



Submission to the Northern Ireland Assembly Committee for Health consultation on the Abortion Services (Safe Access Zones) Bill

November 2021

admin@bsacp.org.uk

www.bsacp.org.uk

Background to the organisation making this submission

1. The British Society of Abortion Care Providers (BSACP) is the principal, authoritative Society for health professionals working in abortion care in the UK, its Crown Dependencies and its Overseas Territories. It aims to provide a supportive community to promote best practice in abortion care. It was formed in October 2015 and is a specialist Society of the Royal College of Obstetricians and Gynaecologists (RCOG). It is separate from the RCOG but works closely with it and with its Faculty of Sexual and Reproductive Healthcare (FSRH). Representatives of all devolved nations sit on its Council. Its membership comprises mainly doctors, nurses and midwives who deliver abortion care for the National Health Service (NHS) – whether in NHS settings or the independent sector. The three main independent sector providers (ISPs) are: the British Pregnancy Advisory Service (BPAS), MSI Reproductive Choices (MSUK) and the National Unplanned Pregnancy Advisory Service (NUPAS).

2. BSACP has previously made submissions to:
 - a) Isle of Man Abortion Reform Bill 2017
 - b) Home Office 2018 consultation on abortion clinic protests
 - c) Consultation on a new legal framework for abortion services in Northern Ireland – implementation of the legal duty under section 9 of the Northern Ireland (Executive Formation etc) Act 2019

(all can be viewed at:

<https://bsacp.org.uk/resources/bsacp-submissions-to-formal-consultations/>).

BSACP has also prepared a Position Statement on Protests, updated on 16 July 2021 in relation to Northern Ireland, which can viewed at:

<https://bsacp.org.uk/resources/bsacp-position-statements/>.

Introduction

3. BSACP welcomes and fully supports this Bill introduced by Ms Clare Bailey MLA on 13 September and which passed its Second Stage on 13 October by 58 votes to 29. We have carefully considered the wording of the Bill, the Explanatory Memorandum and the Official Report of the Second Stage debate. We have no doubt that there is a need for legislation in relation to protests outside abortion services premises in Northern Ireland; existing legislation is inadequate to protect health service users and providers.

We identify very much with remarks made at Stormont by the Bill's sponsor. We also feel strongly that the importance of the dignity of the users of healthcare services is paramount, as described in detail by Ms Paula Bradshaw MLA who sits on the Committee for Health.

Experiences of those in other jurisdictions

4. In England, of the 43 clinics that have been targeted in the last three years, only three are now protected by Public Spaces Protection Orders (PSPOs). BSACP believes that PSPOs cannot be the mechanism for a long-term solution to the problem of protests outside abortion services premises.
5. Women experience protests outside facilities where abortion is provided as unwelcome street harassment and intimidation which invades their privacy. Canadian women reported that when they experience it first-hand, they find it unpleasant and invasive.¹ Although, none of them said that these encounters made them reconsider their decision, they found seeing and interacting with protestors at times unsettling, stigmatising and frustrating. Some US women reacted to protestors with negative emotions.² Common emotional reactions are anger and, to a lesser extent, guilt.³ The women are not in control of the situation as they cannot avoid the protestors.
6. We are aware of anti-abortion protestors harassing patients in a variety of different ways, including filming individuals approaching clinics that provide abortion services and giving patients unsolicited 'advice', which is contrary to that provided by clinical staff, and grossly erroneous information about clinical risks, such as linking abortion with breast cancer. It is known that protesting can be passive, active or violent.^{4 5} The Court of Appeal (England and Wales) has confirmed that protestors can cause "significant emotional and psychological damage" to some individuals.⁶
7. BSACP is aware of serious secondary effects of protests. In some cases, women are so put off that they end up deferring their treatment (the higher the gestation at which an abortion is carried out, the greater the morbidity and mortality). BSACP has also heard of cases of women opting for simultaneous administration of their drugs for a medical abortion to avoid a repeat consultation, which is known to have a somewhat lower efficacy than when an interval of 6–48 hours is left between administration of the two medicines. Finally, women have resorted to an

abortion using drugs obtained from the internet rather than face the protestors so that they can access professional services.⁷

Experiences and opinions of citizens in Northern Ireland

8. Even before this Bill was introduced, there had been reports to the Assembly on protests. Evidence was taken from the HSC Trust Chief Executives in relation to the Severe Fetal Impairment Abortion (Amendment) Bill earlier this year.⁸ Dr Cathy Jack explained that, after two incident reports, extra security had to be put in place around the entrance to Belfast HSC Trust premises. Ms Jennifer Welsh reported that in the Northern HSC Trust protestors had intimidated patients and staff, including video and still photography of service users, and because of this the Trust had been forced to relocate premises more than once. Mr Shane Devlin reiterated having to relocate premises in the Southern HSC Trust on account of protests.

