

Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022
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In 2018 the thirty-sixth Amendment of the Constitution of Ireland was subject to a referendum with more than 66% of those who voted approving the repeal of the Eighth Amendment of the Irish Constitution. The Health (Regulation of Termination of Pregnancy) Act 2018 was signed into law by the President on 20 December 2018 and all sections were commenced on 1 January 2019.

The Act of 2018 sets out the law governing access to Termination of Pregnancy services in Ireland. It permits a termination to be carried out in specified circumstances. Patients attending any health service, as well as their family members, are often at a vulnerable point in their lives and should not be subjected to further distress at a time and place when they may feel most sensitive to uninvited attention. 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 order to ensure access to the services, health service staff must also be able to provide lawfully available services without fear of intimidation or harassment, and healthcare providers must also be able to provide or make a determination to provide termination of pregnancy services without fear of intimidation or harassment.

This General Scheme is to provide for Safe Access Zones around defined healthcare settings wherein certain conduct will be regulated for the purpose of ensuring safe access, with privacy and dignity, to Termination of Pregnancy services for women, service providers and their staff throughout the country. The objectives of the Bill are to:

- **Protect the safety and well-being** of women accessing termination of pregnancy services, as well as service providers, their staff and others who need to access defined locations (healthcare settings) in the course of their duties and responsibilities.
- **Respect the privacy and dignity** of women accessing termination of pregnancy services, as well as the service providers, and their staff in the course of their duties and responsibilities.
- **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 accessing termination services, as well as service providers and others attending by putting in place legislative measures to ensure that specific behaviours, activities and/or protests/demonstrations are prohibited within 100m of certain healthcare settings that can lawfully provide termination of pregnancy services in accordance with the Health (Regulation of Termination of Pregnancy) Act 2018.

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Part 1
Preliminary and General

Head 1 Short title and commencement

Provide that:

- This Bill may be cited as the Health (Termination of Pregnancy Services (Safe Access Zones)) Bill 2022; and
- The provisions contained herein may be commenced on a date or dates to be prescribed by the Minister.

Explanatory note

This is a standard provision containing the title and commencement date and will provide for commencement on a date prescribed by the Minister, by Order.

Head 2 Interpretation

Provide for:

In this Act

“Act of 2018” means the Health (Regulation of Termination of Pregnancy) Act 2018;

“curtilage” means an area immediately surrounding or adjacent to the premises of a healthcare provider, which is used in conjunction with the premises;

“healthcare provider” means:

- a) a medical practitioner who is for the time being registered in the register of medical practitioners established under section 43 of the Medical Practitioners Act 2007, or
- b) a hospital;

“member” means a member of the Garda Síochána;

“Minister” means the Minister for Health;

“healthcare premises” means the land and buildings in which a healthcare provider is located including the curtilage;

“place of worship” means a building used for the purpose of religious worship but does not include the grounds or other lands associated with the building;

“prohibited conduct” has the meaning assigned to it by Head 4;

“Safe Access Zone” has the meaning assigned to it by Head 3;

“service provider” means:

- a) a healthcare provider;
- b) the staff of a healthcare provider
- c) any person employed or engaged on behalf of a healthcare provider;
- d) any person providing a service to a healthcare provider;

“termination of pregnancy” has the meaning assigned to it under the Health (Regulation of Termination of Pregnancy) Act 2018;

“termination of pregnancy services” means any healthcare service related to the termination of a pregnancy including follow up care.

Explanatory note

This head is a standard provision containing definitions of the key terms of the Act. The proposed list of terms is not intended to be exhaustive.

The intention is to implement Safe Access Zones around sites that can provide termination of pregnancy services in accordance with the Act of 2018, not just those that do. This includes acute hospitals, community care and secondary care centres, being predominately GP practices, family planning clinics and Wellwoman Clinics. All acute hospitals are included to ensure that the legislative provisions include both dedicated maternity hospitals and those hospitals that provide or can provide Termination of Pregnancy services, or could provide follow on or ancillary care to woman that has had a termination.

