

MEMORANDUM FROM THE SCOTTISH GOVERNMENT TO THE HEALTH, SOCIAL CARE AND SPORT COMMITTEE

Introduction

1. The Scottish Government, as set out in the Programme for Government 2023-24, is committed to working closely with Gillian Mackay MSP to deliver her Member's Bill on safe access zones.
2. This memorandum has been prepared to assist consideration by the Health, Social Care and Sport Committee of the Abortion Services (Safe Access Zones) (Scotland) Bill ("the Bill"), which was introduced by Gillian Mackay MSP on 5 October 2023.

Background

3. The Bill:
 - creates an automatic safe access zone comprising the premises which provide abortion services ("the protected premises"), the public area of the attaching grounds if there are any, and each public area of land within 200m of the edge of the protected premises;
 - allows health providers or Health Boards to respond to local circumstances by providing the ability for them to apply for an extension zone if the current zone does not provide adequate protection; and allow Ministers to reduce a zone if they consider it appropriate to do so;
 - creates offences within a safe access zone which prohibit behaviours in terms of their impacts;
 - safeguards the rights of those who wish to protest or otherwise demonstrate opposition to abortion by limiting the prohibition to only activities carried out (or which can be seen or heard) in public areas within the boundary of a zone.
4. The most important provisions of the Bill are:

Section 1 provides the meaning of "protected premises".

Section 2 sets out the establishment of safe access zones, and what they will encompass. It also creates a requirement for the Scottish Ministers to publish a list of protected premises and accompanying safe access zones which will include a map. This list must be in place when the provisions come into force and be updated as and when safe access zones change.

Section 3 sets out that the operator of a proposed protected premises must notify Scottish Ministers of the day when abortions services will begin to be provided. Upon receiving a notification, the Scottish Ministers must update the maintained list of protected premises and safe access zones, identify when the proposed safe access zone will come into effect and publish the updated list. The list must be published 14 days in advance of a safe access zone coming into effect.

In the event that no notification has been provided and the Scottish Ministers become aware of a protected premises, then they must update the list of protected premises and safe access zones, identify when the safe access zone will come into

effect which can be no earlier than 14 days after the list being published, and publish the updated list.

Section 4 sets out offences relating to conduct within a safe access zone. An offence will be committed if the person within a safe access zone does an act with the intent of, or is reckless to the effect of:

- influencing the decision of another person to access, provide or facilitate the provision of abortion services at the protected premises,
- preventing or impeding another person from accessing, providing or facilitating the provision of abortion services at the protected premises, or
- causing harassment, alarm or distress to another person in connection with the other person's decision to access, provide or facilitate the provision of abortion services at the protected premises.

A person who commits an offence will be subject, on summary conviction, to a fine not exceeding the statutory maximum or, on indictment, to an unlimited fine.

Section 5 sets out offences in an area visible or audible from a safe access zone. A person is committing an offence if they do an act which is capable of being seen or heard by another person within a safe access zone and does so with the intention of, or is reckless as to whether the act has the effect of:

- influencing the decision of another person to access, provide or facilitate the provision of abortion services at the protected premises,
- preventing or impeding another person from accessing, providing or facilitating the provision of abortion services at the protected premises, or
- causing harassment, alarm or distress to another person in connection with the other person's decision to access, provide or facilitate the provision of abortion services at the protected premises.

A person who commits an offence will be subject, on summary conviction, to a fine not exceeding the statutory maximum, or, on indictment, to an unlimited fine.

Section 6 provides a list of instances where a person would be exempt from committing offences, such as if the person was providing or facilitating the provision of abortion services.

Section 7 provides the Scottish Ministers with the ability to extend safe access zones, and for operators to apply for an extension based on individual circumstance.

Section 8 provides the Scottish Ministers with the ability to reduce the size of safe access zones.

Section 10 provides the Scottish Ministers with the power to amend the meaning of "protected premises" through regulations.

Section 12 provides the Scottish Ministers with ancillary powers which will allow for the Act to be amended through regulations.

Consultation

5. Gillian Mackay MSP ran a public consultation on an Abortion Services Safe Access Zones Member's Bill between 19 May – 11 August 2022. The consultation sought views on the introduction of safe access zones around healthcare facilities providing abortion care within Scotland.
6. The 11,879 responses to the consultation were analysed by Gillian Mackay MSP and of these responses, 52 were from organisations which included the public sector, third sector and trade unions. 11,827 came from individuals, including politicians, academics, medical professionals, and those writing in a personal capacity. This last group made up the majority of responses (10,491).
7. Responses were highly polarised and reflect the general discourse around abortion. Of the responses received 6658 (56.1%) of individuals were fully in favour of the proposal with a further 38 responses partially in support of the proposal. 33 organisations (63%) were fully in favour. Reasons for support included protecting women's rights to access healthcare, freedom of choice, individuals' rights to privacy and compassion, and concerns both for people accessing abortion services, and other people affected by protest and vigil activities, including people accessing other services and those working in clinics and hospitals. 5,065 (42.6%) of individuals who responded were fully opposed to the Bill, with a further 51 partially opposed. 16 organisations (31%) were fully opposed. Reasons given for opposing the Bill included fundamental opposition to abortion, that the Bill would restrict individuals' rights to free speech and expression of religious views, and that there is no proof that anti-abortion activity causes harm. As noted above, these views mirror the general discussion around abortion.

Financial Impact

8. The Financial Memorandum accompanying the Bill provides a summary of estimated costs relating to the establishment of safe access zones and their on-going costs. The main costs associated with the Bill will be the initial awareness raising campaign, the potential use of signage to demarcate zones, enforcement of offences and prosecution of offences by the Crown Office and Procurator Fiscal Services.
9. Summary of cost for awareness raising and potential for implementation of the Bill:
 - Awareness raising including publishing cost - £1,000 - £3,000
 - Signage - £12,673 - £63,365
10. Summary of costs for COPFS
 - Estimated annual cost – £11,824 - £196,200

Scottish Government's Position

11. The Scottish Government is committed to ensuring that patients and staff can access abortion services free from intimidation, harassment, and undue influence. As set out in the Programme for Government 2023-24, the Scottish Government has been working closely with Ms Mackay to deliver her Member's Bill and will continue to support the Bill as it makes its way through Parliament.

12. The Scottish Government is aware that safe access zones, like the general discourse around abortion, is a highly divisive issue. The Scottish Government also acknowledges that, in protecting the right to respect for private and family life under article 8 of the European Convention on Human Rights, the Bill may impinge on the article 9, 10 and 11 rights of individuals of those who may wish to participate in anti-abortion activity directly outside healthcare premises providing abortion services. It is considered that the Bill achieves a proportionate response that balances these competing rights. The Bill is designed to restrict these rights in very specific circumstances and only with the intention of protecting the rights of patients and staff to access abortion services. Nothing in the Bill seeks to limit the ability of those who oppose abortion to express that opposition in any other forum.
13. In August 2022, before a formal agreement was reached to support Gillian Mackay MSP's Bill, the Scottish Government commissioned research on the impact of protests and vigils on behalf of the formal Ministerial-led working group on safe access zones. The research aims to examine the impact protests and vigils have on individuals who organise and participate in protests and vigils, staff who work at hospitals and clinics where protest and vigils have occurred and patients who experience protests and vigils whilst accessing services. The research is due to conclude in 2024; however, an interim year 1 report has been produced and has been included as a separate attachment for the Committee's consideration.

Conclusion

14. The Scottish Government will continue to work closely with Gillian Mackay MSP to deliver her Member's Bill, and will assist the Parliamentary scrutiny of the Bill in any way it can.

Scottish Government
December 2023