9. Dr Caroline Hunter, a provider of abortion services, has described her distressing personal experiences of intrusive protestor actions within the Southern HSC Trust.⁹ These actions included holding up large placards with graphic images of macerated fetuses and emotive text, speaking in an inflammatory way through loudspeakers and putting anti-choice leaflets into people's handbags/shopping bags. We know from this Bill's Second Stage debate that the Chief Executives of HSC Trusts in Northern Ireland have again directly expressed their concern at the ongoing harassment outside premises that they are responsible for.

10. In the Second Stage debate a number of MLAs gave graphic descriptions of the abuse and harassment they themselves received when entering and leaving buildings to have meetings with healthcare staff. Ms Sinead McLaughlin MLA spoke particularly on this. How much worse it is for those who are receiving forms of sexual and reproductive healthcare, mental healthcare and other forms of treatment at these healthcare settings. From direct reports from MLAs' constituents, it is abundantly clear that existing police powers are inadequate to deal with the ongoing protests. Constituents have told their MLAs that there is an obvious gap in the legislation resulting in service users being unprotected from harassment, intimidation and obstruction to them receiving essential healthcare. There is widespread support in Northern Ireland for action to be taken in response to protests: recommendation 33 of the NIACT Report calls for the establishment of Safe Access Zones (SAZs).¹⁰

Current parliamentary activity in Scotland and the Republic of Ireland

11. There has been intense activity on SAZs recently in neighbouring jurisdictions. BSACP notes the debate at Holyrood on 4 November 2021. Gillian Mackay MSP formally announced her plans to bring forward a Members' Bill on Abortion Clinic Buffer Zones with 150 metre zones.¹¹ Ten MSPs spoke in favour of SAZs, generally backing a national legislative approach; one MSP spoke against SAZs. Scottish experience is that seven hospitals/clinics are being repeatedly targeted by protestors. The Women's Health Minister, Maree Todd MSP, said that a solution to ongoing protests had to be found but the Scottish Government was looking at using bylaws tailored to local circumstances rather than a national statute. BSACP continues to argue for a national approach in each of the four countries of the UK. The Minister did acknowledge that the Scottish Women's Health Plan contains a specific undertaking to "find ways of preventing women feeling harassed when accessing abortion care due to protests or vigils".¹²

12. BSACP also notes the passage at Second Stage on 10 November 2021 in the Seanad Éireann of the Safe Access to Termination of Pregnancy Services Bill 2021.¹³ In the debate, Senators Paul Gavan and Lynn Boylan proposed the Bill which had been drafted by Together for Safety; a further 10 Senators spoke in favour of the Bill and two spoke against. The Minister for Health, Stephen Donnelly TD, replied on behalf of the government and was strongly in favour of SAZ legislation; indeed he had already instructed his officials to give priority to drafting such a Bill. It appears that the government will draft its own Bill, working with Paul Gavan, to be introduced at the latest by March 2022.

Clause-by-clause comments

13. BSACP does not wish to make specific proposals on any rewording of the Bill but would like to make some general comments on each clause. We hope that this will be informative for the Health Committee in its scrutiny of the Bill. We believe that our submission will be helpful, coming as it does from clinicians with direct experience of managing women faced with unintended pregnancies. We will not cover the penalties imposed on conviction of the offences – these are not within our expertise and we feel sure that others better qualified will make submissions on this. Nor do we comment on the financial implications of such legislation.

Clause 1

14. We note that actions taken by 'D' (those who are not protected persons) that are criminalised generally include those that impede access to abortion services or harrass protected persons. In clause 6(3), 'recording' is specifically mentioned – we take this to mean audio, still photography or video recording. Other jurisdictions specify, too, any protest or pavement interference in relation to abortion, including erection of signs, use of sound amplification and projection of images onto nearby buildings. The Committee may like to consider whether an expansion of the description of criminalised actions is needed. We realise that a list will never be complete and attempts may be made by protestors to create new types of action that have not been tried before.

Clause 2

15. The Bill states that abortion clinics, where treatment is actually carried out, are 'protected premises'. As far as we are aware, there are currently no such clinics run by the independent sector in Northern Ireland. We commend the foresight of the drafters in planning ahead for this possibility. We do not, however, find it entirely clear in the Bill that such premises would be 'automatically' designated as surrounded by a SAZ, as specified in the Memorandum. Nor is it clear who would determine the precise extent of the SAZ.

Clause 3

16. We believe that the categories of premises itemised in the Bill are satisfactory: hospital, community clinic, general practice and 'other'. We welcome the fact that premises eligible to apply for a SAZ can include those that advise, counsel and refer in for treatment. We believe it is reasonable that all such premises are not automatically allotted a SAZ but service managers need to make an application.

Clause 4

17. We believe the definition of those eligible to be protected is wide enough. It includes the person accessing legitimate health care, supporter/escort (be it friend, relative or doula) and any member of staff employed by or contracting services to the protected premises (including all support workers, not just those relating to the service provided but to maintaining the building too).

Clause 5

18. The SAZ extends to the 'immediate vicinity' of the protected premises. There is a balance to be struck here between a blanket rule for SAZ sizes and individualised zones. According to the proposed Bill, each individual application will need administrative time spent on determining the precise geographical extent of the SAZ, presumably drawn on a map. The advantage of the Bill/statute specifying a radius would save this labour duplicated for every single hospital and clinic. The most common size of SAZs laid down in other jurisdictions is a radius of 150 metres; the Bill introduced in the Seanad Éireann specifies 100 metres. BSACP does not hold strong views on this but would point out the administrative time and expense being committed to in the current proposal.