Part 2
Protections in relation to Services

Head 3 Designation of Safe Access Zones

Provide for:

- (1) The designation of a “Safe Access Zone” to be:
 - a) All healthcare premises;
 - b) the area of 100 metres surrounding or adjacent to a healthcare premises, which may include any part of that area that is a public place;

- (2) In this head, “public place” means any place to which the public have access whether as of right or by permission and whether subject to or free of charge;

Explanatory note

This Head designates Safe Access Zones around healthcare premises. For the purpose of this Bill, healthcare premises includes any premises where termination of pregnancy services could lawfully be provided. It is important to reflect that this is not limited solely to those healthcare premises that currently provide such services. Following the enactment of the Health (Regulation of Termination of Pregnancy) Act 2018, termination of pregnancy services were mainstreamed into the healthcare system. This differs from some other jurisdictions where dedicated clinics or facilities provide such services often referred to as “abortion clinics”. As a result of the mainstreaming of this service, any hospital, general practitioner, or other such service provider may provide these services, subject to the provisions of the Act of 2018. There is no publicly available complete list of all healthcare providers providing termination of pregnancy services, as each provider will determine to provide the services. It is Government policy that termination of pregnancy services, under the Health (Regulation of Termination of Pregnancy) Act 2018, should be provided in all nineteen maternity hospitals/units.

In this Head, a zone, consisting of 100m surrounding or adjacent to every healthcare premises are designated. In the context of this Head a healthcare premises will include the premises (buildings and land and curtilage) of hospitals, community care and secondary care centres, being predominately general practitioners, family planning clinics and Wellwoman clinics. The Safe Access Zone includes any part of the 100m designated area that is a public place.

Curtilage is included rather than from the entrance of the healthcare building to achieve the objective of providing a perimeter around the whole building and any associated driveway/campus associated with the premises of healthcare provider (i.e. not just the entrance to the buildings). This is addressed so as to avoid a situation where prohibited conduct (see Head 4) is carried out away from the access points to the healthcare premises but still sufficiently close to the building to potentially impede or influence healthcare decisions or access to services or cause unnecessary upset for service users (e.g. where the window of a consultation room or ward etc. overlooks a public space). It is also to be noted that where a healthcare premises is located within a shared building (i.e. with other services unrelated to the healthcare provider) it is intended that the building in which the healthcare premises is located along with 100m from the curtilage of that building will form part of the designation of the Safe Access Zone. By way of an example, if a GP practice was located within a shopping centre, the extent of the Safe Access Zone would be 100m from the curtilage of the shopping centre, not 100m from the office space within which the GP is located. This is to ensure that access to the service is not impeded, which may be at further risk of occurring in indoor areas/multiuse premises.

The intention of creating zones is to prohibit certain conduct in the vicinity of healthcare premises that may provide termination of pregnancy services, which intentionally or reasonably could have the

effect of impeding access or influencing the decision of a person in relation to availing of, or providing, termination of pregnancy services, or interfering with a person's access to or provision of termination of pregnancy services, or both (see Head 4 for further detail).

The Department is aware of some protests which have caused distress to those accessing and providing services. In recent times, and most likely in the context of COVID-19 restrictions on gatherings, some maternity units and hospitals had experienced a reprieve from such protests. However, through engagement with stakeholders the Department is aware that anti-abortion demonstrations continue, with some sites experiencing recurrent protests. This can be distressing for patients and service providers, and as such, there has been significant support for safe access legislation.

Head 4 Prohibited conduct within Safe Access Zones

Provide for:

