

FROM THE MINISTER OF HEALTH



Department of  
**Health**

An Roinn Sláinte

Mánnystrie O Poustie

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Dear *Colm,*

**Committee for Health – Department of Health Comments on the Abortion Services (Safe Access Zones) Bill**

The Committee has requested comments from my Department on the Abortion Services (Safe Access Zones) Private Members Bill.

Following the second stage vote in the Assembly on 12 October 2021, I met with the Bill sponsor, Clare Bailey MLA, and outlined my support for the intention and the spirit in which the Bill has been brought. Whilst I support the right of people to protest, I have stated on many occasions that it is wrong for people to use this democratic right of protest to obstruct or intimidate anyone who is attempting to access lawful healthcare services for whatever reason, or indeed the staff who work at these facilities. It is my view that this Bill attempts to address the important issue of safe access to healthcare premises, with a focus on the protection of patients and staff, which is to be welcomed.

However, as I also outlined to the Bill sponsor, I have some concerns about the current draft Bill in terms of feasibility, and in particular the obligations it would place upon my Department around designation of safe zones, and the monitoring and review role the Department would be required to carry out under this proposed legislation. I should note that the Bill sponsor recognised these concerns, and undertook to consider alternative ways that the intended aims might be achieved, including the role that other organisations might potentially have, and to revise the Bill if this were appropriate. However, as it was not possible to do so in advance of the Committee stage, I have set out my Department's response to the current draft Bill for the Committee's consideration below.

My Department's primary concerns relate to the statutory responsibility it would have under this Bill to, in effect, determine where a criminal offence does or does not take



place, and to monitor the effectiveness of such determinations on an ongoing basis. In making these decisions, my Department would become responsible for balancing the safety and dignity of protected persons and the right to respect for private and family life on the one hand against the right to manifest religious belief and the rights to freedom of assembly and expression on the other. In my view, these are not appropriate functions for the Department of Health, as it does not, and should not, have competence in this arena. Such matters are therefore better left to the judicial system. I would suggest, if the Committee is minded to support the intention of the Bill, that alternative means of achieving this should be considered.

As currently drafted, the Bill places certain legal obligations on my Department, such as the need to designate safe zones at the request of any operators of premises which provide treatment, advice, information or counselling relating to the termination of pregnancy, within an eight week period of the request. This may include private providers as well as Health and Social Care (HSC) Trusts, which in itself would create several practical difficulties if my Department were responsible for this, as described in further detail below. In doing this, my Department would be required to consult with various individuals and bodies, including the clinic operator and the police. My Department would also be obliged to publish details of each safe access zone, along with an annual report, setting out whether, in the opinion of the Department, each safe access zone has been effective in protecting the safety and dignity of protected persons.

The practical considerations include the potential need for my Department to designate safe access zones in differing clinical settings, including those for which it does not have statutory responsibility. Some abortion-related services, as covered by the provisions of the draft Bill, take place in town centres, some of which are in private premises, and which can be adjacent to commercial premises, roads and public walkways; others take place in hospitals and other HSC premises. The way in which safe access zones are designated, enforced and monitored would therefore vary greatly according to the clinical location. While all users and providers of lawful healthcare services are equally entitled to protection from harassment or intimidation, the additional complexity involved in implementing these provisions in urban or in private settings would be further beyond the competence of my Department.

Also, as I have pointed out to the Bill sponsor, it will be necessary for any provisions describing the type and location of services covered by the Bill to be able to accommodate the potential for future changes to the current location and delivery model.

There is a further practical concern around the appropriateness of my Department being responsible for a monitoring and reporting requirement, particularly when another agency (PSNI) would be responsible for enforcement. I understand that the Health Committee intends to consider the roles and responsibilities of the PSNI and the Department of Justice (DoJ) within this process. I would welcome this and any revisions which reflect the practical considerations around enforcement, monitoring and reporting, and which in turn may allow the Bill to have the desired impact.

It should be noted that, on introducing the Abortion Services Directions in July 2021, the Secretary of State for Northern Ireland referred to the matter of abortion protests in a letter to Executive Ministers, and asserted the view that this issue should be reviewed *once services are operational*, and that this should be considered by the DoJ with the assistance of the Department of Health. The Health Committee will be aware that some

abortion services, whilst not yet commissioned, are currently operational across most of Northern Ireland, with the current exception of the Western HSC Trust. My Department has communicated with DoJ officials in relation to indications by the Justice Minister that she may develop a legislative approach to this issue, however there appear to be no firm plans by DoJ to do so at present.

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In considering the above, I trust that the Committee will also give due consideration to whether any revision to existing legal provisions and protections, such as those set out in the *Protection from Harassment (NI) Order 1997*, might offer a more feasible route to achieving the Bill's aims.

The Committee will be aware that, in June this year, my Department restarted a Project to develop a draft service specification for the commissioning of abortion services under the new legal framework introduced by the Abortion (Northern Ireland) (No.2) Regulations 2020, with proposals expected to be presented to the Executive in early 2022. Whilst the Project scope does not include the designation of safe access zones, as this is not within my Department's competence for the reasons outlined above, this work will remain mindful of the need to design services that women and staff can access safely and free from obstruction, and this will remain my Department's priority. The Project, and any future commissioning decision relating to these services, will remain cognisant of any decisions taken by the Assembly in respect of the Abortion Services (Safe Access Zones) Bill, or any other relevant changes to the current legislative framework.

Yours sincerely



**Robin Swann MLA**  
**Minister of Health**

