

ABORTION SERVICES (SAFE ACCESS ZONES) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by Clare Bailey MLA (“the Member”), in order to assist the reader of the Bill and to help inform the debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum should be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill, and where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. This Bill requires the Department of Health to establish ‘safe access zones’ around abortion clinics in order to protect the women using those clinics as well as the people who work in them. It will be a criminal offence to harass people in a safe access zone around those clinics. The topic of the Bill is health.
4. The Member proposes the establishment of ‘safe access’ zones around registered pregnancy advisory bureaux and clinics, in which anti-abortion activity cannot take place. This would stop activity directly outside centres, ensure women are not approached unsolicited and prevent other activities designed to cause distress including (but not limited to) filming, recording, unsolicited ‘counselling’ and pamphlet distribution.
5. The proposed Private Member’s Bill, if enacted, would ensure safe access for those who wish to avail of non-directive sexual and reproductive health services in Northern Ireland. The Bill does not include provision for protestors.
6. In terms of the legal structure there will be ‘protected premises’ (e.g. abortion clinics), ‘safe access zones’, and ‘protected persons’ (e.g. the people who will be protected from harassment).
7. The Abortion Services (Safe Access Zones) Bill has seven policy objectives.

- a) to ensure that buildings which house organisations offering sexual and reproductive health services have a safe access zone appropriate to their specific location and environment;
- b) to ensure women and others visiting or working in the premises with legitimate reason (and those accompanying them) are not approached in an unsolicited manner within this zone;
- c) to prevent activities designed to cause distress or to deter a person from approaching a building – e.g. filming, recording, unsolicited ‘counselling’ and pamphlet distribution;
- d) to place an obligation on the Department of Health to create safe access zones. The Department of Health will be required to designate the extent of the zone within eight weeks of a request from the service provider offering sexual and reproductive health services moving into or beginning work in a building, whether as tenant or owner;
- e) to place an obligation on the Department of Health to consult with various people, including the clinic operator, locals and the police. The Department of Health will also be obliged to publish details of the safe access zone;
- f) to create a series of obligations on constables in relation to the monitoring and enforcing of safe access zones; and
- g) to require that the Department of Health to publish an annual report highlighting the effectiveness of the safe access zones in protecting people attending protected premises.

CONSULTATION

8. The Member conducted a consultation exercise over an eight-week period in 2016/17 during the previous Assembly mandate. In 2020, the Member submitted a Statement of Reasons letter to the Speaker requesting that this consultation be accepted to progress this Private Member’s Bill. The Speaker approved the request. The Member also shared her legislative proposal with the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland.

OPTIONS CONSIDERED

9. **Option 1:** Do nothing.
10. **Option 2:** Proceed with a Private Member’s Bill to make provision for the protection of women (and specified others) accessing non-directive sexual and

reproductive health services in Northern Ireland from harassment, intimidation and impediment.

11. Following consultation and deliberation, the Member considers that primary legislation is the best mechanism by which to achieve the policy objectives. The Member notes that current legislation does not ensure protected persons can safely access services.

OVERVIEW

12. The Bill has 13 clauses and no schedules. Commentary is not provided for clauses that are self-explanatory.

COMMENTARY ON CLAUSES

Clause 2 –Premises where abortion treatments are carried out

An abortion clinic is a “protected premises”. This means a place where treatments for termination are actually carried out.

Clause 3 –Premises where information, advice or counselling about abortion treatments are provided

The definition of “protected premises” also extends to a place where advice, information or counselling about abortion is provided. These places will generally be hospitals or clinics. Unlike abortion clinics which will automatically be protected premises, these places will only be protected if the operator of the clinic makes a formal request to the Department of Health for them to be protected.

Clause 4 – Protected persons

The following people will be “protected persons”:

- The women attending the clinics
- A person accompanying a woman attending the clinic
- Staff or workers at the clinic

Clause 5 – Safe access zone

The safe access zone will be the protected premises themselves, as well as an area in the immediate vicinity of the protected premises. The exact extent of the safe access zone will be determined by the Department of Health.

Clause 6 – Offences in respect of a safe access zone

This is a key clause which criminalises certain behaviour in the safe access zone. This is designed to protect women and staff from being harassed whilst they are visiting an abortion clinic.

