# PROTECTION OF LIFE DURING PREGNANCY (HEADS OF) BILL 2013

## Submission from the Christian Medical Fellowship (UK and Ireland)

## Introduction

The Christian Medical Fellowship (CMF) is an interdenominational Christian organisation with more than 4,000 British and Irish doctors as members, practising in all branches of the profession. Through the International Christian Medical and Dental Association we are linked with like-minded colleagues in over 100 other countries.

CMF regularly makes submissions on ethical and professional matters to Government committees and official bodies.

One of CMF's aims is 'to promote Christian values, especially in bioethics and healthcare, among doctors and medical students, in the church and in society'. Many of our members are directly involved 'on the front line' in diagnosing, treating and caring for pregnant women, Many of our members are directly involved 'on the front line' in diagnosing, treating and caring for pregnant women, as well as people with disabilities. As a Christian organisation, we encourage our members to be advocates for those who are weak, sick, marginalised and handicapped and seek to love and care for them to the utmost of their abilities.

CMF believes that abortion, understood as the direct and intentional destruction of an unborn baby, is gravely immoral in all circumstances. This is different from medical treatments which do not directly and intentionally seek to end the life of the unborn baby.

We support current law and medical guidelines in Ireland which allow nurses and doctors in Irish hospitals to apply this vital distinction in practice.[1] This has been an important factor in ensuring that Irish hospitals are among the safest and best in the world in terms of medical care for both a mother and her unborn baby during pregnancy. The nation consistently boasts one of the lowest maternal mortality rates in the world (1st in 2005, 3rd in 2008[2]).

As a country this is something Ireland should cherish, promote and protect.

## Executive summary and Recommendations (Head by Head)

Thankfully bringing a pregnancy to a premature end in order to save the life of the mother is rare. In the UK it was reported in 1992 that in the first 25 years of the operation of the Abortion Act 1967 only 0.013% of all abortions were performed 'to save the life of the mother' and it is even questionable whether many of these required such radical action. The 2009 Abortion Statistics for England and Wales do not report a single case meaning this is a scenario that the vast majority of doctors, and even most obstetricians, will never face in a

[1] Section 21.4 of Ireland's Guide to Professional Conduct and Ethics for Registered Medical Practitioners: *'In current obstetrical practice, rare complications can arise where therapeutic intervention (including termination of a pregnancy) is required at a stage when, due to extreme immaturity of the baby, there may be little or no hope of the baby surviving. In these exceptional circumstances, it may be necessary to intervene to terminate the pregnancy to protect the life of the mother, while making every effort to preserve the life of the baby.'*

[2] http://www.unicef.org/infobycountry/ireland_statistics.html

lifetime of medical practice.

We believe that there is no necessity for any relaxation or change in the law and professional guidance in Ireland when the existing law and guidance do not prevent doctors intervening to save a mother's life.

CMF supports current law and medical guidelines in Ireland which allow nurses and doctors in Irish hospitals to intervene to terminate the pregnancy (while making every effort to preserve the life of the baby) only in order to treat and protect the life of the mother. Where a real and substantial risk to a pregnant woman's life exists, clear procedures and explanations are provided for everyone involved. Section 21.4 of Ireland's Guide to Professional Conduct and Ethics for Registered Medical Practitioners: *'In current obstetrical practice, rare complications can arise where therapeutic intervention (including termination of a pregnancy) is required at a stage when, due to extreme immaturity of the baby, there may be little or no hope of the baby surviving. In these exceptional circumstances, it may be necessary to intervene to terminate the pregnancy to protect the life of the mother, while making every effort to preserve the life of the baby.'*

The medical certification process is framed around ethical principles and constitutional requirements that place a duty on doctors 'to preserve the life of the unborn as far as practicable'.

We have deep concerns with Protection of Life during Pregnancy (Heads of) Bill which would, if approved, make the direct and intentional killing of unborn children lawful in Ireland.

## 1. Head 1 Interpretation

The formal definition of unborn used is scientifically incorrect. 'Unborn life' does not begin at implantation but at fertilisation.

**Recommendation: The definition of 'unborn' should be scientifically accurate.** Head 1 should therefore read: 'unborn' as it relates to human life means following fertilisation until such time as it has completely proceeded in a living state from the body of the woman.

