

Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2023

Bill No. 54 of 2023

Karen McLaughlin, Senior Parliamentary Researcher (Law)

Dr Lucy Davis, Senior Parliamentary Researcher (Law)

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Abstract

The Health (Termination of Pregnancy Services) (Safe Access Zones)) Bill 2023 provides for the designation of 100 metres Safe Access Zones around certain healthcare premises where conduct aimed at impeding or obstructing access or influencing decisions in relation to termination of pregnancy services will be prohibited.



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Introduction

On 29 June 2023 the [Health \(Termination of Pregnancy Services\) \(Safe Access Zones\) Bill](#) (the Bill) was initiated in Dáil Éireann. The Bill contains seven sections as follows:

- **Section 1: Interpretation** – definitions, including definition of “safe access zones”
- **Section 2: Conduct prohibited in safe access zones**
- **Section 3: Exceptions to section 2(2)**
- **Section 4: Powers of Garda Síochána**
- **Section 5: Offences and penalties**
- **Section 6: Expenses** – includes standard provisions
- **Section 7: Preliminary and General** – includes standard provisions

Announcing the Government’s approval for the Bill on 27 June 2023, Minister for Health, Stephen Donnelly TD, stated:

"Nobody should be harassed, insulted or intimidated in any way, or have their decision to access lawfully available healthcare services subject to attempted unsolicited influence by strangers. I would like to acknowledge the commitment shown by my Ministerial colleagues, officials in my department and the Gardaí, all of whom worked together to get this Bill to this point.”¹

This *Bill Digest* analyses the Bill in the following sections:

- **Background to the Bill (including legal and policy context and comparative experience in other jurisdictions)**
- **Pre-legislative scrutiny**
- **Regulatory impact assessment**
- **Principal Provisions of the Bill**

L&RS resources relevant to the Bill:

- [Spotlight: Impact of anti-abortion protest on women accessing services - A Rapid Evidence Assessment](#)
- [Note: Safe Access Zones - What do other countries do?](#)

The L&RS has also produced a [Bill briefing page](#) which provides links to a wide range of sources on the Bill, including stakeholder and academic commentary (available internally only).

¹ [gov.ie](https://www.gov.ie/en/news/2023-06/minister-secures-government-approval-to-introduce-legislation-ensuring-women-can-access-termination-of-pregnancy-services-safely/) - Minister secures government approval to introduce legislation ensuring women can access termination of pregnancy services safely (www.gov.ie).

Summary

The [Health \(Termination of Pregnancy Services\) \(Safe Access Zones\) Bill](#) (the Bill) was published on 29 June 2023. The Bill contains seven sections and provides for the designation of 100 metre safe access zones (**section 1**) around relevant healthcare premises (**section 1**) where conduct aimed at impeding or obstructing access (**section 2(1)**) or influencing decisions in relation to termination of pregnancy services will be prohibited.

The types of conduct prohibited in a safe access zone under the Bill include:

- Communication of material to the public (display, publication, distribution or dissemination of material or showing or playing the material) (**Sections 2(2)(a), (5), (6), (7)**)
- Conduct likely to threaten or intimidate a person accessing or attempting to access a relevant healthcare premises (**Section 2(3)(a)**)
- Accompanying, following or repeatedly approaching a person accessing or attempting to access a relevant healthcare premises (**Section 2(3)(b)**)
- Prohibition of photographing, filming or recording of a person in a safe access zone who is accessing or attempting to access a relevant healthcare premises (**Section 2(4)**)

Such conduct must be aimed, either intentionally or recklessly, at influencing decisions in relation to availing of or providing termination of pregnancy services. The communication of material or other conduct directed at the public or a section of the public will not be unlawful where it is not directed at a specific relevant healthcare premises or persons accessing a such premises and takes place within 100 metres of an entrance to either House of the Oireachtas, or inside a place of religious worship (**section 3**).

An Garda Síochána (AGS) may issue a warning (**section 4(1)**) to a person who has engaged, is engaging or will engage in conduct prohibited in a safe access zone. Such a warning must be recorded (**section 4(2)**). This requirement implements the recommendation of the Joint Committee on Health's [pre-legislative scrutiny](#). When issuing a warning, AGS may require a person to state his or her name and address (**section 4(3)**) and failure to do so will be a criminal offence (**section 5(2)**). It will be an offence for a person, who has been issued with a warning, to engage in prohibited conduct (**sections 2(1)-(4)**) in a safe access zone. AGS may arrest an individual he/she has reasonable cause for believing is committing or has committed an offence (**section 4(4)**).

The offences provided for in the Bill are summary offences and the penalties are on an escalating basis where harsher penalties may apply for repeat offences, ranging from a fine up to €500 and/or up to one month in prison for a first offence to a fine up to €2,500 and/or up to 6 months in prison for a third and subsequent offence (**section 5(3)**).

In terms of the background to this legislation, it had been the intention to legislate for safe access zones when the Health (Regulation of Termination of Pregnancy) Act 2018 was being developed. Since the commencement of the 2018 Act, an independent review of the legislation was carried out and additional research has been published illustrating the impact of protest on persons availing of or providing termination of pregnancy services. Some stakeholders have argued that the existing legal framework does not capture the type of behaviour that safe access zone legislation can address (namely, behaviour that can cause harm in the longer term by deterring individuals from accessing or healthcare providers from providing abortion services). Some commentators have questioned whether this legislation is proportionate and necessary, and others have argued that the legislation is necessary, achieves a legitimate aim and constitutes a proportionate interference with the right to freedom of assembly and association.

Background

This section of the *Digest* provides an outline of the policy and legislative context as well as outlining the findings of some research studies relevant to the development of the Bill. This section also outlines the experience in other jurisdictions.

Policy context and development of the Bill

On 25 May 2018, a referendum on the Thirty-sixth Amendment to the Constitution was held. The electorate voted, by a margin of 66.4 per cent Yes to 33.6 per cent No, to replace Article 40.3.3° of the Constitution ('the Eighth Amendment') with an Article stating provision may be made by law for the regulation of termination of pregnancy. Following legal challenges to the vote and the Supreme Court's subsequent refusal to hear further challenges, President Michael D Higgins signed the Thirty-sixth Amendment of the Constitution Bill 2018 into law on 18 September 2018.

On 1 October 2018, the Health (Regulation of Termination of Pregnancy) Bill 2018 was published. The Bill, which proposed to provide a statutory basis for the regulation of the termination of pregnancy in Ireland, passed all stages in the Houses of the Oireachtas on 13 December 2018 and was signed by the President of Ireland on 20 December 2018. The [Health \(Regulation of Termination of Pregnancy\) Act 2018](#) came into operation on 1 January 2019 by order of the Minister.

During the Second Stage debate on the Health (Regulation of Termination of Pregnancy) Bill 2018, the former Minister for Health, Simon Harris TD, stated:

“... it is my intention that, following the passage of this Bill, services for termination of pregnancy will be a normal and lawful part of the Irish public health service for women. I recognise, however, that these services carry a significant likelihood of demonstrations taking place, demonstrations which may be distressing and upsetting both for service users and for healthcare professionals. I am concerned we have already had maternity hospitals like the Rotunda having to take to their social media channels to alert women to this very upsetting situation happening outside the hospital.

...

While it was my original intention to provide for such safe access in this Bill, a number of issues were identified during the drafting process. In order to allow for full consideration, I decided we could not delay this Bill and that the best way to proceed would be a separate companion piece of legislation. I, therefore, requested and was granted Government approval to draft a separate general scheme of a Bill to provide for safe access to services which may provide termination of pregnancy procedures. Work on this companion legislation will be concluded without delay and, I hope, will be in place by early next year.”²

Subsequently, a Safe Access Bill was listed on the [2019 Spring Legislation Programme](#). In September 2019, the Irish Times reported that Garda Commissioner, Drew Harris, wrote to the former Health Minister, Simon Harris TD, outlining his views on safe access legislation as follows:

² Dáil Éireann, [Health \(Regulation of Termination of Pregnancy\) Bill 2018: Second Stage \(Resumed\)](#), 18 October 2018.

