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Abortion in Ireland: Prospects for Rights-Centred Law Reform?

Máiréad Enright*

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Abstract

This article offers a critical account of the recent Independent Review of Ireland's abortion legislation. I begin by setting out some of the obstacles to abortion care that are built into the current law. Next, I discuss evidence that the legislation is being interpreted more narrowly than necessary. Then, I review a culture of liberal incrementalism that inhibits creative abortion law reform in Ireland, before setting the Review's modest proposed amendments in that context. Finally, I critique the Review's failure to offer a robust account of abortion-seeker's rights, or to assess the Act's failings from the perspective of human rights law.

Introduction

Until January 2019, only some life-saving abortions were legal in Ireland. The Health (Regulation of Termination of Pregnancy) Act 2018 changed all that. It was passed following a referendum removing a foetal life provision, known as the 8th Amendment, from Ireland's constitution. It was signed into law just before Christmas 2018, and abortion services began in the new year. Today, abortion is legal on request, without restriction as to reason,¹ up to 12 weeks LMP.² Thereafter, it is criminalised except where two doctors certify that the woman's circumstances fall within limited statutory grounds (risk to life³, risk of serious harm to health,⁴ and diagnosis of some "fatal foetal anomalies"⁵). Treatment is provided free of charge at the point of access.⁶ General practitioners and specialised clinics lead on care early in the first trimester, referring women to hospital if considered necessary. This model is intended to ensure that women can access abortion with relative privacy, and within the mainstream health service. As a policy matter, abortion seekers are required to attend for treatment at a providing hospital if their pregnancy has exceeded 10 weeks LMP.⁷ In addition, where abortion is sought on grounds of risk to life, health or "fatal" foetal anomaly, treatment is delivered in hospital.

Section 7 of the Act provided for a statutory review of its operation to take place "not later than three years" after its commencement. The review was completed late, with the independent chair, Marie O'Shea BL, submitting her report (the Report) to Cabinet in February 2023. The Report draws on two

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¹ Health (Regulation of Termination of Pregnancy) Act 2018 (2018 Act) s.12.

² "LMP" indicates that the time limit is counted from the pregnant person's last menstrual period, rather than from an estimated date of conception.

³ 2018 Act ss.9 and 10.

⁴ 2018 Act ss.9 and 10.

⁵ 2018 Act s.11.

⁶ Note, however, documented difficulties experienced by migrants to Ireland; M. O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023].

⁷ C. Conlon, K. Antosik-Parsons and E. Butler, "Unplanned Pregnancy and Abortion Care (UnPAC) Study" (2022), <http://www.tara.tcd.ie/bitstream/handle/2262/101813/Unplanned%20Pregnancy%20and%20Abortion%20Care%20UnPAC%20Study%20Conlon,%20Antosik-Parsons%20and%20Butler%202022.pdf?sequence=1> [Accessed 25 June 2023].

specialty-commissioned pieces of academic research; one on patient experiences of abortion access under the Act,⁸ and one on abortion providers' experiences.⁹ The Report documents the changes enabled by the Act. It also confirms difficulties in providing rights-centred abortion care.

Although sections of the Irish media initially presented the Report as recommending dramatic legislative changes,¹⁰ the reality is more modest. This article offers a critical account of the Report's legislative agenda. I begin by setting out some of the obstacles to abortion care that are built into the current legislation. Next, I discuss evidence that the legislation is being interpreted more narrowly than necessary. Then, I review a culture of liberal incrementalism that inhibits creative abortion law reform in Ireland, before setting the Report's modest proposed amendments in that context. Finally, I critique the Report's failure to offer a robust account of abortion-seeker's rights, or to assess the Act's failings from the perspective of human rights law.

Obstruction by Design?

The Act erects barriers to timely and dignified abortion access, even in early pregnancy. Women may seek abortion on request before 12 weeks LMP. They may present before the statutory time limit has elapsed and yet be denied care. In 2019, 5% of abortion seekers presenting for care with the Irish Family Planning Association (IFPA) were close to or just over the 12-week limit.¹¹ The law imposes a three-day waiting period between a first and second consultation.¹² At the first, which can be done over the phone, the patient's entitlement to access an abortion is certified and their informed consent is sought. Treatment is provided at the second consultation, at least three days later. This waiting period is unique to abortion care. It has no therapeutic justification and reflects a paternalistic impulse to ensure that women seeking abortion on request have properly considered their decision.¹³ It is especially inappropriate because abortion care is always time-sensitive. The IFPA has called it an "enforced delay".¹⁴ It can exacerbate other delays; for instance the only providing doctor in a GP practice may only work part-time, a certifying doctor may refer the woman for an ultrasound to date the pregnancy only to find that no appointments are immediately available, or a woman may need to travel several miles to visit a providing GP.¹⁵ A three-day wait may easily become a week. The waiting period can be distressing and compounds existing burdens on those—for instance, teenagers, homeless people or disabled people—who may already struggle to keep multiple appointments.¹⁶ The 12-week limit is strict and inflexible. There is no provision to waive or extend it even where the woman misses the deadline because of issues beyond her control.¹⁷ The position is the same even in cases where abortion treatment provided in good time fails.¹⁸ Those refused care in early pregnancy

⁸ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023].

⁹ D. N. Duffy et al, "Service Provider Perspectives and Experiences of the Health [Regulation of Termination of Pregnancy] Act 2018" (Department of Health (DoH) 2023), Report, <https://www.lenus.ie/handle/10147/635553> [Accessed 22 June 2023].

¹⁰ J. Bray and P. Leahy, "Abortion Review to Recommend Sweeping Changes to Existing Law" (2023), *The Irish Times*, <https://www.irishtimes.com/health/2023/04/21/abortion-review-to-recommend-sweeping-changes-to-existing-law/> [Accessed 22 June 2023].

