



Northern Ireland
Assembly

Research and Information Service Bill Paper

19th October 2021

RaISe

Abortion Services (Safe Access Zones) Bill

NIAR 224-21

Paper 65/21

19 October 2021

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Key Points

- The Abortion Services (Safe Access Zones) Bill was introduced to the Assembly on 13th September 2021. The Bill would require the Department of Health to create ‘safe access zones’ outside premises which provide lawful abortions or related information, advice or counselling. It would further create offences which apply to safe access zones, and empower the police to enforce these. The Bill passed its Second Stage of Assembly consideration on 12th October 2021.
- On 30th March 2020, the Abortion Regulations (Northern Ireland) 2020 came into effect. These Regulations permit registered medical professionals to carry out abortions in Northern Ireland in a range of circumstances. At the time of writing, there is no centrally commissioned abortion service in Northern Ireland, and there have been gaps in provision of abortion services within individual Health and Social Care Trusts.

In July 2021, the Secretary of State issued directions to the First and deputy First Ministers, the Minister and Department of Health, and the Health and Social Care Board for Northern Ireland. Amongst other measures, the Secretary directed that abortion services should be available in Northern Ireland by 31st March 2022.

- There have been multiple protests outside abortion and reproductive health clinics across Northern Ireland in recent years, including at the Marie Stopes clinic in Belfast; Daisy Hill Hospital and John Mitchel Place in Newry; and a health centre in Coleraine.
- Several pieces of current domestic legislation are potentially applicable to protests outside abortion clinics. These include the Public Order (Northern Ireland) Order 1987, the Protection from Harassment (Northern Ireland) Order 1997 and the Public Processions (Northern Ireland) Act 1998.
- On 27th July 2021, the Minister for Justice advised that she had intended to bring forward legislation providing for safe access zones within a broader Justice (Miscellaneous Provisions) Bill. However, these provisions were ultimately excluded from the Bill, in order to secure Executive agreement on its introduction.
- A ‘safe access zone’ – also referred to as a ‘bubble zone’ or ‘buffer zone’ – is an area on and around premises offering abortion, or related premises. Within the zone, most forms of assembly, protest and recording are banned and punishable by fines and/or imprisonment. The precise nature of the safe access zone, and what is banned within it, will vary from place to place.

- There are currently safe access zones in multiple jurisdictions including England, the Isle of Man, Canada, Australia and the United States. In addition, the Republic of Ireland's Department for Health intends to introduce safe access zone legislation to the Oireachtas.
- The Bill as introduced has thirteen clauses.

It creates definitions of 'protected premises' and 'protected persons' in relation to places where abortions or related information, advice or counselling are carried out. It further requires the Department of Health to create a 'safe access zone' outside such premises, if this is requested by the operator of the premises.

Within a safe access zone, the Bill establishes several offences which are punishable by fines not exceeding £500. The Bill also empowers police to enforce safe access zones, and makes failure to comply with police directions an offence punishable by fines not exceeding £2,500.

In exercising its functions under the Bill, the Department of Health is required to have regard to the safety and dignity of 'protected persons'; rights to privacy under Article 8 of the European Convention on Human Rights; and rights to religious belief, assembly and expression in Articles 9-11 of the Convention. The Department is further required to publish an annual report on the effectiveness of safe access zones.

- Research informing this paper indicates that creating lawful safe access zones requires the balancing of competing human rights. In particular, a right to privacy on the part of those accessing premises must be balanced against rights to expression, association and religion on the part of others.

This issue has been considered by courts in multiple jurisdictions. The paper details considerations by the High Court and Court of Appeal for England & Wales; the European Court of Human Rights; multiple provincial Canadian courts; the High Court of Australia; and the United States Supreme Court.

In each jurisdiction, case law has balanced rights to privacy on one side, with rights to expression, association and/or religion on the other. There are significant differences between individual jurisdictions and judgments. In each jurisdiction, however, safe access zones are found to be lawful where the legislation strikes a proportionate balance between the rights at issue in the given case.

- Safe access zone legislation in other jurisdictions varies from the provisions of the Bill as introduced, in several ways:
 - The Bill places no limit on the size of a safe access zone in Northern Ireland. In other jurisdictions, zones are typically limited to 50-150 metres from the protected premises.

- The Bill places safe access zones only outside of ‘protected premises’, where lawful abortion – or information, advice or counselling relating to this – is carried out. In other jurisdictions, zones can also be created around the homes of those who provide abortion or related services.
 - Under the Bill, persons can be fined up to £2,500 for an offence. In other jurisdictions, persons can be fined up to \$10,000 and also be subject to 12 months’ imprisonment. Several jurisdictions also distinguish between persons and corporations, and can fine these corporations up to \$100,000 depending on the offence.
 - Finally, under the Bill a safe access zone is a fixed and static zone. In the United States, however, several states operate ‘floating’ safe access zones. Under this arrangement, persons cannot be approached once they are within a certain distance of protected premises, but most other forms of free expression and protest remain lawful.
- The paper finally considers potential financial implications of the Bill as introduced.

The Bill would lead to additional one-off and recurring costs for the Department of Health. These would arise from creating and maintaining safe access zones, publishing annual reports and defending the Bill’s provision from potential legal challenge. Members may wish to seek the Bill Sponsor’s and/or Department’s view on the level of these costs.

The Bill may also have cost implications for the Police Service of Northern Ireland, by granting it enforcement powers in relation to safe access zones. Members may wish to seek further information from the police: in particular, whether the Bill could impose additional costs, or alternatively possibly reduce costs by clarifying the law in this area.

Contents

- Key Points.....1**
- 1 Introduction.....5**
- 2 What is a safe access zone?.....6**
- 3 Abortion and protest law in Northern Ireland.....8**
- 4 Content of the Bill as introduced.....14**
- 5 Consideration of the Bill as introduced.....19**
- 6 Financial implications of the Bill as introduced.....27**

1 Introduction

This Bill Paper aims to support consideration of the Abortion (Safe Access Zones) Bill, as introduced to the Assembly on 13th September 2021.

The Bill would require the Department of Health ('DoH') to create 'safe access zones' outside premises which provide lawful abortions, or related information, advice or counselling. It further creates offences which apply to safe access zones, and empowers the police to enforce these.

The paper is structured as follows:

- Section 2 defines a 'safe access zone', and provides current examples of safe access zones across the world.
- Section 3 briefly details the recent history of abortion law, and current law on public protest, in Northern Ireland.
- Section 4 outlines the content of the Bill as introduced.
- Section 5 considers the effect of the Bill as introduced. This includes consideration of the Bill's impact on human rights, and comparison of the Bill's specific content with safe access zone legislation in other places.
- Section 6 addresses potential financial implications arising from the Bill.

Throughout the paper, issues for consideration are highlighted. These aim to assist consideration, scrutiny and development of the Bill.