“... the introduction of such safe-access legislation would be “redundant” because of the existence of current laws and the fact that “no incidence of criminality has been reported or observed.” He said there was “no evidence to suggest that there is threatening, abusive or insulting behaviour directed towards persons utilising such services.”³

In 2020, the new Programme for Government included a commitment to “establish exclusion zones around medical facilities”.⁴

On 19 October 2021 the [Safe Access to Termination of Pregnancy Services Bill 2021 \[PMB\]](#) was initiated in Seanad Éireann and completed all stages in that House on 7 April 2022. This Private Members Bill (PMB) provided for the establishment of safe access zones and the restriction of certain activities therein as well as harassment related to provision of termination of pregnancy services. Commenting on the PMB during the pre-legislative scrutiny debate Muris O'Connor, Assistant Secretary at the Department of Health, stated:

“We can absolutely see such similarity with the Private Members' Bill in many ways. We are deeply grateful to Senator Gavan and all the Senators and Deputies who contributed to that. Members will see it is evident that our current scheme builds on their work in the area in many respects. However, it is acknowledged that legislating the area is complex and challenging from the perspective of balancing competing constitutional rights. All the work we are doing now is work that is always necessary with any legislative vehicle. That Private Members' Bill helped us greatly and we have built on it in the work we are doing now.”⁵

On 8 December 2021, the Department of Health launched a public consultation to review of the operation of the Health (Regulation of Termination of Pregnancy) Act 2018, which closed on 1 April 2022.⁶ According to the [Department](#):

“a three-part approach is being taken to reviewing the operation of the Act, with strands focusing on service users, service providers and a public consultation. Research to inform the service user and service provider strands will be commissioned and carried out independently.”

The [Report of the Independent Review of the Operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018](#) was finalised on 28 February 2023 and was published on 26 April 2023. The relevant sections of that report will be discussed later in this *Digest*.

On 5 August 2022, the Minister for Health, Stephen Donnelly TD, published the [General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#) and referred the General Scheme to the Joint Committee on Health for pre-legislative scrutiny in September 2022, which will be discussed in further detail below.

³ Jennifer Bray, [Existing laws adequate to deal with abortion protests, says Garda commissioner](#), *Irish Times* 26 September 2019.

⁴ Programme for Government, [Our Shared Future](#) (2020), p. 47.

⁵ Joint Committee on Health debate - [General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022: Discussion](#), 19 October 2022.

⁶ Section 7 of the [Health \(Regulation of Termination of Pregnancy\) Act 2018](#) states that: “The Minister shall, not later than 3 years after the commencement of this section, carry out a review of the operation of this Act.”

Research on the prevalence and impact of anti-abortion protest in Ireland

Since the enactment of the [Health \(Regulation of Termination of Pregnancy\) Act 2018](#), research has been carried out in relation to the impact of anti-abortion protest on women accessing services, as well as the impact on service providers. This section provides a snapshot of the key findings of relevant pieces of research, many of which have been cited by the Department of Health as an evidence base for the necessity of safe access legislation.

The prevalence of anti-abortion protests in Ireland

During pre-legislative scrutiny, An Garda Síochána stated that disaggregated data on anti-abortion protests at medical facilities was not readily available.⁷

Since 2019 several studies and consultations have been carried out by the Department and others and some of these provide information on the prevalence of anti-abortion protest in Ireland.

In a study published by the Abortion Rights Campaign and Dr Lorraine Grimes in 2021,⁸ 14 per cent of participants said that they encountered anti-abortion activity while attempting to access abortion care and provided the following details of such activity:

“One participant said they experienced, “protests, verbal abuse, posters” outside a clinic. There were “people doing rosaries and saying hurtful things about going to hell and punishment.” One recalled “people with coffins outside praying”, while another respondent said “there was an anti-choice sign (maybe a picture of a foetus) outside the private ultrasound clinic where I had to go to ensure I was within the 12 weeks.”⁹

In a study published by Dr Camilla Fitzsimons in June 2022, it was stated that 44.6 per cent of research participants experienced protests outside of a provider’s service.¹⁰

⁷ General Scheme of the Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022: An Garda Síochána, [Joint Committee on Health, 9 November 2022](#).

⁸ Abortion Rights Campaign and Lorraine Grimes. [Too Many Barriers: Experiences of Abortion in Ireland after Repeal](#). Sept. 2021. This research entailed an online survey with both quantitative and qualitative questions. There was a total of 402 respondents: 388 respondents answered in English; 5 answered in Irish; 6 in Arabic; and 3 in Polish. The sample was therefore self-selected and not a random sample. According to the Methodology at p 12 “This research takes a person-centred approach, prioritising the experiences and testimony of those who successfully or unsuccessfully attempted to access an abortion in Ireland since 1st January 2019”.

⁹ Abortion Rights Campaign and Lorraine Grimes. [Too Many Barriers: Experiences of Abortion in Ireland after Repeal](#). Sept. 2021, p.60.

¹⁰ Fitzsimons, C. (2022) [Irish healthcare workers experiences of anti-abortion protesters and the case for safe access zones](#), p. 9. It is stated at p 3: “This research adopts a pro-choice perspective and makes the case for legally imposed, clearly defined perimeters around Irish abortion providers within which anti-abortion protesters would be prohibited from harassing, intimidating, misleading and/or obstructing entrants.” In relation to participation in this study, the author states at p 3 that “findings come from an online, anonymous survey questionnaire completed by 75 providers in 2021. Most (77 percent) were GPs, seven percent worked within an outpatient reproductive healthcare provider (for example a Family Planning Clinic) and 16 percent worked within a maternity hospital” and describes this as a “non-representative sample”. At p 7 the report states: “I made contact with providers through identifiable gatekeepers namely START – a voluntary network of GPs and Obstetric providers, and the Midwives Association of Ireland. Both organisations circulated a link to an online anonymous survey-questionnaire amongst their members. Information was also circulated via social media. Participation was once off and people were asked to consent to a statement, “To be eligible to participate you must be a healthcare worker providing abortion services”.”

The impact of anti-abortion protest on women accessing services

In 2019, an [L&RS Spotlight](#) found:

“The available evidence appears to indicate that women generally experience an emotional and entirely negative response to anti-abortion protests outside abortion facilities”.¹¹

The Spotlight also notes:

“As all four studies identified pointed to significant levels of emotional distress and upset among women accessing abortion services in the United States and United Kingdom, it is likely that a similar study conducted in Ireland would also identify protest-related stress or upset. However, only an Irish-based study could confirm this, while identifying particular systemic and social factors that may exacerbate protest-related stress arising from the relatively recent legalisation of abortion, the contested history of abortion in Ireland, and the close social networks through which Irish people are connected”.¹²

Since 2019, further studies have been conducted. For example, a qualitative research study, entitled Unplanned Pregnancy and Abortion Care (UnPAC) Study, was published in July 2022, which examined the experiences of pregnant women who have accessed unplanned pregnancy support and abortion services since the enactment of the Health (Regulation of Termination of Pregnancy) Act 2018 on 1 January 2019. This study was commissioned by the Health Service Executive’s (HSE) Sexual Health and Crisis Pregnancy Programme (SHCPP) within the remit of the National Sexual Health Strategy (2015 – 2020). According to the UnPAC Study:

“The data indicates that the impact of legalisation notwithstanding, the legacy of the Eighth Amendment and the contestation of legalisation of abortion in Ireland has left a residue of symbolic effect that presented in the data as considerable levels of insecurity among women in the certainty of the provision of and access to abortion. It also featured in the form of concerns about judgement and stigma, including potential for protests, that affected accessibility of the service. ... This all points to the need for particular attention to cultivating normalisation of abortion through care provision practices, evolving discourse and tailored policy initiatives such as legislating for safe access zones.”¹³

The impact of anti-abortion protest on the provision of termination of pregnancy services

In a 2021 study published in *Contraception* it was found that:

“Irish providers encounter stigma related to their abortion work, which is consistent with the international literature”.¹⁴

¹¹ Oireachtas Library & Research Service, 2019, [Spotlight: The impact of anti-abortion protest on women accessing services – A Rapid Evidence Assessment](#), p. 2. This Spotlight was written in collaboration with the Trinity Centre for Global Health, Trinity College Dublin, the University of Dublin.