Clause 6

19. The scope of the three general categories of offence laid out in this clause is sensible.

Clause 7

20. The powers given to the police in this clause appear to us proportionate and reasonable.

Clause 8

21. The 8-week period allowed for the application process for a SAZ seems reasonable to us. We refer back to the labour intensity we mentioned before and to the need for the Department of Health to hold multiple consultations during this 8-week period and to publish the details of each SAZ. We feel there is a lot to be said for a universal 150 metre radius SAZ.

Clause 9

22. We believe these are the appropriate rights to be balanced by the statute. They accord with our Position Statement.

Clause 10

23. BSACP agrees with the need to monitor the effectiveness of the SAZs. Although, in general we feel that abortion should not be exceptionalised, we see the need to monitor the *de facto* situation once each SAZ has been set up. The annual report should not be a vague, general document. There would need to be specific criteria laid down as to how effectiveness would be measured. There would need to be reporting on each and every breach in the law and the nature of any subsequent prosecutions/convictions and the amount of any fines. But, more than

this, ensuring the safety and dignity of protected persons would need detailed feedback from each health service with a SAZ for an overall assessment to be made. Otherwise it could be that less flagrant infringements of the law that escape police action remain undocumented.

24. We are unsure if this monitoring function should be the responsibility of the Department of Health or the Department of Justice or even an independent body. We feel this should be carefully considered. We also think that the Committee should discuss the possible mechanisms for action to be taken if a SAZ was found not to be effective.

Conclusions

25. BSACP supports the establishment of Safe Access Zones in Northern Ireland through national legislation, as proposed, following the lead of the established 2019 Isle of Man abortion law and similar Bills currently being discussed in two other nearby jurisdictions. We feel that this Bill contains the essential elements needed for such a statute.

References

1. Foster AM, Persaud MS, LaRoche KJ. "I didn't doubt my choice, but I felt bad": a qualitative exploration of Canadian abortion patients' experiences with protestors. *Contraception* 2020;102:308-13.
2. Foster DG, Kimport K, Gould H, et al. Effect of abortion protestors on women's emotional response to abortion. *Contraception* 2013;87:81-87.
3. Cozzarelli C, Major B, Karrasch A, et al. Women's experiences of and reactions to antiabortion picketing. *Basic and Applied Social Psychology* 2000;22(4):265-75. doi: 10.1207/S15324834BASP2204_1
4. NAF. Violence statistics & history Washington DC: National Abortion Federation; 2020 [Available from: <https://prochoice.org/education-and-advocacy/violence/violence-statistics-and-history/>]
5. Cohen DS, Joffe C. *Obstacle course: the everyday struggle to get an abortion in America*. Oakland: University of California Press 2020.
6. *Dulgheriu and Orthova v London Borough of Ealing* [2019] EWCA Civ 1490 [Available from: <https://www.bailii.org/ew/cases/EWCA/Civ/2019/1490.html>]
7. Bras S, Gomperts R, Kelly M, et al. Accessing abortion outside jurisdiction following legalisation of abortion in the Republic of Ireland. *BMJ Sex Reprod Health* 2020 doi: 10.1136/bmj.srh-2020-200849
8. Committee for Health. *Severe Fetal Impairment Abortion (Amendment) Bill: Health and Social Care Trust Chief Executives Belfast: Northern Ireland Assembly Official Report (Hansard); 2021* [Available from: <http://data.niassembly.gov.uk/HansardXml/committee-27167.pdf>]
9. ICNI. *Beyond decriminalisation: pregnancy choices and abortion care in Northern Ireland Belfast: Informing Choices Northern Ireland; 2021* [Available from: <https://informingchoicesni.org/wp-content/uploads/2021/06/Beyond-Decriminalisation-Report.pdf>]
10. Northern Ireland Abortion & Contraception Taskgroup. *Report on sexual and reproductive health in Northern Ireland London: Faculty of Sexual & Reproductive Healthcare; 2021* [Available from: <https://www.fsrh.org/documents/niact-full-report-31st-march-2021/>]
11. Mackay G. *Members' Business – S6M-01767: Abortion Clinic Buffer Zones Edinburgh: The Scottish Parliament; 2021* [Available from: <https://www.scottishparliament.tv/meeting/members-business-s6m-01767-gillian-mackay-abortion-clinic-buffer-zones-november-4-2021>].
12. Scottish Government. *Women' Health Plan: a plan for 2021-2024 Edinburgh: Scottish Government; 2021* [Available from: <https://www.gov.scot/publications/womens-health-plan/documents/>]
13. Gavan P. *Private Members' Business: Safe Access to Termination of Pregnancy Services Bill 2021 - Second Stage Dublin: Seanad Éireann; 2021* [Available from: <https://www.oireachtas.ie/en/oireachtas-tv/seanad-eireann-live/>]