to be reviewed by the committee.
- (6) For the purposes of this Chapter, a relevant decision which falls within *paragraph (a)* of *section 10(1)* shall be treated as if it were a refusal to give an opinion such as would be required for the purposes of a *section 7* certification (where the circumstances referred to in *section 7(1)* apply) or a *section 9* certification (where the circumstances referred to in *section 9(1)* apply).

Review of relevant decision

- 13.** (1) The review committee shall complete its review of a relevant decision as soon as may be but, in any event, not later than 7 days from the date on which the review committee was established and convened under *section 12(1)*.
- (2) The review committee shall, for the purposes of reaching a determination on its

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review of the relevant decision, examine the pregnant woman.

(3) Where the review committee has completed its review of the relevant decision and is satisfied in good faith that—

- (a) there is a real and substantial risk of loss of the pregnant woman's life from a physical illness or by way of suicide, as the case may be, and
- (b) in its reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) that risk can only be averted by carrying out a medical procedure referred to in *section 7(1)* or *9(1)*, as the case may be,

the committee shall, subject to *section 19*, jointly certify that it is so satisfied and, as soon as may be, give notice in writing of its determination to the woman (or, if the application under *section 10(2)* concerned was made by another person on behalf of the woman, to that other person) and the Executive.

(4) Where the review committee has completed its review of the relevant decision and is not satisfied as referred to in *subsection (3)*, it shall, as soon as may be, give notice in writing of its determination to the pregnant woman (or, if the application under *section 10(2)* concerned was made by another person on behalf of the woman, to that other person) and the Executive.

(5) Subject to *section 19*, the certifying obstetrician shall—

- (a) forward, or cause to be forwarded, the *section 13* certification to an appropriate institution, and
- (b) make such arrangements as may be necessary for the carrying out of the medical procedure to which the *section 13* certification relates at the appropriate institution.

(6) In *subsection (3)* “jointly certify”, in relation to the review committee, means that all of the members of the committee make the *section 13* certification concerned.

Procedures of review committee

14. (1) The pregnant woman shall be entitled to be heard by the review committee and, where the woman or a person acting on her behalf informs the committee that she wishes to be heard, the committee shall make such arrangements as may be necessary in order to hear the woman or a person acting on her behalf.

(2) The review committee may, for the purposes of its review of a relevant decision, by direction in writing require a medical practitioner or former medical practitioner, at such time and place as may be specified in the direction—

- (a) to produce to the committee such documents or other records in his or her possession or control as may be so specified, or
- (b) to attend before the committee and to give to the committee such assistance and answer such questions as it may require.

(3) The review committee may, subject to the provisions of this Act, determine its own

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procedures.

- (4) The Executive shall provide, or arrange for the provision of, such administrative facilities as may be necessary to enable the review committee to perform its functions.
- (5) A member of the review committee shall be paid by the Executive out of funds at its disposal such remuneration and such allowances for expenses as the Minister may, with the approval of the Minister for Public Expenditure and Reform, determine.
- (6) A person who attends the review committee pursuant to a direction under *subsection (2)* shall be paid by the Executive out of funds at its disposal such remuneration and such allowances for expenses as the Minister may, with the approval of the Minister for Public Expenditure and Reform, determine.
- (7) A person who fails to comply with a direction under *subsection (2)* shall be guilty of an offence and shall be liable on summary conviction to a class C fine.
- (8) Summary proceedings for an offence under *subsection (7)* may be brought and prosecuted by the Executive.

Report by Executive on operation of Chapter

15. (1) The Executive shall, not later than 30 June in each year, prepare and submit to the Minister a report on the operation of this Chapter in the immediately preceding year, and the Minister shall, as soon as may be after receiving the report, cause copies of the report to be laid before each House of the Oireachtas.
- (2) Notwithstanding the generality of *subsection (1)*, a report under this section shall, in respect of the year that is the subject of the report, include information on—
 - (a) the total number of applications for review received by the Executive,
 - (b) the number of reviews carried out,
 - (c) in the case of the reviews carried out, the reason why the review was sought, and
 - (d) the outcome of the reviews.
- (3) In preparing a report under this section, the Executive shall exclude from the report information that identifies, or that could reasonably lead to the identification of—
 - (a) a woman who has made an application under *section 10(2)* or in respect of whom such an application has been made by a person acting on her behalf, or
 - (b) a medical practitioner who has carried out a review.
- (4) The Executive shall arrange for a report laid before both Houses of the Oireachtas in accordance with *subsection (1)* to be published in such form and manner as it thinks appropriate as soon as practicable after copies of the report are so laid.

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PART 3

MISCELLANEOUS

Consent

16. Nothing in this Act shall operate to affect any enactment or rule of law relating to consent to medical treatment.

Conscientious objection

17. (1) Subject to *subsections (2) and (3)*, nothing in this Act shall be construed as obliging any medical practitioner, nurse or midwife to carry out, or to assist in carrying out, any medical procedure referred to in *section 7(1) or 9(1)* to which he or she has a conscientious objection.
- (2) *Subsection (1)* shall not be construed to affect any duty to participate in any medical procedure referred to in *section 8(1)*.
- (3) A person who has a conscientious objection referred to in *subsection (1)* shall make such arrangements for the transfer of care of the pregnant woman concerned as may be necessary to enable the woman to avail of the medical procedure concerned.

Travel and information

18. (1) Nothing in this Act shall operate to limit the freedom—
- (a) to travel between the State and another state, or
 - (b) 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) Nothing in this Act shall 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 22*.

Certification

19. A certification shall—
- (a) be made in the prescribed form and manner, and
 - (b) contain the prescribed information (which shall include the clinical grounds for carrying out the medical procedure to which the certification relates).

Notifications

20. (1) Where a medical procedure referred to in *section 7(1), 8(1) or 9(1)* is carried out in respect of a pregnant woman at an appropriate institution, the person in charge of the appropriate institution shall—

