

## **Abortion Services (Safe Access Zones) Bill - Committee Stage Submission by Northern Ireland Women's European Platform to the Committee for Health**

**November 2021**

### **1. Introduction**

Northern Ireland Women's European Platform (NIWEP) welcomes the Justice Bill as an important step in strengthening protections for women and pregnant people accessing family planning and abortion clinics.

NIWEP is a membership organisation working to promote the implementation of international human rights standards in Northern Ireland, and in particular the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in line with the international obligations of the UK. Locally, NIWEP coordinates representation of the women's sector in Northern Ireland within UN human rights processes and builds the capacity of the sector to utilise international human rights standards in their own work to strengthen gender equality. Acting as the Northern Ireland link to the European Women's Lobby, NIWEP also works to amplify the voice of women and girls in Northern Ireland internationally.

NIWEP views implementing the recommendations of CEDAW as a clear roadmap and mechanism to ensuring women's human rights are fully met and upheld in Northern Ireland. NIWEP also endorses the right of all individuals to self identify in terms of gender and personal identity, and to have that right respected. The comments in this submission are made within this context, and with the understanding that women and people from LGBTQIA+ communities may be particularly vulnerable when seeking reproductive health care, requiring appropriate additional protection from harassment and intimidation.

### **2. Endorsement**

NIWEP endorses the response of Alliance for Choice to this consultation, as the primary organisation with first hand expertise on the relevant issues.

NIWEP also endorses the response of Women's Policy Group. NIWEP is a member of the Women's Policy Group and has contributed to the submission of the group. NIWEP would be pleased to expand on any of the points made in this submission in an oral evidence session, should that be helpful.

### **Summary**

NIWEP welcomes the Bill as an important step in strengthening protection for women and pregnant people seeking sexual and reproductive healthcare, as well as staff of clinics. The

harassment they are subjected to is well documented, and amounts to both a human rights violation and in many cases common assault, which to date has not been adequately addressed and creates negative health impacts for people seeking care, as well as staff providing care. In addition, the protesters create public disorder through blocking public space and intimidating passers by, which has a deterrent impact on women and people who may need to access such services in future and therefore can put them at risk. This is developed in detail in submissions by Women's Policy Group and Alliance for Choice. Debates in Ireland have highlighted that simply concern about protest can act as a chill factor discouraging medical providers from offering abortion services.<sup>1</sup>

The Bill also directly implements a recommendation within the report of the Inquiry into abortion legislation in Northern Ireland under the Optional Protocol to CEDAW, which requires the State Party to protect women from harassment by anti abortion protesters by investigating complaints and punishing perpetrators<sup>2</sup>. This is a welcome development, as progress on implementing these recommendations has been very slow since the decriminalisation of abortion, and the recommendations only together create the conditions in which women and pregnant people have access to full sexual and reproductive health services. It can be noted that a similar recommendation was made by the Northern Ireland Human Rights Commission in 2019, and this Bill also implements that recommendation.<sup>3</sup>

The Bill is also entirely consistent with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 12 of the Convention, which deals with healthcare, and requires State Parties to ensure women access to full healthcare, including family planning. It also emphasises the right of women to enjoy full human rights, including non discrimination and non harassment in all areas of life (Articles 1-3), and the elimination of gender stereotypes, including those that prioritise the role of women as mothers (Article 5)<sup>4</sup>. It is relevant to note in this context that Northern Ireland has an obligation to implement CEDAW under international law, as part of the UK's overarching obligations as a State Party to CEDAW.

## **Experience from elsewhere: Safe access zones are compliant with human rights**

Legislation on safe access zones has been implemented elsewhere, including across Australia (following passing of legislation in Western Australia in August<sup>5</sup>), where the experience has been positive for clinic staff and users.<sup>6</sup> In Ontario, Canada, legislation in place since 2018 specifies the types of activities that are prohibited, and decisions regarding safe access zones are made on a case by case basis at the state level.<sup>7</sup> Similar legislation is also in place in Canada in British Columbia, Alberta, Quebec and Newfoundland and Labrador, with the British Columbia law in force since 1995. Laws in Quebec and Ontario followed evidence that injunctions sought individually by clinics were both too costly and insufficient to ensure the safety of staff and clinic users.<sup>8</sup>

