



Northern Ireland
Assembly

Committee for Health

OFFICIAL REPORT (Hansard)

Abortion Services (Safe Access Zones) Bill:
Department of Health

16 December 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Colm Gildernew (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Ms Paula Bradshaw
Mrs Deborah Erskine
Ms Órlaithí Flynn
Mr Colin McGrath

Witnesses:

Mr/Ms Departmental Official 1 Department of Health
Mr/Ms Departmental Official 2 Department of Health

The Chairperson (Mr Gildernew): I welcome both Department of Health officials to the meeting. I thank you for attending the session this afternoon to assist the Committee in its scrutiny of this important Bill. Please go ahead with your opening remarks and we will then go to members' questions. Which of you would like to make the opening remarks, or are you both making some remarks?

Mr/Ms Departmental Official 1 (Department of Health): I will kick off, Chair.

The Chairperson (Mr Gildernew): OK. Go ahead, please.

Mr/Ms Official 1: Thank you, Chair. We appreciate the arrangements that you have made for us today, and for the opportunity to brief the Committee. We know that it has been a long day for the Committee, so I will keep these opening remarks brief. My colleague and I will then be happy to take any questions from the Committee. First and foremost, we want to state that the Department respects the democratic right to protest but condemns, unequivocally, any activity that obstructs or intimidates people from accessing healthcare facilities, whether it is someone who is trying to avail themselves of services that are lawful or a member of staff of any organisation that is providing those services. We are aware of the evidence that the Committee has heard on the issue.

The Health Minister has stated that position repeatedly. He met with the Bill sponsor, Ms Bailey, in October to reiterate that position and outline his support for the principles and intentions of the Bill following its Second Stage. The Department does, however, have fundamental concerns about the Bill in that it would create obligations that may be difficult to implement, and, therefore, could be ineffective. The concerns relate to the proposed responsibility for designating safe access zones and for monitoring and reviewing their effectiveness.

The Department sought legal advice on that issue, which confirmed that it would make the Department of Health responsible for determining where a criminal offence does or does not take place. We are

aware of the balance that needs to be struck in any measures being introduced between the right to safety, dignity and private and family life on the one hand and the right to freedom of assembly and expression on the other. Those are not appropriate functions for the Department of Health to assume, and we do not have the competence to make such a determination. It is the Department's view that matters that relate to criminal offences are more appropriately handled by the justice system. The Minister and officials discussed those concerns with Ms Bailey at the meeting following the Second Stage debate. She recognised and took on board the practical implications that we outlined, and undertook to consider how the Bill might be revised accordingly. However, it was not possible to make any revisions in advance of the Committee Stage.

As drafted, the Bill would require the Department of Health to designate safe access zones at the request of any operators, be they private or public operators, of premises that provide treatment, advice, information or counselling services, and to do so within eight weeks. During that time, the Department would have to consult with various individuals and organisations, including the clinic, the premises operator and the police, and then publish details of the safe access zone and an annual report. The practical implications of that are quite problematic. For example, some of the services are delivered in a wide range of settings: in town centres, in private premises and adjacent to commercial premises, roads and public walkways. We find it difficult to envisage how the designation role, as currently drafted, could be implemented effectively.

We understand that an alternative approach to designating a safe access zone within the legislation was suggested in the course of the Assembly and Committee's considerations of the proposals. Indeed, that was among the suggestions that the Health Minister made to Ms Bailey during their meeting. The Department has not scoped out that suggestion or proposal in any detail. On the face of it, however, it would appear to be a more practical way of achieving what we understand to be the Bill's objectives.

We support the aim of the Bill to end the intimidation of patients and staff. We recognise that it seeks to achieve that by creating the deterrent of a criminal offence, but we do not believe that the Department is the appropriate authority for making that determination.

I will conclude by providing some wider context. Members will be aware that the Department is taking forward planning work for the commissioning of abortion services. That work is progressing at pace, and will, ultimately, require the agreement of the Executive. The Health Minister has stated his intention to bring forward proposals for a commissioned service to the Executive early in the new year, and that work remains on course. The focus of that work is on implementing the requirements of the 2020 abortion regulations and therefore does not seek specifically to introduce any type of safe access zone. However, we are fully aware of the access issues through our engagement with trusts as part of that process, and we will, of course, take cognisance of any decisions that are taken by the Assembly as the plans progress.

I will leave it there and turn to members for questions.