- (1) Subject to Head 5, no person shall engage in prohibited conduct within a Safe Access Zone.
- (2) In this Head, 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.
- (3) In this Head, prohibited conduct includes, but is not limited to:
 - (a) Interfering, or attempting to interfere, by any means, with any service provider, any person accessing or attempting to access the services of a healthcare provider or any person accompanying a person who is accessing or attempting to access the services of a healthcare provider;
 - (b) blocking access or attempting to block access to a healthcare premises;
 - (c) communicating in such a way as to deter or dissuade, or attempt to deter or dissuade, a person from accessing termination of pregnancy services;
 - (d) communicating in such a way as to persuade, or attempt to persuade, a person to avail of termination of pregnancy services;
 - (e) communicating in such a way as to deter or dissuade, or attempt to deter or dissuade, a healthcare provider from providing termination of pregnancy services;
 - (f) engaging in conduct which is intended to, or could reasonably be expected to, exert moral pressure on a person in relation to termination of pregnancy services;
 - (g) intimidating or harassing, or attempting to intimidate or harass, any service provider, any person accessing or attempting to access the services of a healthcare provider or any person accompanying a person who is accessing or attempting to access the services of a healthcare provider;
 - (h) displaying or distributing, or attempting to distribute, any text, or images intended to, or which could reasonably be considered likely to, influence a person's decision to access termination of pregnancy services;
 - (i) displaying or distributing, or attempting to distribute, any text, or images intended to, or which could reasonably be considered likely to, influence a healthcare provider's decision to provide termination of pregnancy services;
 - (j) displaying any item, whether symbolic or otherwise, with the intended or likely effect of influencing a person's decision to access termination of pregnancy services;
 - (k) displaying any item, whether symbolic or otherwise, with the intended or likely effect of influencing a healthcare provider's decision to provide termination of pregnancy services;
 - (l) playing or using amplified music, voice or audio recordings or visual recordings relating directly or indirectly to termination of pregnancy or a foetus or both;
 - (m) photographing or recording by any means a healthcare provider, person or persons providing services or assisting in the provision of services by a healthcare provider,

any person accessing or attempting to access the services of a healthcare provider or any person accompanying a person who is accessing or attempting to access the services of a healthcare provider without the person's consent;

- (n) Offering, or attempting to offer, in any unsolicited way, counselling in respect of termination of pregnancy or pregnancy or both to any person accessing, or attempting to access, the services of a healthcare provider or to any person accompanying a person who is accessing, or attempting to access, the services of a healthcare provider, or both.
- (4) For the purposes of this Head, "influencing" shall include dissuading a person to avail of, or provide, termination of pregnancy services.
- (5) A member of the Garda Síochána who believes, with reasonable cause, that a person has engaged, is engaging, or will engage in prohibited conduct may issue a warning to that person to cease engaging or not to engage in prohibited conduct.
- (6) A warning issued by a member of the Garda Síochána pursuant to subsection 5 shall apply to all Safe Access Zones and shall not be time-limited.
- (7) It shall be an offence for a person who has been issued with a warning pursuant to subsection 5 to engage, without reasonable excuse, in prohibited conduct within a Safe Access Zone.
- (8) 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.
- (9) A member of the Garda Síochána who believes, with reasonable cause, that a person has engaged, is engaging, or will engage in prohibited conduct may require the person to state his or her name and address.
- (10) A person who fails or refuses to state his or her name and address in compliance with a requirement under subsection (9), or who, in purported compliance with such a requirement, states a name or address that is false or misleading, shall be guilty of an offence.
- (11) The Garda Síochána may maintain a record of a warning issued pursuant to subsection 5, which may include particulars relevant to the warning and the person to whom the warning has been issued.

Explanatory Memo

This Head specifies the type of conduct that is prohibited within the Safe Access Zones. 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, in conjunction with the General Scheme as a whole, 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. Arising from evidence of demonstrations at the premises of healthcare providers, and having regard to the evidence of the impact that such protests can have on service users, there is a pressing social need to:

- Protect the safety and well-being of women accessing termination of pregnancy services, as well as service providers, their staff and others who need to access defined locations (healthcare settings) in the course of their duties and responsibilities;

- Respect the privacy, personal autonomy and dignity of people accessing termination of pregnancy services, as well as the service providers, and their staff in the course of their duties and responsibilities;
- 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 accessing termination services, as well as service providers and others attending.

The pressing social need and legitimate aim to provide for these protections align with the rights provided for under Article 40 of the Constitution and Article 8 of the European Convention on Human Rights (right to respect for private and family life).

