

Women's Policy Group NI

WPG NI Response to Health
Committee Call for Evidence:
Abortion Services (Safe Access
Zones) Bill
November 2021

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1. Introduction:

The WPG is a platform for women working in policy and advocacy roles in different organisations to share their work and speak with a collective voice on key issues. It is made up of women from trade unions, grassroots women's organisations, women's networks, feminist campaigning organisations, LGBT+ organisations, migrant groups, support service providers, NGOs, human rights and equality organisations and individuals. Over the years this important network has ensured there is good communication between politicians, policy makers and women's organisations on the ground.

The WPG uses our group expertise to lobby to influence the development and implementation of policies affecting women. The WPG is endorsed as a coalition of expert voices that advocates for women in Northern Ireland on a policy level. This group has collective expertise on protected characteristics and focus on identifying the intersectional needs of all women; in line with international human rights mechanisms.

The organisations represented in this response have extensive experience and expertise through working with a range of groups impacted by the upcoming legislation including; women, girls, trans men, non-binary people, disabled people, bisexual and lesbian women, victims of domestic abuse, victims of rape and sexual assault, rural women, those with dependents, migrant women and more. All of these groups mentioned are set to benefit from the introduction of safe access zones legislation in Northern Ireland; if it adequately takes the concerns of these groups into account.

Within the Women's Policy Group Feminist Recovery Plan, originally launched in 2020¹ and relaunched in 2021², the WPG provided a comprehensive overview of the severe impact of the Department of Health's failure to provide accessible abortion services on women in Northern Ireland. The issues, evidence and recommendations made by the WPG within the Feminist Recovery Plan and the other work of the WPG and its members is crucial to fully addressing issues relating to abortion services in Northern Ireland.

¹ Women's Policy Group (2020) [WPG COVID-19 Feminist Recovery Plan](#).

² Women's Policy Group (2021) [WPG COVID-19 Feminist Recovery Plan: Relaunch - One Year On](#)

This evidence submission will highlight the evidence compiled by the WPG in recent years and will make several recommendations in relation to specific aspects of the Abortion Services (Safe Access Zones) Bill. This evidence is a joint submission from several WPG members including:

- Women's Resource and Development Agency
- Alliance for Choice
- HERe NI
- Raise Your Voice
- Northern Ireland Women's European Platform

This response was prepared by the following WPG members:

- Rachel Powell - Women's Resource and Development Agency
- Emma Campbell - Alliance for Choice
- Elaine Crory - Women's Resource and Development Agency/ Raise Your Voice
- Jonna Monaghan - Northern Ireland Women's European Platform
- Danielle Roberts - HERe NI
- Aoife Mallon - Independent Contractor for WRDA

Please note that this response also includes evidence from other WPG work, compiled by a range of WPG members. If you have any questions or queries about this evidence submission, or would like the WPG and the relevant membership organisations involved in this joint submission to discuss this evidence with the committee further, please contact Rachel Powell, Women's Sector Lobbyist, rachel.powell@wrda.net or Elaine Crory, Good Relations Coordinator elaine.croory@wrda.net.

1.1 Endorsements

The WPG would like to endorse the responses submitted to this call for evidence by Alliance for Choice and the Northern Ireland Human Rights Commission (NIHRC). In particular, the WPG endorse Recommendation 7.13 from the NIHRC Monitoring Report on Reproductive Healthcare Provision in NI³ which recommends:

³ Northern Ireland Human Rights Commission (2019) 'Monitoring Report on Reproductive Healthcare Provision in Northern Ireland' Available at: <https://nihrc.org/uploads/publications/Reproductive-Healthcare-Monitoring-Report-FINAL.pdf>

“Ensure women and girls are protected from harassment when accessing family planning information and termination services. This includes enabling the creation of safe or buffer zones as required and working with the Department of Justice to ensure that effective laws are in place and fully implemented to enable complaints of such harassment to be effectively investigated and that perpetrators are dealt with in accordance with such laws.”

2. Past Consultations Responses, Evidence Submissions and Briefings:

Several members of the Women’s Policy Group have been campaigning on matters relating to reproductive justice for decades. Although abortion was decriminalised in Northern Ireland on 21st October 2019, and abortion services were due to be available from the 31st March 2020, it is extremely disappointing that in November 2021, there is still extremely limited access to abortion and there has been a failure to fully commission services.