2 What is a safe access zone?

This section details what a safe access zone is, and current examples of safe access zone legislation across the world.

2.1 What is a safe access zone?

A safe access zone is an area on and around premises offering abortion, or related premises. Within the zone, most forms of assembly, protest and photography, video and audio recording are banned. Safe access zones are sometimes also referred to as 'bubble zones' or 'buffer zones'.

The precise nature of what is banned varies between individual zones. In general, it is not permitted to:

- Impede or obstruct access to premises in question;
- Protest against abortion;
- Directly counsel, argue with or harass people who may be attempting to enter the premises;
- Graphically record (e.g. photo, video, audio) any person who may be attempting to enter or exit the premises.

Most safe access zones are fixed zones, which cover an area outside either a premises' entrances, or outside the entire footprint of the premises.

Some zones, however, are referred to as 'floating' zones. In these zones, once a person gets within a certain distance of relevant premises, they cannot be approached. Most other forms of free expression and protest remain lawful.

2.2 Safe access zones across the world

Safe access zones are permitted under existing legislation in several jurisdictions:

- **England & Wales.** Using powers within the Anti-social Behaviour, Crime and Policing Act 2014, several local authorities have created safe access zones outside premises in their areas – specifically Ealing Council,¹ the London Borough of Richmond² and Manchester City Council.³
- **Isle of Man.** The Parliament of the Isle of Man passed the Abortion Reform Act in 2019. Among other measures, it permits the Department of Health and Social Care to establish safe access zones around NHS hospitals and surgeries providing abortions or related counselling, and the homes of relevant staff.⁴
- **Canada.** Several safe access zones have been established at a provincial level within Canada, including in British Columbia, Ontario and Alberta.⁵

¹ Court of Appeal (Civil Division), *EWCA Civ 1490* (2019) para 10

² See <https://www.localgov.co.uk/Council-bans-anti-abortion-protests-near-clinic/47009>, retrieved on 13th October 2021

³ See <https://www.msichoice.org.uk/news/manchester-city-council-to-introduce-a-safe-access-zone-around-our-clinic/>, retrieved on 13th October 2021

⁴ Isle of Man *Abortion Reform Act* 2019, Arts. 19-24

⁵ British Columbia *Access to Abortion Services Act* 1995; Ontario *Safe Access to Abortion Services Act* 2017; and Alberta *Protecting Choice For Women Accessing Health Care Act* 2018

- **Australia.** Within Australia, safe access zone legislation exists in five states and two territories: New South Wales, Queensland, Tasmania, Victoria, Western Australia, The Australian Capital Territory and the Northern Territory.⁶
- **United States.** At the federal level in the United States, the Freedom of Access to Clinic Entrances Act 1994 does not create buffer zones, instead establishing specific criminal offences relating to preventing or interfering with access to reproductive health services.⁷

In addition to this federal protection, many states have specific legislation protecting access to premises. Three states have established ‘floating’ zones around persons within specific distances of a clinic. In Colorado an 8ft bubble exists around a person within 100ft of a clinic door; in Montana an 8ft bubble exists within 36ft of a clinic door; and in Massachusetts, police can order a 25ft bubble around persons accessing clinics. Many states also specifically prohibit obstruction of access to premises, damaging premises and threatening individuals, in the context of reproductive health premises.⁸

- **Republic of Ireland.** In 2018, the Minister for Health promised to create 100 metre safe access zones around abortion facilities across the Republic of Ireland.⁹ The 2020 Programme for Government also included a pledge to ‘establish exclusion zones around medical facilities.’¹⁰

In August 2021, the Government shelved these plans and the Department of Health confirmed it would rely on existing public order law in relation to any issues.¹¹ Following media coverage and opposition to this, the Minister for Health confirmed his intention to introduce legislation on safe access zones.¹² At the time of writing, no such legislation has been introduced.

Most recently in October 2021, the pressure group Together for Safety submitted its own Bill to Seanad Éireann, which would create a 100 metre safe access zone around any location offering abortion or contraceptive services.¹³

Some of the safe access zones detailed above are considered in more detail in section 5.

⁶ Marie Stopes International, *Safe access zones in Australia: Legislative considerations* (2020). See also <https://www.mediastatements.wa.gov.au/Pages/McGowan/2021/08/Safe-Access-Zones-passes-WA-Parliament.aspx>, retrieved on 11th October 2021

⁷ See <https://www.law.cornell.edu/uscode/text/18/248>, retrieved on 13th October 2021

⁸ See <https://www.gutmacher.org/state-policy/explore/protecting-access-clinics#>, retrieved on 13th October 2021

⁹ See <https://www.irishexaminer.com/news/arid-40354406.html>, retrieved on 13th October 2021

¹⁰ Department for the Taoiseach, *Programme for Government – Our Shared Future* (2020) p47

¹¹ As cited in footnote 9

¹² See <https://www.gov.ie/en/press-release/1cd8d-statement-by-the-minister-for-health-stephen-donnely-on-exclusion-zones-around-healthcare-facilities/>, retrieved on 11th October 2021

¹³ See <https://www.belfasttelegraph.co.uk/news/republic-of-ireland/abortion-services-safe-access-zones-bill-launched-by-a-campaign-group-40907747.html>, retrieved on 19th October 2021

3 Abortion and protest law in Northern Ireland

This section briefly details the recent history of abortion law in Northern Ireland, and current law on public protest in Northern Ireland.

3.1 Abortion law in Northern Ireland

3.1.1 The Northern Ireland (Executive Formation etc.) Act 2019

During the absence of fully functioning devolved government in Northern Ireland after January 2017, the Northern Ireland (Executive Formation etc.) Bill was introduced in Westminster.

The Bill was introduced by the UK Government to extend the period for a Northern Ireland Executive to form, and require the Secretary of State for Northern Ireland ('SoS') to provide progress reports on that matter. During the Bill's passage, it was amended to include measures in several other areas, including abortion law in Northern Ireland.

Section 9 of the Act, as passed, required regulations to be made which would transpose and implement the 2018 recommendations of the United Nations ('UN') Committee on the Elimination of Discrimination Against Women ('CEDAW'). These regulations were required to come into force by 31st March 2020.

3.1.2 Abortion Regulations (Northern Ireland) 2020

The Abortion Regulations (Northern Ireland) 2020 came into effect on 30th March 2020. They permit registered medical professionals to carry out abortions in Northern Ireland under specific circumstances.¹⁴¹⁵

3.1.3 Delivery of abortion services in Northern Ireland

Since the 2020 Regulations came into effect, abortion can be lawfully provided in specified circumstances in Northern Ireland.

