

Abortion Services (Safe Access Zones) Bill

Background

Abortion is a contested issue across the world because of the multiple human lives and fundamental freedoms involved. For many years in Northern Ireland, abortion was permitted only in limited circumstances pertaining to a risk to the life of the woman or a real and serious, permanent or long-term risk to her health. Pressure to make abortion available as a matter of personal choice intensified in recent decades and again following the repeal of the eighth amendment to the Irish constitution. In the absence of a sitting Northern Irish Assembly in October 2019, abortion was decriminalised in Northern Ireland and in March 2020 the government published the new framework for the provision of abortion 'services'. By this time the Northern Ireland Assembly had been re-established. As of November 2021, the Department for Health has not centrally commissioned these abortion 'services', citing the need for Executive approval. Despite this, there have been over 2000 abortions in Northern Ireland since March 2020¹. Abortion remains a criminal offence across the rest of these islands when performed outside of the boundaries of the law.

Before and since the law change in Northern Ireland, there have been protests and groups offering alternatives outside premises providing services relating to abortion. There have also been previous attempts to limit these activities. For instance, in 2017, the Green party brought a motion at Belfast City Council to stop *"anti-abortion protesters from intimidating and harassing women outside the Marie Stopes Clinic"*. It is clear that abortion remains a contested and sensitive issue here. In the midst of this tug of war, the Evangelical Alliance remains deeply committed to advocating for the human dignity of both women and their unborn children.

It is helpful and important to note that attempts to introduce exclusion/buffer/bubble/safe zones are a key part of a global campaigning strategy to normalise abortion and limit public dissent to it. Yet both Westminster and the Dail have recently rejected similar legislation. After a period of review and a call for evidence the British Home Secretary in 2018 concluded that 'introducing national buffer zones would not be a proportionate response'². Similarly, the Department of Health in Ireland claimed in August 2021 that there has been only a 'limited number' of reports of protests since the introduction of abortion in 2019, highlighting the

¹ As claimed by MP Carla Lockhart on 28 October 2021

<https://www.facebook.com/100057797720389/posts/this-week-in-parliament-i-had-some-very-constructive-discussions-on-pro-life-iss/317458090190779/>

² <https://questions-statements.parliament.uk/written-statements/detail/2018-09-13/HCWS958>

absence in need for such legislative measures. There has been no review of any evidence for such measures to be introduced in Northern Ireland.

In considering this bill, our concern is that public safety maintained along with the freedom to advocate for women and their unborn children by protesting peacefully and offering alternatives to abortion.

Our response to the issue of Safe Access Zones seeks to be:

1. Prophetic and Pastoral

We want to make it clear that nothing in this response is to be understood as the Evangelical Alliance Northern Ireland supporting or legitimising the legislation that was introduced in 2019 and 2020 around abortion. We continue to oppose this change in law, both in terms of substance and process.

We understand that this consultation deals with very sensitive issues and recognise many women who attend these legally provided services will be vulnerable. Indeed, we continue to advocate for alternative life-affirming services to be freely available in every situation and continuing long after birth. Many churches and charities are already offering a wide variety of help and practical support from befriending to debt counselling to help address the systemic causes behind the felt-need for abortion in many cases. We encourage communities and churches to continue to stand in countercultural solidarity offering refuge, restoration, and redemption for women and their unborn children in pregnancy crisis and far beyond.

There are better and more beautiful stories to be told by women and children than ending human lives in the name of human rights.

A group called *Be Here For Me*, has been set up in England following attempts in Ealing to ban alternative help outside an abortion clinic. The group was formed by women who themselves choose life affirming alternatives outside of abortion clinics and today are thankful for the children they have as a result. They seek to protect the ability of people 'to help those who want to keep their children but have no help available to them'.³ This bill, if passed, would ban such help in Northern Ireland. The many powerful stories of these women are told on their website - <http://behereforme.org/> We would encourage the Committee to

³ <http://behereforme.org/>

listen to their evidence in person before they make any decision about the further passage of this bill.