The WPG has published a wide range of evidence through various evidence submissions, public consultation responses and specific briefings on issues relating to this Bill. Responses made by the WPG and some of our members, in relation to issues covered in this Bill, include:

- [WPG Response](#) to the Northern Ireland Office (NIO) Consultation on a New Legal Framework for Abortion Services in NI
- [WPG Response](#) to the NI Assembly Health Committee’s Call for Evidence on the Severe Fetal Impairment Abortion (Amendment) Bill
- [WPG Response](#) to Judge Marrinan’s Hate Crime Review Consultation

2.1. Content from WPG Response to NIO Consultation on Abortion Framework

In particular, we would like to draw attention to the WPG response to the NIO Consultation on an Abortion Framework for Northern

Ireland. Many of the recommendations we made throughout this are of relevance to the Abortion Services (Safe Access Zones) Bill. The following paragraphs have been taken from this response.

For context on Northern Ireland, Belfast City Council supported a motion calling for exclusion zones to reproductive healthcare facilities in 2017 and this gained cross-party support; including support from the DUP.

Protesters outside of clinics and healthcare facilities are extremely distressing and a large invasion of the private life pregnant people seeking an abortion and their families. Protesters further enhance the extreme stigma surrounding abortion and they have no place in anyone's healthcare experience. Protests outside the Marie Stopes Clinic, Brook clinic and the Family Planning Association, were so distressing to those accessing healthcare that a volunteer clinic escort service was required for patients; with many patients and escorts facing verbal abuse, harassment, threats and, on occasion, physical assault.

For some leaving maternity hospitals, they are leaving without their babies and face being re-traumatised by protesters who attack each woman who looks to them as one who is of a child-bearing age. These protesters seek to humiliate these women, and further stigmatise them, this should not be tolerated nor enabled. Protesters should not be allowed to insert themselves into the private lives of those seeking abortions.

The WPG supports the freedom of opinion and expression, but protests of this kind involve threatening individuals, who are making an extremely private decision, in a public setting; this should be described as harassment and abuse rather than protest. This sort of protest should be condemned and banned from being near any healthcare facility in Northern Ireland.

The WPG believes it is necessary to deliver on all CEDAW recommendations to achieve full sexual and reproductive rights in Northern Ireland. For too long, women, girls and pregnant people have faced archaic laws, impossible barriers and immense stigma when it comes to abortion. Too many people have had to travel or continue with unwanted/forced pregnancies due to the 1861 Offence against the Person Act, and it is a relief to the women, girls and

pregnant people of Northern Ireland that abortion has finally been decriminalised.

It is essential that there is also support for those with a conscientious commitment to providing abortion care. For example, protection from discrimination and targeted harassment from colleagues, anti-abortion groups or individuals. Whilst conscientious objection often refers to the freedom of religion, consideration needs to be given to freedom from religion when trying to access healthcare. Training for healthcare professionals on conscientious objection and its limits should be mandatory; especially as recent interviews from some GPs have suggested that the doctor should "try to reason with her." This would be going beyond the realm of conscientious objection and it is vital that pregnant people are still able to access an abortion, without stigma, judgement or delay.

3. WPG Feminist Recovery Plan:

3.1. Overview of WPG Feminist Recovery Plan:

The WPG NI COVID-19 Feminist Recovery Plan highlights the disproportionate impact of the pandemic on women and makes several recommendations for addressing this impact. The Plan also provides detailed evidence of pre-existing gender inequalities in our society, which have become exacerbated as a result of the pandemic. The Plan covers a wide range of topics, including violence against women, health inequalities and women's poverty, within six main Pillars: Economic Justice, Health, Social Justice, Culture, Brexit, Human Rights and a Bill of Rights, and International Best Practice.

As many members of the Health Committee will be aware, the WPG published a COVID-19 Feminist Recovery Plan in July 2020 (and a relaunched version in July 2021) that provided a comprehensive roadmap on how the NI Executive could not only address the disproportionate impact of COVID-19 on women, but also address the structural inequalities existed before the pandemic that led to such a disproportionate impact on women. A summary of recommendations from the Relaunched WPG Feminist Recovery Plan can

be accessed [here](#). We would like to reiterate our recommendations in relation to abortion, maternal health and bodily autonomy below.

3.2. Abortion content from WPG Feminist Recovery Plan

Since 22nd October 2019, new legislation decriminalised abortion in Northern Ireland. However, instead of access becoming mainstreamed within the health service over a year after the regulations were laid, the Minister for Health has failed to commission the services required by law. Alliance for Choice (AfC) have maintained public and political pressure to enact our legal access to abortion.