In an overarching sense, the purpose of the Safe Access Zones and the associated prohibited conduct aims to protect the rights of service users and providers to ensure that service users can access a lawfully available healthcare service, in a safe, private, dignified, and unimpeded way, and to ensure that those who provide such services are free from harassment, intimidation and unsolicited communications and can attend their workplace and provide healthcare services safely.

It is recognised that protecting the rights of service users must be balanced against protecting the rights of those engaged in legitimate protest, including the rights provided for under Article 40.6.1 of the Constitution and Articles 10 (Freedom of Expression) and 11 (Freedom of Assembly and Association) of the European Convention on Human Rights. These rights are not absolute. In balancing the various rights, this General Scheme of a Bill prohibits specified conduct, as described above, but does so with limited scope – limiting such restrictions to that which is necessary. In that regard, the designation of Safe Access Zones is confined only to a 100m area surrounding specified healthcare premises. The behaviours in question are not restricted in any way under this Head outside of those designated Safe Access Zones. Conduct that is otherwise lawful, including protest or demonstrations in respect of termination of pregnancy may continue in all other circumstances and at all other locations.

Further, the offences provided for are not “strict liability” offences. The provision aims to address conduct which is intended to or could be considered by a reasonable person to be believed to influence the decision of a person in relation to availing of, or providing, termination of pregnancy services, or interfere with a person’s access to or provision of termination of pregnancy services, or both. This is further supported in Head 5, to which Head 4 is subject, which also provides for specific exceptions. The Head also acknowledges that the boundaries of Safe Access Zones may not be readily identifiable “on the ground” and to ensure legal certainty, the Head requires that a member of An Garda Síochána must, in the first instance issue a warning to the person that has engaged in, is engaging or will engage in prohibited conduct. If that person engages in prohibited conduct in the Safe Access Zone or any other Safe Access Zone at any time thereafter they will be committing an offence. This provides an opportunity for the person or persons concerned to cease prohibited conduct, prior to further escalation or enforcement being taken.

Head 5 Exceptions

Provide for the following exceptions in respect of Head 4:

- (1) Nothing in this Bill shall prohibit conduct which would otherwise be lawful, which occurs within 100 metres of either House of the Oireachtas.
- (2) Nothing in this Bill shall prohibit conduct which would otherwise be lawful, which occurs within a public place of worship.
- (3) Nothing in this Bill shall prohibit anything done in the course of or in relation to the provision of healthcare services by the healthcare provider or its staff, including the provision of information.

Explanatory note

This Head sets out exceptions that may apply in the context of restricted conduct within Safe Access Zones and corresponding offences. In doing so this Head also acknowledges and promotes, on a proportionate basis, the balancing of various human and constitutional rights.

This Head makes clear that otherwise lawful conduct close to the Houses of the Oireachtas is excepted.

The head also excepts, for the avoidance of doubt, activity which may occur within places of worship – for example, a sermon during mass. It is intended that this exception will apply within indoor environments and not, for example, on the exterior grounds of a place of worship.

This Head further makes it clear that this Bill does not impede, impact on, prohibit or criminalise anything done by healthcare and other staff of the healthcare provider in the normal function of the healthcare service.

Head 6 Harassment in relation to Termination of Pregnancy Services

Provide for:

- (1) It shall be an offence to intimidate or harass a service provider in relation to that service provider's decision to provide termination of pregnancy services.
- (2) For the purpose of this section, harassment or intimidation may take the form of, but is not limited to, repeatedly communicating with a service provider by letter, social media, telephone, text message, email or other electronic or non-electronic means, persistently following, watching, monitoring, pestering or besetting the service provider.

Explanatory note

This Head specifies conduct that is prohibited irrespective of where it is committed (i.e. this is not conduct that is confined to Safe Access Zones). This conduct is in the context of termination of pregnancy services only. This Head aims to prevent repeated behaviours amounting to intimidation or harassment, including campaigns aimed towards healthcare providers, which are, in effect, aimed at influencing a provider's choice to provide termination of pregnancy services. This Head aims to pursue the legitimate aim to ensure that there is no impact on the offering by service providers of termination of pregnancy services, to ensure that the provision of service is maximised to the greatest extent, and to avoid disproportionate impacts on access to and provision of services geographically.

