

**RESPONSE OF THE COUNCIL FOR PUBLIC AFFAIRS OF THE
PRESBYTERIAN CHURCH IN IRELAND TO THE NORTHERN IRELAND
ASSEMBLY COMMITTEE FOR HEALTH CALL FOR EVIDENCE ON
THE ABORTION SERVICES (SAFE ACCESS ZONES) BILL**

NOVEMBER 2021

General Comments

1. The Presbyterian Church in Ireland (PCI) has over 200,000 members belonging to more than 530 congregations across 19 Presbyteries throughout Ireland, north and south. Included in our membership are women and families who have personal experience of circumstances leading to a crisis pregnancy, those who offer pastoral support during these difficult times, and many medical and health professionals who provide professional advice and care to women throughout their pregnancy. The Council for Public Affairs is authorised by the General Assembly of the Presbyterian Church in Ireland to speak on behalf of PCI on matters of public policy, and we welcome this invitation from the NI Assembly Committee for Health to respond to its call for evidence on the Abortion Services (Safe Access Zones) Bill.
2. PCI recognises that this legislation is not about opening up another debate about the nature and provision of abortion services in Northern Ireland. However, we feel it is important to restate our position that the CEDAW report¹ upon which the new legislative framework for the provision of abortion services in NI is based, is flawed and inaccurate. Further the legislative framework which has been introduced by the UK Government adopts a maximalist approach to the implementation of the CEDAW recommendations, in opposition to the views and opinions of almost 80% of those who responded to the 2019 consultation.
3. PCI also recognises that the matters under consideration through this legislation are not only sensitive but cut across the lives and personal experiences of women and their families who have experienced a crisis pregnancy situation in the past, or who may do so in the future. This is not simply a theological or academic exercise for the church as many of our ministers, and others in congregations, have journeyed alongside women and families who have experienced a pregnancy

¹ [CEDAW/C/OP.8/GBR/1 \(ohchr.org\)](https://www.ohchr.org/en/hrbodies/cedaw/cedawdocs/OP/8/GBR/1)

crisis and been presented with difficult decisions. As a denomination we are actively considering how we can better support women and their families who face these challenges.

4. In response to the 2019 NIO consultation on a new legal framework for the provision of abortion services in NI PCI made the following comments²:

“Question 13: Do you agree that there should be provision for powers which allow for an exclusion or safe zone to be put in place? NO

We recognise that women and girls who attend a location to find out information about abortion services, or to access those services, can often be vulnerable and experiencing some form of mental distress. We deplore any situation where a woman seeking a termination, or medical staff involved in the provision of abortion services, are harassed or subjected to behaviour which would compound their distress.

However we suggest that existing legislation around harassment and anti-social behaviour may be sufficient to deal with the small number of issues that may arise and we endorse the use of such statutory powers to manage any illegal activity. The rights of peaceful protestors should not be diminished because of the actions of a small number who may break the law.

Question 14: Do you consider there should also be a power to designate a separate zone where protest can take place under certain conditions? NO

There should be freedom to protest, and freedom to share opinion in a reasonable, lawful and peaceful manner. This is not harassment. While women must have a clear path to access services that is not physically blocked, others should be able to exercise their fundamental right to a reasonable expression of opinion. We would however deplore any situation where a woman seeking a termination, or medical staff involved in the provision of abortion services, are harassed or subjected to behaviour which would compound their distress.”

5. PCI recognises that the legislation under consideration by the Health Committee also highlights serious matters relating the European Convention on Human Rights and specifically:

- Article 9 – freedom of thought, conscience and religion;
- Article 10 – freedom of expression;
- Article 11 – freedom of assembly and association.

² [Abortion Consultation - Presbyterian Church Ireland \(presbyterianireland.org\)](https://www.presbyterianireland.org/abortion-consultation)

6. There must be space within society to express views with which others may disagree and PCI notes the comments of Rt Hon Savid Javid MP in his statement to Parliament on the outcome of the Abortion Clinic Protest Review in 2018 that the introduction of national buffer zones would not be a proportionate response and that³:

“In this country, it is a long-standing tradition that people are free to gather together and to demonstrate their views. This is something to be rightly proud of.”

Comments on the provisions of the Bill

7. Turning to the provisions of the Abortion Services (Safe Access Zones) Bill PCI would wish to make the following comments and observations.

Clause 1: Overview

8. The broad scope of this legislation as indicated in clause 1 highlights a concern that, even if the introduction of safe access zones were considered a proportionate and reasonable response to protests outside premises providing information on abortions, or where termination of pregnancy is performed, the manner in which the Bill has been drafted means that it would be difficult to apply in practice.
9. The Bill does not seek to differentiate between those individuals acting properly, lawfully and in a sensitive and appropriate fashion contrasted with other protestors who are engaged in conduct which undoubtedly is offensive and involves harassing and intimidating women and others who access premises providing abortions and services relating to abortion.
10. PCI notes the contributions to the second stage debate on this bill which highlighted activities and behaviours that should not be part of any legitimate protest. This might include for example images so graphic and explicit so as to cause distress to people who may be seeking to access a venue which provides for abortions, or information and advice relating to abortion, and also to those who work in other parts of the same building, or even passers-by. Physically impeding a person should also not be part of reasonable freedom of expression or a display of freedom of thought, conscience and religion. Neither should the recording of images – either photographs or video recordings – be deemed to be an appropriate or reasonable form of protest.
11. The risk is that the Bill does not merely propose to inhibit harassment and intimidation and the wrongful actions of third parties interfering with a right to access abortion services but may

³ [Written statements - Written questions, answers and statements - UK Parliament](#)

have the effect of restricting any conduct, no matter how benign, within a safe access zone on the grounds that it would amount to a criminal offence.