NI now has the most progressive law on these islands, especially with the recommendations from the CEDAW inquiry into Abortion in NI now enshrined in primary legislation. The WPG wish for the abortion legislation to be honoured to the letter and urgently. The NI Executive blockage of Health Trusts interim Early Medical Abortion (EMA) services initially, and their subsequent precarity, illustrates clearly how the Department of Health and one of the main political parties is governing against the best interests of people living in NI.

It is testament to the public campaigns of AfC, Doctors for Choice NI, the work of individuals within the trusts and the Royal College of Obstetricians and Gynaecologists (RCOG) that the Executive relented and allowed the Trusts to provide abortions without commissioning. AfC continues to signpost access to the online EMA pills and train ordinary people on how to self-manage pills safely for themselves. AfC provides these services because of an urgent need but they should not have to. The Health Trusts should have been supported with what the World Health Organisation (WHO) has classed as essential services.

There has been a 28% increase in NI requests to the Women on Web services since the law was changed. This is unacceptable. Though these services are safe and it is legal for women and pregnant people to use them, they have nominal fees and present no aftercare, which could be offered by a locally NHS run telemedicine service. Since the beginning of the outbreak WHO recommended that services related to reproductive health are considered part of

essential services during COVID-19. In June 2020, WHO recommended⁴ that abortion provision in the global pandemic should:

"Minimise facility visits and provider-client contacts through the use of telemedicine and self-management approaches, when applicable, ensuring access to a trained provider if needed."

Abortion telemedicine has been available in Ireland, England, Scotland and Wales since the onset of the pandemic. Northern Ireland remains the only place in the UK and Ireland where a safe, cost effective and practical method of abortion care has been denied to individuals seeking abortions. Emma Campbell of AfC said:

"There is no evidence-based reason for blocking these services, they have proven to be safe, effective and preferable to many people unable to travel even outside of a global Covid-19 outbreak."

In October 2020 an Open Letter was sent to the Health Minister for Northern Ireland, Robin Swann.⁵ This letter included the signatures of 76 organisations, calling on the Minister for Health to commission abortion services in line with the regulations and WHO recommendations. The letter highlighted:

"On Monday 5th October 2020, the Northern Health Trust reluctantly advised they are no longer in a position to provide early medical abortions due to lack of resources. This was as a direct result of a failure of the Department of Health to commission or fund ANY services. This is just as the confirmed cases of COVID-19 have surged in that same Trust, with risk of contagion amongst the highest across the UK and Ireland. The blocking of EMA services and a complete lack of telemedicine as a result of the DoH inaction, means those seeking abortions will have to travel to GB, which directly contravenes WHO

⁴ World Health Organization (June 2020) 2.1.4 Sexual and reproductive health services, Maintaining essential health services: operational guidance for the COVID-19 context, Interim guidance (pp. 29)

⁵ Alliance for Choice (2020) Open Letter to Robin Swann, Health Minister for Northern Ireland - 21st October 2020. Available at: <https://www.alliance4choice.com/news/2020/10/open-letter-to-robin-swann-health-minister-for-northern-ireland>

guidance, placing service users and healthcare workers at increased risk of COVID-19 and adding unnecessary cost and pressure to NHS services...

Since April 2020, over 150 women and pregnant people from Northern Ireland have had to use the Central Booking system of the British Pregnancy Advisory Service (BPAS) and have been forced to travel to GB in order to access the care they require, more have used Women on Web and Women Help Women services when a straightforward pathway was unavailable to them."

The Secretary of State for Northern Ireland and the Department of Health, led by Robin Swann, need to do their jobs, uphold the law and deliver the services they were charged with implementing. Without this there will continue to be issues with the provision of abortion services across the Health Trusts as evidenced by the fact that there are now no longer EMA services available in the South Eastern Trust since January 2021⁶.

Because abortion has been more heavily restricted in Northern Ireland, it has fostered a society that is in many ways, decades behind on women's reproductive healthcare⁷. In adolescence, this manifests itself in relationships and sex education (RSE) in schools. Roughly 70% of post-primary schools in NI use abstinence based RSE, provided from an evangelical Christian perspective. Many schools utilise the ethical elements of religious studies to teach only a "Christian" perspective on abortion. Yet groups recently formed such as the [Faith Voices for Reproductive Justice](#) demonstrate there is no singular "Christian" perspective on abortion. Many people of faith require access to the full spectrum of reproductive healthcare.