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- (a) keep a record—
 - (i) in the prescribed form and manner of the carrying out of the medical procedure, and
 - (ii) containing the information specified in *subsection (3)*,and
 - (b) not later than 28 days after the medical procedure has been carried out, forward, or cause to be forwarded, a copy of that record, or such part of that record as may be prescribed, to the Minister in such manner as may be prescribed.
- (2) Where a medical procedure referred to in *section 8(1)* is carried out in respect of a pregnant woman in a location other than an appropriate institution, the medical practitioner who carried out the medical procedure or, where appropriate, the person in charge (if any) of the location where the medical procedure was carried out shall—
- (a) keep a record—
 - (i) in the prescribed form and manner of the carrying out of the medical procedure, and
 - (ii) containing the information specified in *subsection (3)*,and
 - (b) not later than 28 days after the medical procedure has been carried out, forward, or cause to be forwarded, a copy of that record, or such part of that record as may be prescribed, to the Minister in such manner as may be prescribed.
- (3) The following information is specified for the purposes of *subsections (1)(a)* and *(2)(a)*:
- (a) the Medical Council registration number attached to the registration of the medical practitioner who carried out the medical procedure referred to in *section 7(1)*, *8(1)* or *9(1)*, as the case may be, in respect of the pregnant woman concerned;
 - (b) whether the medical procedure was carried out in respect of the pregnant woman pursuant to a *section 7* certification, *section 8* certification (whether made before or after the medical procedure was carried out) or *section 9* certification and the Medical Council registration number attached to the registration of each of the medical practitioners who made the certification concerned;
 - (c) the name of the appropriate institution where the medical procedure was carried out in respect of the pregnant woman or, if that medical procedure is a medical procedure referred to in *section 8(1)* that was carried out at a location other than an appropriate institution, a description of that location sufficient to identify it;
 - (d) the date on which the medical procedure was carried out in respect of the pregnant woman.
- (4) The Minister shall, not later than 30 June in each year, prepare a report on the notifications received by him or her under this section during the immediately

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preceding year, and shall, as soon as may be after preparing the report, cause copies of the report to be laid before each House of the Oireachtas.

- (5) The Minister shall arrange for a report laid before both Houses of the Oireachtas in accordance with *subsection (4)* to be published in such form and manner as he or she thinks appropriate as soon as practicable after copies of the report are so laid.
- (6) In preparing a report under this section, the Minister shall exclude from the report information that identifies, or that could reasonably lead to the identification of—
 - (a) a woman who is the subject of a notification under this section,
 - (b) a medical practitioner referred to in *subsection (3)(a)*, or
 - (c) a medical practitioner referred to in *subsection (3)(b)*.
- (7) In this section, “notification” means a copy of a record, or a part thereof, that is forwarded or caused to be forwarded to the Minister under *subsection (1)* or *(2)*.

Amendment of section 9 of Health Act 2007

21. Section 9 of the Health Act 2007 is amended—

- (a) in subsection (1), by the substitution of the following paragraph for paragraph (a):

“(a) there is a serious risk—

- (i) to the health or welfare of a person receiving those services, or
 - (ii) of a failure to comply with the provisions of the Act of 2013,
- and”,

and

- (b) by the insertion of the following subsections after subsection (3):

“(4) Where an investigation under this section is being undertaken in respect of a serious risk referred to in subsection (1)(a)(ii) and such risk relates to an appropriate institution, the Minister may, by notice in writing served on the person in charge of the appropriate institution, direct that person to ensure that, from the date, or the event, specified in the notice for the purpose—

- (a) a medical procedure referred to in *section 7(1)* of the Act of 2013 is not carried out at the institution, or
 - (b) a medical procedure referred to in *section 9(1)* of that Act is not carried out at the institution,
- or both.

- (5) Where—

- (a) the Minister has served a notice under subsection (4) on the person in charge of an appropriate institution, and

PT.3 S.21 [No. 35.] *Protection of Life During Pregnancy Act 2013.* [2013.]

- (b) subsequent to the service of the notice referred to in paragraph (a), the Minister believes that the serious risk concerned referred to in subsection (1)(a)(ii) that caused him or her to serve such notice is not, or is no longer, such serious risk (regardless of whether he or she comes to that belief during the course of, or after the conclusion of, the investigation concerned under this section),

the Minister shall, as soon as practicable after coming to the belief referred to in paragraph (b), by notice in writing served on the person in charge of that appropriate institution, revoke the notice referred to in paragraph (a) on the date, or the event, specified in the notice so served on that person.

- (6) In this section—

‘Act of 2013’ means the *Protection of Life During Pregnancy Act 2013*;

‘appropriate institution’ has the meaning it has in the Act of 2013.”.

Destruction of unborn human life

22. (1) It shall be an offence to intentionally destroy unborn human life.
- (2) A person who is guilty of an offence under this section shall be liable on indictment to a fine or imprisonment for a term not exceeding 14 years, or both.
- (3) A prosecution for an offence under this section may be brought only by or with the consent of the Director of Public Prosecutions.

Offence by body corporate

23. (1) Where an offence under this Act is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, shall be guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

[2013.]

Protection of Life During Pregnancy Act 2013.

[No. 35.]

SCHEDULE

Section 2

APPROPRIATE INSTITUTIONS

Adelaide and Meath Hospital Dublin Incorporating the National Children's Hospital

Beaumont Hospital

Coombe Women & Infants University Hospital

Cavan General Hospital

Cork University Hospital and Cork University Maternity Hospital

Galway University Hospitals

Kerry General Hospital

Letterkenny General Hospital

Mater Misericordiae University Hospital

Mayo General Hospital

Midland Regional Hospital Mullingar

Midland Regional Hospital Portlaoise

Mid-Western Regional Hospital Dooradoyle

Mid-Western Regional Maternity Hospital

The National Maternity Hospital, Dublin

Our Lady of Lourdes Hospital, Drogheda

Portiuncula Hospital Ballinasloe

The Rotunda Hospital

Sligo General Hospital

South Tipperary General Hospital

St Luke's Hospital, Kilkenny

St James's Hospital

St Vincent's University Hospital

Waterford Regional Hospital

Wexford General Hospital

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Appendix 3 Protection of Life During Pregnancy Act 2013 (Certification) Regulations 2013

DH-DD(2012)1283: Communication from Ireland / Communication de l'Irlande
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STATUTORY INSTRUMENTS.

S.I. No. 538 of 2013



PROTECTION OF LIFE DURING PREGNANCY ACT 2013
(CERTIFICATION) REGULATIONS 2013

2 [538]

S.I. No. 538 of 2013

PROTECTION OF LIFE DURING PREGNANCY ACT 2013
(CERTIFICATION) REGULATIONS 2013

I, James Reilly, Minister for Health, in exercise of the powers conferred on me by section 4 of the Protection of Life During Pregnancy Act 2013 (No. 35 of 2013), hereby make the following regulations:

1. (1) These Regulations may be cited as the Protection of Life During Pregnancy Act 2013 (Certification) Regulations 2013.

(2) These Regulations shall come into operation on the 1st day of January 2014.

2. In these Regulations “Act of 2013” means the Protection of Life During Pregnancy Act 2013.

3. The following forms of certification are prescribed for the purposes of section 19 of the Act of 2013:

- (a) in the case of a section 7 certification, the form of certification set out in Part 1 of the Schedule;
- (b) in the case of a section 9 certification, the form of certification set out in Part 2 of the Schedule;
- (c) in the case of a section 8 certification, the form of certification set out in Part 3 of the Schedule.