There is a broad and a specific offence. The broad offence makes it a crime to do anything in a safe access zone which might influence a person in their decision to attend an abortion clinic, or which might prevent or impede access to the clinic, or which might harass, alarm or distress that person. For example, a protest group handing out leaflets to visitors to the clinic in the safe access zone, or individual protestors haranguing visitors to the clinic, or blocking the entrance point to a clinic.

The specific offence is recording a person who is in the safe access zone if that might also have the effect of influencing their decision to attend, preventing or impeding access, or that might harass, alarm or distress them.

It is a defence if the protestor did not know, and had no reasonable way of knowing, that the person was in a safe access zone.

The punishment is a level 2 fine. The punishment does not include a jail term.

Clause 7 – Enforcement of a safe access zone by a constable

This clause gives powers to the police to enforce a safe access zone. If a police officer believes an offence is being committed, the police officer can direct the offender to leave the safe access zone, and may also use force to remove them from the safe access zone. If a police officer believes a person is recording in breach of the law, the officer may direct that person to cease recording.

Refusing to follow a direction, or resisting being removed will be a criminal offence, with a level 4 fine. The punishment does not include jail time.

Clause 8 – Procedure for designating a safe access zone

This clause sets out the administrative procedure for creating a safe access zone. The operator of the clinic must first request that the Department of Health create the zone. The Department then has 8 weeks to designate exactly the extent of the zone. In making its decision, the Department of Health is obliged to consult with various people, including the operator of the clinic, locals and the police. There is power to vary or revoke the zone. The Department of Health is under an obligation to publish details of the safe access zone.

Clause 9 – Exercise of functions

Protecting persons attending clinics and respecting the right of protest are both important, and the Department of Health is obliged to consider and balance both these points. This

clause makes explicit obligations to respect the safety of women, the expectation of freedom from harassment and the right to protest. These are all manifestations of important human rights.

Clause 10 – Monitoring of effectiveness of safe access zones

The Department of Health must publish an annual report stating whether the safe access zones have been effective in protecting people attending the clinics.

FINANCIAL EFFECTS OF THE BILL

13. This Private Member’s Bill aims to prevent protected persons from suffering harassment when accessing abortion and advisory services. If enacted as proposed, it would place a duty on the Department of Health to establish safe access zones around clinics. The Private Member’s Bill would also create an obligation on the Department of Health to monitor and review the operation of the zones throughout Northern Ireland. This objective could impose costs on the Department of Health relating to the establishment and reviewing of Safe Access Zones. The Member is not aware of the implementation of similar schemes in Northern Ireland.
14. Although not directly comparable, in one example from 2018, Ealing Council in the delivery of its duties in relation to a Public Spaces Protection Order found that the majority of costs were able to be managed within existing budgets. However, the main area in which additional costs were imposed on the public purse was in relation to legal costs. Those were primarily incurred from resisting appeals, and amounted to an estimated £150,000.
15. As of 2019, Ealing Council estimated that in total, the order had cost approximately £250,000.
16. The model for designating Safe Access Zones in Northern Ireland will aim to provide such zones for protected premises at an early juncture and it is therefore anticipated that costs should be lower than in the Ealing Council example. It is reasonable to assume that the majority of costs will arise from enforcement and legal costs.

HUMAN RIGHTS ISSUES

17. The Member is satisfied that the bill is human rights compliant.

EQUALITY IMPACT

18. An Equality Impact Assessment has not been undertaken as communications between the Member, the Equality Commission and legal advice did not identify any equality implications for the Bill. Therefore, it is considered that the Bill will

not have any adverse impacts on any of the groups identified in section 75 of the Northern Ireland Act 1998. For policy implementation, the Department of Health may need to assess for Equality Impact in line with those requirements.

LEGISLATIVE COMPETENCE

19. At introduction, the sponsor of the Bill, Clare Bailey MLA had made the following statement under Standing Order 30 of the Northern Ireland Act 1998:

“In my view the Abortion Services (Safe Access Zones) Bill would be within the legislative competence of the Northern Ireland Assembly.”

SECRETARY OF STATE CONSENT

20. It is considered that the Secretary of State’s consent under Section 8 of the Northern Ireland Act 1998 is not required for this Bill.



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