The Chairperson (Mr Gildernew): Thank you. I reiterate what I said earlier, which the Committee agrees with: we absolutely deplore any threats being made to any officials. Indeed, we have written to the official who was threatened to indicate that and to express our support and concern. If officials who come to give evidence to a Statutory Committee can feel under that level of threat, what must it be like for women and girls who run the gauntlet of the ongoing protests? That is really stark. We are talking about real, live issues, and we have heard some harrowing evidence on the impact, extent, scale and complexity of the harassment that is happening at times. Albeit the Committee recognises, as everyone does, the right to protest, there is a line, and threats to people certainly go beyond that.

You mentioned the Bill's practical implications and the fact that they are problematic. I was reflecting that the real problems are for people who are trying to access services in situations where they may be very vulnerable and already under significant pressure. That is the purpose of the legislation that we are scrutinising. You said that the designation role, as drafted, was not practical and that the Minister had discussed other ways of doing it with the Bill sponsor. What other ways are being proposed? Are they being considered by way of amendment by the sponsor or are they still just proposals from the Department?

Mr/Ms Official 1: The meeting between the Minister and the Bill sponsor took place the day after the Assembly debate. As you will recall, the issues were discussed in detail during that debate, and a suggestion was made about designating a distance or a radius in legislation. The Minister picked up on that point in his meeting with Ms Bailey. It was more a high-level suggestion than a detailed

proposal from the Minister, but, at that point, our understanding was that the Bill sponsor was aware of that alternative means and was very receptive to considering it further. We acknowledged that the Bill was moving from the Assembly to the Committee and that it would therefore not be possible to make any revisions to it at that time. Our understanding was that the Bill sponsor would consider the possibility of building into the legislation an alternative means of designation that took responsibility for it out of the Department's hands. We understood that she took away from the meeting our practical concerns about feasibly designating zones.

The Chairperson (Mr Gildernew): OK. What discussions have taken place with the PSNI on enforcement?

Mr/Ms Official 1: Do you mean between ourselves and the PSNI?

The Chairperson (Mr Gildernew): Yes.

Mr/Ms Official 1: I am not aware of any direct discussions with the PSNI. We have had engagement with the Department of Justice during the course of our project planning for commissioned services, and access is one of our considerations in that. However, I am not aware of any direct communication between us and the police. There would be communication with the trusts, obviously, as the operational providers of services would have more direct contact. I ask my colleague to confirm that and add any further detail that she has.

Mr/Ms Departmental Official 2 (Department of Health): We have engaged with the Department of Justice throughout the commissioning project to ensure that we keep an interface with the issue and we continue to engage with trusts. We have not had direct engagement with the police on the issue. The trusts would be in communication with the police on what they require to deal with the protests on-site; it is not something that the Department would be involved in.

The Chairperson (Mr Gildernew): What discussions are trusts having with the police about the issues that they are facing?

Mr/Ms Official 2: I am not aware of the detail of the discussions between the trusts and the police. They engage with the police as and when required to deal with the protests, but I am not aware of the nature of the discussions.

The Chairperson (Mr Gildernew): I am slightly concerned about the lack of engagement with the PSNI. You told the Committee that you do not feel that it is your role to designate safe zones as it would be difficult to do so — "problematic" was the word that was used — so I would have thought that you would be talking to everyone who could address those problems or share those concerns and come up with solutions to them. I am a bit perplexed that that conversation is not taking place. The situation is clearly active and ongoing, and the legislation needs to be considered. I am surprised that you have not come to us today to say, "Listen, we have discussed a, b and c with the PSNI. We believe that the PSNI can do that and the PSNI believes that it can do that".

Anyway, I will move on. Has the Department looked at how safe access zones have worked in practice in other areas?

Mr/Ms Official 1: To pick up on your previous point, our communication has been with the Department of Justice because it is the parent Department of the police. In general terms, we have been assured by that Department that it has been looking at the issue. The Justice Minister indicated her intention to address it within the Justice (Miscellaneous Provisions) Bill, but that had to be curtailed and replaced. The direct contact to date has been between the Department of Justice and the police. We are happy to look into that further, if the Committee requests that we do so.

What was your second question?

The Chairperson (Mr Gildernew): What work have you done to look at places where safe access zones are in practice, and what lessons might be learned from how they operate in those areas?

Mr/Ms Official 1: Our focus has been on the commissioning project, to be perfectly frank.

The Chairperson (Mr Gildernew): Just to be clear, I am not asking about the commissioning project. I understand the commissioning project is going on, but I am talking about the legislation that we are scrutinising today. The Department is, clearly, a key player in that legislation. Has the Department looked at how safe access zones operate elsewhere to see what could be done better and what lessons we could learned?

Mr/Ms Official 1: We have, at a fairly high level, looked at some of the schemes and proposals in England. We are aware that the debate brought up examples from further afield internationally. I will ask my colleague whether there has been any more detailed consideration as part of the current project. I am not aware of there being anything other than a high-level discussion on that.