¹² Oireachtas Library & Research Service, 2019, [Spotlight: The impact of anti-abortion protest on women accessing services – A Rapid Evidence Assessment](#), p. 3.

¹³ Conlon, Antosik-Parsons, Butler, *Unplanned Pregnancy and Abortion Care (UnPAC) Study*, p. 213.

¹⁴ Dempsey, B., Favier, M., Mullally, A. and Higgins, M.F., 2021. Exploring providers’ experience of stigma following the introduction of more liberal abortion care in the Republic of Ireland. *Contraception*, 104(4), pp.414-419 at 416.

Comparing the experience of service providers in Ireland with other jurisdictions, this study noted:

Applying this to Ireland, obstetricians and midwives/nurses may also experience higher levels of stigma in hospitals while many GPs may be protected as they do not face regular protests. This may be further supported as the hospital staff in this sample was all involved in providing surgical and/or later-gestation abortion care, meaning they must work in a team to provide care and may be exposed to stigma. Difficulties in providing abortion care as part of a team were discussed by fetal medicine specialists' in Ireland, where feelings of disapproval and disrespect from colleagues, as well as resistance and conflict were noted.¹⁵

According to the UnPAC study:

"Some providing doctors do not consent to their names being given to people calling the line, for reasons including fear of targeting by protestors or concerns about capacity of their service to treat patients not registered to their surgery."¹⁶

The [Report of the Independent Review of the Operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018](#) states:

"In one case, a consultant obstetrician in a maternity unit located in the west of Ireland described how in 2019 one consultant obstetrician at the unit would have been prepared to provide termination of pregnancy services under the Act but was deterred from doing so not only by lack of support from colleagues, but also by the effect of receiving letters from anti-abortion campaigners. Letters have continued to arrive since the appointment of a second consultant to support service provision. The consultant described the tone and content of these letters as being quite upsetting to them. A GP also described how the effect of protestors outside the surgery had a chilling effect on her which she found difficult when trying to get to grips with providing new services. She worried that surgery staff, some of whom may have voted against repeal, may have felt they were being judged unfairly. As the practice is in a small town, she wondered if the patients felt that somehow the protestors might know the reasons for their attendance adding to their sense of feeling stigmatised and judged. Another GP commented on how she worried about protestors knowing where she lived and whether she was safe."¹⁷

¹⁵ Dempsey, B., Favier, M., Mullally, A. and Higgins, M.F., 2021. Exploring providers' experience of stigma following the introduction of more liberal abortion care in the Republic of Ireland. *Contraception*, 104(4), pp.414-419 at 416.

¹⁶ UnPAC study, p. 8.

¹⁷ [Report of the Independent Review of the Operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018](#), pp 114-115.

Safe access zones in other jurisdictions

In 2019, the L&RS published a [Note](#) on the experience of safe access zones in other jurisdictions. The research found that:

“Although the provisions vary between jurisdictions, the legislation commonly prohibits a range of behaviour such as harassing, intimidating or obstructing a person from obtaining or performing a termination in a safe access zone.”¹⁸

The research also found that:

“... while safe access zones are not generally found throughout Europe, they are a feature of abortion service provision in several countries, such as Canada, Australia and the United States.”¹⁹

As part of that research, the L&RS submitted an enquiry to the European Centre for Parliamentary Research and Documentation (ECPRD) regarding prohibitions on protest in the immediate vicinity of healthcare providers engaged in providing abortion services. The results of that survey have been summarised as follows:

“Of the 30 countries which provided a response, abortion services were available in all. None had a specific legislative prohibition on protest in the immediate vicinity of hospitals or clinics providing abortion services. As to whether local authorities could institute prohibitions in their own areas, the vast majority stated that they could not, but noted that general regulations did apply to the holding of assemblies or protests, such as a requirement to notify the authority in advance. Two countries noted that they do have a more general prohibition on protests around hospitals, specifically where the protest would obstruct ambulances or disturb the peace of patients. One country, France, has a specific offence related to attempts to prevent a termination of pregnancy by any means.”²⁰

Since this research has been published, there have been some developments in the three jurisdictions within the United Kingdom, which will be briefly discussed in turn below.

Northern Ireland

In Northern Ireland, the [Abortion Services \(Safe Access Zones\) Act \(Northern Ireland\) 2023](#) received Royal Assent on 6 February 2023, having been introduced to the Northern Ireland Assembly on 13 September 2021. Questions regarding the Bill’s compatibility with the European Convention on Human Rights had been referred to the Supreme Court of the United Kingdom by the Attorney General for Northern Ireland in 2022.²¹

¹⁸ [L&RS Note](#) - Safe Access Zones - What do other countries do? (2019), p. 1.

¹⁹ [L&RS Note](#) - Safe Access Zones - What do other countries do? (2019), p. 27.

²⁰ [L&RS Note](#) - Safe Access Zones - What do other countries do? (2019), p. 4.

²¹ [Reference by the Attorney General for Northern Ireland - Abortion Services \(Safe Access Zones\) \(Northern Ireland\) Bill - The Supreme Court](#). Aspects of this judgment will be discussed in more detail below.

According to the Memorandum published alongside the legislative proposal, Clause 5 was described as “a key clause which criminalises certain behaviour in the safe access zone”:

“There is a broad and a specific offence. The broad offence makes it a crime to do anything in a safe access zone that might influence a person in their decision to attend an abortion clinic, or which might prevent or impede access to the clinic, or which might harass, alarm or distress that person. For example, a protest group handing out leaflets to visitors to the clinic in the safe access zone, or individual protestors haranguing visitors to the clinic, or blocking the entrance point to a clinic.”

England and Wales

The L&RS [Note](#) mentioned above referred to a case in relation to the Borough of Ealing. Since the publication of that note in 2019, the English Court of Appeal has held that a safe access zone was a proportionate measure when balanced against the right of protesters to manifest their beliefs. In particular, the Court of Appeal referred to the ‘significant emotional and psychological damage’ endured by clinic-users who had been exposed to the demonstrations.²²

Scotland

A proposal for a Bill, Abortion Services Safe Access Zones (Scotland) Bill, to introduce safe access zones around healthcare settings that provide abortion services was brought forward by the Scottish Green Party in May 2022. A [consultation](#) was launched by Gillian Mackay MSP in May 2022 and this is now closed. Following a Scottish Government commitment to support this proposal, a Working Group was established but it was disbanded in April 2023. According to a BBC News report:

“Members of the working group were informed in an email on Tuesday that the government was “seeking to bring forward legislation as quickly as possible” and there was “limited benefit” at this stage in continuing to meet as a group”.²³

²² *Dulgheriu v Ealing LBC* [2019] EWCA Civ 1490.

²³ Morven Mckinnon, [Activists' concern after abortion buffer zone group disbanded - BBC News](#), 3 May 2023.

Legal context

According to the [Explanatory Memorandum](#):

“It is in the public interest to ensure that healthcare services, including termination of pregnancy services, can be accessed safely and privately by women who need them, and that those services can be accessed with dignity and free from judgment, unsolicited influence or pressure by those not directly involved in the care of the woman”.

In the [General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#), it was recognised that:

“...protecting the rights of service users must be balanced against protecting the rights of those engaged in legitimate protest, ...”