Stigma continues around women's sexuality, resulting in barriers to contraception and abortion services. In January 2021, over 700 women were contacted regarding poor placement of contraceptive implants between 2017 and 2020. A number became pregnant and many would have been unable to access abortion services at home or been at risk of prosecution for seeking telemedicine services from

⁶ AfC [statement](#) on South Eastern Trust closure of services - 5th January 2021

⁷ Northern Ireland women with endometriosis in eight-year wait for diagnosis, Belfast Telegraph, April 2021, <https://bit.ly/3vOgLkv>

online providers. On top of these barriers, there are long waiting lists for long-acting reversible contraception and vasectomies, up to 2 years in some cases. Many people can become pregnant more than once in that time.

The horrific experiences of people trying to access the care that is available needs to be ameliorated with the passing of the Private Members Bill on Safe Access Zones and a detailed list of NHS sanctioned treatment needs to be published to avoid women being misled by organisations such as Stanton Healthcare⁸. The Government has an obligation to take effective measures to protect and guarantee women, girls and pregnant persons' right to health, physical integrity, non-discrimination and privacy as they seek healthcare information and services, free of harassment and intimidation amounting to obstruction of their access to that healthcare. As access to abortion is often timebound and urgent, it is vital that exclusion/ safe access zones are introduced as soon as possible.

3.3. Women's testimonies - WPG Feminist Recovery Plan Primary Research:

The WPG would like to highlight some of the testimonies we received from women through our WPG Feminist Recovery Plan primary research on issues relating to abortion:

"[Access to abortion or contraception] - You did feel that because NHS was overloaded you could not ring your GP"

"Women need access to abortion services and counselling, Covid is NOT AN EXCUSE TO REFUSE SERVICES WHICH HAVE BEEN LAID DOWN BY WESTMINSTER - STOP THE EXCUSES"

"Was able to access ema [Early Medical Abortion] in a local clinic in Western Trust area. Luckily at that time services were still ongoing. I don't know what I would have done if the process wasn't so easily accessible at the time. I did face a longer wait than I'd have liked due to one doctor carrying out the service but the care I received was excellent."

⁸ Shado Magazine (2021) 'Stanton Healthcare needs to answer for deliberately misleading abortion seekers in Belfast - Shado Magazine (shado-mag.com), April 2021. Available at: <https://bit.ly/3gPRouB>

"[Accessing abortion in NI] - It was the most stressful, traumatic experience of my life."

"Because of my post code and where the clinics that would have been dealing with me were, there was nothing they could do to help me."

"... Even looking back on it now, I feel like shock, like it's 2021, abortion was legalised in Northern Ireland and women still can't access that because of all these loopholes."

4. General Comments on the Abortion Services (Safe Access Zones) Bill

4.1 International Mechanisms and Standards

The Bill directly implements a recommendation within the report from the CEDAW Inquiry into abortion legislation in Northern Ireland under the Optional Protocol to CEDAW, which requires the State Party to protect women from harassment by anti-abortion protesters by investigating complaints and punishing perpetrators⁹. This is a welcome development, as progress on implementing these recommendations has been very slow since the decriminalisation of abortion, and the recommendations only together create the conditions in which women and pregnant people have access to full sexual and reproductive health services.

The Bill is also entirely consistent with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 12 of the Convention, which deals with healthcare, requires State Parties to ensure women access to full healthcare, including family planning. It also emphasises the right of women to enjoy full human rights, including non-discrimination and non-harassment in all areas of life (Articles 1-3), and the elimination of gender stereotypes, including those that prioritise the role of women as

⁹ CEDAW Committee (2018) Inquiry into abortion legislation in Northern Ireland under Article 8 of the Optional Protocol to CEDAW. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeCategoryID=7

mothers (Article 5)¹⁰. It is relevant to note in this context that Northern Ireland has an obligation to implement CEDAW under international law, as part of the UK's overarching obligations as a State Party to CEDAW.