Mr/Ms Official 2: It has not been done in any great depth. When we received detail about the Bill, we did some research on the situation in Ealing in England, where such an arrangement is in place. The sponsor modelled some of the proposals on Australia. We have not gone into a great deal of depth regarding practical engagement with other jurisdictions, for example, on the implementation of the Bill's provisions.

The Chairperson (Mr Gildernew): OK. That causes me some concern. I take on board your point about your negotiation with the Department of Justice. However, you have told us that the Bill will be problematic. I am not hearing about where you are engaging. You have heard about examples of where such zones are in place in other areas from the debate in the Chamber, yet there has been no interest or activity from the Department to explore how to address some of the problems that you tell us that the legislation would present. That does not match up: we are not seeing a sense of urgency from the Department on a Bill that is coming through the Assembly and seeks to make safe access zones to provide protection for people who are seeking to access health services. Is there a view in the Department that there is no need to undertake that type of due diligence at this point?

Mr/Ms Official 1: I would not say that there is a sense of there being no need to do that. We recognise that it is important issue. When it comes to the resource that we have at the moment for that particular policy area, the urgency is on implementing the commissioned service from 31 March next year. That presents a range of obstacles, as you can imagine, and I am sure that we will speak about those at another time. The private Member's Bill is related but separate. We understood that the Bill sponsor undertook quite a lot of research over a number of years on international examples and other schemes that have been proposed, and they featured in some of her previous consultations and in the development of the proposals. We discussed those with her in the meeting with the Minister in October. There is not a one-size-fits-all approach or a clear example of successfully preventing that type of intimidation.

The Chairperson (Mr Gildernew): I take that point, but the draft legislation is here. The commissioning process is one thing, and it is important. On the pressure that you have outlined regarding the commissioning of services, the Minister decided to suspend those arrangements and that preparatory work before resuming it in June this year. I make that observation.

The draft legislation on protecting women and providing safe zones is in front of us, and it needs to be taken seriously and addressed alongside the commissioning of services. It is not one or the other: it is a case of having the services commissioned and having them available to women and girls in a way that is safe and appropriate and in a context where they are not being subjected to some of the horrendous abuse that the Committee has heard about.

I am certainly not content with those answers. I will move on to other members, but I want to send a very clear message that I detect a distinct lack of preparation for implementing the Bill's provisions, should it be passed.

Ms Bradshaw: Thank you, officials, for coming to the Committee today. I very much concur with the Chairman's condemnation of any threat against any official who is working on a piece of legislation.

In some regard, my question is a follow-on one. We heard some evidence last week from some of the trusts that when they moved the services further into the sites, they found that the numbers of protesters pretty much dissipated. What conversations are you having on what commissioned services will look like? Obviously, they will all have to be enhanced from the skeletal provision that exists at the minute. Is there any talk about having all the services on hospital sites, so that we could, in many ways, design out or eliminate the ability to have protests?

Mr/Ms Official 1: I will lead on that before passing over to my colleague. Those suggestions have been made during the ongoing work that is being done on a commissioning plan. Trusts have indicated that some services have moved from their initial locations to bigger hospital sites and reported a reduction in the type of intimidating behaviour that we are discussing. Ultimately, where trusts decide to place services are operational decisions for them, but those lessons seem to be coming through. The work that we are doing to develop a commissioning plan is on ensuring that there is sufficient provision of resource, services and staff to deliver the services. It is for trusts to determine the appropriate place to deliver the services. My colleague will fill in any further detail on how those lessons are coming through as part of the planning.

Mr/Ms Official 2: There is very much a mixed model of delivery, with a mix of hospitals, more centralised clinics and family planning centres. For the first phase of the commissioned service, it looks like there will continue to be a mixed model of delivery. What my colleague said is correct: it is very much down to trusts to determine the most appropriate locations for the services. That takes into account the protest issue, but not just that: obviously, lots of things need to be taken into account when we are determining the best locations for services. We remain cognisant of that, and I am aware that some services have moved to more hospital-type sites to get around or mitigate the problem of intimidation.

Ms Bradshaw: I appreciate that, thank you. You are right that there are operational issues, but I thought that the conversation might be flowing both ways.

I want to make a broad point, not to the officials but to the Chair and the Clerk. I am concerned about the written evidence that we have received so far from the PSNI on what they see as being the potential difficulties with the management and enforcement of the zones. When will we have the Bill sponsor back at the Committee to go through some of the queries on the finer detail that are coming through to us during the evidence sessions?

The Chairperson (Mr Gildernew): I will check with the Committee Clerk.