4 [538]

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and

(2) we have considered other medical treatment option(s) (if any),

and

(3) in our reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) that risk can **only** be averted by carrying out a medical procedure referred to in section 7 of the Act of 2013,

and

(4) (i) at least one of the undersigned medical practitioners, namely , has consulted with the above named pregnant woman's general practitioner for the purposes of obtaining information in respect of that pregnant woman from that general practitioner that may assist the undersigned medical practitioners in our decision as to whether or not to make this certification in respect of the above named pregnant woman*

or,

[538] 5

- (ii) it was not practicable to consult with the above named pregnant woman's general practitioner (if any) for the following reasons (including for the reason that the pregnant woman did not agree to the general practitioner being consulted):

.....
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.....*

* *delete as appropriate*

Medical Practitioner 1 (Obstetrician)

Signed: Date and time of signature:

.....
.....
Full name of medical practitioner Medical Council Registration No.

.....
Name of appropriate institution where obstetrician practises

Medical Practitioner 2

Signed: Date and time of signature:

.....
.....
Full name of medical practitioner Medical Council Registration No.

.....
Details of relevant speciality

.....
Name of appropriate institution to which the certificate is to be forwarded

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..... ,

and

- (2) we have considered other medical treatment option(s) (if any),

and

- (3) in our reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) that risk can **only** be averted by carrying out a medical procedure referred to in section 9 of the Act of 2013,

and

- (4) at least one of the undersigned psychiatrists, namely, provides, or has provided, mental health services to women in respect of pregnancy, childbirth or post-partum care,

and

- (5) (i) at least one of the undersigned medical practitioners, namely, has consulted with the above named pregnant woman's general practitioner for the purposes of obtaining information in respect of that pregnant woman from that general practitioner that may assist the undersigned medical practitioners in our decision as to whether or not to make this certification in respect of the above named pregnant woman *

or,

- (ii) it was not practicable to consult with the above named pregnant woman's general practitioner (if any) for the following reasons (including for the reason that the pregnant woman did not agree to the general practitioner being consulted):

.....

8 [538]

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.....*

*delete as appropriate

Medical Practitioner 1 (Obstetrician)

Signed: Date and time of signature:

.....
Full name of medical practitioner Medical Council Registration No.

.....
Name of appropriate institution where obstetrician practises

Medical Practitioner 2 (Psychiatrist)

Signed: Date and time of signature:

.....
Full name of medical practitioner Medical Council Registration No.

.....
Name of appropriate institution where psychiatrist practises

[538] 9

Medical Practitioner 3 (Psychiatrist)

Signed: Date and time of signature:

.....
Full name of medical practitioner Medical Council Registration No.

.....
Name of approved centre where psychiatrist practises or location where psychiatrist practises for, or on behalf of, the Executive

.....
Name of appropriate institution to which the certificate is to be forwarded

10 [538]

PART 3

Protection of Life During Pregnancy Act 2013

Certificate to be completed in relation to a medical procedure referred to in section 8 (Risk of loss of life from physical illness in emergency) of the Act of 2013

Certificate to be completed in relation to a medical procedure referred to in section 8 (Risk of loss of life from physical illness in emergency) of the Act of 2013

Please complete this form in BLOCK CAPITALS.

(Full name of pregnant woman)

of

(Usual place of residence of above named pregnant woman)

Date of birth of above named pregnant woman (dd/mm/yyyy)

Estimated gestational age: weeks

I, the undersigned, hereby certify in good faith that, having examined the above named pregnant woman, on (insert date) (dd/mm/yyyy),—

- (1) I believe that there [is] [was]* an immediate risk of loss of the above named pregnant woman's life from a physical illness,

** delete as appropriate*

and

- (2) I have considered other medical treatment option(s) (if any),

and

- (3) the medical procedure referred to in section 8 of the Act of 2013 [is] [was]* in my reasonable opinion (being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable) immediately necessary in order to save the life of the above named pregnant woman.

** delete as appropriate*

Insert clinical grounds for the belief referred to in paragraph (1) and the reasonable opinion referred to in paragraph (3):

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Location where the medical procedure [is to be] [was]* carried out:

** delete as appropriate*
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12 [538]

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If the certification is made after carrying out the medical procedure, date and time when that medical procedure was carried out:

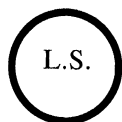
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Medical Practitioner

Signed:

Date and time of certification:

.....
.....
Full name of medical practitioner Medical Council Registration No.



GIVEN under my Official Seal,
19 December 2013.

JAMES REILLY,
Minister for Health.

Protection of Life During Pregnancy Act 2013

Regulations — Certification

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

These Regulations may be cited as the Protection of Life During Pregnancy Act 2013 (Certification) Regulations 2013. They have been developed under Section 4 of the Protection of Life During Pregnancy Act.

These Regulations provide prescribed forms to be used for the purpose of certification under Section 7, 8, and 9 of the Act.

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Appendix 4 Protection of Life During Pregnancy Act 2013 (section 10) (Application of review of medical opinion) Regulations 2013

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STATUTORY INSTRUMENTS.

S.I. No. 539 of 2013

PROTECTION OF LIFE DURING PREGNANCY ACT 2013 (SECTION
10) (APPLICATION FOR REVIEW OF MEDICAL OPINION)
REGULATIONS 2013

2 [539]

S.I. No. 539 of 2013

PROTECTION OF LIFE DURING PREGNANCY ACT 2013 (SECTION
10) (APPLICATION FOR REVIEW OF MEDICAL OPINION)
REGULATIONS 2013

I, James Reilly, Minister for Health, in exercise of the powers conferred on me by section 4 of the Protection of Life During Pregnancy Act 2013 (No. 35 of 2013), hereby make the following regulations:

1. (1) These Regulations may be cited as the Protection of Life During Pregnancy Act 2013 (Section 10) (Application for review of medical opinion) Regulations 2013.

(2) These Regulations shall come into operation on 1st day of January 2014.

2. In these Regulations, “medical speciality” means the medical speciality in respect of which the medical practitioner is registered in the Specialist Division of the register.

3. The form specified in the Schedule is prescribed for the purposes of section 10 of the Protection of Life During Pregnancy Act 2013.

SCHEDULE

Protection of Life During Pregnancy Act 2013

Form to be completed in relation to an application under section 10 of the Protection of Life During Pregnancy Act 2013 for review of a relevant decision

Please complete this form in **BLOCK CAPITALS**.

Part 1 (a) — Applicant details (where the application is made by the pregnant woman)

Name, address and contact details of Applicant		
1	First name	
2	Surname	
3	Address	
4	Contact telephone number	
5	Date of birth	
6	Are you making this application on your own behalf?	

4 [539]

Part 1 (b) — Applicant details and details of pregnant woman (where the application is made by another person (“third party”) on behalf of the pregnant woman)

This section should be completed where the application is being made by a third party acting on behalf of the pregnant woman.