2. Engaged with the proposed text of the bill

Our basic starting point is that we are not convinced that this bill is required.

The Evangelical Alliance wants to see the protection of both public safety and the freedoms to protest and offer support. If there are gaps in legislation which need to be addressed around protecting public safety, then appropriate limited amendments could be made to existing Public Order or Harassment legislation. As it stands, we are of the view that this legislation creates illegitimate and disproportionate risks to the fundamental freedoms contained within Articles 9, 10 and 11 of the ECHR by criminalising otherwise legal activity in a blunt and blanket approach.

No government review has been carried out on any evidence obtained as a potential basis for what is a very significant change in the law. It was this kind of review of evidence that led to the governments in Great Britain and the Republic of Ireland not proceeding with similar proposed legislation.

While strongly opposing the current abortion legislation in Northern Ireland and the need for this bill, we are prepared to engage with and respond to the proposed text of the bill. In doing so we seek to address and mitigate what in our view are areas of concern around the ability to protest, express opinion and belief and offer alternative support.

Comments on the bill as proposed:

This response will consider different aspects of the bill chronologically. At the end we will include some additional concerns and summarise our perspective.

Clause 1 (Overview)

“(1) This Act requires the Department of Health to establish safe access zones for premises providing abortion services.

(2) Acts within a safe access zone which may have the effect of preventing or impeding access to the premises, or influencing, harassing, alarming or distressing persons accessing the premises, are criminalised.”

Clause 1 sets out an overview, it highlights that ‘*This Act requires the Department of Health to establish safe access for premises providing abortion services*’. This bill is designed to address alleged incidents of public order by creating and enforcing new

criminal offences which could seriously restrict some fundamental freedoms. Accordingly we would propose that the Department of Justice should be included (here and in clause 8) as a co-authority in any process which involves the creation of any such zones if this bill is to be passed.

In subsection 2 of clause 1, the wording; ‘...which *may have the effect of..*’ is speculative and very vague language making it worryingly difficult to discern the parameters of this bill.

The very framing of this bill is that the mere presence of some people (even civilly within the existing boundaries of the law) should be considered a threat to public or personal safety. As outlined above and below, the criminalisation of some people by virtue of their very presence in some public places because that ‘might’ have the effect of ‘influencing’ others is a deeply worrying development for everyone in terms of civil freedoms.

In this paragraph the bill also sets out what it intends to criminalise; ‘*influencing, harassing, alarming or distressing*’.

The criminalisation of ‘influencing’ will be heavily contested both in terms of definition and the freedoms and other rights that this could impact. There are no other descriptive words so almost any activity whether it was considered ‘positive’ or ‘negative’ could potentially be described as ‘influencing’? This term is again speculative and very vague.

A query arises in relation to why harassment needs to be addressed by this bill when Protection against Harassment Order 1997 is a legal instrument which is at the disposal of the police. If the concern is an inability of that legislation to address a one-off incident between a ‘protected person’ and others, serious enough to be criminal, then proposals to amend that legislation might be better considered.

There are additional issues with the criminalisation of the other activities in subsection 1.2 such as, ‘alarming or distressing’. Although this wording is similar to some used in other public order legislation, a key point of contention we have with the aim of this bill is the clear desire to criminalise behaviour which may be unwelcome, distasteful, irresponsible or even offensive - but critically is not, and should not be within the scope of the criminal law.

To be clear we do not want to see anyone distressed or subject to ‘grossly offensive’ material (already illegal) or criminal behaviours. Abortion is a very sensitive issue, and we would encourage people to exercise great wisdom and grace when exercising their legal rights in this area, recognising that some women attending these clinics are particularly vulnerable.