Head 7 Powers of An Garda Síochána

Provide for:

- (1) A member of the Garda Síochána who suspects, with reasonable cause, that a person has committed an offence or is in the process of committing an offence under Head 4 may direct the person to take such steps as the member considers necessary to comply with the provisions of this Act;
- (2) A person who, without lawful authority or reasonable excuse, fails to comply with a direction under subsection (1) shall be guilty of an offence.
- (3) A member of the Garda Síochána may arrest without warrant a person whom the member has reasonable cause for believing is committing or has committed an offence under this Act.
- (4) A member of the Garda Síochána who has reasonable grounds for believing that a person is committing or has committed an offence under this Act may require the person to state his or her name and address.
- (5) A person who fails or refuses to state his or her name and address in compliance with a requirement under subsection (4), or who, in purported compliance with such a requirement, states a name or address that is false or misleading, shall be guilty of an offence.
- (6) A direction under this Head may include, but not is not limited to, a direction to:
 - a. desist from acting in a specified manner;
 - b. leave immediately the vicinity of the safe access zone in a peaceable or orderly manner;
 - c. provide the member or any other member with any and all copies of material specified in Head 4(2) (i), (j), (k) or (l);
 - d. where the member has reasonable cause to believe a device, including an electronic device or other such equipment was or is being used to undertake conduct specified in Head 4(2)(m) or 4(2)(n), the member may direct that the person in possession of the device to provide it to the member;
- (7) Where a person, without lawful authority or reasonable excuse, fails to comply with a direction where it specifies actions under Head 7(6)(c) or (d), a member of the Garda Síochána may seize and retain the specified device, equipment or copies of the material, as relevant.

Explanatory note

This Head provides members of An Garda Síochána with relevant powers to effectively manage and respond appropriately to offences under this General Scheme. The Head provides that a member of An Garda Síochána may issue a direction to a person he or she suspects, with reasonable cause, is engaging in or has engaged in the offensive conduct provided set out under Head 4 in a Safe Access Zone. The direction may specify any action or actions the person may take, including to desist from carrying out any action, in order to comply with the provisions of this Bill. It will be an offence if a person fails to comply with such a direction.

A graduated response is proposed in an effort to ensure any restriction on rights is minimised.

Head 8 Penalties

Provide for:

- (1) A person guilty of an offence under Head 4 or Head 7 is liable on summary conviction—
 - (a) in the case of a first such offence, to a Class E Fine or imprisonment for a term not exceeding one month or both,
 - (b) in the case of a second such offence, to a Class D fine or imprisonment for a term not exceeding 3 months or both, and
 - (c) in the case of a third or subsequent such offence, to a Class C fine or imprisonment for a term not exceeding 6 months or both.
- (2) A person guilty of an offence under Head 6 is liable
 - (a) on summary conviction—
 - i. in the case of a first such offence, to a Class B Fine or imprisonment for a term not exceeding one month or both,
 - ii. in the case of a second or subsequent such offence, to a Class A fine or imprisonment for a term not exceeding 3 months or both, and
 - (b) on conviction on indictment to a fine not exceeding €25,000 or imprisonment for a term not exceeding 12 months, or both.

Explanatory note

This Heads sets out the penalties arising for offences under Bill. Under this Bill some of the offences may be prosecuted summarily only. However, more serious offences may be indictable. The indictable offences relate specifically to those in Head 6 and are not restricted to behaviours undertaken in Safe Access Zones only. By their nature, these offences reflect behaviour that is repetitive in nature and may cause ongoing distress or other negative impact to the person experiencing the behaviour and therefore attract escalated treatment.

In this Head an escalation framework is provided so that the penalties arising for offences may escalate where a person is convicted of repeat offences. The maximum fines for Classes of Offences is: Class E Fine - €500; Class D Fine - €1,000; Class C Fine - €2,500; Class B - €4,000; Class A - €5,000.