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An Comhchoiste um Shláinte

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Bealtaine 2023

Joint Committee on Health

Report on the Pre-Legislative Scrutiny of the
General Scheme of the Health (Termination of
Pregnancy Services (Safe Access Zones)) Bill 2022

May 2023

MEMBERSHIP OF THE COMMITTEE



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(FF)



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Sen. Frances Black

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Sen. Martin Conway

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Sen. Annie Hoey
(Lab)



Sen. Seán Kyne
(FG)

Cathaoirleach's Foreword



I welcome the pre-legislative scrutiny report on the General Scheme of the Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022. This Bill is of great significance to the Joint Committee, as it protects the rights of women and pregnant people to access termination of pregnancy services, as well as protecting their privacy. This Bill will also protect the privacy and safety of service providers and staff at relevant locations.

The Joint Committee on Health agreed to undertake pre-legislative scrutiny of the General Scheme, following which it held three meetings in public session and considered written submissions from a number of stakeholders.

On behalf of the Joint-Committee, I wish to thank all of the witnesses who joined us in public session, and all those who provided us with written submissions. The public sessions gave the Committee a valuable insight into both the legislative and practical challenges facing this proposed legislation. The written submissions allowed the Committee to engage with a wide number of concerns and considerations regarding the proposed legislation.

The Joint Committee has made one specific recommendation, which is detailed in this report. The Joint Committee hopes that this recommendation, and the discussions during the pre-legislative process will assist the Minister for Health and his Department in strengthening the legislation and bringing greater certainty to it. I now hope that the Minister for Health will progress this urgently needed legislation and work towards implementation without delay.

I would like to thank the Members of the Joint Committee and the Secretariat for their input into this report. I hope that this report will help to inform the legislative process and make a beneficial contribution to the forthcoming legislation.

A handwritten signature in dark ink, which appears to read 'Seán Crowe'.

Seán Crowe, T.D., Cathaoirleach of the Joint Committee on Health

May 2023

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Introduction

The General Scheme of the Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022 provides for the establishment of exclusion zones around medical facilities.

The fundamental aim of the General Scheme of this Bill is to provide for the safety of women and pregnant people seeking access to Termination of Pregnancy Services, and the providers of these services.

The proposed legislation will :

- Protect the safety and well-being of women and pregnant people accessing termination of pregnancy services.
- Respect the privacy and dignity of women and pregnant people accessing termination of pregnancy services, as well as service providers, their staff and others accessing the location.
- Protect the safety and well-being of service providers, their staff and others who need to access defined locations (healthcare settings).
- Protect the freedom to access termination of pregnancy services without impediment, judgement or unsolicited attempts to influence healthcare decisions or decisions to offer termination of pregnancy services for all women and pregnant people accessing termination services, as well as service providers and others attending the location. This will be achieved by putting in place legislative measures to ensure that specific behaviours, activities and/or protests/demonstrations are prohibited within 100 metres of certain healthcare settings that can lawfully provide termination of pregnancy services in accordance with the Health (Regulation of Termination of Pregnancy) Act 2018.

1.2 Pre-Legislative Scrutiny of the General Scheme

The Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022 was referred to the Joint Committee on Health by the Minister for Health, Mr Stephen Donnelly T.D., on 19 September 2022.

On 15 November 2022, the Committee requested an extension to the eight-week pre-legislative scrutiny deadline, as the issues raised in the Committee meetings in public session could not be fully considered within this timeframe. The Minister of Health agreed to this extension.

In September 2022, stakeholders were contacted and invited to provide written submissions to assist the Committee with its pre-legislative scrutiny. A list of the submissions received and considered is shown in Appendix 1.

Following a review and analysis of key issues raised in the written submissions received, the Committee engaged with a small number of key stakeholders at meetings in public session, which are detailed below.

1.3 Engagement with Stakeholders

The Committee commenced pre-legislative scrutiny in October 2022 and concluded this process in April 2023. The following provides details of witnesses invited to Committee meetings.

Date	Witness	Official Record
19 October 2022	<p>Department of Health</p> <ul style="list-style-type: none"> Mr Muiris O'Connor, Assistant Secretary Ms Caitriona Mason, Bioethics Ms Bronwyn Conway, Bioethics 	Transcript
9 November 2022	<p>An Garda Síochána</p> <ul style="list-style-type: none"> Ms Anne Marie McMahon, Deputy Commissioner 	Transcript

- Ms Kate Mulkerrins,
Executive Director
- Mr Michael McNamara,
Superintendent
- Ms Helen Deely,
Superintendent
- Ms Paula Hilman, Assistant
Commissioner

18 January
2023

Department of Health

[Transcript](#)

- Mr Muiris O'Connor,
Assistant Secretary
- Ms Caitriona Mason,
Bioethics
- Ms Bronwyn Conway,
Bioethics

Overview of the Committee's consideration

The Committee welcomes this proposed legislation and is anxious to see it enacted and operational as soon as possible. Women and pregnant people should be in a position to avail of services for the termination of pregnancy without any hesitation arising from the possibility of their access being disrupted. Service providers and staff should also be entitled to access their place of work in safety and without disruption. As such, the Committee wishes to facilitate the completion of the pre-legislative scrutiny and the passage of the proposed Bill as speedily as possible.