Legislation on safe access zones have been implemented elsewhere, including in most states within Australia, where the experience has been positive for clinic staff and users.¹¹

The United Nations Human Rights Committee made a 'General Comment on article 6 of the International Covenant on Civil and Political Rights, on the right to life'. This included the declaration that: "Although States parties may adopt measures designed to regulate voluntary terminations of pregnancy, such measures must not result in violation of the right to life of a pregnant woman or girl, or her other rights under the Covenant. Thus, restrictions on the ability of women or girls to seek abortion must not, inter alia, jeopardize their lives, subject them to physical or mental pain or suffering which violates article 7, discriminate against them or arbitrarily interfere with their privacy."¹²

The European Convention on Human Rights (ECHR)

The UK is a party to the ECHR, and bound by the judgments of its adjudicative body, the European Court of Human Rights. From the early 2000s this Court has heard a number of cases related to restrictive legal frameworks for abortion. This provides a corpus of jurisprudence determining when human rights under the ECHR are engaged and may be violated. In cases where abortion is lawful but access is prohibited in practice - for example, by health professionals, structures or unclear information - the Court has

¹⁰ [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW, 1979), article 12. The UK signed the Convention in 1981 and ratified in 1986. The State Party

¹¹ Marie Stopes Australia (2020) [Safe access zones in Australia - legislative considerations](#)

¹² Full text on abortion rights from UN available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23797&LangID=E>

found a violation of Article 8¹³ and Article 3¹⁴. These issues may be engaged in Northern Ireland due to a lack of appropriate and timely pathways and information on lawful abortion¹⁵.

UK-wide Perspective

In England and Wales, the Anti-Social Behaviour Crime and Policing Act 2014 provides for Public Space Protection Orders (PSPOs). These have been used to prohibit protest and other activity outside clinics providing abortion services. However, this legislation does not apply to Northern Ireland and there are no equivalent powers in Northern Ireland legislation.

In Northern Ireland, pregnant people rely on the Protection from Harassment legislation which simply is not adequate for women and pregnant people in these circumstances. Protection from Harassment legislation requires that the same person harassed the victim on two or more instances. In terms of harassment outside abortion clinics, many of the anti-choice protestors are aware of this law and change their behaviour to target different people; meaning that victims are unable to rely on this legislation for protection.

4.2 Experiences in Northern Ireland

Alliance for Choice have collected testimonies from people who have encountered anti-choice protests through an online portal since January 2020. Commenters often spoke of being nervous seeing the protestors and feeling intimidated and scared. There were many reports of 'protesters' blocking the entrance to clinics, shouting including using loudspeakers, and recording clients. Some of the testimonies collected by Alliance for Choice include:

¹³ *Tysiac v. Poland* (Application no. 5410/03) (2007); *A., B. and C. v. Ireland* (Application no. 25579/05) (2010); *R. R. v Poland* (Application no. 27617/04) (2011); *P. and S. v Poland* (Application no. 57375/08) (2012)

¹⁴ *R. R. v Poland* (Application no. 27617/04) (2011); *P. and S. v Poland* (Application no. 57375/08) (2012)

¹⁵ Kathryn McNeilly (2017) 'Beyond Article 8: The European Convention on Human Rights and Abortion in Cases of Fatal Foetal Abnormality and Sexual Crime' Stormont Knowledge Exchange Seminar Series. Available at: <https://niassembly.tv/beyond-article-8/>

"Baby killer, evil bitches getting abortions, whores, fallen women. never calm always abusive. Actively blocking not only the entrance to clinics but the whole pavement."

"Approx 20-30 protesters the last day I saw. One man with a microphone and loud speaker roaring about hell and sin. All with placards of fetus' or big black writing saying babies are murdered here."

"Uncomfortable and trapped. There were protesters on each side of the road as well as the road opposite the clinic. The person recording also made me feel uncomfortable."

The protests also had an impact on people who were not even accessing abortion: "I had an appointment in a solicitors office across the road from John Mitchell place Newry, I was so scared entering hill Street newry."

Many commented on the graphic images held by those outside clinics and how this was very distressing, particularly for people who had also experienced miscarriage:

"Extremely intimated, i have ptsd from a complicated birth after i suffered a miscarriage and these images are so traumatising ive been waking up soaked in sweat and my nightmares have returned contantly running round a hospital searching for my baby."

"The pictures made me sick to my stomach. They are incredibly distressing to view. The thought that this woman with the clipboard was there to harasses women accessing health care shook me to the core. My distress was exasperated by the fact that it was the day after the report on Mother and Baby homes was released."

4.3 Why the WPG support this Bill

The principles underpinning our support for this Bill are simple; abortion is healthcare, it is now legally accessible, and nobody should endure verbal abuse to access it, any more than they would any other health treatment. Similarly, no worker should be subject to intimidation, abuse or harassment while accessing their place of work.