This section will provide an overview of the existing legal framework in relation to public order, offences and it will outline the rights engaged by the Bill and what legal principles are commonly used when seeking to balance rights. This section will conclude by referring to recent court cases in the Superior Courts of the United Kingdom, which have dealt with the issue of balancing rights in relation to safe access zones.

Existing legal framework in relation to protests and public order

Part 2 of the [Criminal Justice \(Public Order\) Act 1994](#), as amended, creates offences relating to public order issues including:

- Disorderly conduct in public place (section 5)
- Threatening, abusive or insulting behaviour in public place (section 6)
- Distribution or display in public place of material which is threatening, abusive, insulting, or obscene (section 7)
- Wilful obstruction (section 9)
- Trespass on building, etc. (section 13).

Section 8 of the [Criminal Justice \(Public Order\) Act](#), as amended, provides enforcement powers to An Garda Síochána. The enforcement system in relation to public order is known as a graduated response and is set out in Box 1 below.

In addition, sections 114-115 of the [Criminal Justice Act 2006](#) make provision for a ‘behaviour warning’ or a ‘civil order’ to be made in cases where a person is behaving in an anti-social manner. Anti-social behaviour is defined in section 113 (2) of the Act as where a person “causes or is likely to cause (a) harassment, (b) significant or persistent alarm, distress, fear or intimidation, or (c) significant or persistent impairment of another person’s use or enjoyment of their property.”

Box 1: Public Order Offences

Criminal Justice (Public Order) Act 1994

Failure to comply with direction of member of Garda Síochána.

8.—(1) Where a member of the Garda Síochána finds a person in a public place and suspects, with reasonable cause, that such person—

(a) is or has been acting in a manner contrary to the provisions of **section 4, 5, 6, 7 or 9**, or

(b) without lawful authority or reasonable excuse, is acting in a manner which consists of loitering in a public place in circumstances, which may include the company of other persons, that give rise to a reasonable apprehension for the safety of persons or the safety of property or for the maintenance of the public peace, the member may direct the person so suspected to do either or both of the following, that is to say:

(i) desist from acting in such a manner, and

(ii) leave immediately the vicinity of the place concerned in a peaceable or orderly manner.

(2) It shall be an offence for any person, without lawful authority or reasonable excuse, to fail to comply with a direction given by a member of the Garda Síochána under this section.

(3) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding F7[€1,000] or to imprisonment for a term not exceeding 6 months or to both.

Criminal Justice (Public Order) Act 1994

Refusing or failing to give name or address or failure to comply with direction.

19D.—Where a person—

(a) refuses or fails to give his or her name and address to a member of the Garda Síochána when demanded under section 19C, or gives to the member a name or address that is false or misleading, or

(b) fails to comply with a direction under that section, he or she shall be guilty of an offence.

Rights engaged by this Bill

Both the [Constitution of Ireland](#) and the [European Convention on Human Rights](#) protect the rights that are engaged by this Bill. None of these are absolute rights, which means that they may be restricted by the State in certain circumstances, subject to certain requirements being satisfied, including the existence of a legitimate purpose, necessity and proportionality, as discussed below. Examples of the rights engaged by this Bill are:

- Right to privacy²⁴
- Right to bodily integrity²⁵
- Right to freedom of expression²⁶
- Right to freedom of assembly²⁷
- Religious freedom²⁸

Creation of Safe Access Zones and Balance of Rights

In the [General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#), it is recognised that:

“In balancing the various rights, this General Scheme of a Bill prohibits specified conduct, ..., but does so with limited scope – limiting such restrictions to that which is necessary. ... protest or demonstrations in respect of termination of pregnancy may continue in all other circumstances and at all other locations.”

According to the [Report of the Independent Review of the Operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018](#):

Those who do engage in protest have a lawful right to do so. Their ostensible aim is to dissuade women from having abortions and health workers from providing the service. They have a legitimate right to freedom of association and freedom of expression. However, women seeking lawful healthcare have competing rights.²⁹

The [Report of the Independent Review of the Operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018](#) also states:

“Clearly there is conflict between the rights of women accessing abortion services and the rights of people to engage in demonstrations and protests conflict. They are not absolute rights. They can be limited and restricted by the Oireachtas. The Heads of Bill purports to strike a balance between them. It limits restrictions to that which is necessary to protect women seeking abortion services and those that provide the service by prohibiting certain conduct within 100 metres of the healthcare facility; it provides that members of the Gardai must first issue persons with warnings that their conduct is prohibited within the designated area, providing a person with knowledge, and the offence is committed under the Act if they repeat their conduct. A defence of honestly not realising that their conduct was in breach of the criminal law is available, as are exceptions that do not prohibit protesting or

²⁴ In *McGee v The Attorney General* [1973] IR 284 it was found that this right is implicitly protected by the unenumerated rights which flows from Article 40.3 of the Irish Constitution. It is also protected by Article 8 of the European Convention on Human Rights (ECHR), which has been indirectly incorporated into Irish law by [the European Convention on Human Rights Act 2003](#).

²⁵ Article 40.3.1 of the Irish Constitution.

²⁶ Article 40.6.1.i of the Irish Constitution, Article 10 ECHR

²⁷ Article 40.6.1.ii, Article 11 ECHR

²⁸ Article 44 Irish Constitution, Article 9 ECHR.

²⁹ [Report of the Independent Review of the Operation of the Health \(Regulation of Termination of Pregnancy\) Act 2018](#), p 113.

demonstrating at the Houses of the Oireachtas or activities that occur within places of worship that may be within 100 metres of a healthcare facility.”³⁰

During the pre-legislative scrutiny debates, it was noted that the balancing of rights proposed in this legislation is comparable with the prohibition on canvassing the electorate for votes near polling stations on election days.³¹ This involves balancing the rights to freedom of assembly and expression with the public interest in holding free and fair elections. The relevant legal provision is set out in full in Box 2 below.

Box 2: Restrictions on freedom of assembly and expression in electoral law

Section 147 of the *Electoral Act 1992*, as amended, provides:

- (1) A person shall not interfere with or obstruct or impede an elector going to or coming from or in the vicinity of or in a polling station.
- (2) During the period commencing 30 minutes before the time appointed for the taking of a poll at an election, including a poll which has been adjourned under section 107, and ending 30 minutes after the close of the said poll, a person shall not, in or in the curtilage of a polling station or in any place within 100 metres of such station, for the purpose of promoting the interest of a political party or furthering the candidature of a candidate or candidates or soliciting votes for a candidate or candidates or for any contrary purpose, do any or all of the following things:
 - (a) loiter or congregate with other persons;
 - (b) attempt to induce, by any means whatsoever, an elector to vote for a candidate or candidates or vote in a particular way or refrain from voting;
 - (c) display or distribute any notice, sign or poster (other than a notice, sign or poster displayed by the returning officer) or card, circular or other document relating to the election; or
 - (d) use or cause to be used any loud-speaker or other public address mechanism to broadcast matter relating to the election.
- (3) For the purpose of this section, a polling station shall be deemed to include all parts of the building and any land within the curtilage of the building in which the polling station is situate and the distance referred to in subsection (2) shall be measured from any entrance to the polling station or to the curtilage thereof.
- (4) A person who contravenes subsection (1) or (2) shall be guilty of an offence.

³⁰ Report of the Independent Review of the Operation of the Health (Regulation of Termination of Pregnancy) Act 2018, p: 116.

³¹ General Scheme of the Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022: An Garda Síochána, [Joint Committee on Health, 9 November 2022](#).