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<sup>1</sup> See eg. Irish Council for Civil Liberties (2020) [A rights based analysis of safe access zones](#)

<sup>2</sup> CEDAW Committee (2018) [Inquiry into abortion legislation in Northern Ireland under Article 8 of the Optional Protocol to CEDAW](#)

<sup>3</sup> Northern Ireland Human Rights Commission (2019) [Monitoring Report on Reproductive Healthcare Provision in Northern Ireland](#)

<sup>4</sup> [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW, 1979), article 12. The UK signed the Convention in 1981 and ratified in 1986. The State Party

<sup>5</sup> [Public Health Amendment \(Safe Access Zones\) Act 2021](#) of Western Australia

<sup>6</sup> Marie Stopes Australia (2020) [Safe access zones in Australia – legislative considerations](#)

<sup>7</sup> See Ontario Ministry of Attorney General [website](#) on safe access zones, last accessed 8 November 2021

<sup>8</sup> Abortion Rights Coalition of Canada (2018) [Safe Access Zones and Injunctions to Prevent Clinic Protesters](#)

In both Australia and Canada, courts have upheld these provisions following legal challenges, including on the grounds that freedom of speech is not absolute.<sup>9</sup> Specifically, in Canada it has been noted that safe access zones do not prevent protest, but simply limit the time and space where it can take place, creating a ‘time, place and manner restriction’ that is constitutional in Canadian law. Courts have also found that a patient’s right to access healthcare in a safe and dignified manner takes priority over freedom of speech in this context; in 2008, the Supreme Court of Canada did not agree to hear a case challenging such a ruling, confirming it is constitutional.<sup>10</sup>

Meanwhile, experience from England indicates that a case by case approach is insufficient, as it requires ongoing work to maintain the Public Space Protection Orders (PSPOs) that have been put in place around some clinics<sup>11</sup>. These Orders, which are issued by councils, can also be challenged creating further uncertainty and pressure for clinic users and staff. However, a High Court ruling from 2018 upheld the PSPO for the Ealing clinic, on the grounds that while it does engage the rights to free speech in the European Convention on Human Rights, it has the legitimate aim to protect clinic staff and users<sup>12</sup>.

In Scotland, injunctions preventing protest have similarly been introduced at a local government level in some council areas, including Glasgow. A Women’s Health Plan published by the Scottish Government in September 2021 commits to ensuring women and pregnant people can access clinics without harassment, but no legislation or other measures have been introduced on a Scotland wide basis as yet. The Scottish Parliament debated the issue in early November, with calls for legislation and options including byelaws at local government level.<sup>13</sup> This debate similarly emphasises that freedom of speech does not extend to limiting access to healthcare.

In conclusion, currently available legal perspectives are broadly unanimous that while legislation on safe access zones does curtail freedom of speech, this is legitimate and proportionate in that the right to access healthcare takes greater priority. In addition, safe access zones do not prevent protest, but focus on ensuring service users can access clinics safely.

## **Comments on specific clauses**

### **Clause 1**

NIWEP agrees with the provisions in this clause. To ensure the right of staff and service users to safely access clinics providing family planning and sexual and reproductive health care, including abortions, it is appropriate to designate safe access zones and criminalise acts designed to prevent safe access and/or harass or intimidate people working in such clinics or accessing services through them.

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<sup>9</sup> Oireachtas Library & Research Service, 2019, [L&RS Note: Safe access zones – What do other countries do?](#)

<sup>10</sup> Abortion Rights Coalition of Canada press release 3 October 2021 ‘[Safe access zones at abortion clinics are constitutional and ensure privacy and safety](#)’

<sup>11</sup> See eg. [Open Democracy website](#) regarding the Sister Supporter movement

<sup>12</sup> Oireachtas Library & Research Service, 2019, [L&RS Note: Safe access zones – What do other countries do?](#)

<sup>13</sup> See eg. [report from Scottish Parliament debate](#) on safe access zones on 4 November 2021, via [theyworkforyou.com](#).