At the introduction of the Bill in the Assembly, much of the argument from those who opposed the Bill centred on the right to free speech, arguing in sum that the creation of safe access zones is tantamount to banning free speech - or a certain kind of free speech - in those zones, and also the right to free assembly in those zones.

Free speech and freedom of assembly are both qualified rights; there are certain things that cannot be said and certain gatherings that cannot be permitted without violating others' rights and facing legal consequences. This is already the case in law, and we have laws against hate speech, defamation laws, and laws designed to protect public safety; famously, one cannot shout "fire" in a crowded theatre without justification. This Bill does not propose to prevent the publication or distribution of materials or the articulation of an objection to abortion, simply to prevent this from happening in a targeted zone.

The requirement for this to apply in certain safe access zones is because of the nature of the zones themselves; they are not arbitrarily chosen areas and neither are they spheres of political influence. They are directly in front of the doors of clinics where people access healthcare of various kinds as well as abortion care. Some of the people who need to access these places are vulnerable, all of them are accessing legal services, whether or not they visit for abortion care.

As detailed by the Northern Ireland Human Rights Commission in their Monitoring Report on Reproductive Healthcare Provision in NI¹⁶:

"Pro-life organisations in defence of the protests have argued for the right to freedom of expression (Article 10 ECHR). In this context, the right to freedom of expression is closely linked to the right to freedom of assembly and association (Article 11 ECHR). Article 11 ECHR protection requires peaceful assembly and that a protestor does not inflict bodily harm on anyone. However, both Articles 10 and

¹⁶ Northern Ireland Human Rights Commission (2019) 'Monitoring Report on Reproductive Healthcare Provision in Northern Ireland' Available at: <https://nihrc.org/uploads/publications/Reproductive-Healthcare-Monitoring-Report-FINAL.pdf>

11 ECHR are not absolute rights and can be limited using proportionate measures that are necessary for the purposes of a legitimate aim, such as protection of health and for the protection of rights of others.

In a situation where protests are preventing access to necessary healthcare, causing distress or possibly leading to harassment of patients and staff, protecting their right to physical and psychological integrity (Article 8 ECHR) becomes a factor. Consideration of the individual circumstances will determine whether a protestor's Articles 10 and 11 ECHR rights or a patient/staff member's Article 8 ECHR right prevails.

In more extreme cases, if a woman or girl is prevented (physically or psychologically) by protestors from accessing vital reproductive healthcare that is crucial for protecting their right to life (Article 2 ECHR), it is likely that the woman or girl's Article 2 ECHR right will prevail over a protestor's Articles 10 and 11 ECHR rights. Additionally, if the protests have the impact of amounting to ill-treatment (Article 3 ECHR), as an absolute right, an Article 3 ECHR right prevails over a protestor's Articles 10 and 11 ECHR rights."

The nature of the language used by protestors towards these patients would constitute harassment if it took place over a period of time, but the nature of the care being accessed means that the same patient is unlikely to visit twice. For that reason, it escapes existing legislation on harassment, which must happen on two or more occasions to meet the legal threshold. However, failing to meet the requirements to constitute harassment does not mean that it does not, in the moment and after the fact, constitute harm. Likewise, lobbying or exerting political influence is still entirely legitimate activity, but the people who are accessing legally available healthcare are not the people with the power to influence the laws in this area, and as such, are not appropriate targets for such an attempt to lobby.

In arguments against this Bill, some argue that any kind of harassment carried out at these healthcare facilities could be pursued by legal means. There are two reasons why this remedy is not available. One is that, as outlined above, harassment requires

repeated incidents and this bar is rarely met. The other reason is that the harm caused by this kind of treatment on those subjected to it - even in the rare cases where it meets the existing legal threshold - cannot be undone by legal remedy.

It is particularly important that vulnerable groups accessing abortion care are protected from this harm. This includes those who have become pregnant as a result of violence and coercion, and minors accessing abortion services¹⁷. Lesbian and Bisexual women are more likely to be pregnant as a result of a sexual crime or violence than heterosexual women¹⁸, with bisexual women in particular being more likely to experience proportionately higher levels of domestic abuse¹⁹. Disabled women are almost twice as likely to be in an abusive or controlling relationship²⁰. Harassment at a clinic only presents an additional barrier for vulnerable groups accessing care.

This Bill is a positive step towards protecting these vulnerable groups because it is focused on the prevention of harm, designed to protect the dignity and the privacy of those accessing the facilities, whatever that reason may be. It is also cognisant of the fact that some of those accessing abortion care have become pregnant as a result of violence or coercion and are therefore especially vulnerable to harm, and some are minors. This Bill takes seriously the increased risk that these patients are at and the fact that they are often already victims of crime.