Case law on balancing rights in the context of safe access zones

According to the Irish Council for Civil Liberties:

“Case law of the European Court of Human Rights (EctHR) can provide some guidance as to what approach may be taken to limited forms of safe zones. It has previously held that some narrow restrictions on freedom of expression can be permitted to protect the personal rights of those providing abortions. The Court has associated the right to communicate a political message in the context of abortion with acts that have legislative significance. And the Court, when assessing limits on speech in the context of abortion, said that the historical and social context must be taken into account. This approach suggests that the limited restrictions on freedom of expression that safe zones entail are likely to be permissible under the ECHR, taking into account its effect on those accessing and providing services; the fact that those who would protest outside abortion providers have many other channels and spaces to exercise their right to protest with potentially a greater legislative impact; and considering the social and historical context in Ireland where for decades women seeking abortions have been subject to a range of rights violations and societal stigma, exclusion and discrimination.”³²

In *Dulgheriu v Ealing LBC*, the Court of Appeal of England and Wales referred to the ‘significant emotional and psychological damage’ endured by clinic-users who had been exposed to the demonstrations. The Court discussed the difference between abortion protests and other types of protests containing graphic language and imagery. The Court noted that protests aimed (solely or partly) at people accessing abortion services may be more likely to cause significant distress.³³

In [Reference by the Attorney General for Northern Ireland - Abortion Services \(Safe Access Zones\) \(Northern Ireland\) Bill](#), the UK Supreme Court, considered whether the legislation was a necessary and proportionate interference with rights and concluded:

“The right of women in Northern Ireland to access abortion services has now been established in law through the processes of democracy. That legal right should not be obstructed or impaired by the accommodation of claims by opponents of the legislation based, some might think ironically, on the liberal values protected by the Convention. A legal system which enabled those who had lost the political debate to undermine the legislation permitting abortion, by relying on freedom of conscience, freedom of expression and freedom of assembly, would in practice align the law with the values of the opponents of reform and deprive women of the protection of rights which have been legislatively enacted.”³⁴

³² ICCL (2020) *A Rights Based Analysis of Safe Access Zones*, p. 2-3.

³³ *Dulgheriu v Ealing LBC* [2019] EWCA Civ 1490

³⁴ [Reference by the Attorney General for Northern Ireland - Abortion Services \(Safe Access Zones\) \(Northern Ireland\) Bill](#), [2022] UKSC 32, para 156.

Views on legislating for safe access zones

The negative impact of “anti-abortion protests/activity” on individuals availing of healthcare services and healthcare providers was raised in a number of the written submissions to the pre-legislative scrutiny of the General Scheme, including the submissions from the Health Service Executive Irish Council for Civil Liberties, Irish College of General Practitioners, Irish Family Planning Association, the National Women’s Council, START Doctors Ireland and Together for Safety.³⁵ In terms of necessity for specific legislation to address safe access zones, the Irish Council for Civil Liberties in their submission noted that An Garda Síochána have powers to “move people on”.³⁶ Similarly, it was reported in September 2019, that Garda Commissioner, Drew Harris, had written a letter to then Minister for Health, Simon Harris TD, stating:

“... the introduction of such safe-access legislation would be “redundant” because of the existence of current laws and the fact that “no incidence of criminality has been reported or observed.” “³⁷

However, the Irish Council for Civil Liberties (ICCL) argued that the existing legal framework

“does not necessarily address the kind of behaviour that infringes on the rights of service users to access health care with dignity and in privacy or the kind of behaviour that causes long term harm to mental health or the kind of behaviour that can deter providers from signing up to providing abortion services”.³⁸

In other submissions, the proportionality of introducing legislation for safe access zones was queried. In their written submission, the Pro Life Campaign contended that the scope of this Bill is too broad and “singles out a range of peaceful and innocuous activities which are entirely legal, but will be banned within exclusion zones”.³⁹ Their submission contended that the Bill would be found in breach of the Constitution if challenged:

“the provisions of the Bill restrict the rights to freedom of expression and freedom of assembly to a quite extraordinary degree, by implementing a blanket ban on speech and assembly within huge numbers of newly-created exclusion zones. It also goes far beyond what is necessary to achieve the stated aims of the Bill, by imposing the zones on at least 1,400 sites where termination of pregnancy services are not even carried out.

³⁵ Written submissions are linked in Appendix 1 of the 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, pp.10-11 (last accessed 03 July 2023).

³⁶ ICCL (2022) [ICCL Submission to the Joint Committee on Health on the General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#), p.3.

³⁷ Jennifer Bray, “Existing laws adequate to deal with abortion protests, says Garda commissioner”, *Irish Times*, 26 September 2019.

³⁸ ICCL (2022) [ICCL Submission to the Joint Committee on Health on the General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#), p.4.

³⁹ Pro Life Campaign (2022) [Submission to the Joint Oireachtas Committee on Health: In relation to the General Scheme of the Health \(Termination of Pregnancy Services\) \(Safe Access Zones\)\) Bill 2022](#), p. 14.

Given the draconian extent of the proposed restrictions, the sufficiency of existing law as discussed above, and the scope and range of Constitutional rights that the Bill infringes, it seems clear that any legislation which seeks to ban such peaceful activity will be found to be a breach of the Constitution.”⁴⁰

Commenting on the balance of rights and the application of the proportionality concept, the Irish Human Rights and Equality Commission stated:

“The Commission is of the view that having regard to the aims sought to be achieved by the General Scheme, the restrictions on the rights of those who may engage in protest to express their opposition to termination of pregnancy are proportionate and necessary. In this regard, the Commission notes that a graduated response to prohibited conduct is mandated under the General Scheme with significant safeguards in place, and that religious expression within places of worship is also protected.”⁴¹

Similarly, the ICCL stated:

“ICCL fully supports the right to protest, including the rights to freedom of expression, assembly and association. We have long defended these rights and will continue to do so, recognising their fundamental importance to democracy and for the realization of a range of other rights. However, these rights are not absolute and human rights law and the Irish Constitution permit limitations to these rights when provided for by law, when necessary and proportionate and when in pursuit of a legitimate aim, including to protect the rights of others. We outline in detail below why we consider that the introduction of safe access zones, when narrowly defined and in pursuit of the protection of the rights to privacy, safety, bodily integrity, including the right to mental and physical health, and the right to access healthcare without discrimination, can constitute a proportionate interference with the right to protest.”⁴²

In their submission, the Presbyterian Church in Ireland state that the restrictions imposed by safe access legislation curtail freedom of expression and religion and that the zone of 100 metres could have “unintended consequences” including “constraining freedom of religion by limiting worship to designated locations”.⁴³

⁴⁰ Pro Life Campaign (2022) [Submission to the Joint Oireachtas Committee on Health: In relation to the General Scheme of the Health \(Termination of Pregnancy Services\) \(Safe Access Zones\) Bill 2022](#), p. 14.

⁴¹ IHREC (2022) [Submission on the General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#), p 8.

⁴² ICCL (2022) [ICCL Submission to the Joint Committee on Health on the General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#), p.2.

⁴³ Presbyterian Church of Ireland (2022) [Submission from the Republic of Ireland panel of the Presbyterian Church in Ireland's council for public affairs on the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022 – General Scheme of Bill](#).

Pre-legislative scrutiny




The [General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#) was published on 5 August 2022.

In September 2022, the Minister for Health [referred](#) the General Scheme to the Joint Committee on Health for scrutiny. The Committee agreed to undertake pre-legislative scrutiny (PLS) and held two public meetings with the Department of Health on [19 October 2022](#) and on [18 January 2023](#), as well as a public session with An Garda Síochána on [9 November 2022](#). The Committee also invited written submissions from stakeholders and links to those submissions are provided in the appendix of the [PLS report](#). Issues raised in the debates and written submissions are referred to throughout this *Digest*.⁴⁴

During pre-legislative scrutiny debates,⁴⁵ it was noted that the proposals in the General Scheme (Head 6) in relation to amendments to the law on harassment may be overtaken by the [Criminal Justice \(Miscellaneous Provisions\) Bill 2022](#). The 2022 Bill proposes the repeal and replacement of section 10 of the [Non-Fatal Offences against the Person Act 1997](#), and proposes to expand the harassment offence and provide for a new offence of stalking. The 2022 Bill passed Fifth Stage in Dáil Éireann on 29 March 2023 and Report Stage and Final before Seanad Éireann ordered for Wednesday, 5 July 2023.