However we are concerned about the blunt criminalisation of many perfectly legal activities within the scope of this bill. In a plural democratic society people will disagree and feel strongly about issues of life and death and freedom like abortion. There is no doubt that some of the actions of some of the groups involved in protests

or offering alternative support services outside healthcare facilities have not been received well by some women, staff, and members of the public. Some behaviours and images will be considered offensive, inappropriate, and unhelpful. Where *specific* people have crossed the criminal threshold through *specific* actions then *specific* legal recourse should be pursued rather than a blunt and blanket approach.

Activities such as silent prayer or peaceful protests should not be considered a threat to public safety or 'criminal' simply because they are considered unwelcome or unpopular.

Again, while some behaviours and experiences may be unpleasant or divisive, there is no right not to be offended and such activities can be discouraged through existing legislation (where deemed criminal) or other diversionary measures rather than criminalisation.

Clause 3

There may be legitimate and proportionate reasons for limiting gatherings or activities in some spaces, particularly on Health Trust property, for example to maintain ambulance access, no smoking etc. The owners of such property can already exercise their rights in terms of what behaviours are permitted on their property without recourse to this legislation.

However, when it comes to most public spaces, the freedom to protest and express opinions and beliefs is well established in law. This bill aims to restrict some of these fundamental freedoms, namely, freedom to protest (Article 11) and freedom of expression (Article 10). Any domestic legislation that seeks to limit these freedoms must demonstrate a necessary, legitimate and proportionate aim.

Under section 3(2)d, could a school or university be defined as such premises where a safe access zone could be established if abortion pills were being dispensed (in the instance that legislation permits such action)? If so, could this mean that expressing 'pro-life' views would become a criminal offence within this area or within these institutions? What if a Church is situated close to a local pharmacy which dispenses abortion pills – could attempts be made to extend such a zone to the premises of the church?

An emerging theme from the bill is the direct or indirect establishment of a hierarchy of rights, promoting rights and protections for some individuals while threatening or indeed abolishing some rights for others.

Clause 5

It is concerning that this clause does not provide any limitations in terms of the extent of physical geography or the time-span of such a zone being created. If such

zones are created it would be important that there are clear limits as to powers which can be set on their physical boundaries and the time which they can remain in place.

Clause 6

We have already dealt with this point in more detail in our comments on clause 1 however the vague wording of clause 6 means that this bill is a particularly blunt tool. Notably, clause 6 subsection 2 (a) *'influencing a protected person, whether directly or indirectly'*. This is so wide that almost any activity by any person could be construed as indirect influence – for example this could passive activities including someone wearing a piece of crucifix jewellery around their neck, praying or leaflet distribution.

The Explanatory and Financial Memorandum only adds to our concerns. They outline the seven policy objectives in paragraph 7 and subsection (c) states: *'to prevent activities designed to cause distress or to deter a person from approaching a building – e.g., filming, unsolicited 'counselling' and pamphlet distribution'*. Worryingly this policy aim claims that the distribution of pamphlets is *designed* to cause distress – this is a very cynical reading of the motives from a largely passive and otherwise perfectly legal activity.

As previously outlined, the United Kingdom government in their review deemed prohibiting such activities as 'disproportionate' given that most activity outside clinics is passive in nature and other legislation exists where there is a genuine threat to public order or personal safety.

Then Secretary of State, Sajid Javid said,

*"In some of these cases, protest activities can involve handing out model fetuses, displaying graphic images, following people, blocking their paths and even assaulting them. However what is clear from the evidence we gathered is that these activities are not the norm, and predominantly, anti-abortion activities are more passive in nature. The main activities reported to us that take place during protests include praying, displaying banners and handing out leaflets.... Having considered the evidence of the review, I have therefore reached the conclusion that introducing national buffer zones would not be a proportionate response, considering the experiences of the majority of hospitals and clinics, and considering that the majority of activities are more passive in nature."*⁴

Clause 8

In subsection 2 it reads, *'within eight weeks of receiving this notification, the Department **must** designate an area as a safe access zone'*.