## 2. Head 4 Risk of loss of life from self-destruction

The bill makes suicide an explicit, statute-level ground for abortion. However medical evidence and data does not indicate that abortion is a safe or reasonable treatment for suicide. This also puts doctors in the position of deciding what degree of suicide risk qualifies for legal protection and what does not.

**Recommendation: suicide as a ground for abortion should be removed**

## 3. Head 12 Conscientious Objection

Head 12 of the draft bill states that a doctor with a conscientious objection to assisting or carrying out an abortion *has a duty* to ensure that another colleague takes over the care of the patient. There should be no duty to refer.

**Recommendation: The Bill must be amended to ensure that institutions with an objection to abortion, as well as individuals, do not have to participate in abortions.**

## 4. Head 18 Repeal and Consequential Amendments

Repealing Sections 58 and 59 of the Offences Against the Person Act 1861 will offer less protection to the unborn child.

**Recommendation: if sections 58 and 59 of the Offences Against the Person Act are not retained, the Bill should include a clause specifically tailored to protect the life of the unborn child.**

# Detailed Comments on the draft Bill

## Head 1 Interpretation

The formal definition of 'unborn' used in this draft bill is scientifically incorrect. The Bill defines 'unborn life' as beginning when a 'fertilised egg' implants into a woman's uterus. However implantation occurs 5-7 days post-fertilisation and occurs at the blastocyst stage. This is not when a new distinct individual human life begins to exist. Science concedes that human life begins at fertilisation, thus every new human being begins to exist at this point. This is clearly stated in medical text books:

'*Human development begins at fertilisation, the process during which a male gamete or sperm (spermatozoon development) unites with a female gamete or oocyte (ovum) to form a single cell called a zygote. This highly specialized, totipotent cell marked the beginning of each of us as a unique individual.' 'A zygote is the beginning of a new human being (ie. an embryo).*'[3]

'*Human embryos begin development following the fusion of definitive male and female gametes during fertilization... This moment of zygote formation may be taken as the beginning or zero time point of embryonic development*.' [4]

Our concern with the Bill definition is that it explicitly removes protection for the human embryo before implantation in the womb, by creating an arbitrary point from which to state that human life begins. The definition must be scientifically and medically correct for the purposes of the bill.

## Head 4 Risk of loss of life from self-destruction

The draft bill goes beyond both the permitted grounds of Britain's 1967 Abortion Act and of British case-law (such as the 1938 Bourne judgment) by making suicide an explicit, statute-level ground for abortion.

The draft bill assumes that there is evidence that abortion for suicide is beneficial. However there is no research evidence that abortion is a treatment for women who are suicidal,

[3] Keith L. Moore, *The Developing Human: Clinically Oriented Embryology, 7th edition*. Philadelphia, PA: Saunders, 2003. pp. 16, 2.
[4] William J. Larsen, *Essentials of Human Embryology*. New York: Churchill Livingstone, 1998. pp. 1, 14.

because this has not been investigated. Therefore it would be misleading for anyone to state emphatically that abortion **does or does not** help suicidal women, until better data is available.

We note that recently 113 of 127 psychiatrists in Ireland who took part in a survey organised by four of their peers, agreed with a statement that they were 'deeply concerned' about plans to legislate for suicidality as grounds for an abortion being carried out: '*We as psychiatrists are being called upon to participate in a process that is **not evidence-based** and we do not believe that this should be asked of the profession*.' (emphasis added). One Psychiatrist, Prof Patricia Casey, Mater Hospital and UCD, adds:

'*In my work as a psychiatrist, I run the attempted suicide service in the Mater Hospital in which we see and assess more than 400 attempted suicides in women per year. I have never seen a pregnant woman who was suicidal for whom an abortion was the only answer*.' [5]

The most recent major review of all recent reviews on the relationship between abortion and mental health, published only last month, has concluded that '*there is no available evidence to suggest that abortion has therapeutic effects in reducing mental health risks of unwanted or unintended pregnancy.*' Furthermore, it found that abortion was associated with a moderate **increase** in the risk of suicidal behavior (AOR 1.69, 95% CI 1.12-2.54; p<0.01).[6]

We recommend, from a medical perspective, that the treatment for suicidality in a pregnant woman is not abortion but is to make sure that the patient is on the appropriate medication and receiving appropriate psychological treatment, support, intervention and nursing support.