¹⁷ MSI Choices (2020) 'Marie Stopes UK Position Paper: The need for Safe Access Zones' Available at: <https://www.msichoices.org.uk/media/3345/marie-stopes-uk-position-paper-the-need-for-safe-access-zones-mar-2020.pdf>

¹⁸ Jones, R. K., Jerman, J, and Charlton, B. M. (2018) 'Sexual Orientation and Exposure to Violence Among U.S. Patients Undergoing Abortion.' Available at: <https://doi.org/10.1097/AOG.0000000000002732>

¹⁹ Office for National Statistics (2018) 'Women most at risk of experiencing partner abuse in England and Wales: Years ending March 2015 to March 2017.' Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/womenmostatriskofexperiencingpartnerabuseinenglandandwales/yearsendingmarch2015to2017#characteristics-of-women-who-are-most-at-risk-of-experiencing-partner-abuse>

²⁰ Office for National Statistics (2019) 'Disability and Crime, UK: 2019' Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/bulletins/disabilityandcrimeuk/2019#domestic-abuse>

5. Clause by Clause Comments:

This section of our response will consider specific clauses of the Bill that the WPG believe could be strengthened based on evidence from other countries and international best practice.

1. Overview
2. Premises where abortion treatments are carried out
3. Premises where information, advice or counselling about abortion treatments are provided
4. Protected persons
5. Safe access zone

The WPG is concerned that the definition of a safe access zone in this Bill is vague and requires further specification. The Bill defines a safe access zone as “including entrances to and exits from the premises and a public area outside the protected premises and in the immediate vicinity of the protected premises.” This definition does not specify how far “the immediate vicinity” extends. It could be helpful to give a specific radius measurement around the premises that is protected by a safe access zone.

In countries where safe access zone legislation is in place, such as Canada and Australia, the most commonly cited radius measurement is 150m around the premises.²¹ In Ealing in West London, the local Marie Stopes clinic has a protection order which applies within a 100m radius of the clinic.²²

6. Offences in respect of a safe access zone

The WPG is concerned that punishment relating to safe access zone offences in this Bill is limited and may not act as a sufficient deterrent to those committing these offences. The Bill proposes

²¹ Oireachtas Library & Research Service (2019) L&RS Note: Safe access zones - What do other countries do? Available at: <https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2019/2019-05-08 1-rs-note-safe-access-zones-what-do-other-countries-do en.pdf>

²² Abortion Rights Campaign (2021) 'Safe Access Zones' [Webpage] Available at: <https://www.abortionrightscampaign.ie/safe-access-zones/>

that those in breach of a safe access zone are “punishable on summary conviction by a fine not exceeding level 2 on the standard scale.” This fine increases to one not exceeding level 4 on the standard scale if the offender fails to comply with orders from police. This suggests that offenders will be fined up to and between £500 and £2500 for safe access zone related offences. If fines for these offences are too low, organisations may be willing to accept them as necessary costs and will not be deterred from committing more related offences.

These fines are relatively low compared to fines for this type of offence in other countries. For example, in British Columbia, Alberta and Quebec, fines for safe access zone related offences can be up to and between \$5000 and \$10,000. In France, under Article L2212-1 of the Code of Public Health, a judge can impose a sentence of two years imprisonment and a fine of up to €30,000 against those who prevent or attempt to prevent access to establishments where abortions take place. In South Africa, a person who is found guilty of preventing the lawful termination of a pregnancy or obstructing access to a facility for the termination of a pregnancy is liable on conviction to a fine or to imprisonment for a maximum period of 10 years.²³

The Bill also does not make a distinction between punishment for individuals and organisations or corporations. Safe access zone protests in Northern Ireland are usually organised and coordinated by groups and organisations, rather than spontaneous actions by individuals. Making a distinction in punishment for individuals and organisations or corporations would allow for the application of higher fines and stronger punishment for those coordinating and orchestrating safe access zone related offences, which could act as a stronger deterrent for those considering committing these offences. An example of this can be seen in Alberta where an individual may be fined up to \$5000 and/or up to 6 months in prison and a corporation may be fined up to \$25,000. For subsequent

²³ Oireachtas Library & Research Service (2019) L&RS Note: Safe access zones - What do other countries do? Available at: https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2019/2019-05-08_1-rs-note-safe-access-zones-what-do-other-countries-do_en.pdf

offences, these fines can increase to \$10,000 for individuals and \$100,000 for corporations.²⁴