Name, address and contact details of the third party		
1	First name	
2	Surname	
3	Address	
4	Contact telephone number	
5	Basis on which the third party is acting on behalf of the pregnant woman	

Name, address and contact details of the pregnant woman		
1	First name	
2	Surname	
3	Address	
4	Contact telephone number	
5	Date of birth	

Part 2 — Details of medical practitioner or medical practitioners whose relevant decision or relevant decisions are the subject of the application

Details of medical practitioner(s) consulted		
1	<p>Address of medical practitioner (if known)</p> <p>Date consulted in regard to risk of loss of life</p> <p>Medical speciality (if known)</p>	
2	<p>Name of medical practitioner</p> <p>Address of medical practitioner (if known)</p> <p>Date consulted in regard to risk of loss of life</p> <p>Medical speciality (if known)</p>	
3	<p>Name of medical practitioner</p> <p>Address of medical practitioner (if known)</p> <p>Date consulted in regard to risk of loss of life</p> <p>Medical speciality (if known)</p>	

6 [539]

Part 3 — Medical information

Medical information in relation to the pregnant woman		
1	Name of general practitioner (if any) Address of general practitioner (if known)	
2	Name of obstetrician (if any and if different to medical practitioner(s) listed at Part 2 above) Address of obstetrician (if known)	
3	Name of other relevant medical practitioner (if any and if different to medical practitioner(s) listed at Part 2 above) Address of medical practitioner (if known) Medical speciality (if known)	
4	Hospital attended for maternity services (if any)	
5	Estimated gestational age in weeks	

[539] 7

Signature of person making application

Signed: Date:



GIVEN under my Official Seal,
19 December 2013.

JAMES REILLY,
Minister for Health.

8 [539]

Protection of Life During Pregnancy Act 2013

Regulations — Application for review of medical opinion

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

These Regulations may be cited as the Protection of Life During Pregnancy Act 2013 (Section 10) (Application for review of medical opinion) Regulations 2013. They have been developed under Section 4 of the Protection of Life During Pregnancy Act.

These Regulations provide for a prescribed form to be used for the purpose of applying for a formal review of medical opinion under Section 10 of the Act.

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Appendix 5 Protection of Life During Pregnancy Act 2013 (Section 20) (Notifications) Regulations 2013

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STATUTORY INSTRUMENTS.

S.I. No. 546 of 2013

PROTECTION OF LIFE DURING PREGNANCY ACT 2013 (SECTION
20) (NOTIFICATIONS) REGULATIONS 2013

2 [546]

S.I. No. 546 of 2013

PROTECTION OF LIFE DURING PREGNANCY ACT 2013 (SECTION
20) (NOTIFICATIONS) REGULATIONS 2013

I, James Reilly, Minister for Health, in exercise of the powers conferred on me by section 4 of the Protection of Life During Pregnancy Act 2013 (No. 35 of 2013), hereby make the following regulations:

1. (1) These Regulations may be cited as the Protection of Life During Pregnancy Act 2013 (Section 20) (Notifications) Regulations 2013.
- (2) These Regulations shall come into operation on 1st day of January 2014.
2. In these Regulations “Act of 2013” means the Protection of Life during Pregnancy Act 2013.
3. The form set out in the Schedule is prescribed for the purposes of the record to be kept under section 20(1)(a) and 20(2)(a) of the Act of 2013.
4. Parts B and C of the form set out in the Schedule are prescribed for the purposes of the part of the record to be forwarded to the Minister under section 20(1)(b) and 20(2)(b) of the Act of 2013.

[546] 3

SCHEDULE

Protection of Life During Pregnancy Act 2013

Record of medical procedure referred to in section 7(1), 8(1) or 9(1) of the Act of 2013 carried out in respect of a pregnant woman

Please complete this form in BLOCK CAPITALS.

PART A PATIENT DETAILS

1. Full name of patient: _____.
2. Usual place of residence of patient: _____.
3. Date of birth of patient: _____(dd/mm/yyyy)

4 [546]

PART B INFORMATION RELATING TO THE MEDICAL PROCEDURE

1. Medical Council registration number attached to the registration of the medical practitioner who carried out the medical procedure:

2. Please indicate whether the medical procedure was carried out in respect of the pregnant woman pursuant to a section 7 certification, section 8 certification, or section 9 certification (tick as appropriate):

- Risk of loss of life from physical illness (section 7)
- Risk of loss of life from physical illness in emergency (section 8)
- Risk of loss of life by way of suicide (section 9)

3. (a) If the medical procedure was carried out in respect of the pregnant woman pursuant to a section 7 certification or section 9 certification, the Medical Council registration numbers attached to the registration of each of the medical practitioners who made the certification concerned:

Medical Practitioner 1 (Obstetrician)

Medical Practitioner 2

Medical Practitioner 3 (if applicable)

(b) If the medical procedure was carried out in respect of the pregnant woman pursuant to a section 8 certification (whether made before or after the medical procedure was carried out), the Medical Council registration number attached to the registration of the medical practitioner who made the certification concerned:

Medical Practitioner

[546] 5

4. Name of the appropriate institution where the medical procedure was carried out in respect of the pregnant woman or, if that medical procedure was a medical procedure referred to in section 8(1) that was carried out at a location other than an appropriate institution, a description of that location sufficient to identify it:

5. Date on which the procedure was carried out:

PART C INFORMATION RELATING TO PERSON KEEPING RECORD

1. Name of person keeping record in accordance with section 20(1) or name of person keeping record in accordance with section 20(2) as may be appropriate:

2. Title of person keeping record in accordance with section 20(1) or title of person keeping record in accordance with section 20(2) as may be appropriate:

Signed: _____ Date: _____



GIVEN under my Official Seal,
19 December 2013.

JAMES REILLY,
Minister for Health.

6 [546]

Protection of Life During Pregnancy Act 2013

Regulations — Notifications

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

These Regulations may be cited as the Protection of Life During Pregnancy Act 2013 (Section 20) (Notifications) Regulations 2013. They have been developed under Section 4 of the Protection of Life During Pregnancy Act.

These Regulations provide for a prescribed form for the purpose of notification under Section 20 of the Act.