Scrutiny of the Committee

In the course of the Committee's meetings in Public Session in relation to the proposed Bill, it was clear that a number of key provisions of the Bill were still the subject of consultation and development by the Department of Health. These issues were also raised in a number of written submissions that the Committee considered as part of the pre-legislative scrutiny process. Of particular importance in this regard were –

- the manner in which a number of the new legal provisions would apply in practice in different situations and settings
- how the enforcement provisions of the Bill, including those to be used by An Garda Síochána, if they need to be deployed, would operate.

On account of the uncertainty arising in relation to some of these issues, it was difficult for the Committee to make a definitive assessment of the proposal.

The Committee welcomes the further work that the Department of Health has done on the proposal in response to the concerns in this regard expressed by the Committee. Noting the most recent indication from the Department that there are some areas that require further work in this regard, the Committee recommends that this work should be completed as quickly as possible, so that the provisions of the Bill contain as much certainty as possible in relation to Safe Access Zones and how they will operate in practice.

Key Issue: Prior Warning

Throughout the scrutiny, the issue of prior warnings was the focus of particular attention by the Committee. Members of the Committee questioned if there would be a process to record warnings given to individuals who protest in safe access zones.

The recording of warnings would prevent multiple incidents of protests being organised by the same individuals, as An Garda Síochána would have the ability to check if individuals had previously received warnings regarding protests in safe access zones. However, in practice, this will provide challenges as it appears that An Garda Síochána do not currently have the facility to record such warnings.

The Committee considers that the implementation of a system to record warnings regarding protests in safe access zones is necessary to ensure that the legislation is effective. The legislation must be clear in setting-out the actions that are prohibited in safe access zones, and the consequences of these actions. The recording of warnings will be instrumental in securing the successful implementation of the legislation. The Committee notes that the Department is continuing to work with An Garda Síochána on this matter.

The Committee recommends that every effort be made to ensure that a clear, practical and effective system to record prior warnings be put in place in order to prevent recurring protests from taking place in safe access zones.

Recommendations

The Committee recommends that a clear, practical and effective system of recording prior warnings be included in the Bill.

APPENDIX 1 – Written Submissions

Organisation	Link to Submission
Health Service Executive (HSE)	Link
Irish Council for Civil Liberties (ICCL)	Link
Irish College of General Practitioners (ICGP)	Link
Irish Family Planning Association (IFPA)	Link
Irish Human Rights and Equality Commission (IHREC)	Link

Irish Medical
Organisation
(IMO)

[Link](#)

National Women's
Council (NWC)

[Link](#)

Pro Life Campaign

[Link](#)

START Doctors
Ireland

[Link](#)

Together for
Safety

[Link](#)

Presbyterian
Church

[Link](#)

Orders of Reference

94. Scope and Context of Activities of Select Committees

(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions and the Ombudsmen in the exercise of its functions under Standing Order 125(1); and

(d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department, or

(iii) the principal office-holder of a non-State body which is partly funded by the State, Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Cathaoirleach of one of the Select Committees concerned, waives this instruction.

95. Functions of Departmental Select Committees

(1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: Provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,

(b) Estimates for Public Services, or

(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Cathaoirleach of the Select Committee appointed pursuant to this Standing Order shall also be Cathaoirleach of the Joint Committee.

(8) Where a Select Committee proposes to consider—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters,

or

(d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the

following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

- (i) members of the European Parliament elected from constituencies in Ireland,
- (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
- (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
- (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

96. Powers of Select Committees

Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

- (1) power to invite and receive oral and written evidence and to print and publish from time to time—
 - (a) minutes of such evidence as was heard in public, and
 - (b) such evidence in writing as the Committee thinks fit;
- (2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;
- (3) power to draft recommendations for legislative change and for new legislation;
- (4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—
 - (a) require any Government Department or other instrument-making authority concerned to—
 - (i) submit a memorandum to the Select Committee explaining the statutory instrument, or
 - (ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil, and
 - (b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;
- (5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—
 - (a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published), for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of relevant meetings of the Council of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal officeholders of a—

(a) State body within the responsibility of a Government Department, or

(b) non-State body which is partly funded by the State, which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil; and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Cathaoirligh under Standing Order 120(4)(a)

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