⁴ <https://questions-statements.parliament.uk/written-statements/detail/2018-09-13/HCWS958>

As currently worded, this bill states that once a request is received the Department *must* designate an area as a safe access zone. This 'must' pre-judges that a zone is required simply because it has been requested. In turn this means that the following subsections of this clause around consultation with others becomes a tick-box exercise.

There is apparently no ability or power to assess such a request and then refuse it. There is no clear or transparent process to consider why or whether a safe access zone is needed? It is impossible to see how the freedoms and human rights of others will be balanced when the outcome of any request for a zone is predestined.

This bill will unequivocally provide substantial powers to criminalise otherwise civil behaviours to the Department of Health, without any requirement to weigh up the need or proportionately for such a zone. There is a real risk to the human rights of some other minority groups here when it comes to articles 9, 10 and 11 of the ECHR.

If this bill were to succeed, the very least that the public could expect is a transparent process which leaves open the possibility that although requested, a zone may not be designated because it is not required nor deemed a proportionate response. Again, we reiterate the point of concern raised in our comments on clause 1, that it is the Department of Health who are being proposed as the sole arbiter of why, whether and where such freedoms are being criminalised.

Clause 9

The exercise of functions is set out in clause 9 but fails to mention how the Department of Health will communicate clearly to the public and those at risk of breaching the proposed criminal activities within the zone.

While Clause 9 subsection c points to the need of considering other rights like the right to manifest religious beliefs, little weight is actually given throughout the bill to Articles 9, 10 and 11 of the ECHR. This is especially clear when it comes to the wording 'influence' etc and the process (or lack thereof), as outlined in Clause 8(2). This is a serious failing.

Equality Impact Assessment

Further to our point immediately above, it seems that there is little genuine concern for the protections of the rights and freedoms of others in the creation of this bill. Points 17 and 18 of the Explanatory and Financial Memorandum state that this Bill is not expected to have an impact on human rights or equality legislation. It is our firm belief that this bill could impact on groups identified in section 75 of the Northern Ireland Act 1998. We could foresee a disproportionate impact on those who hold to particular religious beliefs and those who hold different political opinions when it comes to abortion.

Summary

We appreciate that the member takes a very different view on the issue of abortion to the Evangelical Alliance. Where we perhaps have some common ground is in wanting to see public safety and fundamental freedoms protected. However we are not convinced that this bill is required to achieve the former and are concerned that it poses a threat to the latter.

If there are gaps in legislation which need to be addressed around protecting public safety, then appropriate limited amendments could be made to existing Public Order or Harassment legislation.

It remains unclear exactly why such legislation is needed when neighbouring governments have rejected similar attempts on the basis of proportionality.

As it stands, we are of the view that this legislation creates illegitimate and disproportionate risks to the fundamental freedoms contained within Articles 9, 10 and 11 of the ECHR by criminalising otherwise legal activity in a blunt and blanket approach.

The wording is much too vague when attempting to define new legal offences which could criminalise otherwise legal activity (such as prayer and civic protest) and ban alternative help at the point where some might need it most.

It is worth stating that there is a significant difference between handing out a leaflet or holding a silent vigil and harassing staff or physically blocking entry to a building. This bill appears to deliberately conflate these distinct activities, some already illegal and some otherwise legal, together into one broad sweep of new criminal offence.

The bill doesn't contain any ability for the Department of Health to refuse a request for a zone, nor any opportunity for their decision to be appealed.

To be clear we do not want to see anyone distressed or subject to criminal behaviours. Abortion is a very sensitive issue, and we would encourage anyone involved in protest or offering alternative support to exercise great wisdom and grace. While some behaviours and images will be considered offensive, inappropriate, and unhelpful, this does not mean this activity should be blanketed-banned as criminal activity.

Contact

We would be delighted to discuss these issues further and/or give oral evidence to the committee if that was considered helpful.

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