## **Clause 2**

NIWEP agrees with the provisions in this clause.

## **Clause 3**

NIWEP broadly agrees with the provisions in this clause. However, NIWEP would welcome clarification on what criteria the Department is to use to determine whether designation of a specific facility is reasonable. To minimise legal challenges, and in particular prevent spurious challenges, it is vital that criteria are clearly established and the Department has clear guidance on how to apply them to each case in a consistent manner.

## **Clause 4**

NIWEP agrees with the provisions in this clause. It is particularly important that accompanying persons are protected, as support from such a person often is vital to service seekers and/or users, and attacking accompanying persons is a way to intimidate the service user/seeker, while intimidating the accompanying person themselves.

## **Clause 5**

NIWEP agrees with the provisions in this clause. However, it would be helpful to specify in the Bill the distance of a safe access zone, and any variation that may be made to it, to ensure clarity for the purposes of enforcement and any judicial process. The existing legislation in Australia and Canada specifies the distance as up to 150 metres, while injunctions in other specific cases have drawn the perimeter at 50 metres. It would also be helpful to specify whether the homes of staff working in clinics are protected, and within what radius. This has been included in legislation in Australia.<sup>14</sup>

## **Clause 6**

NIWEP broadly agrees with the provisions in this clause. It is potentially helpful to include a broad definition of an offence as outlined, as this covers a wide range of actions and potential actions. However, it would be helpful to clarify the reasons why this broad definition is adopted, and consider the relevance of guidance for the purposes of clarity in enforcement and where relevant, a judicial process. In the Australian and Canadian models, legislation defines the types of actions that are prohibited. NIWEP also shares the concern raised by the Women's Policy Group regarding the level of fines and the deterrent impact of this.

## **Clause 7**

NIWEP broadly agrees with the provisions in this clause. The issue of security at family planning and sexual and reproductive health clinics is long standing, and is central to the effectiveness of safe access zones. While this is outside the scope of the legislation, it remains essential to resolve security provision rights and responsibilities, as well as mechanisms for covering the cost of appropriate security, which is likely to remain necessary for some time. While it is vital to avoid securitising clinics and further traumatising staff and service users by engaging police, it is also critical that this clause is meaningful and therefore

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<sup>14</sup> Marie Stopes Australia (2020) [Safe access zones in Australia – legislative considerations](#)

that regular police monitoring of safe access zones takes place. Clarification of whether, and how, measures such as CCTV cameras and civilian security guards can contribute to enforcement through providing evidence and reporting breaches would also be welcome.

### **Clause 8**

NIWEP broadly agrees with the provisions in this clause. As with Clause 3 above, it would be helpful to clarify what criteria the Department is to use when designating safe access zones, and in particular what criteria will be utilised to assess representations from stakeholders. This is vital to reduce the risk of subversive practices such as anti abortion groups acquiring land or property near clinics, and/or intimidating neighbouring property owners.

### **Clause 9**

NIWEP agrees with the provisions in this clause. As developed in some detail above, the Bill progresses one of the recommendations of the CEDAW Inquiry into abortion legislation in Northern Ireland, which emphasises that safe and dignified access to family planning and abortion clinics is a cornerstone of a full sexual and reproductive health service. This is also specifically set out in CEDAW Article 12, which specifies access to family planning services as a core element of full access to health care. In addition, current jurisprudence, including that of the High Court in England, has deemed safe access to healthcare a priority over freedom of speech and therefore compliant with the European Convention on Human Rights. It is also worth noting that legislation in Australia sets out clear provisions for what is prohibited communication and what is not, thereby limiting the impact on freedom of speech. For example in Victoria, it has been held that church sermons or university lectures would not be considered prohibited communication within a safe access zone.<sup>15</sup>

### **Clauses 10-13**

NIWEP agrees with the provisions in these clauses. With regard to clause 10, annual monitoring should preferably include an assessment from the perspective of staff and service users of relevant clinics, as an experience of feeling safe and dignified while accessing clinics ultimately is the benchmark of effectiveness.

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<sup>15</sup> Government of Victoria (2016) [Safe Access Zones Around Abortion Clinics](#)