At the time of writing, there is no centrally and publicly commissioned abortion service for Northern Ireland. Early medical abortion services for up to 10 weeks' gestation have been available across all Health and Social Care Trusts since April 2020. However, resourcing issues have caused gaps in provision in the Northern, Western and South Eastern Trusts to date. Abortions beyond 10 weeks' gestation have not been available in any Trust.¹⁶

¹⁴ *Abortion Regulations (Northern Ireland) 2020, Regs 3-7. See also RaISe, Severe Fetal Impairment Abortion (Amendment) Bill: Bill Paper (2021) p15*

¹⁵ When made, the Abortion Regulations were required to be approved by Parliament by 17th May 2020 under the 'made affirmative' procedure. However, the impact of COVID-19 on parliamentary proceedings prevented this from happening. To rectify this, on 12th May 2020 the UK Government revoked the 2020 Regulations, and replaced them by making the Abortion (Northern Ireland) (No. 2) Regulations 2020. The amended Regulations were then considered by Parliament under the made affirmative procedure. This enabled the UK Parliament to have sufficient time to consider and vote on the proposed amending Regulations, without causing any disruption to the legal position in Northern Ireland.

¹⁶ AQW18803/17-22

The Minister for Health provided the following update on commissioning abortion services in June 2021, in response to an Assembly Question:

[. . .] my Department is now restarting work which had been paused from February 2020 to develop a commissioning model and service specification for abortion services to be delivered in Northern Ireland. This work is expected to take at least several months and the final draft output will require Executive agreement in due course, in line with the Ministerial Code, before public consultation on the specification commences. Abortion remains a deeply divisive issue in Northern Ireland, and it is important to seek some degree of consensus on the service model. In the meantime, I brought forward a paper on 19 May 2021 for consideration by the Executive, further to my papers of April and May 2020, seeking consensus on proposals for a limited telemedicine Early Medical Abortion service while the commissioning and planning work gets under way. My paper has not yet been discussed by the Executive Committee.¹⁷

3.1.4 Abortion Services Directions 2021

In March 2021, the UK Government made the Abortion (Northern Ireland) Regulations 2021 at Westminster. These empower the SoS to direct any Northern Irish Minister or Department, the Health and Social Care Board or the Public Health Agency for Northern Ireland to take steps to implement the recommendations of the CEDAW report of 2018.¹⁸

On 22nd July 2021, the SoS issued the following direction:

Today I am issuing a direction to the Department of Health, the Minister of Health, the Health and Social Care Board, and to the First and Deputy First Minister, to commission and make abortion services available in Northern Ireland as soon as possible, and no later than 31 March 2022. I am also directing that there should be immediate support for interim services of early medical abortion, which are at risk of collapse.

[. . .]

I am now directing the Department of Health to secure the commissioning and availability of the relevant healthcare services. The direction also includes an immediate requirement for the Department of Health to continue to support the central access point provided by Informing Choices NI (ICNI) who are key to providing early medical abortion services. I have chosen to impose a deadline for the availability of commissioned services of 31 March 2022 to account for the Department of Health's estimate that it would take 8-12 months to make fully commissioned CEDAW compliant services available.

I am also directing the Department of Health and the regional Health and Social Care Board. The direction includes a requirement to commission, provide and fund abortion services so that they are available in all of the circumstances in

¹⁷ AQW 17984/17-22

¹⁸ See p8 immediately above

which abortions are lawful. This includes access to services in cases of fatal foetal abnormality and severe foetal impairment in line with the Abortion (Northern Ireland) (No 2) Regulations 2020 in any service commissioned. It is for the Northern Ireland Executive to allocate all necessary funding for abortion services from its Barnett-based block grant or its own resources.

I am also directing the First Minister and Deputy First Minister that once proposals are brought forward by the Department of Health, they must be included on the agenda at the next meeting of the Executive Committee.¹⁹

The Northern Ireland Minister for Health has stated that abortion is a ‘cross-cutting’ and ‘controversial’ matter, and any commissioning decision must therefore be made by the whole Executive.²⁰

In May 2021, the Health Minister brought abortion commissioning proposals to the Executive, but these were blocked from discussion by Ministers of the Democratic Unionist Party (DUP).²¹ The DUP has separately criticised the SoS’s directions. A DUP Member of Parliament has stated that the UK Government compelling the Executive to implement abortion laws would be a ‘very serious breach of the devolution settlement’ with ‘serious consequences for devolution’.²²

At the time of writing, abortion legislation in Northern Ireland is subject to legal action on two fronts.

In May 2021, the Northern Ireland Human Rights Commission sought judicial review of the Northern Ireland Executive, Department of Health and the Secretary of State for Northern Ireland, seeking to require them to establish a centrally commissioned abortion service for Northern Ireland. In October 2021, the High Court found that the SoS had failed to comply with his duty to provide access to abortion ‘expeditiously’, but declined to compel the Secretary to make abortion services available.²³

Conversely, in October 2021, the Society for the Protection of the Unborn Child challenged the Secretary of State’s above Directions, contending that there is no requirement for the Executive to comply with these Directions.²⁴ At the time of writing, this case is ongoing before the High Court of Justice in Northern Ireland.

¹⁹ See <https://hansard.parliament.uk/commons/2021-07-22/debates/21072214000025/AbortionServicesDirections2021>, retrieved on 7th October 2021

²⁰ AQWs 11805, 10646, 8555, and 8168/17-22. Under Article 20(4) of the Northern Ireland Act 1998, matters which are ‘significant or controversial’ must be discussed and agreed upon by the whole Executive.

²¹ See <https://www.bbc.co.uk/news/uk-northern-ireland-57921537>, retrieved on 7th October 2021

²² See <https://www.bbc.co.uk/news/uk-northern-ireland-56454982>, retrieved on 7th October 2021

²³ High Court of Justice in Northern Ireland, *NIQB 91* (2021), paras 98 and 115-117

²⁴ See <https://www.bbc.co.uk/news/uk-northern-ireland-58765851>, retrieved on 7th October 2021

3.2 Protest law in Northern Ireland

3.2.1 Protests at abortion clinics in Northern Ireland

Protests have occurred at abortion and reproductive health clinics in Northern Ireland in recent years. In 2014, an anti-abortion protester was convicted of harassing a Marie Stopes clinic director in Belfast,²⁵ although this was later overturned on appeal.²⁶ In June 2015, the Irish News reported that police dealt with 183 incidents outside the Marie Stopes clinic since it opened in 2012.²⁷

The clinic eventually closed in 2017, after the UK Government announced women from Northern Ireland could access NHS-funded abortions in England.²⁸ Since this point, protests have occurred at several other locations including Daisy Hill Hospital and John Mitchel Place in Newry,²⁹ and a health centre in Coleraine.³⁰

3.2.2 Current legislation

In 2013, the Northern Ireland Human Rights Commission published a report titled 'Parades and Protests in Northern Ireland', which summarised contemporary legislation in those areas. The below information draws on this research.³¹

Rights to religion, freedom of expression and peaceful assembly in Northern Ireland are recognised by Articles 18, 19 and 21 of the UN's International Covenant on Civil and Political Rights,³² and Articles 9-11 of the European Convention on Human Rights.³³ However, as discussed further in section 5 below, these rights are not absolute: restrictions may be imposed on them by law, if this is necessary in a democratic society.³⁴

Domestically, the most relevant legislation is the Public Order (Northern Ireland) Order 1987, Protection from Harassment (Northern Ireland) Order 1997 and the Public Processions (Northern Ireland) Act 1998.