12. A further concern arising from the draft Bill is that it opens up the dangerous precedent of restricting freedom of speech in an area where individual conscience is particularly engaged. It might be suggested that this legislation is designed only to cover the need to protect women seeking abortion services, but after this legislation is introduced, it is by no means certain that other similar types of Bills might be introduced to cover a range of other areas where there will be a conflict between individuals' rights to act in a particular way, and religious beliefs and freedom of expression which all members of society ought to enjoy freely.
13. It ought to be recognised that the draft Bill seeks to address the pernicious harassment and unlawful conduct of individuals outside protected premises. Nevertheless, it goes much further than the concerns raised in debate, so as to create a criminal offence to merely "influence" a protected person even where that may not be done intentionally but might be perceived as being undertaken recklessly. This is incredibly wide in scope with no clarity as to what might constitute "influence".

Clause 5: Defining a safe access zone

14. Clauses 2 and 3 provide the parameters by which premises should be considered as meeting the criteria of being protected. Clause 5 seeks to set the parameters for defining the 'safe access zone' around those premises. Within this clause there is no clarity as to what would constitute "the immediate vicinity of the protected premises". While Clause 8 outlines the procedure of designating a safe access zone, the reasonable extent of such a zone is not prescribed by the Bill, with no parameters or boundaries set.
15. Assuming that an immediate vicinity is defined and designated by an appropriate map, that map will need to be publicised so as to provide clarity on whether or not a particular area is a "safe access zone". This of itself will no doubt push any protestors to the margins of the site where they may quite lawfully engage in whatever protest they wish at a point beyond the safe access zone. In essence the Bill will merely move the protests thereby resulting in merely displacing the issue.

Clause 6: Offences in respect of a safe zone

16. Clause 6 presents some of the most significant difficulties with the Bill given its extremely broad scope which may criminalise the most benign of actions within a safe access zone which may be

perceived as influencing a protected person. While the influencing may be 'direct or indirect' there is no further definition of what influencing a protected person might entail. Indeed given the breadth of scope an unintended consequence could be the criminalisation of a person perceived to be positively influencing a 'protected person' towards accessing the services provided within the safe access zone.

Clause 7: Enforcement of a safe zone by a constable

17. The explanatory and financial memorandum accompanying the Bill does not give an indication of any additional costs which may be placed on the PSNI in respect of policing the legislation, or in supporting the additional responsibilities placed on police officers through Clause 7. PCI would encourage the Committee to engage with the PSNI to ascertain the implications of the introduction of the Bill, including the feasibility of enforcement, any practical repercussions, the potential financial repercussions and how these might be mitigated.

Clause 8: Procedure for designating a safe access zone

18. Clause 8 provides a mechanism by which the Department for Health may designate a safe access zone. PCI would encourage significant engagement with the Department to understand the potential costs and perceived challenges involved with regard to taking on this responsibility. This should also include anticipated legal costs from challenges to the designation of a safe access zone.
19. The suggested eight-week time-limit for the designation of a safe access zone by the Department also appears to be short given the range of personnel and organisations to be consulted. There is no specification as to who within the Department would be responsible for making this decision. Given the subject matter it should be specified that the Minister should be responsible for signing off on these decisions.
20. The Committee may wish to consider whether it should be included in the list of consultees as part of the Department's decision-making process.
21. On that latter point, there is no mechanism to appeal the decision made by the Department in respect of the designation of a safe access zone. Further while the Department may revoke the designation if it appears that the operator no longer wishes there to be a safe access zone, there is no real or robust mechanism for regular review.

Clause 9: Exercise of functions

22. Here is the only mention within the Bill of the need to be cognisant of the ECHR articles relating to the freedom of assembly, freedom of thought, conscience and religion, and freedom of expression. The broad scope of the legislation has the potential to restrict freedom of expression and interfere with the freedom of religious belief and conviction.
23. The Committee should be aware of the dangers in introducing such broad legislation because of the wide-ranging and potentially damaging future implications it might have for future legislative regimes which are brought into effect ostensibly to protect individuals' rights but at the cost to freedom of expression and freedom of religious expression and belief.
24. The Bill sponsor has not identified through the explanatory and financial memorandum what advice or consultation she has had with the NI Human Rights Commission in respect of this legislation, including the Commission's assessment on how rights might be appropriately balanced.

Clause 10: Monitoring of effectiveness of safe access zones

25. More clarity is required regarding the reporting responsibility of the Department. The proposed annual report should be laid before the NI Assembly and detail the number of requests for safe access zones; a summary of the consultation process and outcome in each case; the number of safe access zones designated including location and extent; the number of appeals registered and the outcome of such appeals; the effectiveness of the safe access zone including details of displacement with regard to protests.