¹¹ Irish Family Planning Association, "Submission to the Review of the Health (Regulation of Termination of Pregnancy) Act 2018" (2022), p.16, <https://www.ifpa.ie/app/uploads/2022/05/Submission-to-the-Review-of-the-operation-of-the-Health-Regulation-of-Termination-of-Pregnancy-Act-2018.pdf> [Accessed 25 June 2023].

¹² 2018 Act s.12(4).

¹³ Acknowledged in O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p.86.

¹⁴ Irish Family Planning Association, "Submission to the Review of the Health (Regulation of Termination of Pregnancy) Act 2018" (2022), p.16, <https://www.ifpa.ie/app/uploads/2022/05/Submission-to-the-Review-of-the-operation-of-the-Health-Regulation-of-Termination-of-Pregnancy-Act-2018.pdf> [Accessed 25 June 2023] at 15.

¹⁵ Oireachtas Joint Committee on Health, 31 May 2023.

¹⁶ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p.17.

¹⁷ Duffy et al, "Service Provider Perspectives and Experiences of the Health [Regulation of Termination of Pregnancy] Act 2018" (Department of Health (DoH) 2023), Report, <https://www.lenus.ie/handle/10147/635553> [Accessed 22 June 2023], p.57.

¹⁸ The Abortion Support Network reported 25 such cases in 2020: Abortion Rights Campaign, "Joint Submission from Abortion Rights Campaign (ARC), Abortion Support Network (ASN) and Termination for Medical Reasons (TFMR) for the 39th Session of the UPR Working Group" (Abortion

are likely to face further suffering. A woman refused care at a few days past the 12-week limit may take weeks to arrange treatment abroad, if she can even travel at all. So, a refusal in Ireland at 12 weeks may become a more difficult and expensive termination at 20 weeks elsewhere,¹⁹ or a continued unwanted pregnancy at home.

The grounds for abortion access after 12 weeks LMP impose their own obstacles. Abortion should be available in Ireland in cases where continuing a pregnancy places a woman's health at risk of serious harm, but in practice this ground is rarely used.²⁰ The reported numbers of abortions performed on this basis, expressed in law as a combined "risk to life and health" ground, are broadly similar to the published figures for access under the 8th Amendment,²¹ when abortion was illegal unless it could be established that the woman's life could only be saved by terminating the pregnancy.²² There is some suggestion that the two grounds are being conflated in practice²³ or even that some doctors may not understand how the law in this area has changed.²⁴ If health-preserving abortions are not available in Ireland then, in practice, there is no statutory safety net for those who miss the 12-week deadline.

Since the legislation was passed, numbers of Irish-resident women reportedly travelling to England to access abortion care have fallen dramatically, from the thousands to the hundreds.²⁵ Abortion is not available on the grounds that the foetus has been diagnosed with a severe anomaly. Provision is confined to cases where the foetus is deemed likely to die before, or within 28 days of birth. Under the Act, it does not matter that women with different diagnoses may experience the pregnancy, the prospective loss of a wanted child and the prospect of planning for the future in substantively similar ways. However, many women are continuing to travel to access abortion following diagnosis of a fatal foetal abnormality because doctors caring for them cannot adequately determine when the baby, if born alive, will die.²⁶ Arguably, given the mental health impacts of being required to carry a pregnancy to term in these circumstances, women who have received a diagnosis of a fatal anomaly should be able to access an abortion under the "health" ground. There is, however, no evidence that this pathway has been made available.

Statutory Interpretation and Clinical Practice

The Report spends some time on doctors' role as gatekeepers to abortion access. Of course, doctors have done more than simply implement the statutory abortion care regime. Committed pro-choice providers and associated organisations including STARTdocs, Doctors for Choice and the IFPA led in establishing the new abortion service and sharing best practice with new practitioners. A small group of obstetricians who were members of STARTdocs led in writing the Institute of Obstetricians and Gynaecologists'

Rights Campaign 2021), p.6, https://www.upr-info.org/sites/default/files/document/ireland/session_39_-_may_2021/js3_upr39_irl_e_main.pdf [Accessed 25 June 2023].

¹⁹ M. Donnelly and Claire Murray, "Early Medical Abortion Care in Ireland: Conscientious Provision and the Role of Law" (26 May 2023), p.13, <https://papers.ssrn.com/abstract=4460644> [Accessed 22 June 2023].

²⁰ No women treated under the health ground were interviewed for the Report; C. Conlon, K. Antosik-Parsons and E. Butler, "Unplanned Pregnancy and Abortion Care (UnPAC) Study" (2022), <http://www.tara.tcd.ie/bitstream/handle/2262/101813/Unplanned%20Pregnancy%20and%20Abortion%20Care%20UnPAC%20Study%20Conlon,%20Antosik-Parsons%20and%20Butler%202022.pdf?sequence=1> [Accessed 25 June 2023], p.126.

²¹ Abortion Rights Campaign and Lorraine Grimes, "Too Many Barriers: Experiences of Abortion in Ireland after Repeal" (2021), p.56, https://www.abortionrightscampaign.ie/wp-content/uploads/2021/09/Too-Many-Barriers-Report_ARC1.pdf [Accessed 25 June 2023].

²² We might expect numbers in this category to be relatively low because abortion care can now be offered much earlier in pregnancy, well before the woman's life is at risk. That said, risks of serious harm to health can materialise after 12 weeks LMP and the law should make provision for them.

²³ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p.8.

²⁴ Duffy et al, "Service Provider Perspectives and Experiences of the Health [Regulation of Termination of Pregnancy] Act 2018" (Department of Health (DoH) 2023), Report, <https://www.lenus.ie/handle/10147/635553> [Accessed 22 June 2023], p.74.