- **Public Order (Northern Ireland) Order 1987**

This Order prohibits acts which are intended or likely to stir up hatred or arouse fear. This includes use of threatening, abusive or insulting language, behavior or written material; publishing or distributing threatening, abusive or insulting material; or showing images or sounds which are threatening, abusive or insulting. These offences may be prosecuted summarily, or on indictment.³⁵

²⁵ See <https://www.bbc.co.uk/news/uk-northern-ireland-30116191>, retrieved on 8th October 2021

²⁶ See <https://www.bbc.co.uk/news/uk-northern-ireland-33570771>, retrieved on 8th October 2021

²⁷ See <https://www.irishnews.com/news/2015/06/22/news/psni-deal-with-200-incidents-at-marie-stopes-clinic-143073/>, retrieved on 8th October 2021

²⁸ See <https://www.bbc.co.uk/news/uk-northern-ireland-49629205>, retrieved on 8th October 2021

²⁹ See <https://www.belfastlive.co.uk/news/belfast-news/abortion-protest-intimidating-threatening-staff-20673130>, retrieved on 8th October 2021

³⁰ See <https://www.irishnews.com/news/northernirelandnews/2021/06/18/news/attacks-on-anti-abortion-protesters-in-coleraine-treated-as-hate-crimes-2358771/>, retrieved on 8th October 2021

³¹ Northern Ireland Human Rights Commission, *Parades and Protests in Northern Ireland* (2013)

³² See <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, retrieved on 8th October 2021

³³ See https://www.echr.coe.int/documents/convention_eng.pdf, retrieved on 8th October 2021

³⁴ As cited in footnotes 32 and 33. See specifically arts. 18(3), 19(3) and 21 (second sentence) of ICCPR, and arts. 9(2), 10(2) and 11(2) of ECHR.

³⁵ *The Public Order (Northern Ireland) Order 1987*, Part III

Breach of the peace is defined as a statutory offence by Article 18 of the Order. Where a person in a public place uses riotous or disorderly behaviour, or behaviour likely to cause a breach of the peace,³⁶ they are guilty of an offence. This is punishable by up to 6 months' imprisonment or a fine not exceeding level 5 on the standard scale (£5,000).³⁷

The Judicial Studies Board for Northern Ireland sentencing guidelines state that aggravating factors in sentencing include the perpetrator demonstrating hostility towards the victim based on their race, religion, sexual orientation or disability, or the offence being motivated by this hostility. Further factors include where the offence is committed at 'a school, hospital or other place where vulnerable persons may be present', and where the offence 'is part of a group action'.³⁸

In addition, the Magistrates' Court is empowered to bind over offenders for up to two years, in order to 'keep the peace'.³⁹

- **Protection from Harassment (Northern Ireland) Order 1997**

This Order defines harassment as including 'alarming the person or causing the person distress'. For harassment to be an offence, it must occur on at least two occasions.⁴⁰ In this case, it is punishable by up to two years in prison and/or a fine.⁴¹

The Order also provides civil remedy where a person is a victim of harassment, meaning that action can be taken against offending persons via civil proceedings.⁴²

- **Public Processions (Northern Ireland) Act 1998**

Under the Public Processions Act, police must receive notice of any protest meeting either 14 or 28 days prior to the event. Anyone who organises or participates in a non-compliant protest, or a protest which fails to comply with specified conditions, is guilty of an offence. This is punishable by up to 6 months' imprisonment and/or a fine up to level 5 on the standard scale (£5,000).⁴³

Issue for consideration:

1. Protests and other activity outside abortion clinics and related premises is currently subject to existing legislation, as detailed immediately above. Is the above legislation sufficient? Or are the specific protections envisioned by the Bill, as detailed below, necessary?

³⁶ The fuller definition of 'breach of the peace' is taken from *R v Howell* [1982]:

'there is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.'

³⁷ *The Public Order (Northern Ireland) Order 1987*, art. 4

³⁸ See https://www.judiciaryni.uk/sites/judiciary-ni.gov.uk/files/media-files/Breach%20of%20the%20Peace%20%28Template%29%285%29%28Final%29_0.pdf, retrieved on 13th October 2021

³⁹ *Magistrates' Court (Northern Ireland) Order 1981*, art. 127

⁴⁰ *Protection from Harassment (Northern Ireland) Order 1997*, art. 2

⁴¹ As cited immediately above, art. 4(2)

⁴² As cited in footnote 40, art. 5

⁴³ *Public Processions (Northern Ireland) Order 1998*, arts. 6 & 7

3.2.3 Consultation on Anti-Social Behaviour Legislation

Between April and July 2018, in the absence of Ministers, the Department of Justice (DoJ) consulted on the effectiveness of existing anti-social behavior legislation in Northern Ireland.⁴⁴

The DoJ consultation sought views on powers within the Anti-social Behaviour, Crime and Policing Act 2014 which applies in England and Wales. Amongst other measures, this Act introduces Public Spaces Protection Orders ('PSPOs'),⁴⁵ allowing local authorities to impose conditions on behaviour within certain defined areas. By the close of the consultation, Ealing Council had used PSPO powers to create a safe access zone outside an abortion clinic in its district.

The consultation found consensus that there were 'inadequacies in the current legislative framework to manage anti-social behaviour', with many respondents finding current processes for addressing anti-social behaviour as 'ineffective and laborious.'⁴⁶

Despite this, opinions on the creation of PSPO powers in Northern Ireland were mixed. Just under half of respondents supported the extension of these powers, but many also expressed concerns. Specifically, respondents feared that PSPOs could be disproportionate, detrimental to young people and the most vulnerable, criminalise non-criminal behaviours, and displace the problem rather than solving it.⁴⁷

It should be noted that this consultation, and consideration of PSPOs within it, was not specific to using PSPOs to create safe access zones. The consultation as a whole was concerned with the much broader topic of anti-social behaviour, which can include forms of protest outside abortion clinics, but is not limited to that. Following the consultation, the DoJ did not, at that stage, develop any proposals for legislation for an incoming Minister.⁴⁸

3.2.4 Proposals to include Safe Access Zones in a Justice Bill

In June 2021, the Justice Minister confirmed that legislation on anti-social behaviour was unlikely in the 2017-2022 mandate.⁴⁹