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Appendix 6 List of Appropriate Institutions

APPROPRIATE INSTITUTIONS

Adelaide and Meath Hospital Dublin Incorporating the National Children's Hospital
Beaumont Hospital
Coombe Women & Infants University Hospital
Cavan General Hospital
Cork University Hospital and Cork University Maternity Hospital
Galway University Hospitals
Kerry General Hospital
Letterkenny General Hospital
Mater Misericordiae University Hospital
Mayo General Hospital
Midland Regional Hospital Mullingar
Midland Regional Hospital Portlaoise
Mid-Western Regional Hospital Dooradoyle
Mid-Western Regional Maternity Hospital
The National Maternity Hospital, Dublin
Our Lady of Lourdes Hospital, Drogheda
Portiuncula Hospital Ballinasloe
The Rotunda Hospital
Sligo General Hospital
South Tipperary General Hospital
St Luke's Hospital, Kilkenny
St James's Hospital
St Vincent's University Hospital
Waterford Regional Hospital
Wexford General Hospital

Appendix 7 List of Mental Health Commission Approved Centres³⁵

Area	Name of Approved Centre	Address
HSE Dublin Mid-Leinster	Acute Psychiatric Unit, AMNCH (Tallaght) Hospital	Tallaght, Dublin 24
	Central Mental Hospital	Dundrum, Dublin 14
	Department of Psychiatry, Midland Regional Hospital, Portlaoise	Portlaoise, Co. Laois
	Elm Mount Unit, St Vincent's University Hospital	Elm Park, Dublin 4
	Jonathan Swift Clinic	St James's Hospital, James's Street Dublin 8
	Lakeview Unit, Naas General Hospital	Naas, Co. Kildare
	Newcastle Hospital	Greystones, Co. Wicklow
	St Bridget's Ward & St Marie Goretti's Ward, Cluain Lir Care Centre	St Mary's Campus, Longford Road, Mullingar, Co. Westmeath
	St Fintan's Hospital - Ward 6	Dublin Road, Portlaoise, Co. Laois
	St Loman's Hospital, Mullingar - Admission Unit & St Edna's Ward	Delvin Road, Mullingar, Co. Westmeath
HSE Dublin North East	Acute Psychiatric Unit, Cavan General Hospital	Cavan, Co. Cavan
	Blackwater House, St Davnet's Hospital	Armagh Road, Monaghan, Co. Monaghan
	Department of Psychiatry, Connolly Hospital	Blanchardstown, Dublin 15
	Department of Psychiatry, Our Lady's Hospital, Navan	Navan, Co. Meath
	Hawthorn Unit, Connolly Hospital	Blanchardstown, Dublin 15
	Joyce Rooms, Fairview Community Unit	Griffith Court, Philipsburgh Avenue Dublin 3
	O'Casey Rooms, Fairview Community Unit	Griffith Court, Philipsburgh Avenue Dublin 3
	Phoenix Care Centre	North Circular Road, Dublin 7
	St Aloysius Ward, Mater Misericordiae University Hospital	Eccles Street, Dublin 7
	St Ita's Hospital - Willowbrook & Woodview Units	Portrane, Donabate, Co. Dublin
	St Joseph's Intellectual Disability Service	St Ita's Hospital, Portrane, Donabate Co. Dublin
	St Vincent's Hospital - St Louise's, St Mary's, St Teresa's, & Psychiatry of Old Age Wards	Richmond Road, Fairview, Dublin 3

³⁵ This list is accurate of as January 2014.

	Sycamore Unit, Connolly Hospital	Blanchardstown, Dublin 15
	Unit One and St Ita's Ward, St Brigid's Hospital, Ardee	Kells Road, Ardee, Co. Louth
HSE South	Acute Mental Health Admission Unit, Kerry General Hospital	Rathass, Tralee, Co. Kerry
	Carraig Mór Centre	Shanakiel, Cork
	Centre for Mental Health Care & Recovery, Bantry General Hospital	Bantry, Co. Cork
	Department of Psychiatry, St Luke's Hospital, Kilkenny	Freshford Road, Kilkenny
	Department of Psychiatry, Waterford Regional Hospital	Dunmore Road, Waterford
	Heywood Lodge	Heywood Road, Clonmel, Co Tipperary
	Selskar House, Farnogue Residential Healthcare Unit	Old Hospital Road, Wexford, Co Wexford
	South Lee Mental Health Unit, Cork University Hospital	Wilton, Cork
	St Finan's Hospital - O'Connor Unit (East & West Wings)	Killarney, Co. Kerry
	St Finbarr's Hospital - St Catherine's Ward	Douglas Road, Cork
	St Gabriel's Ward, St Canice's Hospital	Dublin Road, Kilkenny
	St Michael's Unit, Mercy University Hospital	Grenville Place, Cork
	St Otteran's Hospital	John's Hill, Waterford
	St Stephen's Hospital - Units 2, 3, 4, 5, and Unit 8 (Floor 2)	Sarsfield's Court, Glanmire, Co. Cork
	HSE West	Acute Psychiatric Unit 5B, Midwestern Regional Hospital
Acute Psychiatric Unit, Midwestern Regional Hospital, Ennis		Ennis, Co. Clare
Adult Mental Health Unit, Mayo General Hospital		Castlebar, Co. Mayo
An Coillín		Westport Rd, Castlebar, Co. Mayo
Cappahard Lodge		Tulla Road, Ennis, Co Clare
Department of Psychiatry, County Hospital Roscommon		Roscommon
Department of Psychiatry, Letterkenny General Hospital		Circular Road, Letterkenny, Co Donegal
Department of Psychiatry, University Hospital Galway		Newcastle Road, Galway
Sligo/Leitrim Mental Health In-patient Unit		Sligo/Leitrim Mental Health Services Clarion Road, Ballytivnan, Sligo
St Anne's Unit, Sacred Heart Hospital		Castlebar, Co Mayo

	St Brigid's Hospital, Ballinasloe - Clonfert, St Dymphna's, & St Luke's Wards	Creagh, Ballinasloe, Co Galway
	St Joseph's Hospital - Aurora Unit	Mulgrave Street, Limerick
	Teach Aisling	Westport Road, Castlebar, Co. Mayo
	Tearmann Ward, St Camillus' Hospital	Shelbourne Road, Limerick
Child/Adolescent	Adolescent In-patient Unit, St Vincent's Hospital	Richmond Road, Fairview, Dublin 3
	Child & Adolescent Mental Health In-patient Unit, Merlin Park University Hospital	Merlin Park, Galway
	Eist Linn Child & Adolescent In-patient Unit	Bessborough, Blackrock, Cork
	Linn Dara Child & Adolescent In-patient Unit	St Loman's Hospital, Lucan Road, Palmerstown, Dublin 20
	Willow Grove Adolescent Unit, St Patrick's University Hospital	James's Street, Dublin 8
Independent	Bloomfield Hospital	Stocking Lane, Rathfarnham, Dublin 16
	Highfield Hospital	Swords Road, Whitehall, Dublin 9
	Lois Bridges	3 Greenfield Road, Sutton Dublin 13
	St Edmundsbury Hospital	Lucan, Co. Dublin
	St John of God Hospital Limited	Stillorgan, Co. Dublin
	St Patrick's University Hospital	James's Street, Dublin 8

Appendix 8 List of Executive Clinical Directors (Mental Health)