²⁵ See discussion in J. Mishtal et al, "Policy Implementation—Access to Safe Abortion Services in Ireland Research Dissemination Report" [2021] UNDP-UNFPA-UNICEF-WHO-World Bank Special Programme of Research, Development and Research Training in Human Reproduction (HRP), Department of Sexual and Reproductive Health and Research, World Health Organization, 20 Avenue Appia 1, 36.

²⁶ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p.67.

guidance on abortion care.²⁷ Innovative providers have shaped their practice to address the legislation's limitations. The IFPA led in advocacy to demonstrate that access to care in early pregnancy could be provided via telemedicine within the terms of the Act, and pioneered a new model of remote care.²⁸ Some doctors will offer care early in the morning or on a weekend to a woman who would otherwise miss the 12 week deadline.²⁹ Others, conscious of the delays that may be caused by over-reliance on scanning to date a pregnancy are likely to trust the woman's own account of "her dates" where it is reasonable to do so. This good faith practice is well within the terms of the Act, which does not prescribe dating methods.³⁰ However, there is also plenty of evidence of reluctance to provide abortion access to the fullest extent permitted by law.

In the last decade Irish obstetricians' relationship to abortion law has shifted dramatically.³¹ In 1983, several prominent practising obstetricians campaigned to insert the foetal life provision into the Constitution,³² and continued to defend it for years afterwards. By 2013, however, an influential group of Masters and senior obstetricians, especially in the Dublin maternity hospitals, were working to change the law, first by giving expert testimony before the Oireachtas, and later as advocates for a "Yes" vote in the referendum.³³ The official campaign for a "Yes" vote, Together for Yes used doctors as spokespeople to reassure perceived anxieties within a cohort of voters concerned about unsafe procedures or "abortion on demand".³⁴ As Sadie Bergen has shown, pro-choice campaigning doctors remain a minority in the Irish medical profession. Obstetricians were more likely to adopt a moderate liberal abortion politics; arguing for decriminalisation to expand the perceived scope of their clinical autonomy, rather than for a woman-centred model of care rooted in principles of reproductive justice.³⁵

To a significant degree, the Report attributes conservative interpretation of the legislation to anxieties about criminalisation.³⁶ It is an offence under the Act for a doctor to provide abortion care except on the limited grounds provided for under the Act. A penalty of up to 14 years' imprisonment may apply.³⁷ Mary Donnelly and Claire Murray's research suggests that pro-choice primary care providers³⁸ distinguished between a low personal risk of prosecution and a broader hypervigilance associated with the idea that their work falls within the scope of the criminal law.³⁹ Even if the law is not enforced, it has an influence. Obstetricians also report a sense of vulnerability to criminalisation. For example, in offering abortion care following a diagnosis of a fatal foetal anomaly, the Act requires certifying doctors to be satisfied that the baby, if born, is likely to die within 28 days of birth. Prospective quality of life is not relevant. Doctors

²⁷ B. M. Stifani et al, "Abortion Policy Implementation in Ireland: Successes and Challenges in the Establishment of Hospital-Based Services" (2022) 2 *S&M—Qualitative Research in Health* 100090, p.4.

²⁸ Duffy et al, "Service Provider Perspectives and Experiences of the Health [Regulation of Termination of Pregnancy] Act 2018" (Department of Health (DoH) 2023), Report, <https://www.lenus.ie/handle/10147/635553> [Accessed 22 June 2023].

²⁹ Duffy et al, "Service Provider Perspectives and Experiences of the Health [Regulation of Termination of Pregnancy] Act 2018" (Department of Health (DoH) 2023), Report, <https://www.lenus.ie/handle/10147/635553> [Accessed 22 June 2023], p.57.

³⁰ M. Donnelly and Claire Murray, "Early Medical Abortion Care in Ireland: Conscientious Provision and the Role of Law" (26 May 2023), p.13, <https://papers.ssrn.com/abstract=4460644> [Accessed 22 June 2023], p.14.

³¹ See e.g. Krajewska demonstrating that the medical profession in Poland has mobilised to preserve its clinical autonomy and retain its social authority despite significant changes in abortion; A. Krajewska, "Rupture and Continuity: Abortion, the Medical Profession, and the Transitional State—A Polish Case Study" (2021) 29 *Feminist Legal Studies* 323.

³² See discussion in M. E. Daly, *The Battle to Control Female Fertility in Modern Ireland* (Cambridge: Cambridge University Press, 2023), pp.197–247.

³³ M. Taylor, A. Spillane and S. Arulkumaran, "The Irish Journey: Removing the Shackles of Abortion Restrictions in Ireland" (2020) 62 *Best Practice & Research Clinical Obstetrics & Gynaecology* 36, 44.

³⁴ S. Bergen, "'The Kind of Doctor Who Doesn't Believe Doctor Knows Best': Doctors for Choice and the Medical Voice in Irish Abortion Politics, 2002–2018" (2022) 297 *Social Science & Medicine* 114817, 10–13; F. de Londras, "'A Hope Raised and Then Defeated'? The Continuing Harms of Irish Abortion Law" (2020) 124 *Feminist Review* 33, 39.

³⁵ S. Bergen, "'The Kind of Doctor Who Doesn't Believe Doctor Knows Best': Doctors for Choice and the Medical Voice in Irish Abortion Politics, 2002–2018" (2022) 297 *Social Science & Medicine* 114817, 9–10.

³⁶ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p.125.

³⁷ 2018 Act s.23. The pregnant person cannot be prosecuted for procuring her own abortion.

³⁸ As of 1 March 2022, 408 GPs had contracted with the HSE for provision of abortion services. There are about 2,500 GPs in Ireland.