Comments on suggested alternatives

26. PCI recognises the desire of the Bill sponsor to address the extreme forms of protest currently being experienced by some women and outlined in the Assembly debate on 12th October 2021. However PCI encourages the Committee to consider whether existing legislative provision, properly enforced, provides the remedies sought.
27. During the second stage debate there was much focus on the Protection from Harassment (Northern Ireland) Order 1997 and whether its provisions were sufficient to deal with the types of incident addressed by this legislation. That defines harassment pursuant to Article 2 in the following way:

Harassing a person includes alarming the person or causing the person distress.

28. Article 3 then makes clear that a person shall not pursue a course of conduct which amounts to harassment of another and which he knows or ought to know amounts to harassment of the other.
29. The definition of a course of conduct is provided under Article 2. That must involve conduct on at least two occasions.
30. Article 4 creates an offence of harassment. Article 7 provides for the power of a Court to impose a Restraining Order where someone is convicted of an offence of harassment. Furthermore, even where an individual is acquitted of such an offence, the Court can still impose a Restraining Order pursuant to Article 7A.
31. One of the issues repeatedly raised in the debate was the fact that for a course of conduct to occur, it would have to occur on two or more occasions. That interpretation of the legislation is correct, but it may be that there was a failure to properly grapple with the definition of a “person”.
32. In addressing the definition of a “person”, it is useful to have regard to Section 37 of the Interpretation Act (Northern Ireland) 1954. This states as follows:

Words in an enactment importing (whether in relation to an offence or otherwise) persons or male persons shall include male persons and female persons, corporations (whether aggregate or sole) and unincorporated bodies of persons.
33. This therefore means that an offence of harassment can be committed where an individual pursues a course of conduct which amounts to a harassment of another as defined within Section 3 of the 1997 Order.
34. The key point however is Section 2 (2) which defines harassing a person as including alarming the person or causing the person distress.
35. It is impossible to cause a limited liability company distress. Equally, it would be difficult to cause distress to an unincorporated association. Nevertheless, insofar as an Abortion Clinic is concerned or indeed other designated premises, they will be inhabited by people.

36. In circumstances where third parties are engaged in attending at particular premises on two or more occasions in a manner which would be considered to alarm a person within the Abortion Clinic or to cause a person within the Abortion Clinic distress, then that would commit an offence of harassment. It therefore is not necessary that an individual woman (who plainly is only likely to attend such premises on perhaps as little as one occasion) is necessarily the victim of such an offence.
37. Insofar as the concerns of those seeking to promote the Bill are concerned, the Protection from Harassment (Northern Ireland) Order 1997 ought to be effective if properly applied to prohibit third parties from approaching such clinics regularly and engaging in a course of conduct which causes alarm or distress to anyone within that clinic. That would provide considerable protection to those working within such clinics and by extension their patients.
38. In respect of the further conduct of third parties as described in the speech of the Member promoting the Bill, much of that would already be captured by the existing criminal law.
39. An assault is committed in circumstances where a person acts in a way in which the victim perceives they are at risk of suffering the application of unlawful force. The conduct of protestors in pushing or spitting at individuals, as described by some of the MLAs, are criminal offences which can be lawfully and effectively dealt with within the existing law. Equally, an individual is not permitted to act in a manner which is disorderly and a specific offence exists of Disorderly Behaviour in a public place.
40. Much was made in the debate of the inability to enforce the existing legislation. That concern is viewed as equally likely to occur in the application of the proposed Bill. This concern arises because of the broad way in which it has been defined and the difficulties which are likely to arise in determining the "vicinity" and whether or not a particular act offended the terms of the legislation.

Concluding comments

41. Finally we would like to make some more general comments around the development and passage of Private Members' legislation within the NI Assembly. PCI recognises that Private Members' Bills can be a useful mechanism by which new laws can be made which may for reasons of priorities, capacity and timeliness may not be possible for the relevant NI Executive department to pursue.
42. However in the current mandate it has become increasingly prevalent for individual MLAs to bring forward legislative proposals that are significant in scope and reach. Despite this there appears to be no obligation on an MLA to provide detailed information on any consultation activities undertaken in the development of legislative proposals, including which organisations or individuals have been consulted.
43. By contrast government departments generally engage in a number of different consultation exercises throughout the process of policy development and subsequent legislative drafting. Additionally departments have a specified list of consultees to ensure that organisations representative of all Section 75 categories have an opportunity to input their views.
44. Whilst not wanting to overburden individual MLAs seeking to bring forward private members' legislation, perhaps this Committee might consider approaching the Committee on Procedures in relation to its review of private members' bills and in particular ask it to consider the requirements placed on MLAs to consult, and provide information on the outcome of any consultation exercise.
45. PCI would be happy to provide representation to the Committee once oral hearings on the Abortion Services (Safe Access Zones) Bill commence.



Rev Daniel Kane (Convener of the Council for Public Affairs)



Rev Trevor D Gribben (Clerk of the General Assembly)