In July 2021, the Minister advised that she had intended to bring forward legislation providing for safe access zones within a Justice (Miscellaneous Provisions) Bill; however, this was excluded from the Bill to secure Executive agreement on its introduction. The Minister further stated that she intended to write to the SoS on the issue of safe access to abortion services.⁵⁰

⁴⁴ Department of Justice, *Anti-social Behaviour Legislation in Northern Ireland: Consultation Exercise – SUMMARY OF RESPONSES* (2019) p3

⁴⁵ *Anti-social Behaviour, Crime and Policing Act* (2014) Part 4 Chapter 2

⁴⁶ As cited in footnote 44, p6

⁴⁷ As cited in footnote 44, pp12-13

⁴⁸ As cited in footnote 44, pp19-20

⁴⁹ See <https://www.belfasttelegraph.co.uk/news/northern-ireland/anti-social-behaviour-three-years-on-from-public-consultation-and-still-no-sign-of-new-legislation-in-ni-40489927.html>, retrieved on 13th October 2021

⁵⁰ AQW21749/17-22

4 Content of the Bill as introduced

This section explains the content and effect of the Abortion (Safe Access Zones) Bill as introduced, drawing on the Bill clauses and its accompanying explanatory and financial memorandum.⁵¹ The Bill as introduced has thirteen clauses.

Clause 1: Overview

Clause 1 sets out the overarching purposes of the Bill. Specifically:

- It requires the DoH to establish safe access zones for premises providing abortion or related services, and
- Criminalises any acts which may impede or prevent access to such premises, or which may influence, harass, alarm or distress persons accessing the premises.

Clause 2: Premises where abortion treatments are carried out

Clause 2 introduces the definition of 'protected premises'.

Premises are 'protected premises' if they are premises where lawful termination of pregnancy is carried out, or proposed to be carried out.

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

Clause 3 adds to the definition of 'protected premises' introduced in clause 2.

In addition to clause 2, premises are also 'protected premises' if they meet three conditions:

- i) They are a HSC hospital or a HSC Trust clinic, used to provide services under the Health and Personal Social Services (Northern Ireland) Order 1972, or are otherwise approved for the purposes of this clause by the DoH.
- ii) Information, advice or counselling relating to treatment for terminating pregnancy is provided at the premises.
- iii) Following a request from the operator of the premises, the Department determines that the premises are to be treated as 'protected premises.' (The Department may only make this determination if it is satisfied that 'it is reasonable to do so.')

⁵¹ The Bill as introduced and the accompanying memorandum are available at <http://www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/non-executive-bill-proposals/abortion-services-safe-access-zones-bill/>, retrieved 19th October 2021

Clause 4: Protected persons

Clause 4 introduces the definition of a 'protected person'.

A 'protected person' is someone who attends protected premises for any of three purposes:

- i) Accessing the treatment, information, advice or counselling provided there
- ii) Accompanying a person accessing those services, at that person's invitation
- iii) Working in, or providing services to, the protected premises

Issue for consideration:

2. A person is a protected person if (amongst other things) they are accompanying a person accessing services, 'at the invitation of that person'.

Are Members content with this condition: 'at the invitation of that person'? Or would alternative to that phrasing be preferred – for instance, 'with that person's consent'?

Clause 5: Safe access zone

Clause 5 defines 'safe access zone.'

A 'safe access zone' consists of two elements:

- i) The protected premises, including any entrances or exits, and
- ii) A public area outside the premises and in their immediate vicinity, which is designated a safe access zone by the DoH.

Clause 6: Offences in respect of a safe access zone

Clause 6 establishes that within a safe access zone, it is an offence for a person, who is not a 'protected person', to intentionally or recklessly:

- i) Influence a protected person, directly or indirectly
- ii) Prevent or impede access to protected premises
- iii) Harass, alarm or distress a protected person, or
- iv) Record a protected person without their consent, if it has any of the effects listed in (i)–(iii) above.

It is a defence for a person to show that they did not know, and had no reasonable way of knowing, that the protected person was in a safe access zone.

An offence under clause 6 is punishable, on summary conviction, by a fine not exceeding level 2 on the standard scale (£500).

Issue for consideration:

3. In other safe access zone legislation, there are specific definitions of what it means to 'record a protected person.' For example, in British Columbia, 'A person must not photograph, film, videotape, sketch or in any other way graphically record' a protected person.⁵²

The language for offence (iv) in the Bill, as introduced, is as follows:

it is an offence to record a protected person [. . .] without the consent of that person

Is this language sufficiently defined to ensure that the aim of this clause is achieved? Or would a more specific description of what it means to record a person – such as that in British Columbia, as cited above – be more suitable?

Clause 7: Enforcement of safe access zone by a constable

Clause 7 establishes police powers in relation to offences under clause 6.

Where a constable has reasonable grounds to believe a person is about to commit offences (i)–(iii) listed immediately above, they may direct that person to leave the safe access zone, and remove that person using reasonable force.

Where a constable has reasonable grounds to believe that a person is committing or about to commit offence (iv) above, the constable may direct the person to cease recording.

A person who fails to comply with any of these directions, or resists removal from a safe access zone, is guilty of an offence. An offence under clause 7 is punishable, on summary conviction, by a fine not exceeding level 4 on the standard scale (£2,500).

Issue for consideration:

4. A constable can use reasonable force to remove a person from a safe access zone in relation to offences (i)–(iii), but not in relation to offence (iv), recording a person without that person's consent.

What is the rationale for this distinction? Should constables also be able to use reasonable force in safe access zones to prevent such recording?

Issue for consideration:

5. Clause 7 permits a constable to direct a person to cease any recording of a protected person. The Bill makes no specific provision, however, relating to misuse of any recordings that are undertaken.

Should the Bill include specific offences relating to the misuse of recordings taken in safe access zones?

⁵² British Columbia *Access to Abortion Services Act* 1995, art. 3

Clause 8: Procedure for designating a safe access zone

Clause 8 establishes the procedure by which a safe access zone is designated.

The operator of protected premises may notify the DoH that they wish there to be a safe access zone in respect of the premises.

Within eight weeks of receiving notification, the Department must designate a safe access zone. In determining the extent of any zone, the Department must consult certain statutory partners. Specifically, these partners are the operator; owners and occupiers of land in the immediate vicinity; the relevant Police District Commander; and other persons which the Department considers appropriate.

After creating and defining the safe access zone, the Department can vary the zone's dimensions in consultation with the above persons.

Where it appears to the Department that the operator no longer wants a safe access zone around their premises, the Department may revoke the zone – though they are not required to do this.

Finally, the Department must publish the extent of the safe access zone, including any variations or revocations, in a manner it considers appropriate.

Issue for consideration:

6. Under the Bill as introduced, the DoH must consult the operator, owners or occupiers in the immediate vicinity, and the relevant Police District Commander when designating a safe access zone.