³⁹ M. Donnelly and Claire Murray, "Early Medical Abortion Care in Ireland: Conscientious Provision and the Role of Law" (26 May 2023), p.13, <https://papers.ssrn.com/abstract=4460644> [Accessed 22 June 2023], pp.15–16.

have reported difficulty in applying this test.⁴⁰ Even where doctors are certain that a baby's prognosis is very poor, they may be unable to predict when death will occur or rule out the prospect that the baby may be an "outlier" capable of surviving for longer than ordinarily expected. In some cases, protracted decision-making has placed patients under severe pressure. Some people who have received a fatal diagnosis in later pregnancy have withdrawn from assessment under Irish law and travelled sooner rather than later, hoping to obtain care in the Britain before it becomes too expensive or too distressing.⁴¹ Although the legislation speaks in terms of "likelihood" of death, doctors often require something approaching certainty before they are willing to authorise care. Marie O'Shea told the Oireachtas Joint Committee on Health:

"There is a sense of practising defensive medicine because they are afraid of making a wrong call and because of the cases that have gone wrong, the media attention and the prospect of criminalisation. They are erring on the side of safety and there is an attitude among some that this person can go abroad anyway so will ultimately get treatment."⁴²

Not all difficulties in interpreting the legislation can be attributed to the chilling effects of criminal law. For instance, the Act allows for conscientious objection but requires the objector to make appropriate arrangements for transfer of the patient's care. The Report suggests that some conscientious objectors will ignore their clear statutory obligation⁴³ to promptly refer an abortion-seeking patient to an alternative provider, and that this behaviour generally goes unpunished.⁴⁴ The Act does not provide for any relevant sanction.⁴⁵ The Report also shows that individual conscientious objectors, particularly in hospitals, have been able to block and delay abortion access in certain parts of the country. As of February 2023, eight of the country's nineteen maternity units were still not providing full services under the Act.⁴⁶ These gaps in provision are attributed to conscientious objection.⁴⁷ Difficulties in securing provision at maternity hospitals have a knock-on effect on community abortion care because GPs are reportedly less willing to provide care if they cannot rely on a local maternity unit for backup.⁴⁸

Issues around doctors' legal agency are not unique to Ireland. Work by Sally Sheldon and colleagues reminds us that doctors' legal agency has been central to English women's experience of the Abortion Act 1967. In the years immediately after that Act was passed it was by no means obvious that doctors would take a permissive approach to service provision. Women, especially unmarried women, were

⁴⁰ C. Conlon, K. Antosik-Parsons and E. Butler, "Unplanned Pregnancy and Abortion Care (UnPAC) Study" (2022), <http://www.tara.tcd.ie/bitstream/handle/2262/101813/Unplanned%20Pregnancy%20and%20Abortion%20Care%20UnPAC%20Study%20Conlon,%20Antosik-Parsons%20and%20Butler%202022.pdf?sequence=1> [Accessed 25 June 2023], p.33.

⁴¹ Abortion Rights Campaign and Lorraine Grimes, "Too Many Barriers: Experiences of Abortion in Ireland after Repeal" (2021), p.56, https://www.abortionrightscampaign.ie/wp-content/uploads/2021/09/Too-Many-Barriers-Report_ARC1.pdf [Accessed 25 June 2023], p.26; C. Conlon, K. Antosik-Parsons and E. Butler, "Unplanned Pregnancy and Abortion Care (UnPAC) Study" (2022), <http://www.tara.tcd.ie/bitstream/handle/2262/101813/Unplanned%20Pregnancy%20and%20Abortion%20Care%20UnPAC%20Study%20Conlon,%20Antosik-Parsons%20and%20Butler%202022.pdf?sequence=1> [Accessed 25 June 2023], p.149. Although a woman may be able to access an abortion under Ground E (disability) of the Abortion Act 1967, the evaluation process is more demanding and so she may prefer to travel while abortion under the more liberal Ground C is still an option.

⁴² Oireachtas Joint Committee on Health, 31 May 2023. See also O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p.62.

⁴³ 2018 Act s.22; C. Conlon, K. Antosik-Parsons and E. Butler, "Unplanned Pregnancy and Abortion Care (UnPAC) Study" (2022), <http://www.tara.tcd.ie/bitstream/handle/2262/101813/Unplanned%20Pregnancy%20and%20Abortion%20Care%20UnPAC%20Study%20Conlon,%20Antosik-Parsons%20and%20Butler%202022.pdf?sequence=1> [Accessed 25 June 2023], p.14.

⁴⁴ See discussion of refusal to refer in Abortion Rights Campaign and Lorraine Grimes, "Too Many Barriers: Experiences of Abortion in Ireland after Repeal" (2021), p.56, https://www.abortionrightscampaign.ie/wp-content/uploads/2021/09/Too-Many-Barriers-Report_ARC1.pdf [Accessed 25 June 2023], p.55.

⁴⁵ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p.14.

⁴⁶ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, p.127. Four more maternity units are expected to be providing services by the end of this year; O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, p.44.

⁴⁷ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, p.7.

⁴⁸ C. Conlon, K. Antosik-Parsons and E. Butler, "Unplanned Pregnancy and Abortion Care (UnPAC) Study" (2022), <http://www.tara.tcd.ie/bitstream/handle/2262/101813/Unplanned%20Pregnancy%20and%20Abortion%20Care%20UnPAC%20Study%20Conlon,%20Antosik-Parsons%20and%20Butler%202022.pdf?sequence=1> [Accessed 25 June 2023] at 11.

routinely subjected to intrusive assessments,⁴⁹ and doctors, including senior obstetricians, were able to obstruct access on ideological grounds.⁵⁰ Even today, despite significant liberalisation in doctors' approach to the law, the activities of anti-choice actors, especially in the media, assert a "chilling effect" on the adoption of new approaches and techniques.⁵¹ Access to abortion depends, in some measure, on a smaller sub-set of the medical profession, who share deep personal commitments to care. Experience in other jurisdictions shows that criminalisation is not the only determinant of doctors' attitudes to abortion legislation. Atina Krajewska's work on abortion in Poland shows that hierarchies within institutions and within professions can profoundly shape doctors' working interpretations of abortion law.⁵² In this vein, the Report acknowledges that perceived anti-choice attitudes on the part of hospital management and consultants may deter more junior doctors from participating in abortion care.⁵³