The Committee published its [PLS report](#) on 8 May 2023 which included one recommendation.

Table 1: Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used in Table to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	

⁴⁴ Some written submissions provided more detailed analysis of the Heads of the General Scheme and are cited more frequently in this *Digest*.

⁴⁵ [General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022: Discussion](#), Joint Committee on Health, 19 October 2022 (last accessed 03 July 2023).

Table 2: Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

Commentary as per Committee report	Department of Health Commentary on whether Committee’s commentary addressed (either in whole or in part) in the Bill
The Committee recommends that a clear, practical and effective system of recording prior warnings be included in the Bill.	<div data-bbox="678 533 746 607" data-label="Image"> </div> In line with the recommendation from the Joint Committee, the Bill includes a requirement to record the warning.

Regulatory Impact Analysis

In the Regulatory Impact Analysis (RIA) carried out by the Department⁴⁶ with respect to this legislation, it is stated that the Department considered three options with regard to safe access zones:

1. No change in the law
2. Amendment of public order law
3. New legislation

Given the Government’s commitment to establish safe access zones, Option 3 (new legislation) was selected as the preferred option as full consideration could be given to constitutional issues in the development of primary legislation. It was noted in the RIA that the 100 metre ‘safe access zone’ is either in line with, or less restrictive than, other jurisdictions where zoning measures are used. The RIA also notes the range of rights that are engaged by this legislation and the legal principles exercised in achieving balance in the Bill. The approach is summarised as follows:

“In order to be legally permissible, restrictions on constitutional rights must be proportionate to a legitimate objective, should amount to a rational means for securing that objective, and should interfere as little as is reasonably possible with the right in question”.

The RIA also notes that “Members of An Garda Síochána would be provided with relevant powers to effectively manage and respond appropriately to offences under the General Scheme drafted for option 3.”

⁴⁶ The L&RS is grateful to the Department of Health for supplying a soft copy of the Regulatory Impact Analysis when requested.

Principal provisions of the Bill

This Bill contains seven provisions. This section of the *Digest* will discuss the provisions in detail.

Definition of Safe Access Zones (Section 1)

Section 1 of the Bill states:

“‘safe access zone’ means, in relation to a health care premises—

- (a) the relevant healthcare premises, and
- (b) any place within 100 metres of an entrance to the relevant healthcare premises or, in a case where part only of the place is within 100 metres of an entrance to that relevant healthcare premises, that part of that place;”

Section 1 also defines “relevant healthcare premises” and “place” which are referred to within this definition of safe access zone. “Place”, other than references to a “place of religious worship” is defined as:

- “(a) any public place,
- (b) any doorway, entrance, or opening, including a window, abutting or otherwise open to a public place,
- (c) any garden or land abutting a public place, or
- (d) any land or car park adjoining and open to a public place;”

“Relevant healthcare premises” is defined as:

- “(a) subject to paragraph (b), the land and buildings that form part of the premises at which a relevant healthcare provider provides healthcare services, or
- (b) where the premises referred to in paragraph (a) is a shared premises—
 - (i) such part of that premises that is used for the purposes of, or in connection with, providing such healthcare services, and
 - (ii) any other part of that premises (including land or buildings) that is used for the purposes of accessing, the part of the premises referred to in subparagraph (i);”

The definition of “relevant healthcare premises” includes a reference to a “shared premises”.

“Shared premises” is defined as follows:

“‘shared premises’, in relation to a relevant healthcare premises, means a premises that is not used solely for the provision by a healthcare provider of healthcare services;”

The term “access” is also defined in section 1 as follows:

“access” means, in relation to a relevant healthcare premises—

- (a) entry to the relevant healthcare premises, or
 - (b) exit from the relevant healthcare premises,
- or both;

The designation and definition of “safe access zones” was discussed during pre-legislative scrutiny debates⁴⁷ and also arose in stakeholder submissions.⁴⁸ In particular, the designation of ‘safe access zones’ in the General Scheme included the term “curtilage”.⁴⁹ Concerns were expressed that this term may not be easily understood. It may be noted that the term “curtilage” is used in [section 147 of the Electoral Act 1992](#), as amended, in relation to the prohibition of the promotion of a political party or a candidate on election polling days, as outlined above. However, in *Monkstown Road Residents Association and others v An Bord Pleanala and others* [2022] IEHC 318 it was noted that “curtilage is not a precisely defined concept in law”.⁵⁰

The term “curtilage” is not included in the published Bill. Instead, a number of definitions in section 1 relate to geographical areas. During the first pre-legislative scrutiny hearing with the Department of Health in [October 2022](#), it was stated that issues surrounding the use of the term “curtilage” were raised during drafting discussions with the Office of the Attorney General. In this hearing, the Department stated that the intention was to move towards a “more specific” definition in relation to the “entrance or egress points for healthcare facilities”.⁵¹ It may be noted that the term “access”, as defined in section 1, includes reference to entry and exit but the term “safe access zone” only refers to an “entrance”. As outlined above “place”, “relevant healthcare premises” and “shared premises” are also defined separately within section 1. The inclusion of detailed definitions would appear to align with the recommendations of the Irish Council for Civil Liberties who noted:

“Clear, unambiguous definitions of key terms are vital to ensure that this legislation can be implemented effectively and comply with general rule of law principles requiring clarity and foreseeability in criminal law.”⁵²

⁴⁷ According to Mr Muris O'Connor, Assistant Secretary at the Department of Health: “Discussions with the Attorney General on the refinement of the legislation has raised problems around the term “curtilage”. [General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022: Discussion](#), Joint Committee on Health, 19 October 2022 (last accessed 03 July 2023).

⁴⁸ For example, IHREC (2022), [Submission on the General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#), p 9.

⁴⁹ See the explanatory note for Head 3 of the [General Scheme](#).

⁵⁰ [2022] IEHC 318 at para 90.

⁵¹ Mr Muiris O'Connor, Assistant Secretary Research, Department of Health, [General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022: Discussion](#), Joint Committee on Health, 19 October 2022 (last accessed 03 July 2023).

⁵² ICCL (2022) [ICCL Submission to the Joint Committee on Health on the General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#), p.7.

Prohibited conduct (Section 2)

According to the [Explanatory Memorandum](#):

“It is not intended to be a general prohibition on expression or assembly or protest in relation to termination of pregnancy services. The overarching aim of this provision is to protect a person’s access to a lawfully available healthcare service and protect their decision to access termination of pregnancy services from unsolicited influence. Likewise, this also protects healthcare providers in their provision of termination of pregnancy services and their decision to provide termination of pregnancy services in order to ensure the availability of service.”

The prohibited conduct may be summarised as follows:

- Conduct likely to obstruct or impede access to a relevant healthcare premises (Section 2(1))
- Communication of material likely to influence the decision of another person to avail of or provide termination of pregnancy services (Section 2(2))
- Conduct likely to influence the decision of another person to avail of or provide termination of pregnancy services (Section 2(2))
- Conduct likely to threaten or intimidate a person accessing or attempting to access a relevant healthcare premises (Section 2(3))
- Accompanying, following or repeatedly approaching a person accessing or attempting to access a relevant healthcare premises (Section 2(3))
- Photographing, filming or recording of a person in a safe access zone who is accessing or attempting to access a relevant healthcare premises (Section 2(4))

The communication of material mentioned in section 2(2) is further defined in this section as occurring where a person displays, publishes, distributes or disseminates material; shows or plays the material; or makes material available in any other way including through the use of an information system. The meaning of information system is taken from section 1 of the [Criminal Justice \(Offences Relating to Information Systems\) Act 2017](#) which defines an information system in the following manner:

“information system” means—

- (a) a device or group of interconnected or related devices, one or more than one of which performs automatic processing of data pursuant to a programme, and
- (b) data stored, processed, retrieved or transmitted by such a device or group of devices for the purposes of the operation, use, protection or maintenance of the device or group of devices, as the case may be”.

