



## **Proposed Terms of Reference for the Review of the Health (Regulation of Termination of Pregnancy) Act 2018**

The Health (Regulation of Termination of Pregnancy) Act 2018 provides the legal framework for the provision of abortion services in Ireland. Section 7 specifies that “[t]he Minister shall, not later than 3 years after the commencement of this section, carry out a review of the operation of this Act”; therefore, the Review is due to commence in 2021. During the passage of the legislation, Minister for Health Simon Harris committed to [“a full, external review of the Act”](#), designed to [“make sure that the legislation continues to be in line with best international practice”](#). This document, prepared by the Abortion Rights Campaign and Lawyers for Choice, outlines key recommendations for the development of an external Review process which will support bringing Ireland’s abortion legislation towards best international standards. These recommendations are centred on the needs of those who access abortion care, and reflect our commitment to free, safe, legal and local abortion access for everyone who needs or wants it across the island of Ireland.

### **Principles and framing of the Review process**

1. An independent Chair of the Review should be recruited by the Minister for Health; the Chair must have both a sexual and reproductive health background and a background in human rights.
2. An advisory panel should be independently recruited to inform the Review. The panel should consist of independent experts in the field of reproductive healthcare and human rights, as well as providers, past/prospective patients, patient advocates, and representatives of relevant government departments.
3. The Review processes, timeframes and outcomes should be published publicly.
4. The Review should look to the substance of the law and associated guidelines and any need for reform, as well as to the operation of the current Act.
5. The Review should be conducted at all times with reference to international human rights standards.
6. The Review is tasked with evaluating Ireland’s abortion provision and improving access to healthcare; not with removing existing statutory rights, introducing new statutory or regulatory restrictions on access to abortion, or considering proposals for constitutional amendments which would have the effect of restricting access.
7. Any additional research undertaken as part of the Review process should focus on: data collection and investigation of the current status of Ireland’s abortion provision and legislation; consultations with patients, patient advocates, providers and relevant professionals; and recommendations for

changes to legislation and/or clinical guidance as appropriate in order to improve access to healthcare.

8. The Review process should commence in Autumn 2021 and last no more than 6 months. A report from the Minister to the Oireachtas Health Committee detailing recommended changes should be produced no more than 6 months following the conclusion of the Review.

### **Review processes: Purpose of data collection and investigation**

- To document the lived experience of abortion access in Ireland since January 2019.
- To document on the extent to which the 2018 Act enables implementation of international best practice, and compliance with the state's obligations under Irish constitutional law, European and international human rights law.
- To review how the abortion law is interpreted in practice in relevant healthcare settings, and to identify any continuing 'chilling effects' leading to reluctance to offer abortion care individually or in teams/institutions, refusal of care or delays in providing care.
  - In particular, to identify reasons for non-provision, or restricted provision of legal abortion care in any maternity hospital or other healthcare setting.
- To identify any persistent areas of inequality or discrimination affecting access to abortion care.
- To identify any causes of frequently-occurring unnecessary or avoidable delay in access to abortion care.
- To identify any areas in which the abortion law contributes to negative healthcare outcomes for patients.
- To investigate the accessibility of high quality abortion care information within the health service and the wider public sphere, including via the MyOptions service.
- To examine the prevalence and any effects of obstructive practices, including anti-abortion activity at or near healthcare facilities, 'rogue' information providers, delayed referral, delayed treatment, and refusal of abortion care or aftercare.
- To document the operation and outcomes of the review process under ss. 13-19 of the Act.
- To report on the adequacy of data collection under s. 20 of the Act.
- To report on any wider legal issues arising from the 2018 Act. These should include, but are not restricted to;
  - Interactions with capacity law.
  - Interactions with the law on child protection.
  - Interactions with the criminal law, including any evidence surrounding investigations or potential prosecutions.
- To identify existing instances of excellence—rights-centred practice or innovative practice—which should be mainstreamed within the HSE's model of care.

- In particular, to consider the evidence for maintaining innovations increasing the accessibility of care, including provision via telemedicine developed during the COVID-19 pandemic.
- To undertake data-collection on service provision and gaps therein:
  - To report on the geographic distribution of services, identifying any localities where abortion services are not readily accessible to local residents.
  - To identify the incidence of continued abortion travel out of Ireland and the reasons for that travel.
  - To identify the incidence of continued use of abortion medications in Ireland, otherwise than as prescribed in accordance with the 2018 Act, and the reasons for that use.
  - To identify the incidence of and reasons for refusal of abortion access under s. 12, including where the pregnant person has not been able to meet the statutory deadlines for access to care on request.
  - To identify the incidence of and reasons for refusal of abortion access under ss. 9-10, including where the risk of harm was not considered to reach the statutory threshold for abortion access.
  - To identify the incidence of and reasons for refusal of abortion access under s.11, including where the condition affecting the foetus was not considered to reach the statutory threshold for access.
  - To identify the reasons for and outcomes of all applications for review, and reviews of denial of care under ss. 13-17.

### **Review processes: Consultation with patients, providers and others**

- To run an accessible consultation (by soliciting written and oral submissions in a variety of formats) with the following:
  - Patients and potential patients;
    - People who have accessed legal abortion in Ireland since the legislation came into effect;
    - People who have been unable to access legal abortion in Ireland since the legislation came into effect; including
      - Disabled Persons' Organisations, including disabled persons in inpatient and residential settings.
      - People living outside of major cities
      - People living in areas with limited or no GP provision
      - Organisations supporting those who have received a diagnosis of foetal abnormalities
      - Travellers and Mincéirí and representative organisations
      - Migrants to Ireland, including those without a PPSN.
      - Persons seeking international protection
      - International Students
      - People receiving social welfare payments
      - Unhoused people and people living in shelters or insecure housing; clients of homelessness service organisations

- People living in direct provision centres and emergency accommodation
- Organisations led by trans and non-binary, and intersex persons
- People resident in Northern Ireland
- People under 18
- Healthcare practitioners
  - Abortion providers, including GPs, hospital doctors, and community and specialist sexual and reproductive health providers.
  - Doctors, midwives, nurses, counsellors and pharmacists who have been involved in abortion care.
  - Healthcare practitioners who are willing to participate in abortion provision but have been unable to do so.
  - International organisations working in the fields of sexual and reproductive health, and reproductive rights.
  - Organisations supplying abortion medication other than as part of the formal healthcare service.
  - MyOptions staff.
- Civil servants
  - Legal services with an advisory role in relation to the HSE

### **Review processes: Recommendations for legislation and clinical guidelines**

- To make recommendations, including for law reform, such as decriminalisation of abortion; and to make recommendations for development of additional clinical guidance on interpreting Ireland’s abortion legislation, as necessary.
  - The Review should make recommendations that have broad support among patients, healthcare providers, relevant professionals, and patient-support organisations;
  - The Review should prepare draft legislative amendments where necessary.
- To consider the merits of retaining section 7 of the Act and advise whether future reviews may be needed.

#### **For further information please contact:**

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