Dr Justin Brophy Executive Clinical Director Department of Psychiatry Newcastle Hospital Greystones Co. Wicklow	Tel: 01-2015109/ 01-2819001	ecd.eastcoast@hse.ie	Dublin Mid Leinster East Coast Area
Dr Mary Cosgrave Executive Clinical Director North Dublin Mental Health Service St. Ita's Hospital Portrane Co. Dublin	Tel: 01-8836004 01-8836000 Ext.2458 Fax: 01-8436315	ecd.northdublin@hse.ie	Dublin North East North Dublin Mental Health Service
Dr Ian Daly Executive Clinical Director St. Loman's Hospital Ballyowen Road Palmerstown Dublin 20	Tel: 01-7782025 01-7782040	ecd.dublinsouth@hse.ie	Dublin Mid Leinster Dublin South City Mental Health Service
Dr Maurice Gervin Executive Clinical Director St. Fintan's Hospital Portlaoise Co. Laois	Tel: 057-8692874/ 057-8696432 Fax: 057-8660067	ecd.midlands@hse.ie	Dublin Mid Leinster Midlands Area Mental Health Service
Dr Amir Niazi Executive Clinical Director Louth/Meath Mental Health Services St. Brigid's Hospital Kells Road, Ardee Co. Louth	Tel: 041-6853264	ecd.louthmeath@hse.ie	Dublin North East Louth Meath Mental Health Service
Dr Frank Kelly Executive Clinical Director Department of Psychiatry St. Lukes Hospital Kilkenny	Tel: 056-7785088/ 056-7785109	ecd.kilkenny@hse.ie	South Carlow/ Kilkenny & South Tipperary Mental Health Service
Professor Harry Kennedy Executive Clinical Director National Forensic Mental Health Service Central Mental Hospital Dundrum Dublin 14	Tel: 01-2157458/ 01-2989266 Fax:01-2157570	ecd.forensic@hse.ie	Dublin Mid Leinster National Forensic Service

Dr Owen Mulligan Executive Clinical Director Sligo/Leitrim Mental Health Services Ballytivnan Sligo	Tel: 071-9144831	ecd.sligo@hse.ie	West Sligo, Leitrim & West Cavan Mental Health Service
Dr John O'Mahoney Executive Clinical Director HSE Mid West Mental Health Services St. Joseph's Hospital Mulgrave Street Limerick	Tel: 061-461498 065-6863712 (Ennis Office)	ecd.midwest@hse.ie	West Limerick, Clare and North Tipperary Mental Health Service
Dr Amanda Burke Executive Clinical Director Department of Psychiatry West Galway Mental Health Service Galway University Hospital Newcastle Road Galway	Tel: 091-544072	ecd.galwayross@hse.ie	Galway /Roscommon Mental Health Service
Professor Marcellino Smith Executive Clinical Director North Cork & North Lee MHS St. Michael's Unit Mercy University Hospital Cork	Tel: 021 4935045 027 52970	ecd.cork@hse.ie	South North Lee & North Cork Mental Health service
Dr Noel Sheppard Executive Clinical Director Department of Psychiatry Waterford Regional Hospital Dunmore Road Waterford	Tel: 051-842172 Fax: 051-848570	ecd.waterwex@hse.ie	South Waterford & Wexford Mental Health Services
Dr Roy Browne, Executive Clinical Director Phoenix Care Centre Grangegorman North Circular Road Dublin 7	Tel: 01 8276505 Fax: 01 8276591	ecd.newcdublin@hse.ie	Dublin North East Dublin North West & Dublin North Central Mental Health Service
Dr Feargal Leonard Executive Clinical Director Cavan/Monaghan Mental Health Services St. Davnet's Hospital Monaghan	Tel: 049-4361399 Cavan: 049-4376471/ 049-4376427 Monaghan: 047-77509	ecd.cavmon@hse.ie	Dublin North East Cavan & Monaghan Mental Health Service

Dr Owen Mulligan Executive Clinical Director Department of Psychiatry Letterkenny General Hospital Co Donegal	Tel: 074-9197185	ecd.donegal@hse.ie	Donegal
Dr Ursula Skerritt Executive Clinical Director Adult Mental Health Unit Mayo General Hospital Castlebar Co. Mayo	Tel: 094-9042150	ecd.mayo@hse.ie	Mayo

DH-DD(2012)1283: Communication from Ireland / Communication de l'Irlande

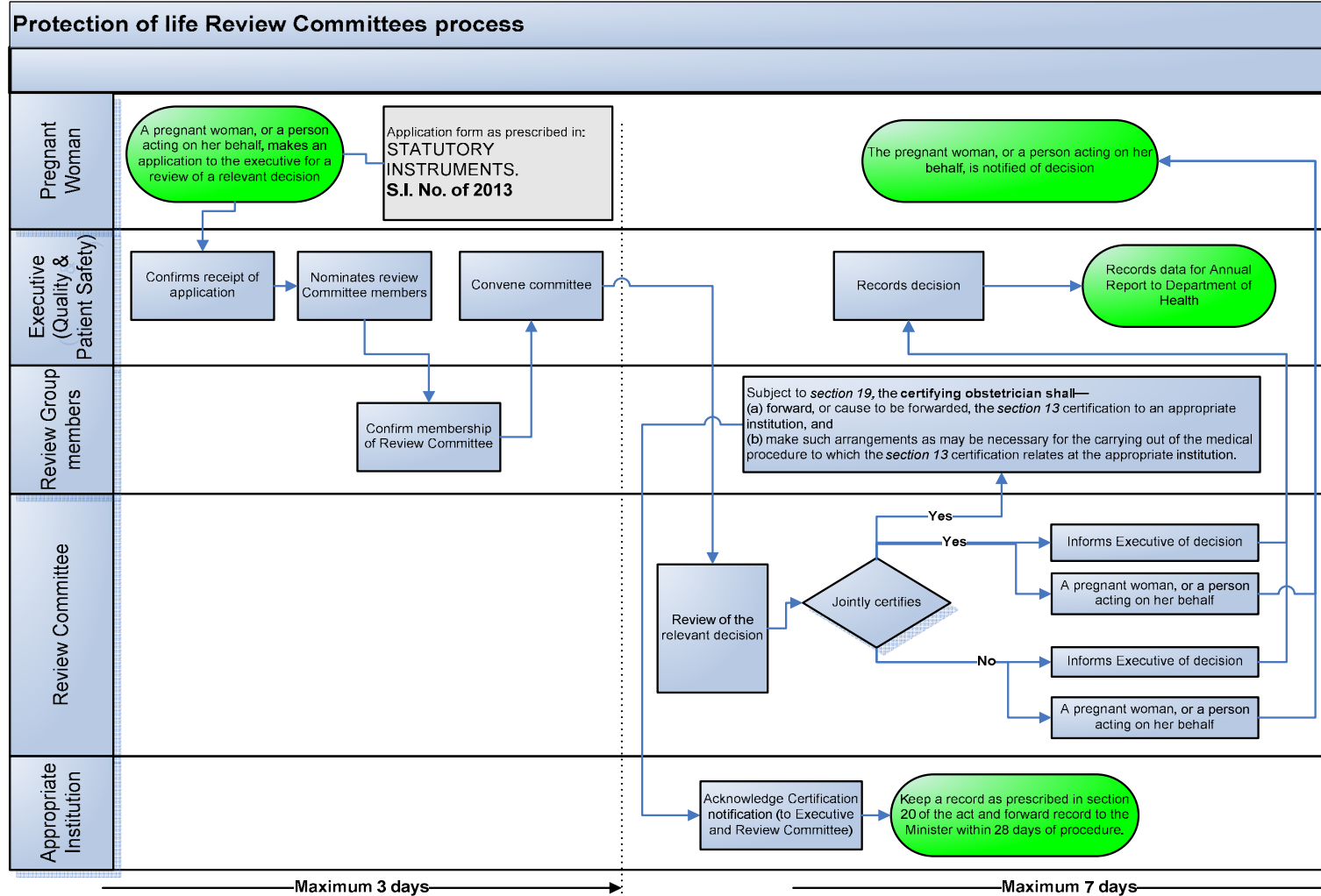
Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers. / Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Appendix 9 Protection of Life During Pregnancy Act Review Committee Process