These cultural and social issues are most evident in the interpretation of the Irish foetal anomaly ground. To escape criminalisation, the law only requires doctors to form "reasonable" opinions in "good faith", but this defence is proving inadequate. Although the Act requires just two appropriately qualified doctors to decide together, it is common for larger multi-disciplinary teams⁵⁴ to decide the question of legal eligibility for termination on a group consensus basis. Some doctors find this practice reassuring; they engage in over-compliance to soften the perceived risks of criminalisation.⁵⁵ Practices around ultrasounds provide other examples of over-compliance. Pregnant people considered to be close to 10 weeks' LMP are often referred for ultrasounds to determine gestation, even though this is not required by law and can impose additional delays in accessing treatment.⁵⁶ Documented abuse of conscientious objection protections also show how statutory provisions designed to guarantee access to care can be undermined by institutional and professional factors. For example, the IFPA have argued that the Act's explicit protection for conscientious objection intersects with medical cultures that privilege doctors' preferences over women's needs, providing cover for distressing and obstructive actions that are not expressly protected by law.⁵⁷ Mundane social and collegiate factors also play a role; providing doctors may be affected by colleagues' emotional reactions,⁵⁸ or even by their desires to avoid additional workload within an already over-stretched healthcare system.⁵⁹

Despite these difficulties, the Report does not seek to disrupt the expectation that doctors will have significant clinical autonomy where abortion is concerned. Rather than amend the legislation itself, the Report often asks that guidance supporting clinicians' interpretation of the legislation be provided, modified or supplemented, only suggesting legislative amendments where this is insufficient. For instance, on foetal anomaly, the Report does not recommend any immediate amendment of legislation. Instead, it suggests

⁴⁹ S. Sheldon et al, *The Abortion Act 1967: A Biography of a UK Law* (Cambridge: Cambridge University Press, 2022), pp.39–42.

⁵⁰ Sheldon et al, *The Abortion Act 1967: A Biography of a UK Law* (2022), at pp.33–46. See similarly A. Krajewska, "Revisiting Polish Abortion Law: Doctors and Institutions in a Restrictive Regime" (2021) 31(3) *Social & Legal Studies* 409.

⁵¹ Sheldon et al, *The Abortion Act 1967: A Biography of a UK Law* (2022), p.186.

⁵² A. Krajewska, "Revisiting Polish Abortion Law: Doctors and Institutions in a Restrictive Regime" (2021) 31(3) *Social & Legal Studies* 409.

⁵³ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p.48.

⁵⁴ Such teams can also be a key site of tension between willing providers and non-providing colleagues; O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023] at 66; Duffy et al, "Service Provider Perspectives and Experiences of the Health [Regulation of Termination of Pregnancy] Act 2018" (Department of Health (DoH) 2023), Report, <https://www.lenus.ie/handle/10147/635553> [Accessed 22 June 2023], p.61.

⁵⁵ Duffy et al, "Service Provider Perspectives and Experiences of the Health [Regulation of Termination of Pregnancy] Act 2018" (Department of Health (DoH) 2023), Report, <https://www.lenus.ie/handle/10147/635553> [Accessed 22 June 2023], p.58.

⁵⁶ Abortion Rights Campaign, "Submission for the Review of the Health (Regulation of Termination of Pregnancy) Act 2018" (2022), pp.35–36, https://www.abortionrightscampaign.ie/wp-content/uploads/2022/03/ARC_Submission-1.pdf [Accessed 25 June 2023].

⁵⁷ Irish Family Planning Association, "Submission to the Review of the Health (Regulation of Termination of Pregnancy) Act 2018" (2022), 16, <https://www.ifpa.ie/app/uploads/2022/05/Submission-to-the-Review-of-the-operation-of-the-Health-Regulation-of-Termination-of-Pregnancy-Act-2018.pdf> [Accessed 25 June 2023] at 18.

⁵⁸ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p.66.

⁵⁹ Stifani et al, "Abortion Policy Implementation in Ireland: Successes and Challenges in the Establishment of Hospital-Based Services" (2022) 2 *SSM—Qualitative Research in Health* 100090, 5.

a collaborative approach to considering alternative grounds that would be easier to apply in practice while keeping within the spirit of the legislation.⁶⁰ While collaboration has much to recommend it, any desire for slow deliberation must be weighed against the need to ensure timely access to abortion services for pregnant people in extremely difficult circumstances.

Incrementalism and Law Reform in Ireland

None of the Report's criticisms of the legislation will surprise those lawyers, NGOs, activists and opposition politicians, who identified its defects and predicted its shortcomings as the Bill was being debated, and proposed a range of legal solutions.⁶¹ Ruth Fletcher observes that the law-making processes that produced the 2018 Act made little room for feminist legal expertise.⁶² Even when feminist lawyers worked to engage with the legislative process, it was to propose amendments to a framework established by a series of carefully designed collectives.

The 2018 Act began life in decisions of a "deliberative mini-public"; a representative Citizens Assembly of 100 people, who heard from a range of experts and advocates before voting on options for law reform.⁶³ The Assembly was supported by an expert advisory group, who formulated the legislative options for those votes.⁶⁴ These experts were selected for their "impartiality and objectivity".⁶⁵ Pro-choice advocacy ruled others out of this role. Certainly, the Assembly's support for abortion on request in early pregnancy with no restriction as to reasons was central to the eventual legislative model adopted.⁶⁶ In general, however, the Assembly proposed a conservative legal framework. This is because the legislative options presented to them for voting followed an established model rooted in therapeutic time-limited, grounds-based options for access. Sometimes, members of the Assembly felt empowered to contest the options originally presented to them. For instance, the citizens themselves suggested a socio-economic ground for abortion access. However, they were never empowered explore alternative models of abortion law that did not rely on a combination of grounds and gestational or other time limits.⁶⁷ The Citizens' Assembly's recommendations were further pruned by a dedicated Joint Oireachtas Committee. For instance, the Assembly had recommended that abortion should be available both on socio-economic grounds and following a diagnosis of a significant non-fatal foetal anomaly, but the Committee rejected both proposals, and they do not appear in the Act.⁶⁸ Cabinet agreed a General Scheme of a Bill in February 2018, and this was published some months in advance of the referendum vote.⁶⁹ The legislation underwent further adjustments after the

⁶⁰ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p.67. See a similar recommendation on guidance on interpretation of the health ground O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126 <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p.21.

