

Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022

Opening statement to the Health Committee

18th January 2023

Chairman and Members of the Committee

I would like to thank you for inviting us here today. I welcome the opportunity to address the issues raised by An Garda Síochána in relation to the Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022. My name is Muiris O'Connor, Assistant Secretary in the Department of Health. I am joined by my colleagues Caitriona Mason and Bronwyn Conway from the Bioethics Unit in the Department.

I would like to begin by expressing my appreciation to An Garda Síochána for their considered contribution to the drafting process. There is no doubt that this is a complex piece of legislation seeking as it does to balance a range of competing rights. The Minister is committed to developing a constitutionally robust and operationally feasible bill capable of ensuring that termination of pregnancy services can be accessed and provided safely and privately without unwarranted interference or influence.

In their submission to this Committee, An Garda Síochána raised a number of operational issues in relation to the General Scheme, and with the forbearance of the Committee, I intend to outline the Department's position on these this morning.

Fortunately, a number of these matters had already been identified and addressed by the OPC. For ease of reference my presentation will follow the sequence of the summary table set out in the Garda submission.

The first issue raised was the difficulties around the use of curtilage in the demarcation of the zones. This had previously been considered by the Office of the Attorney General as part of the drafting process and it was agreed that curtilage would no longer be used in the definition of safe access zones. The parameters of the zones would now be calculated as being 100m from the entrance of the healthcare facility to a public road or street. It is hoped this will bring increased clarity to the delineation of the zones.

The definition of "public place" had also been revised through the drafting process to mean any place to which the public have access, whether as of right or by permission and whether subject to or free of charge. From a policy perspective it is also intended to include private property in certain instances, and this is the subject of ongoing engagement with Counsel.

It was a core tenet of Government policy to mainstream termination of pregnancy within existing healthcare services. This was done both to embed the provision of termination of pregnancy into primary, community and acute services, and to ensure that services could be provided to those needing them in relative anonymity. It would run contrary to this policy to highlight or expose individual providers. Consequently, it was considered necessary to extend the ambit of this legislation to all providers who are eligible to provide the service, not just those who currently do. It is also hoped that this would entice additional practitioners to provide the service, and increase availability and access.

In relation to Head 4, recklessness has been included as an alternative mens rea to intention for prohibited conduct in safe access zones.

The present draft has also facilitated a greater alignment of Garda powers with prohibited conduct.

The operation of the warning along with its unlimited temporal and geographic effect is one of the matters currently under consideration by Advisory Counsel and an opinion is awaited.

The draft will be revised in accordance with the advice received.

As outlined earlier, the Department would be reluctant to specifically identify individual providers, and would prefer to allow them to continue to operate in a manner that protects the privacy and confidentiality of the doctor-patient relationship. Unfortunately, the suggestion of creating a register would run counter to this policy intention.

On the issue of a “global warning”, the Department’s legal advice is that it is a significant departure from the previous concept set down in the general scheme which was intended to be an interaction between two individuals, to enhance legal certainty around the zones. Moreover, as the warning is intended to be an ingredient of the offence, Counsel is of the view that a global warning could cause practical difficulties in relation to the proofs in a prosecution.

However, this does not mean that Gardaí, when tasked with policing, cannot use a global warning as a means of engagement and for the purposes of endeavouring to disperse groups of potential offenders. It is merely that a warning issued in such a way is unlikely to be capable of constituting an ingredient of criminal offending.

In relation to the comments on Head 5, I can confirm that it is our intention to allow what may otherwise be “prohibited conduct”, within 100 metres of the Houses of the Oireachtas.

On Head 6, following the advice of OPC, it was agreed that the harassment of health service providers would be addressed through the existing law (currently Section 10 of the Non-Fatal Offences Against the Person Act 1997). The use of Section 10 would also provide the Gardai with the necessary suite of powers to investigate and prosecute such offences, which addresses some of the Garda comments in relation to Head 8.

Also, the majority of Garda Powers are now included under one Head and the Department will engage with the OPC, with a view to consolidating further, if possible.

There is ongoing discussion with the OPC in relation to providing the Gardai with the additional powers of search and arrest requested under Head 7. Provided this is legally feasible there are no policy objections.

Finally, we have sought the views of the DPP in relation to including the requirement for a direction in the legislation and

will be guided by same. Again, there are no set policy objections to the inclusion of such a requirement.

To conclude, I wish to thank the Committee for their patience and attention this morning and I, and my colleagues, are happy to take questions and inputs from Committee members on the legislation.