Should any other bodies or persons be added to this list of consultees, to ensure that the aim of this clause is achieved?

Clause 9: Exercise of functions

Clause 9 requires the DoH, in exercising functions under the Act, to have regard (amongst other things) to:

- i) The safety and dignity of protected persons;
- ii) The right to respect for private and family life in Article 8 of the European Convention on Human Rights ('ECHR') – in particular, the right of protected persons to be free from harassment, alarm and distress in attending protected premises; and
- iii) The rights to manifest religious belief, freedom of assembly and expression set out in Articles 9-11 of the ECHR – in particular, the right to protest.

Clause 10: Monitoring of effectiveness of safe access zones

Clause 10 requires the DoH to publish an annual report, setting out the Department's view on whether each safe access zone has been effective in protecting the safety and dignity of protected persons.

Issue for consideration:

7. The Bill attributes the creation and enforcement of safe access zones to the DoH and the police, respectively.

Given previous plans for the DoJ to permit safe access zones in legislation,⁵³ should the DoJ have a role in the designation of such zones? Or are Members content that only the DoH should have this statutory responsibility?

Clause 11: Interpretation

Clause 11 defines three key terms which are abbreviated throughout the rest of the Bill:

- i) 'The Convention' is defined as the European Convention on Human Rights
- ii) 'The Department' is defined as the Department of Health
- iii) 'The operator' of premises is the person in charge of providing services specified in clauses 2 and 3 on the premises.

Clause 12: Commencement

Clause 12 provides that the whole Act, except for clauses 6 and 7, would come into operation on the day after the Act receives Royal Assent, assuming this Bill is enacted.

Clauses 6 and 7 – concerning offences within a safe access zone, and enforcement of safe access zones by police – would come into operation three months after the Act receives Royal Assent.

Clause 13: Short title

Clause 13 provides that the Bill, if enacted, may be cited as the 'Abortion Services (Safe Access Zones) Act (Northern Ireland) 2021'.

⁵³ See AQW21749/17-22, as cited on p13 above

5 Consideration of the Bill as introduced

This section considers the Bill as introduced, in two parts. First, the Bill's impact on various competing human rights is considered. Second, the Bill's specific content is compared to safe access zone legislation in other countries.

5.1 Safe access zones and human rights

5.1.1 Competing rights

The creation and maintenance of safe access zones requires the balancing of human rights which compete in this context. Specifically, the right to privacy on the part of those accessing clinics to deliver or receive services must be balanced with the rights of others to freedom of expression, association and religion.

For this reason, it is worth considering how these competing rights have been balanced in other countries with safe access zone legislation.

Table 1: Competing rights in countries with safe access zone legislation

Jurisdiction/international body and source of rights	Right to privacy	Rights to freedom of expression, association & religion
Council of Europe (European Convention on Human Rights ('ECHR'))	Article 8.	Articles 9, 10 and 11.
UN (International Covenant on Civil and Political Rights ('ICCPR'))	Article 17.	Articles 18, 19 and 21.
Canada (Charter of Rights & Freedoms)	No overall right to privacy, but specific and implicit protections in Sections 7 and 8.	Section 2.
Australia	Australia does not have explicit rights to privacy or freedom of expression at the constitutional level; ⁵⁴ however, domestic legislation and case law has historically created and balanced these rights. ⁵⁵	
U.S. (U.S. Constitution)	No overall right to privacy, but specific and implicit protections in the 3 rd , 4 th , 9 th & 14 th Amendments.	1 st Amendment.

⁵⁴ See <https://www.aph.gov.au/constitution>; https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/CBHF6/upload_binary/cbhf64.pdf;fileType=application%2Fpdf#search=%22library/prspub/CBHF6%22; <https://humanrights.gov.au/our-work/rights-and-freedoms/freedom-information-opinion-and-expression>; and <https://www.employmentlawworldview.com/australian-high-court-confirms-no-personal-right-of-free-speech-in-some-cases/>, all retrieved on 12th October 2021

⁵⁵ High Court of Australia, *HCA 11* (2019)

The rights in the above table which apply in Northern Ireland – the ICCPR, and in particular the ECHR – are ‘qualified rights’,⁵⁶ meaning they can and must be balanced against one another.

In describing ECHR rights, the Council of Europe states the following:

Qualified right

Qualified rights are rights which may be interfered with in order to protect the rights of another or the wider public interest [. . .]⁵⁷

For example, Article 8 of the ECHR establishes a right to privacy, stating that ‘everyone has the right to respect for his private and family life, his home and his correspondence.’ However, it goes on to state:

*There shall be no interference by a public authority with the exercise of this right **except such as is in accordance with the law and is necessary in a democratic society** [emphasis added] [. . .]⁵⁸*

Similarly, Article 9 of the ECHR establishes a right to freedom of thought, conscience and religion. However, it goes on to state:

*Freedom to manifest one’s religion or beliefs shall be **subject only to such limitations as are prescribed by law and are necessary in a democratic society** [emphasis added] [. . .]⁵⁹*

In practice, then, creating safe access zones must lawfully balance the competing rights of privacy and expression, association and religion. Section 5.1.2 below provides a brief summary of case law in jurisdictions where safe access zones exist.

5.1.2 Case law on safe access zones

- **England & Wales**

In 2018 and 2019, Ealing Council’s creation of a safe access zone outside a reproductive health clinic in their district was challenged. The challenge was rejected by the High Court of Justice, and further rejected by the Court of Appeal.

In upholding the Ealing safe access zone, the High Court stated the following with regards to competing human rights under the ECHR:

‘I am satisfied that the Article 8 rights of such users of the Centre were engaged on the facts of this case. [. . .] In the circumstances of this case, I do not doubt that there has been a significant interference with the rights of activists under Article 9, 10 and 11. I do not underestimate the seriousness of taking steps which are bound to conflict with that special degree of protection afforded to expressions of opinion which are made in the course of a debate on matters of public interest.