Feidhmeannacht na Seirbhíse Sláinte
 Health Service Executive

Protection of Life During Pregnancy Act 2013



Appendix 10 Capacity and Consent³⁶

Adults without capacity

It is **presumed that all adults have capacity to give consent** unless there is evidence to the contrary. The possibility of incapacity and the need to assess capacity formally should only be considered, if, having been given all appropriate help and support, the woman is unable to communicate a clear and consistent choice or is obviously unable to understand and use the information and choices provided. In those circumstances, the obstetrician must carry out an assessment of the woman's capacity using the test set out in the National Consent Policy.

This test involves assessing whether

- 1) The woman understands in broad terms and believes the reasons for and nature of the decision to be made
- 2) The woman has sufficient understanding of the principal benefits and risks of the intervention and relevant alternative options after these have been explained to her in a manner and language appropriate to her individual level of cognitive functioning
- 3) The woman understands the relevance of the decision, appreciates the advantages and disadvantages in relation to the choices open to her and is able to retain this knowledge long enough to make a voluntary choice

There is currently no legislative framework to govern how a decision about treatment and care should be made for those who lack capacity to make that decision themselves. It is important to note that **no other person such as a family member, friend or carer and no organisation can give or refuse consent on behalf of a pregnant woman who lacks capacity** to consent unless they have specific legal authority to do so.³⁷

Irish case law, national and international guidelines suggest that in making decisions for those who lack capacity, the responsible clinician should **determine what is in their best interests**.

³⁶ This Appendix reflects the guidance provided in the HSE National Consent Policy.
http://www.hse.ie/eng/about/Who/qualityandpatientsafety/nau/National_Consent_Advisory_Group/NationalConsentPolicy.pdf

³⁷ Such as if the woman is a Ward of Court.

Legal advice should be sought as to whether a court declaration on this issue is necessary before proceeding with the termination of pregnancy.³⁸

As for all women in emergency circumstances (under section 8 of the Act), where there is an immediate risk of loss of life, consent is not required.

Minors

Section 23 of the Non-Fatal Offences Against the Person Act 1997 provides as follows:

- 1) The consent of a minor who has attained the age of 16 years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his or her person, shall be as effective as it would be if he or she were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his or her parent or guardian.
- 2) In this section “surgical, medical or dental treatment” includes any procedure undertaken for the purposes of diagnosis, and this section applies to any procedure (including, in particular, the administration of an anaesthetic) which is ancillary to any treatment as it applies to that treatment.

This means that for a person over the age of 16 years, her consent to the procedure is sufficient and it is not necessary to seek parental consent.

Section 23 does not make any reference to those under the age of 16. In the UK, the ‘Gillick test’³⁹ provides that capacity to consent should not be determined by a fixed age limit but should be determined according to the maturity, understanding and intelligence of the child in relation to what is proposed. Although medical practitioners in Ireland sometimes use this test in practice to treat minors under 16 without parental consent, it is unclear whether this would be constitutionally challengeable due to the strong protection of the rights and interests of parents under the Irish Constitution.

The HSE National Consent Policy states that **where a minor under 16 years seeks treatment it is usual for parents to be involved**. However, in exceptional circumstances, health interventions may be provided for those under 16 without the knowledge or consent of parent(s) or guardian(s). This position is also adopted by the Medical Council Guide to Professional Conduct and Ethics (7th ed. 2009) which provides that where a person under 16 seeks to make a healthcare decision without the involvement of their parents the medical

³⁸ This section may be revised if the Assisted Decision-Making Bill 2013 is enacted.

³⁹ *Gillick v Western Norfolk and Wisbech Area Health Authority and another* [1985] 3 AER 402

practitioner should encourage the patient to involve their parents in the decision, bearing in mind the **practitioner's paramount responsibility to act in the patient's best interests.**

Minors and confidentiality:

For patients over the age of 16, it is not necessary to seek parental consent for treatment. It is important however that the patient should be informed that although the medical practitioner will not breach her confidentiality, **her parents are presumed to have the right to see her medical records under the Freedom of Information Act 1997 until she reaches the age of 18** if they seek them, **unless** this would not be in her best interests.

Mental health

The Mental Health Act 2001 defines a child as a person under 18 years. There is nothing in Section 23 of the Non-Fatal Offences Against the Person Act 1997 which suggests that there is a distinction to be drawn between physical and mental health for the purposes of capacity to give consent.⁴⁰ Therefore this Guidance document adopts the position that, apart from situations in which the Mental Health Act applies, a woman over the age of 16 years can give consent for psychiatric assessment and treatment in the same way as for other medical treatment as long as she is deemed to have the mental capacity to do so. If the psychiatrist is of the opinion that she requires **admission to an in-patient facility under the provisions of the Mental Health Act 2001**, then her parents will be contacted and their consent sought for admission and treatment.

Minors in the care of the HSE

For minors, i.e. persons under the age of 18 years, in the care of the HSE, there are a number of different care orders that may be in place. In some circumstances a court order may be required before proceeding with a medical or psychiatric assessment and/or treatment and advice should be sought from the HSE in such cases.

⁴⁰ The Law Reform Commission has recommended that the Mental Health Act 2001 be amended to provide that a person who is 16 or 17 years of age is presumed to have capacity to consent to and refuse healthcare and medical treatment, including psychiatric treatment: *Report on Children and the Law: Medical Treatment* (LRC 103-2011) para 4.14. The Mental Health Commission has also recommended that persons aged 16 or 17 years should be presumed to have capacity to consent to and refuse treatment: *Mental Health Commission submission on Review of the Mental Health Act 2001*, page 32.

If there is **no contactable parent/ guardian**, the relevant social worker may be authorised by the District Court to give consent. This also applies to children in **foster care** for less than five years.

If the child is the subject of a **voluntary care order**, consent is required from the parents unless a Court order is given dispensing with such consent.

In respect of children under **interim or emergency care orders**, an application should be made to the District Court. Again, every effort would be made to contact and seek consent from the parents.