The Committee Clerk: We are looking to schedule a session with Clare on either 11 or 13 January 2022. We hope that that will happen in the first week back.

Ms Bradshaw: Perfect. Thank you very much. Thanks again to the officials.

Mrs Cameron: Thank you to the two officials who are in attendance today. I send my best wishes to your colleague and utterly condemn any type of threat — low-level or otherwise — being made towards officials; it is absolutely despicable. I put on record, yet again, that intimidation and harassment are wrong in any circumstance and in any place — certainly in front of any healthcare facility — but I also respect the right to protest and understand that it must be protected.

My question is about the Minister's letter, which mentions the Department of Justice previously indicating the potential for legislative change. Was there any indication of what that might look like and how it might differ from the provisions in the Bill?

Mr/Ms Official 1: I will ask my colleague to answer that, because they have had contact with the DOJ officials.

Mr/Ms Official 2: Unfortunately, I do not have the detail of what DOJ was proposing. The provision was removed from the Justice (Miscellaneous Provisions) Bill and the scope of that Bill was reduced. However, I do not have the detail of what was being proposed, although I think that the policy intent was similar to what Ms Bailey has proposed.

Mrs Cameron: Would you be able to get that detail from the Department of Justice and forward it to us in writing?

Mr/Ms Official 2: Yes, we can certainly ask our Department of Justice colleagues for that. There is no problem with that.

Mrs Cameron: OK, thank you. What additional resource requirement or dedicated investment from existing resources would be required to implement the provisions of the Bill?

Mr/Ms Official 1: We do not have a clear estimate on that. The proposals relate to the trusts taking the initial step of reporting the need for a designated safe zone. Practically speaking, that might mean one or two departmental officials being required to carry out the necessary practicalities, but we have not costed that in great detail. It will also depend on the volume of requests that are made.

Mrs Cameron: Thank you.

Mr/Ms Official 1: That point was raised in the Assembly debate as well. Looking at the lessons learned from England or GB, the costs may arise more from the legal defence of challenges to the implementation of the proposals than from the resource costs of their implementation.

Mrs Cameron: That is great, thank you.

Mrs Erskine: I concur with the comments that have been made by my colleagues in this afternoon's meeting on the threats that were made; it is totally disgraceful.

What alternatives to the proposed duty on the Department to designate safe access zones and monitor their effectiveness have been discussed with the Bill sponsor? Are draft amendments expected? We touched a wee bit on that, but can you give us clarity on it?

Mr/Ms Official 1: As I said earlier, the discussion on the alternative suggestions was at a fairly high level. They are not well developed proposals, but the principle behind them was that responsibility for the designation of a safe zone should, essentially, be taken out of the hands of the Department of Health. That could be achieved, potentially, by stipulating in the legislation the size of the zone or radius to be applied. That was floated in the Assembly debate, and it was then discussed as a possible alternative by the Health Minister and the Bill sponsor.

I cannot speak to what has been done since then, but at our meeting in October Ms Bailey undertook to give that further consideration.

Mrs Erskine: OK. I am curious about that. Does the Department currently have any powers to prohibit specific activities on their thoroughfares or anything like that? Essentially, is there anything the Department can do at the moment?

Mr/Ms Official 1: I understand where you are coming from with that. No specific powers belong to the Department in that regard. The existing powers relate to laws on harassment and intimidation. I am sorry, the name of the specific Act escapes me at the moment. We have considered whether that would provide sufficient cover for the objectives that the Bill tries to achieve. In the current provision, there are criminal offences created by harassment, but there are some drawbacks with using that legislation. For example, it requires harassment to occur twice: the same person needs to be on the receiving end of harassment or intimidation on more than one occasion. That is difficult in a scenario where somebody is possibly only accessing a clinic once. In that sense, the harassment legislation does not lend itself to the type of prevention or deterrent that Ms Bailey is trying to achieve. Whether that can be achieved by an adjustment to the current harassment legislation is a different question. That, too, was debated at length in the Assembly, and there are probably some good reasons why that law might not lend itself, even with revision, to the specific circumstances of people accessing a healthcare facility.

Going back to your question, there is no specific power or set of measures at the Department's disposal in relation to any healthcare facility beyond the common law that exists to criminalise harassment and intimidation.

Mrs Erskine: OK, thank you.

The Chairperson (Mr Gildernew): Thank you. No other members have indicated that they want to ask a question. Thank you both very much for attending the Committee and engaging with us in our scrutiny of the legislation. I wish you both a very happy, peaceful and healthy Christmas, and all the very best.

Mr/Ms Official 1: Thank you, Chair, and the same to you all.

Mr/Ms Official 2: Thank you.