⁵⁶ See <https://www.lexisnexis.co.uk/legal/guidance/convention-rights-structure-of-qualified-rights>, retrieved on 13th October 2021

⁵⁷ See <https://www.coe.int/en/web/echr-toolkit/definitions>, retrieved on 13th October

⁵⁸ Council of Europe, *European Convention on Human Rights* (1950) art. 8

⁵⁹ As cited immediately above, art. 9

*Nevertheless I am satisfied that the defendant was entitled to conclude on the entirety of the evidence and information available to it that the making of this [safe access zone] was a necessary step in a democratic society.*⁶⁰

In upholding the High Court's judgment, the Court of Appeal stated the following:

*['. . .] the rights under articles 8, 9, 10 and 11 are all of equal importance in the sense that none has precedence over the other and, where there is a tension between their values, what is necessary is an intense focus on the comparative importance of the rights being claimed in the individual case [. . .]'*⁶¹

- **European Court of Human Rights (EctHR)**

Freedoms under Articles 9-11 of the ECHR have been limited in lawful ways, in many areas of the law other than safe access zones specifically. The EctHR has produced guides on each Article, detailing case law in which freedoms of expression, association and religion have been limited as necessary in a democratic society.⁶²

In a 2020 paper entitled 'A Rights Based Analysis of Safe Access Zones', the Irish Council for Civil Liberties provided the following summary of the Court's perspective on balancing competing rights in the context of safe access zones:

*['. . .] [The Court's] approach suggests that the limited restrictions on freedom of expression that safe zones entail are likely to be permissible under the ECHR, taking into account its effect on those accessing and providing services; the fact that those who would protest outside abortion providers have many other channels and spaces to exercise their right to protest with potentially a greater legislative impact; and considering the social and historical context in Ireland where for decades women seeking abortions have been subject to a range of rights violations and societal stigma, exclusion and discrimination.*⁶³

- **Canada**

In *R. v Watson* and *R. v Spratt*, two men were convicted of breaching safe access zone law in British Columbia. They appealed their convictions to the Supreme Court, and consequently the Court of Appeal of British Columbia, unsuccessful in both cases.

In dismissing the appellants, the Court of Appeal ultimately stated:

*The purpose or objective of the Act is sufficiently important to justify a limitation on the way in which freedom of expression is exercised in an area adjacent to the facilities providing abortion services. [. . .] The objective of the Act justifies the limited infringement of freedom of expression in the circumstances.*⁶⁴

⁶⁰ High Court of Justice, *EWHC 1667* (2018) paras 61 & 97

⁶¹ Court of Appeal (Civil Division), *EWCA Civ 1490* (2019) para 91

⁶² See https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf; https://www.echr.coe.int/Documents/Guide_Art_10_ENG.pdf; and https://www.echr.coe.int/Documents/Guide_Art_11_ENG.pdf, retrieved on 14th October 2021

⁶³ Irish Council for Civil Liberties, *A Rights Based Analysis of Safe Access Zones* (2020) pp5-6

⁶⁴ See <https://www.canlii.org/en/bc/bcca/doc/2008/2008bcca340/2008bcca340.html?autocompleteStr=r%20v%20spratt%20bcca&autocompletePos=2>, retrieved 12th October 2021

- **United States**

State-level safe access zones have been considered by the U.S. Supreme Court on multiple occasions.

In 1994, the Court upheld elements of safe access zone law in Florida, but also rejected elements of that state's law. In this case, the Court established a test for the lawfulness of safe access zones:

the governing standard is whether [the zone's provisions] burden no more speech than necessary to serve a significant government interest [i.e. a woman's right to privacy and freedom to seek lawful services].⁶⁵

The Court has since utilised this test in judgments on safe access zone law in New York⁶⁶ and Massachusetts.⁶⁷ Separately, in 2000, the Court also upheld safe access zone legislation in Colorado.⁶⁸

Given the absence of an explicit and broad constitutional right to privacy in the U.S., and the comparatively broad freedom of expression granted by the 1st Amendment, case law in the U.S. is more restrictive in what is permitted in safe access zone legislation. Such laws must be carefully drafted to place only reasonable restrictions on the time, place and manner of speech by protesters. Further, the law must not 'burden' more speech than is necessary.⁶⁹

- **Australia**

In 2019, the High Court of Australia considered a constitutional challenge to safe access zones in the provinces of Victoria and Tasmania.

The Court ultimately found the safe access zones to be lawful as they infringed free speech only to the extent that they 'serve the purpose of protecting the safety, wellbeing, privacy and dignity of persons accessing premises where terminations are provided.'⁷⁰

In each of the five jurisdictions outlined above, case law has balanced the rights to privacy held by people accessing premises, with the rights to expression, association and religion held by those who wish to protest. Although there are differences in each context, in each jurisdiction safe access zones are found to be lawful and permissible where the legislation strikes a correct balance between these rights.

Issue for consideration:

8. Do Members believe that the Bill, as introduced, will appropriately balance competing rights to privacy and freedom of expression, association and religion when implemented?

⁶⁵ See <https://supreme.justia.com/cases/federal/us/512/753/>, retrieved on 12th October 2021

⁶⁶ See <https://supreme.justia.com/cases/federal/us/519/357/>, retrieved on 13th October 2021

⁶⁷ See <https://supreme.justia.com/cases/federal/us/573/464/>, retrieved on 13th October 2021

⁶⁸ See <https://supreme.justia.com/cases/federal/us/530/703/>, retrieved on 12th October 2021

⁶⁹ As cited in footnote 65

⁷⁰ High Court of Australia, *HCA 11* (2019) para 120

5.1.3 Recommendations of the CEDAW Committee

The UK is a signatory to the UN Convention on the Elimination of All Forms of Discrimination Against Women.⁷¹ In 2018, the CEDAW Committee⁷² reported on an inquiry undertaken within an Optional Protocol to the Convention, and specifically abortion law in Northern Ireland as it stood at that time.

In its report, the CEDAW Committee made multiple findings and recommendations. These primarily related to the legislation around abortion itself; however, the Committee made specific findings and recommendations relating to access:

C. Violations of rights under the Convention

(l) Criminalization of abortion and impeded access to sexual and reproductive health services

[. . .]

(e) Harassment by anti-abortion protestors

70. In violation of their right to seek sexual and reproductive health services and information, women are subjected to harassment by anti-abortion protestors emboldened by lack of prosecution.⁷³

[. . .]

86. The Committee recommends that the State party: [. . .]

(g) Protect women from harassment by anti-abortion protestors by investigating complaints, prosecuting and punishing perpetrators.⁷⁴

Although the UK Parliament and SoS passed the Abortion (Northern Ireland) Regulations 2020 to enact recommendations within this CEDAW report, to date the UK Government has not legislated for safe access zones in Northern Ireland. In July 2021, the Northern Ireland Minister for Justice advised she would write to the SoS on this issue.⁷⁵

⁷¹ See <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>, retrieved on 13th October 2021

⁷² See <https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>, retrieved on 13th October 2021

⁷³ Committee on the Elimination of Discrimination Against Women, *Report on the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (2018) p16

⁷⁴ As cited immediately above, p19

⁷⁵ AQW 21749/17-22

5.2 The Bill's specific content in comparison to other safe access zones

Section 2 above briefly details examples of safe access zone legislation across the world. Below, these examples are considered in more detail to highlight differences between the Bill as introduced and existing safe access zone legislation elsewhere.

5.2.1 The size of safe access zones

Clause 8 of the Bill as introduced permits the DoH to create a safe access zone on and around 'protected premises', once the operator of those premises requests this. There is no limit on the size of a safe access zone in the Bill.