⁶¹ See, for instance, model legislation and proposed amendments; M. Enright et al, "Abortion Law Reform in Ireland: A Model for Change" [2015] *feminists@ law*; F. de Londras and Máiréad Enright, "Model Legislation" in *Repealing the 8th* (Policy Press, 2018); Lawyers for Choice, "Briefing Paper on the Health (Regulation of Termination of Pregnancy) Bill 2018", https://lawyers4choice.files.wordpress.com/2018/10/hrtp_briefing_final.pdf [Accessed 22 June 2023].

⁶² R. Fletcher, "#RepealedThe8th: Translating Travesty, Global Conversation, and the Irish Abortion Referendum" (2018) 26 *Feminist Legal Studies* 233, 244.

⁶³ M. Enright, "Abortion and the Citizens' Assembly: Agonist Futures?" (5 December 2018), IACL-AIDC Blog, <https://blog-iacl-aidc.org/debate-the-citizens-assembly-in-ireland/2018/12/5/abortion-and-the-citizens-assembly-agonist-futures> [Accessed 25 June 2023].

⁶⁴ O. Doyle and R. Walsh, "Constitutional Amendment and Public Will Formation: Deliberative Mini-Publics as a Tool for Consensus Democracy" (2022) 20 *International Journal of Constitutional Law* 398.

⁶⁵ M. Laffoy, "First Report and Recommendations of the Citizens' Assembly: The Eighth Amendment of the Constitution" [2017] *An Thionól Saoránach* at [139]. See <https://2016-2018.citizensassembly.ie/en/The-Eighth-Amendment-of-the-Constitution/Final-Report-on-the-Eighth-Amendment-of-the-Constitution/Final-Report-incl-Appendix-A-D.pdf> [Accessed 25 June 2023].

⁶⁶ O. Doyle and R. Walsh, "Deliberation in Constitutional Amendment: Reappraising Ireland's Deliberative Mini-Publics" (2020) 16 *European Constitutional Law Review* 440.

⁶⁷ See further K. Side, "'Changed Utterly': The Citizens' Assembly on the 8th Amendment" (2022) 6 *Feminist Encounters: A Journal of Critical Studies in Culture and Politics* 8.

⁶⁸ Joint Oireachtas Committee on the 8th Amendment of the Constitution, "Report of the Joint Committee on the Eighth Amendment of the Constitution", p.11.

⁶⁹ "General Scheme of a Bill to Regulate Termination of Pregnancy" (27 March 2018), <https://www.gov.ie/en/publication/f501db-general-scheme-of-a-bill-to-regulate-termination-of-pregnancy/> [Accessed 22 June 2023].

referendum. Some of the most troublesome legislative provisions—for instance the three-day waiting period, and the 28-day time limit in the foetal anomaly provision were included at the government's insistence.⁷⁰ As Mary Donnelly and Claire Murray observe, the legislation was passed quickly; the full Bill was published on 27 September 2018 and the Act was signed into law less than three months later.⁷¹ Following an exhausting and difficult referendum campaign, only a handful of pro-choice organisations were active in proposing amendments, and the vast bulk of their proposed amendments were rejected. The government prioritised defending the legislation from anti-choice attack at the expense of devising the best possible legislative framework.⁷² Opportunities to improve the legislative framework were missed.

Reluctance to Change

The Taoiseach has expressed “reluctance” to change the law in any respect.⁷³ Some in the Cabinet argue that the referendum was effectively a vote on adopting the legislation itself, as published in draft, in March 2018, so that any amendments would disrupt the bargain struck with voters at that time.⁷⁴ The government parties used this reasoning during the 2018 Oireachtas debates on the legislation to resist calls for many of the same kinds of amendments the Report now recommends.⁷⁵ The current government is a coalition between two centre-right parties, Fianna Fáil and Fine Gael, with some support from the Greens. A majority of Fianna Fáil TDs and Senators advocated for a “No” vote in the referendum. Fine Gael led the minority government which finally offered the 2018 referendum, but the current legislation may represent the limit of its imagination where abortion care is concerned.

The Report, as written, does nothing to disrupt this pattern. Presenting on the Report before the Joint Oireachtas Health Committee, Marie O'Shea encouraged law-makers to show “courage” in addressing the need for reform. At the same time, she reassured them that her Report does not suggest any reforms that might “represent the start of a creep towards a more progressive termination of pregnancy regime”.⁷⁶ Instead, most of the suggested legislative amendments are adjustments or recalibrations of existing provisions. For example, the Report does not propose any general extension to the 12-week time limit for accessing abortion on request. Instead, it advises reframing the associated three-day mandatory waiting period as a statutory entitlement, which the woman could exercise or not. This would assist women who can only seek care late within the 12-week window, by making the time limit more liveable. The Report also suggests that the 12-week time limit could be extended in a few exceptional circumstances, where a woman has “timed out” before care was provided or completed.⁷⁷ This would cover failed treatment, delays caused by the three-day wait if retained, or delays within the healthcare system but not, as drafted, obstacles to accessing timely care associated with structural inequalities.⁷⁸

⁷⁰ A. Carnegie and R. Roth, “From the Grassroots to the Oireachtas” (2019) 21 *Health and Human Rights* 109.