This approach to communication is comparable with the approach to communication in section 6 of the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 (for further information, see this [Bill Digest](#)), which states that communication occurs when a person displays, publishes, distributes or disseminates material, shows or plays material, or makes material available through the use of an information system. The inclusion of this definition promotes legislative consistency, as communication was not previously defined in the General Scheme.

This type of prohibited conduct involves a triangular relationship between three principal actors: the person communicating the material; the public audience and the individual who is availing of, or providing, termination of pregnancy services.

The language and approach to prohibited conduct in section 2 of this Bill differs from the text of Head 4 of the General Scheme which addressed prohibited conduct in safe access zones. For example, the General Scheme included a non-exhaustive list of forms of prohibited conduct, which was detailed in nature. Section 2 of the Bill provides an exhaustive list as outlined above. However, the forms of conduct prohibited under section 2 of the Bill do not differ in material substance to what was proposed under Head 4 of the General Scheme. Section 2 of the Bill has streamlined the forms of prohibited conduct for clearer application.

The mental element of the offence (also known as *mens rea*) was different under the General Scheme. For example, in the General Scheme prohibited conduct was outlined in the following manner:

Prohibited conduct shall mean conduct which is **intended to**, or **may reasonably have the effect of**-

- (a) influencing the decision of a person in relation to availing of, or providing, termination of pregnancy services, or
- (b) interfering with a person's access to or provision of termination of pregnancy services,
- (c) or both.

Section 2 of the Bill changed the criminal threshold to intention or recklessness. For example, section 2(1) of the Bill offers greater clarity as it states that prohibited conduct under this subsection is done with **intent to obstruct** a person from availing of, or providing, termination of pregnancy services, or where the individual engaging in the prohibited conduct **is reckless as to whether such person is obstructed or impeded**.

However, sections 2(2)-(4) of the Bill may give rise to some ambiguity as these subsections retain the terminology to **"influence the decision of another person"**. In their submission to the pre-legislative scrutiny, the Irish Council for Civil Liberties (ICCL) noted that the phrase "may reasonably have the effect of influencing the decision of a person" could be construed as too broad".⁵³ They also noted that this Head "may not provide the necessary clarity and foreseeability required for criminal law, given that 'being influenced' can be considered a subjective experience".⁵⁴ They suggested that "[t]o reach the threshold of behaviour that can be criminalised we consider a higher degree of intention should be required".⁵⁵

⁵³ ICCL (2022) [*ICCL Submission to the Joint Committee on Health on the General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022*](#), p. 8-9.

⁵⁴ Ibid.

⁵⁵ Ibid.

Exemptions to section 2(2) (Section 3)

Section 3 of this Bill provides for exemptions to section 2(2) of the Bill set out in Box 3 below. It may be noted that the exceptions provided for in Head 5 of the General Scheme applied to Head 4 (Prohibited conduct within safe access zones) in its totality.

Box 3: Section 2(2) of the Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2023

Subject to *section 3*, a person shall not, in a safe access zone—

(a) communicate material to the public or a section of the public in a manner that is likely to influence the decision of another person in relation to availing of, or providing, termination of pregnancy services, or

(b) otherwise engage in conduct directed at the public or a section of the public in a manner that is likely to influence the decision of a person in relation to availing of, or providing, termination of pregnancy services,

with intent to influence the decision of such a person in relation to availing of, or providing, termination of pregnancy services, or being reckless as to whether such a decision is thereby so influenced.

In summary, section 3 of the Bill provides a person will not be prohibited from:

- engaging in lawful protest, advocacy or dissent within 100 metres of a public or private entrance to either House of the Oireachtas provided this is not directed at a specific healthcare premises, or persons accessing a relevant healthcare premises or
- engaging in lawful conduct inside a place of religious worship.

In the [Explanatory Memorandum](#) to the Bill, it is stated:

“In relation to the right to protest, the proposed legislation does not interfere with the right to advocate in favour or against abortion, apart from in the limited areas covered by Safe Access Zones and in the limited fashion covered by the concept of “prohibited conduct” as set out in Section 2. As such, the prohibition is not on the right to protest. The prohibition is on exercising a right of protest within a Safe Access Zone in a manner that is intended to, or is reckless as to whether, the protest interferes with a person’s access to a facility for the purpose of availing of, or providing termination of pregnancy services.”

“[P]lace of religious worship” is defined in section 3 as:

“... a building— (a) that is used for the purpose of religious worship, and (b) to which the public have access whether as of right or by permission and whether subject to or free of charge, but does not include the grounds or other land associated with the building.”

This definition was not previously included in the General Scheme. However, in the explanatory note to Head 5 of the General Scheme, it was stated that the exemption for places of worship would not apply to "the exterior grounds of a place of worship". This approach was critiqued in the written submission from the Presbyterian Church of Ireland, who stated that this approach "may have the unintended consequence of constraining freedom of religion by limiting worship to designated locations".⁵⁶ They further noted that the exclusion of the exterior grounds of a place of worship could limit the public advertisement of services, such as "pro-life counselling" or "pastoral support" on noticeboards on the exterior grounds of a church.⁵⁷

In the [Explanatory Memorandum](#) to the Bill, it is stated:

"The Section also ensures that conduct which would otherwise be lawful, which occurs within a public place (building) of worship is not prohibited. This is to protect, for example, sermons that may be given during church services. It should be noted that this exception would not apply to, for example, grounds outside of a church with a Safe Access Zone. This exception will avoid a situation where protestors may use the grounds of a church, or other similar location, to circumvent the prohibited conduct."

Section 3 also provides an exemption for the actions of a relevant healthcare provider, or any person employed by or acting on behalf of a relevant healthcare provider, which are done in the course of providing healthcare services, including the provision of information and advice relating to termination of pregnancy services. A similar provision was included in the General Scheme, although it previously did not explicitly mention the provision of advice regarding the termination of pregnancy.

It should be noted that during pre-legislative scrutiny, the application of safe access zones to industrial action was raised.⁵⁸ It was suggested in a number of the written submissions that there should be a specific "clause" included in the Bill so that "anything done in the course of industrial action within the meaning of the Industrial Relations Act 1990, or anything done by an authorised Trade Union in the conduct of its business" should be exempted.⁵⁹ This specific provision was not included in the text of the Bill. However, it was noted by the Department of Health in the oral hearings that "it is absolutely not the policy intent to prohibit industrial action within safe access zones".⁶⁰

⁵⁶ Presbyterian Church of Ireland (2022) [Submission from the Republic of Ireland panel of the Presbyterian Church in Ireland's council for public affairs on the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022 – General Scheme of Bill](#).

⁵⁷ Ibid.

⁵⁸ Róisín Shorthall T.D., [General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022: Discussion](#), Joint Committee on Health, 19 October 2022 (last accessed 03 July 2023).

⁵⁹ See, for example, the submission from Irish Family Planning Association, [General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022: Submission by the Irish Family Planning Association](#), p. 12. Other written submissions are linked in Appendix 1 of the 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, pp.10-11 (last accessed 03 July 2023).

⁶⁰ Mr Muiris O'Connor, Assistant Secretary Research, Department of Health, [General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022: Discussion](#), Joint Committee on Health, 19 October 2022 (last accessed 03 July 2023).

Powers of An Garda Síochána (Section 4)

Section 4 of the Bill provides three new powers to An Garda Síochána in relation to the enforcement of the proposed legislation as set out in Table 3 below. Some of these powers are standard provisions (e.g., power of arrest) and are somewhat comparable to powers found in public order law, which will be discussed below. Section 4(4) of the Bill provides that such powers are in addition to existing legislation, which means that the existing legal framework in relation to policing protests set out in the background section of this *Digest* will still apply.