Moreover we are very concerned about the pressure that would be put on Psychiatrists by this draft Bill. It would put psychiatrists in the unenviable position of deciding what degree of suicidality qualifies for legal protection and what does not. Medical judgements can be wrong and psychiatrists should not be asked to adjudicate in these cases. Suicidal intent is an easily fabricated condition and it is very difficult for psychiatrists to **prove** that a woman who says she is not suicidal is not, nor is it their job to do so.

The explanatory notes to the proposed Bill state that the risk to life need not be immediate or inevitable. So doctors are being asked to predict who, on the balance of probability, will take their lives sometime in the future because of the pregnancy.

Inevitably there will be an over-prediction of suicide, since doctors always err on the side of caution where threats of suicide are concerned.

Including suicidal risk in forthcoming legislation is not consistent with Article 40.3.3 which protects the life of the unborn child. We strongly recommend that the parts of the draft bill permitting abortion where there is a risk of suicide should be removed.

## Head 12 Conscientious Objection

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[5] http://www.thelifeinstitute.net/current-projects/abortion-and-suicide/#SUPredict

[6] Fergusson DM et al. Does Abortion reduce the mental health risks of unwanted or unintended pregnancy? A reappraisal of the evidence. *ANZJP* 4 April 2013. DOI: 10.1177/0004867413484579.

Head 12 of the draft bill suggests that a doctor with a conscientious objection to assisting or carrying out an abortion **must refer** the woman to a colleague:

'*In the event of a doctor or other health professional having a difficulty in undertaking a required medical procedure, he or she will have a duty to ensure that another colleague takes over the care of the patient as per current medical ethics*.

In addition, the draft Bill appears to impose a duty on all hospitals, including Catholic hospitals and any with an objection or abortion, to provide abortions, without exception. The following Resolution by the Council of Europe states that:

*'No person, **hospital or institution** shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason.'*[7]
Religious hospitals or organisations which may find themselves being pressurised to agree to abortion services could theoretically use the resolution to allege that they were being discriminated against.

The Bill must be amended to ensure that the legitimate autonomy and religious ethos of faith-based institutions, as well as individuals, is fully respected, and to ensure there is no **duty to refer**. Doctors with a conscientious objection must tell patients of their right to see another doctor, and ensure they have sufficient information to exercise that right.

The scope of conscientious objection is also too narrow applying only to '*assisting or carrying out an abortion*'. However doctors who object to the procedure should be excused from all **'participation'** in the abortion process (apart from attendance in emergency). This has been helpfully clarified in a recent high profile British Court ruling last month as extending '*not only to the actual medical or surgical termination **but to the whole process of treatment** given for that purpose*.'[8] (emphasis added).

## Head 18 Repeal and Consequential Amendments

This Head provides that (1) Sections 58 and 59 of the Offences e Person Act 1861[9]
are repealed and replaced by the provisions in Head 2 of the Bill.

The 1861 Act protects the unborn child. Any substitute legislation would be less than the protection which the 1861 Act affords.

The constitutional protection has in fact been reduced to an 'Explanatory Note' in Head 2 as follows: '*Subhead (1)(b)(ii) refers to a 'reasonable opinion. This is defined in the Interpretation to mean an opinion formed in good faith, which **has regard to the need to preserve unborn life where practicable.** Again, as outlined earlier, this definition is intended to place a duty on certifying medical practitioners to preserve the life of the unborn as far as practicable…'* (emphasis added).

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[7] The right to conscientious objection in lawful medical care'. The Council of Europe, http://assembly.coe.int/ASP/APFeaturesManager/defaultArtSiteView.asp?ID=950

[8] http://www.scotcourts.gov.uk/opinions/2013CSIH36.html

[9] Sections 58 and 59 of the Offences Against the Person Act 1861 provided for life imprisonment for a doctor who performs an 'intentional miscarriage'.

We note that in the 2002 abortion referendum the Irish people **rejected** a proposal to repeal sections 58 and 59 of the Offences Against The Person Act 1861.

We recommend that the Bill should include a clause specifically tailored to protect the life of the unborn child.

## Conclusion

The unborn child is a living human being from the moment of conception, and is entitled to all of the same rights as other members of the human family.

Any legislation which has any exception in its text would be an open door for liberalising abortion in Ireland.

We believe that there is no necessity for any relaxation or change in the law and professional guidance in Ireland when the existing law and guidance do not prevent doctors intervening to save a mother's life.

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