⁷¹ M. Donnelly and C. Murray, “Abortion Care in Ireland: Developing Legal and Ethical Frameworks for Conscientious Provision” (2020) 148 *International Journal of Gynecology & Obstetrics* 127, 129.

⁷² M. Enright, “‘The Enemy of the Good’: Reflections on Ireland’s New Abortion Legislation” (2018) 8 *feminists@law*. See: <http://journals.kent.ac.uk/index.php/feministsatlaw/article/view/658> [Accessed 5 February 2019].

⁷³ F. O'Brien, “Taoiseach ‘reluctant’ to Change Abortion Legislation” (21 April 2023), *RTE*, <https://www.rte.ie/news/politics/2023/0421/1378311-politics-abortion/> [Accessed 22 June 2023].

⁷⁴ See e.g. Minister for Health, Stephen Donnelly, Dáil Éireann, Health (Regulation of Termination of Pregnancy) (Amendment) Bill 2023, Second Stage, 25 May 2023.

⁷⁵ See e.g. contribution from Health Minister Simon Harris, Dáil Éireann, Health (Regulation of Termination of Pregnancy) Bill 2018, Report Stage, 28 November 2018, explaining that he felt a responsibility not to enact legislation substantively different from the Heads of Bill.

⁷⁶ Oireachtas Joint Committee on Health, 31 May 2023.

⁷⁷ O'Shea, “The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018” (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p.25.

⁷⁸ See in D. Chakravarty et al., “Restrictive Points of Entry into Abortion Care in Ireland: A Qualitative Study of Expectations and Experiences with the Service” (2023) 31 *Sexual and Reproductive Health Matters* 2215567.

What about Human Rights?

So far, the review process has had little to say about pregnant people's rights. Certainly, rights discourse has influenced the politics of abortion provision in Ireland. For example, Mary Donnelly and Claire Murray's research with fifteen providing doctors emphasised that respect for human rights was a significant motivator for those who chose to get involved in providing abortion care.⁷⁹ The Report, however, is marked by some ambivalence around pregnant people's status as constitutional rights-bearers. It stops short of offering a sustained analysis of delayed and denied care, or compelled abortion travel, as human rights issues. Certainly, Ms. O'Shea acknowledges clear gaps between government expectations and the state of play in international human rights circles. At the Health Committee, she was clear that the state may be "in a very vulnerable position" in certain cases of denial of access to abortion care, including cases of fatal foetal anomaly documented in research for the Report. It is difficult not to see parallels between those experiences and the pre-2018 cases of *Mellet* and *Whelan*.⁸⁰ Although Ireland's abortion law no longer directly criminalises women, most of salient features of the *Mellet* and *Whelan* cases continue under the 2018 Act. Women denied care in Ireland after a foetal anomaly diagnosis describe depending on charitable support to fund treatment and travel,⁸¹ separation from family and friends,⁸² and difficulty in repatriating their baby's remains.⁸³ Travel disrupts continuity of care, potentially exposing affected people to further health risk.⁸⁴ Further treatment will be delayed while the pregnant person makes travel arrangements and navigates a foreign healthcare system.⁸⁵ Some women who travelled after 2018 reported a sense of stigma or shame associated with not qualifying for care in Ireland.⁸⁶ These issues can all have a serious impact on the woman's ability to frame and grieve her loss.⁸⁷ In *Mellet* and *Whelan*, the UN Human Rights Committee found that experiences of this kind imposed "intense mental and physical suffering" and "a high level of mental anguish" on pregnant people required to leave Ireland to end a pregnancy abroad following a fatal foetal anomaly diagnosis. Irish law imposed this suffering and anguish in breach of their rights to privacy and to freedom from cruel and inhuman treatment.

Reasoning by analogy with these examples, Ms O'Shea has suggested that human rights issues may arise in cases where abortion treatment fails, and a woman is required to continue the pregnancy because she is now more than 12 weeks pregnant, even though she has taken medications which may cause significant harm to the foetus.⁸⁸ This suggests that the Review was open to some creative arguments from

⁷⁹ M. Donnelly and Claire Murray, "Early Medical Abortion Care in Ireland: Conscientious Provision and the Role of Law" (26 May 2023), 13, <https://papers.ssrn.com/abstract=4460644> [Accessed 22 June 2023] at 10.

⁸⁰ UN Human Rights Committee, *Mellet v Ireland*, UN Doc. No. CCPR/C/116/D/2324/2013 (2016). See also UN Human Rights Committee, *Whelan v Ireland*, UN Doc. No. CCPR/C/119/D/2425/2014 (2017).

⁸¹ C. Conlon, K. Antosik-Parsons and E. Butler, "Unplanned Pregnancy and Abortion Care (UnPAC) Study" (2022), <http://www.tara.tcd.ie/bitstream/handle/2262/101813/Unplanned%20Pregnancy%20and%20Abortion%20Care%20UnPAC%20Study%20Conlon,%20Antosik-Parsons%20and%20Butler%202022.pdf?sequence=1> [Accessed 25 June 2023], p.172.

⁸² Abortion Rights Campaign and Grimes, "Too Many Barriers: Experiences of Abortion in Ireland after Repeal" (2021), p.68; Conlon, Antosik-Parsons and Butler, "Unplanned Pregnancy and Abortion Care (UnPAC) Study", p.173.

⁸³ Conlon, Antosik-Parsons and Butler, "Unplanned Pregnancy and Abortion Care (UnPAC) Study" (2022), <http://www.tara.tcd.ie/bitstream/handle/2262/101813/Unplanned%20Pregnancy%20and%20Abortion%20Care%20UnPAC%20Study%20Conlon,%20Antosik-Parsons%20and%20Butler%202022.pdf?sequence=1> [Accessed 25 June 2023], pp.178–179.