The Bill also does not make provision for offences relating to online harm associated with safe access zones. This concern has also been raised by the NI Human Rights Commission in their response to this call for evidence, who have argued that safe access zones legislation should specifically mention offences of harassment to include photographing and audio recording. The Bill currently allows for protesters to take images or post contact information of reproductive health service staff and premises as long as they are physically outside of the safe access zone. In California, online harassment is specifically prohibited in safe access zones legislation in addition to physical obstruction, threat or damage. This prohibits posting of contact information and images of reproductive health service providers.²⁵

The WPG also agrees with the NI Human Rights Commission that provisions of this Bill should be extended to specifically recognise the use of posters/ placards with graphic images as an offence under safe access zones legislation. As noted previously in this response, these graphic images cause severe distress to those seeking abortion services and should not be allowed outside clinics.

7. Enforcement of safe access zone by a constable

8. Procedure for designating a safe access zone

The WPG is concerned that this clause of the Bill allows the Department of Health to revoke the designation of a safe access zone "where it appears to the Department that the operator no longer wishes there to be a safe access zone." This allows the Department to revoke the designation of a safe access zone without first consulting providers. In the Isle of Man, Part 3, Section 27 of the Abortion Reform Act (2019) allows the Department to do so only after consulting the person at whose request the zone was established.²⁶ Including similar requirements in Northern Ireland

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

legislation would provide greater protection and assurances for providers that their autonomy will be respected and safe access zones will only be removed with their consent.

9. Exercise of functions

10. Monitoring of effectiveness of safe access zones

The WPG agrees that there should be monitoring requirements contained in safe access zones legislation but would stress that this monitoring should be independent, open and transparent. The WPG also believes that these requirements should be strengthened to facilitate more robust monitoring practices. The Bill currently only requires the Department of Health to “publish an annual report, setting out whether, in the opinion of the Department, each safe access zone has been effective.”

This does not require the Department to consult with providers, service users or community stakeholders on the effectiveness of these zones. It also does not require the Department to take action where safe access zones are found to have not been effective. In California, safe access zones legislation requires the collection and analysis of data by the state attorney general’s office and training for law enforcement officers by experts on clinic violence.²⁷ Similar provision could be made in Northern Ireland safe access zones legislation to ensure that this monitoring is both thorough and productive.

The WPG would like to see a built-in review period included in this Bill, similar to that included in the Public Spaces Protection Order (PSPO)²⁸ that created a 100m safe access zone around the MSI Reproductive Choices clinic in Ealing, London. This Order states that:

“This decision will be formally reviewed after six months and after twelve months of operation, at which point a decision shall be taken as to whether or not to revoke the Order or for it to remain. If there is need to do so, the Council may shorten, extend or vary the order at any time in the three

²⁷ Ibid.

²⁸ Ealing Council (2018) Public Spaces Protection Order. Available at: [https://www.ealing.gov.uk/downloads/download/5745/full copy of pspo order and map](https://www.ealing.gov.uk/downloads/download/5745/full_copy_of_pspo_order_and_map)

years. If the Council wants to extend or vary the Order, they must consult appropriate community representatives, the police and owners of the affected land on the variation.”

11. Interpretation

12. Commencement

13. Short title

6. Additional Comments

To conclude, the NI Women’s Policy Group support and welcome the introduction of safe access zones in Northern Ireland. The introduction of these zones through this Bill are necessary in order to fully implement CEDAW’s recommendation to: “protect women from harassment from anti-abortion protestors by investigating complaints, prosecuting and punishing perpetrators”²⁹. The adoption of such provisions is a legally binding duty on the NI Secretary of State in domestic law³⁰. The WPG believes that safe, accessible and unhindered access to services should be guaranteed to any person seeking an abortion and is fundamental to ensuring women’s free and equal access to healthcare.

The WPG hope that every MLA on the Health Committee, regardless of their individual positions on abortion, will support this Bill on the basis of respecting the fundamental human rights of women, as recognised and protected by international human rights law. At its core, this Bill is about facilitating women’s access to healthcare, and should be considered no different to facilitating their access to other forms of healthcare.

²⁹ Report of 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 (CEDAW/C/OP.8/GBR/1) published on 6 March 2018.

³⁰ S9 Northern Ireland (Executive Formation etc) Act 2019.

ENDS

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