Table 3: Powers of An Garda Síochána

Powers	Relevant sections of the Bill
Issue a warning	Section 4(1)
Require a person to state his or her name and address	Section 4(3)
Power of arrest	Section 4(4)

Power to issue a warning

Section 4(1) provides:

“A member of the Garda Síochána who believes, with reasonable cause, that a person has engaged, is engaging or will engage in conduct referred to in *subsection (1), (2), (3) or (4) of section 2* in a safe access zone may issue a warning to the person, which warning shall inform the person that—

- (a) the person, the subject of the warning, is in a safe access zone,
- (b) his or her conduct is, or if engaged in would be, conduct prohibited by this Act in a safe access zone,
- (c) because of the matters specified in paragraphs (a) and (b), he or she must cease engaging or not engage, as the case may be, in the conduct referred to in subsection (1), (2), (3) or (4) of section 2, and
- (d) if he or she continues to engage or engages in such conduct, he or she will be committing an offence.”

This provision is comparable to section 8 of the *Criminal Justice (Public Order) Act 1994*, which provides An Garda Síochána with the power to issue a direction to desist from engaging in unlawful activity or to vacate a particular vicinity. A notable difference between these provisions is that section 4(1) of the Bill allows for the issuing of a warning in relation to future conduct of an individual, i.e. conduct that a member of An Garda Síochána reasonably believes that an individual will engage in.

Recording a warning

During pre-legislative scrutiny there was much discussion about the recording of a warning from An Garda Síochána.⁶¹ In particular Ms Anne-Marie McMahon, Assistant Garda Commissioner stated:

Heretofore, we would not ordinarily record a warning. It is the resultant action of the warning that gives us the power to proceed to investigate the offence or, in the case of the public order Act, to make an arrest.⁶²

Current policing practice in relation to recording of crime by An Garda Síochána is outlined as follows:

“In Ireland, a crime is recorded when the alleged offence is first reported to An Garda Síochána. Hence, when Gardaí respond to a report of a crime, they record the incident (assuming it meets the criteria of reasonable probability) as opposed to waiting for an investigation to be conducted. An incident is created on PULSE that records data relevant to the alleged crime that has occurred.”⁶³

As noted earlier in this *Digest*, the Department of Health has implemented the Joint Committee on Health’s recommendation in relation to the recording of a warning.⁶⁴ Section 4(2) of the Bill now makes it mandatory for An Garda Síochána to record a warning issued under this legislation. Such a record must include “the time, date and particulars of the warning and the person to whom the warning has been issued.”

⁶¹ General Scheme of the Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022: An Garda Síochána, [Joint Committee on Health, 9 November 2022](#). The requirement for An Garda Síochána to record their warnings issued was recommended in written submissions from the ICCL, IFPA, IHREC, National Women’s Council and Together for Safety. Written submissions are linked in Appendix 1 of the 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, pp.10-11 (last accessed 03 July 2023).

⁶² General Scheme of the Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022: An Garda Síochána, [Joint Committee on Health, 9 November 2022](#).

⁶³ An Garda Síochána (2020, [Guide to How Crime is Recorded and Counted by An Garda Síochána, p 6](#)).

⁶⁴ This was also recommended by the ICCL in its written submission on the General Scheme. ICCL (2022) [ICCL Submission to the Joint Committee on Health on the General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#), p 9.

Offences (Section 5)

Sections 2(1)-(4) and 5(1) of the Bill creates new criminal offences with respect to prohibited conduct in safe access zones. These are set out in Table 4 below. It is a prerequisite for these offences that a person must have been issued with a warning by a member of An Garda Síochána in accordance with section 4(1) of this Bill.⁶⁵

The mental element of these offences is which intentionally or recklessly impedes access or influences the decision of a person in relation to availing of, or providing, termination of pregnancy service. Stakeholder submissions in relation to the mental element of the offences are outlined earlier in this *Digest* in the section on prohibited conduct.

Table 4: New criminal offences – prohibited conduct in safe access zones

Prohibited conduct (<i>actus reus</i> of the criminal offence)	Relevant sections of the Bill
Engaging in conduct likely to obstruct or impede access to a relevant healthcare premises	Sections 2(1), 5(1)
Communication of material likely to influence the decision of another person to avail of or provide termination of pregnancy services	Sections 2(2)(a), 2(5), 2(6) and 5(1)
Engaging in conduct likely to influence the decision of another person to avail of or provide termination of pregnancy services	Sections 2(2)(b), 5(1)
Engaging in conduct likely to threaten or intimidate a person accessing or attempting to access a relevant healthcare premises	Sections 2(3)(a), 5(1)
Accompanying, following or repeatedly approaching a person accessing or attempting to access a relevant healthcare premises	Sections 2(3)(b), 5(1)
Prohibition of photographing, filming or recording of a person in a safe access zone who is accessing or attempting to access a relevant healthcare premises	Sections 2(4), 5(1)

Section 5(2) also creates an offence of failure to provide a name and address to a member of An Garda Síochána when required under section 4(3) of the Bill or providing a name or address that is false or misleading. This is similar to section 19D of the *Criminal Justice (Public Order) Act 1994*.

⁶⁵ Sections 4(1) and 5(1) of the Bill.

Penalties and Escalated Enforcement

Section 5(3) provides that all offences in this Bill are summary offences, which means they are minor offences triable in the District Court. In its submission on the General Scheme, the IHREC stated:

“... the Commission considers that it would not be disproportionate to also provide for an indictable offence in respect of Heads 4 [prohibited conduct within safe access zones] and 7 [powers of An Garda Síochána], with a two year maximum sentence, for repeat offenders who engage in egregious forms of confrontation.”⁶⁶

The Explanatory Memorandum notes that “penalties have been provided on an escalating basis where harsher penalties may apply for repeat offences.” In its submission on the General Scheme the ICCL welcomed “the provision for a graduated response from the Garda Síochána to the breaching of provisions”.⁶⁷

The penalties can be summarised as follows:

1. **first offence:** fine of up to **€500**⁶⁸ or **imprisonment** for a term not exceeding **one month** or both,
2. **second offence:** fine of up to **€1,000**⁶⁹ or **imprisonment** for a term not exceeding **3 months** or both,
3. **third or subsequent offence:** fine of up to **€2,5000**⁷⁰ or **imprisonment** for a term not exceeding **6 months** or both.

Defences

Subsection 8 of Head 4 of the General Scheme provided for a defence of “honest belief” as follows:

“It shall be a defence to proceedings for an offence under this Head for the defendant to prove that he or she honestly believed that, at the time of the alleged commission of the offence, he or she was not within a safe access zone”.

In its submission on the General Scheme, the ICCL stated:

“... we consider that a defence of ‘honest belief’ may provide those who would seek to breach the provisions of this law with a broad scope for excusing behaviour that is deliberately setting out to interfere with service users or providers.”⁷¹

The Bill does not contain a defence of honest belief. It is a pre-requisite for an offence to have been issued with a warning; this is a change from the General Scheme. It would not seem necessary to have a defence of honest or reasonable belief.

⁶⁶ IHREC (2022), [Submission on the General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#), p 11.

⁶⁷ ICCL (2022) [ICCL Submission to the Joint Committee on Health on the General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#), p 9.

⁶⁸ Class E fine as set out in section 3 of the [Fines Act 2010](#).

⁶⁹ Class D fine as set out in section 3 of the [Fines Act 2010](#).

⁷⁰ Class C fine as set out in section 3 of the [Fines Act 2010](#).

⁷¹ ICCL (2022) [ICCL Submission to the Joint Committee on Health on the General Scheme of the Health \(Termination of Pregnancy Services \(Safe Access Zones\)\) Bill 2022](#), p 9.

Contact:

Houses of the Oireachtas
Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie

Tel: +353 (0)1 6183000 or 076 1001700

Twitter: @OireachtasNews

Library & Research Service

Tel: +353 (0)1 6184701

Email: library.and.research@oireachtas.ie