In most other safe access zones considered, there is a limit on the size of a safe access zone:

- In Ontario within Canada, and in New South Wales, Queensland, Tasmania, the Australian Capital Territory and the Northern Territory within Australia, safe access zones can extend 150 metres from protected premises.⁷⁶
- In the Isle of Man, zones can extend 100 metres from protected premises.⁷⁷
- In British Columbia, Newfoundland & Labrador and Alberta within Canada, zones can extend 50 metres.⁷⁸

Issue for consideration:

9. Under the Bill as introduced, the DoH creates safe access zones, after consulting statutory partners⁷⁹ and with regard to ECHR rights. There is no limit on the size of safe access zones.

Are Members content with this approach? Alternatively, do Members feel that an upper limit on the size of safe access zones would be appropriate – for example, 100 metres from protected premises?

5.2.2 The locations of safe access zones

In the Bill, safe access zones can only be created in relation to 'protected premises': that is premises where lawful abortion, or information, advice or counselling relating to such treatment, is carried out.⁸⁰

In several other jurisdictions, safe access zones can be created in other locations. For example, in British Columbia, Ontario and Newfoundland & Labrador, it is lawful to create safe access zones outside service providers' homes.⁸¹

⁷⁶ See Ontario *Safe Access to Abortion Services Act* 2017; and Marie Stopes International, *Safe access zones in Australia: Legislative considerations* (2020)

⁷⁷ Isle of Man *Abortion Reform Act* 2019, art. 22

⁷⁸ See British Columbia *Access to Abortion Services Act* 1995; Newfoundland & Labrador *Access to Abortion Services Act* 2016; and Alberta *Protecting Choice For Women Accessing Health Care Act* 2018

⁷⁹ See clauses 8 and 9 of the Bill, as detailed on p16 above

⁸⁰ See clauses 2 and 3 of the Bill, as detailed on p14 above

⁸¹ See British Columbia *Access to Abortion Services Act* 1995; Ontario *Safe Access to Abortion Services Act* 2017; and Newfoundland & Labrador *Access to Abortion Services Act* 2016

Issue for consideration:

10. Under the proposed Bill, safe access zones can only be placed outside premises offering lawful abortion, or information, advice and counselling relating to this. Is this sufficient?

Should the Bill be amended to permit safe access zones outside the homes of those who provide services in protected premises?

5.2.3 Punishment and enforcement

Under the Bill as introduced, if a person commits an offence under clause 6, this is punishable by a fine of no more than £500. If a person commits an offence under clause 7 – in essence, if that person fails to comply with police enforcement of a safe access zone – this is punishable by a fine of no more than £2,500.

In other jurisdictions, punishment can be more financially severe, and can also include imprisonment. Some jurisdictions also distinguish between individuals and organisations:

- In British Columbia, a person is liable to a fine of no more than \$5,000 and/or up to 6 months' imprisonment for a first offence. This rises to a fine of no more than \$10,000, and/or no more than 12 months' imprisonment for a second offence.⁸²
- In Quebec, a person guilty of an offence can be fined \$250-\$2,500, depending on the offence. The Quebec legislation also distinguishes between 'natural persons' (individuals) and 'legal persons' (organisations). 'Legal persons' are subject to fines between \$500-\$5,000, depending on the offence.⁸³
- In Alberta, a person is liable to a fine of no more than \$5,000 and/or up to 6 months' imprisonment for a first offence. This rises to a fine of no more than \$10,000, and/or no more than 12 months' imprisonment for a second offence. Like Quebec, Alberta also distinguishes between 'individuals' and 'corporations': corporations may be fined between \$5,000 and \$100,000 depending on the offence.⁸⁴

Issue for consideration:

11. Are the levels of fines in the Bill appropriate, or should they be raised or lowered?

Should the Bill be amended to include the possibility of imprisonment for certain offences, as in British Columbia and Alberta?

Should the Bill distinguish between individuals and organisations when prosecuting offences, as in Quebec and Alberta?

⁸² British Columbia *Access to Abortion Services Act* 1995, art. 14

⁸³ Oireachtas Library & Research Service, *Safe access zones – what do other countries do?* (2019) p17

⁸⁴ Alberta *Protecting Choice For Women Accessing Health Care Act* 2018, art. 13

5.2.4 Floating zones

As detailed in section 2, three states within the U.S. have created ‘floating’ safe access zones in relation to protected premises. Within a certain distance of protected premises, persons may not be approached or engaged with inside their bubble:

- In Colorado, an 8ft bubble exists around a person within 100ft of the door of premises.
- In Montana, an 8ft bubble exists around a person within 36ft of the door of premises.
- In Massachusetts, police can order a 25ft bubble around persons accessing premises.⁸⁵

Outside of an individual person’s bubble, free expression and protest is largely permissible, although obstruction and threat of individuals is often specifically criminalised.⁸⁶

Issue for consideration:

12. Would ‘floating’ zones like those in several U.S. states be a more appropriate form of safe access zone than the fixed zones envisioned by the Bill as introduced?

If so, would these need to be combined with bans on specific behaviours in relation to premises offering abortion, or related premises?

⁸⁵ See <https://www.guttmacher.org/state-policy/explore/protecting-access-clinics#>, retrieved on 13th October 2021

⁸⁶ As cited immediately above

6 Financial implications of the Bill as introduced

This section addresses potential financial implications arising from the Bill. It considers one-off and recurrent costs and savings which may arise from the Bill's provisions.

6.1 Duties on the DoH

The explanatory and financial memorandum for the Bill acknowledges that if enacted as introduced, the Bill would place duties on the DoH which would lead to additional costs for the Department:

[. . .] [The Bill] 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 [by publishing annual reports]. 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.⁸⁷

Issue for consideration:

13. Members may wish to seek information from the Department on potential costs of implementing safe access zones, and producing annual reports on these.

The explanatory memorandum further considers that a major source of additional cost could be legal costs, citing the example of Ealing Council detailed in section 5⁸⁸:

[. . .] 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.

As of 2019, Ealing Council estimated that in total, the order had cost approximately £250,000.

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.⁸⁹

Issue for consideration:

14. Members may wish to seek information from the Department on potential costs of defending the Bill's provisions against legal challenge.

⁸⁷ Clare Bailey MLA, *Abortion Services (Safe Access Zones) Bill - Explanatory and Financial Memorandum*, p5

⁸⁸ See p19 above

⁸⁹ As cited in footnote 87

6.2 Enforcement powers

Clause 7 grants several police powers in relation to safe access zones. Specifically, police can direct persons to leave safe access zones, direct persons to cease any graphic recording and use reasonable force in certain circumstances.

Issue for consideration:

15. Members may wish to seek information from the Police Service of Northern Ireland on whether passage of the Bill would increase costs on the police, or conversely reduce costs by clarifying the law in these circumstances.