In relation to children under a **full care order**, it is best practice to seek consent from parents but the HSE is authorised to give consent under the Child Care Act to medical or psychiatric treatment.

Appendix 11 Excerpts from Freedom of Information Acts 1997 and 2013

Section 28 – Personal Information

FOI legislation must take account of the need to balance the right to freedom of information against the right to privacy⁴¹. Section 28 is aimed at achieving the necessary balance. It provides that a public body must refuse to grant an FOI request if access to the record concerned would involve the disclosure of personal information (including information relating to a deceased person).

Personal information means “information about an identifiable individual that

(a) would, in the ordinary course of events, be known only to the individual or members of family, or friends, of the individual, or

(b) is held by a public body on the understanding that it would be treated by it as confidential,

and, without prejudice to the generality of the foregoing, includes

(i) information relating to the educational, medical, psychiatric or psychological history of the individual...”

Personal information may, however, be released if:

- it relates directly to the person who is requesting the information – S28(2)(a)
- the person to whom the information relates gives permission to the public body to release the information – S28(2)(b)
- similar type information is available to the general public – S28(2)(c)
- the person to whom it relates was told, at the time of providing the information, that it may be made available to the general public – S28(2)(d)
- its disclosure is necessary in order to avoid a serious and imminent danger to the life or health of an individual – S28(2)(e)

In cases where personal information is released the public body must satisfy itself of the identity of the requester and also of the consent of the individual where applicable.

If the granting of a request for personal information outweighs, in the public interest, the right to privacy of the individual to whom the information relates then the public body may grant the request – S28(5). There is an obligation on the public body to make such enquiries as are necessary to make a proper decision and to be able to justify that decision on external review.

Requests by Parents or Guardians

Personal information may be released where the requester is a parent or guardian of a minor to whom the record relates. In deciding to grant access to parents or guardians, the decision

⁴¹ For more information on the Freedom for Information Acts, please see the Citizens Information website at http://www.citizensinformation.ie/en/government_in_ireland/national_government/standards_and_accountability/freedom_of_information.html and http://www.citizensinformation.ie/en/health/legal_matters_and_health/access_to_medical_records.html

maker should have regard to all the circumstances, and to the best interests of the person to whom the information relates⁴².

Release is also possible where a member of a class specified in the regulations requests access to records of a deceased individual – S28 (6). The regulations referred to are “The Freedom of Information Act 1997(Section 28(6)) Regulations 1999”. The classes specified include: a personal representative of the individual, a person on whom a function is conferred by law, the spouse, or a next of kin of the individual.

Section 23 (1) (aa) of FOI (Amendment) Act, 2013 – Public Safety

Section 23(1) (aa) offers explicit protection for information which, if disclosed, would be likely to endanger the life or safety of any person, be they members of the public, or those discharging public business. The exemption is stated in the following terms:

“A head may refuse to grant a request under s.7 if access to the record concerned could, in the opinion of the head, reasonably be expected to –.....

..... (aa) endanger the life or safety of any person...”

In order to apply S23 (1) (aa), all that is required is that there be evidence of a risk to personal safety from any source should the information become generally known. A decision to refuse access to information on these grounds is a sensitive matter and must be approached with great caution.

When assessing the level of risk, regard may be had to the factual background to the request.

⁴² Please see The Freedom of Information Act 1997 (Section 28(6)) Regulations 1999" - SI No. 47 of 1999.

Appendix 12 List of Useful Contacts

An Bord Altranais / Irish Nursing Board, 18/20 Carysfort Avenue, Blackrock, Co. Dublin, Ireland. Tel: +353 1 639 8500, Email: professionalguidance@nursingboard.ie, Website: <http://www.nursingboard.ie/en/homepage.aspx>

College of Psychiatrists of Ireland, 5 Herbert Street, Dublin 2 Ireland. Tel: + 353 1 661 8450, E-mail: info@irishpsychiatry.ie, Website: <http://www.irishpsychiatry.ie/Home.aspx>

Department of Health, Hawkins House, Hawkins Street, Dublin 2, Ireland. Tel: +353 1 635 4000, Website: www.doh.ie

Health Service Executive, Oak House, Millennium Park, Naas, Co. Kildare, Tel: +353 45 880400, or Dr. Steevens' Hospital, Dublin 8, Ireland. Tel:+353 1 635 2000, Call-save 1850 24 1850, Email: info@hse.ie, Website: www.hse.ie

HSE Crisis Pregnancy Programme, 4th Floor, 89 – 94 Capel Street, Dublin 1, Ireland. Tel: +353 1 814 6292, Email: info@crisispregnancy.ie, Website: <http://www.crisispregnancy.ie/>

HSE National Clinical Programmes, National Director for Clinical Strategy and Programmes – Dr Aine Carroll, Dr. Steevens' Hospital, Dublin 8, Ireland. Tel: +353 1 635 2000, Email: clinicalprogrammeadmin@rcpi.ie, Website: <http://www.hse.ie/eng/about/Who/clinical/natclinprog/>

HSE Quality and Patient Safety Directorate, National Director of Quality and Patient Safety – Dr Philip Crowley, Room 1.51, Dr Steevens' Hospital, Dublin 8, Ireland. P. A to Philip: Orla McEvoy, Tel: +353(0)1 6352038, Email: Orla.mcevoy1@hse.ie, Website: <http://www.hse.ie/eng/about/qps/>

Institute of Obstetricians and Gynaecologists, C/O RCPI, Frederick House, 19 South Frederick Street, Dublin 2 Ireland. Main landline: +353 1 863 9700, Receptionist: +353 1 863 9701, Email: college@rcpi.ie, RCPI helpdesk: Freephone (Republic of Ireland only): 1800 303 574, international calls: + 353 1 863 9721, Email: helpdesk@rcpi.ie, Website: <http://www.rcpi.ie/landing.php?locID=1.5.71>

Irish College of General Practitioners, 4/5 Lincoln Place, Dublin 2, Ireland. Tel: +353 1 6763705, Email: info@icgp.ie, Website: <http://www.icgp.ie/>

Medical Council, Kingram House, Kingram Place, Dublin 2, Ireland. Tel: +353 1 4983100 Email: info@mcirl.ie, Website: <http://www.medicalcouncil.ie/>

Mental Health Commission, St Martin's House, Waterloo Road, Dublin 4, Ireland. Tel: +353 1 636 2400, Email: info@mhcirl.ie, Website: <http://www.mhcirl.ie/Registration/ACRegister/>

Royal College of Physicians in Ireland, Frederick House, 19 South Frederick Street, Dublin 2 Ireland. Main landline: +353 1 863 9700, Receptionist: +353 1 863 9701, Email: college@rcpi.ie, RCPI helpdesk: Freephone (Republic of Ireland only): 1800 303 574, International calls: + 353 1 863 9721, Email: helpdesk@rcpi.ie, Website: <http://www.rcpi.ie/article.php?locID=1.12.25>