⁸⁴ Abortion Rights Campaign and Lorraine Grimes, "Too Many Barriers: Experiences of Abortion in Ireland after Repeal" (2021), 56, https://www.abortionrightscampaign.ie/wp-content/uploads/2021/09/Too-Many-Barriers-Report_ARC1.pdf [Accessed 25 June 2023], p.25.

⁸⁵ Sinead Kennedy, "Accessing Abortion in Ireland: Meeting the Needs of Every Woman" (National Women's Council of Ireland 2021), p.36, https://www.nwci.ie/images/uploads/15572_NWC_Abortion_Paper_WEB.pdf [Accessed 25 June 2023].

⁸⁶ C. Conlon, K. Antosik-Parsons and E. Butler, "Unplanned Pregnancy and Abortion Care (UnPAC) Study" (2022), <http://www.tara.tcd.ie/bitstream/handle/2262/101813/Unplanned%20Pregnancy%20and%20Abortion%20Care%20UnPAC%20Study%20Conlon,%20Antosik-Parsons%20and%20Butler%202022.pdf?sequence=1> [Accessed 25 June 2023], p.173.

⁸⁷ Conlon, K. Antosik-Parsons and E. Butler, "Unplanned Pregnancy and Abortion Care (UnPAC) Study" (2022), <http://www.tara.tcd.ie/bitstream/handle/2262/101813/Unplanned%20Pregnancy%20and%20Abortion%20Care%20UnPAC%20Study%20Conlon,%20Antosik-Parsons%20and%20Butler%202022.pdf?sequence=1> [Accessed 25 June 2023], p.177.

⁸⁸ Joint Oireachtas Health Committee, 31 May 2023. For an example case see M. Donnelly and C. Murray, "Abortion Care in Ireland: Developing Legal and Ethical Frameworks for Conscientious Provision" (2020) 148 *International Journal of Gynecology & Obstetrics* 127.

human rights law. The Report also frames conscientious objection, and its impact on abortion seekers in human rights terms.⁸⁹

Elsewhere, however, the Report's position on human rights is less clear. Aside from its discussion of anti-abortion protest outside healthcare facilities⁹⁰ the Report offers no sustained analysis of relevant human or constitutional rights, to privacy, bodily integrity, equality and so on, as they might apply to abortion. It is as if these rights, intended to safeguard women from serious dignitary harms, overcome patriarchal stereotyping and secure bodily autonomy, are optional where abortion is concerned. Ms. O'Shea accepts that her recommendations for legislative reform fall short of the standards set by the World Health Organisation and relevant international human rights bodies but has insisted that the terms of reference of the review prevented her from going any further.⁹¹

The 2018 referendum is often presented as transforming the Irish constitutional landscape on abortion. However, it did not replace the 8th Amendment's foetal life provision with any text expressly protecting reproductive rights, and the government has never indicated that women have rights that might trump its policy agenda.⁹² The Report's discussion of criminalisation is especially instructive here; having rehearsed the arguments in favour of decriminalisation,⁹³ the Report simply notes that continued partial criminalisation represents Irish public policy.⁹⁴ Deconstitutionalisation of abortion in Ireland liberalised abortion care without entirely transforming it;⁹⁵ access remains a matter for repeated political negotiation and policy is still a trump card.

Conclusion

What now for abortion rights in Ireland? The Oireachtas is entitled to pursue more extensive reforms than the Report has recommended. On 25 May 2023, a Private Members Bill⁹⁶ devised by Brid Smith TD of the left-wing opposition party People Before Profit saw its second reading in the Dáil. The Bill is not a return to the drawing board or a rejection of the legislation's fundamental structure. It would make four core amendments to the current abortion legislation. It would abolish the three-day waiting period, decriminalise any involvement in performing an abortion, extend the application of the foetal anomaly ground to cases where the baby if born alive is predicted to die within a year of birth, and remove the 12-week time limit for accessing abortion on request. In other words, rather than making the most difficult provisions of the legislation a bit more bearable, it would amend them. Opposition TDs have sometimes used private members bills strategically, to highlight government intransigence on abortion reform.⁹⁷ It may be that this Bill has more potential. Despite government efforts to delay a vote on the Bill for a year, it passed its second stage in a free vote, and will now be considered by the Health Committee alongside the more modest recommendations set out in the O'Shea Report. Whether future reforms will be rooted in any cogent rights framework, or in more pragmatic policy agendas, remains to be seen.

⁸⁹ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p. 125.

⁹⁰ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p. 116.

⁹¹ "Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018 Appointment of Independent Chair" (26 January 2022), <https://www.gov.ie/en/press-release/e3510-review-of-the-operation-of-the-health-regulation-of-termination-of-pregnancy-act-2018-appointment-of-independent-chair/> [Accessed 22 June 2023].

⁹² F. de Londras and Máiréad Enright, "Model Legislation" in *Repealing the 8th* (Policy Press, 2018), pp. 34–35.

⁹³ See further F. de Londras et al., "The Impact of Criminalisation on Abortion-Related Outcomes: A Synthesis of Legal and Health Evidence" (2022) 7 *British Medical Journal Global Health* e010409.

⁹⁴ O'Shea, "The Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018" (Department of Health (DoH) 2023), Report 126, <https://www.lenus.ie/handle/10147/635573> [Accessed 22 June 2023], p. 104.

⁹⁵ M. Enright, "Abortion Law in Ireland: Reflecting on Reform" in L. Black and P. Dunne (eds), *Law and Gender in Modern Ireland: Critique and Reform* (Bloomsbury Publishing, 2019), pp. 69–70.

⁹⁶ Health (Regulation of Termination of Pregnancy) (Amendment) Bill 2022.

⁹⁷ F. de Londras, "In Defence of Judicial Innovation and Constitutional Evolution" (13 July 2015), 9, <https://papers.ssrn.com/abstract=2630263> [Accessed 22 June 2023].