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Convener
Health, Social Care and Sport Committee
Scottish Parliament

BY EMAIL ONLY: SAZBill@parliament.scot

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Dear Convener

[Abortion Services \(Safe Access Zones\) \(Scotland\) Bill](#)

Thank you for the opportunity to give evidence to the committee on 12 March as part of stage 1 scrutiny of the above Bill.

I am writing to follow up on two points arising from the evidence session:

[Silent prayer and proportionality](#)

During the evidence session, Ivan McKee MSP raised a query regarding silent prayer in the context of the Bill. He asked for any comments “on the pertinent issue of the right to silent prayer, the ECHR rights on that and how that applies in the legislation and the Supreme Court ruling”. I indicated that this was something I would like to consider further with others from the Law Society of Scotland.

We are not aware of any specific case law or precedent on this issue, and we are not therefore able to comment on how this may be interpreted by a court.

We would, however, note the following:

- We are not aware of anyone being convicted of an offence for engaging in silent prayer within a safe access zone established under equivalent legislation in other jurisdictions (although we note the evidence provided to the committee on 12 March by Isabel Vaughan-Spruce that she was arrested twice for engaging in silent prayer).
- We are not aware of anything on the face of the Northern Irish legislation, nor any discussion in the Supreme Court case, which specifically excludes silent prayer from the scope of equivalent offences in Northern Ireland.
- An offence is only committed within the scope of the Bill where a person commits an act

“with the intention of, or is reckless as to whether the act has the effect of—

(a) influencing the decision of another person to access, provide or facilitate the provision of abortion services at the protected premises,



(b) preventing or impeding another person from accessing, providing or facilitating the provision of abortion services at the protected premises, or

(c) 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"

Intention or recklessness as to effect in this context will be a question of fact to be determined on the basis of evidence according to the usual processes for investigation and prosecution of alleged crimes, including the duties of the courts under section 6 of the Human Rights Act 1998 as highlighted by Eilidh Dickson of the Scottish Human Rights Commission during her evidence to the committee.

We acknowledge that these are complicated issues to address by way of legislation, and regret that within the time available we are not able to provide a more detailed response.

Other protests around abortion services

During the evidence session, Dr Sandesh Gulhane MSP also discussed issues around other protests around abortion services, not just those referred to in the Bill. I noted that if the Committee had a query around that then the legislation should be made clear. I noted existing legislative frameworks for other forms of protest, such as trade unions. Dr Gulhane asked me to write to the Committee to provide wording to help make that clearer.

Having now had an opportunity to reflect, my view is that from the Society's perspective the Bill as introduced is sufficiently specific to exclude other protests, such as trade union demonstrations, from its scope. Whilst a trade union demonstration or other protest unconnected to the provision of abortion services outside a hospital may be within a safe access zone, there is nothing on the face of the Bill which prohibits all protests within safe access zones. Rather, the Bill creates offences where persons commit certain acts within a safe access zone. In order to fall within the scope of the offences created by sections 4 and 5, an offence is committed if the person does the act:

"with the intention of, or is reckless as to whether the act has the effect of—

(a) influencing the decision of another person to access, provide or facilitate the provision of abortion services at the protected premises,

(b) preventing or impeding another person from accessing, providing or facilitating the provision of abortion services at the protected premises, or

(c) 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"

We consider that the specific references to abortion services should ensure that other, legitimate, forms of protest are not criminalised by the Bill.

Further, section 6(d) of the Bill provides that a person does not commit an offence under section 4(1) or 5(1) where the person does anything in the course of engaging in conduct that is



lawful under section 220 (peaceful picketing) of the Trade Union and Labour Relations (Consolidation) Act 1992.

If the committee remains concerned that the Bill may be used to, or set a precedent for, curbing other legitimate protests it may wish to consider the suggestion we have made in our written evidence that overarching principles be included on the face of the Bill to assist with the proper balancing exercises required for ECHR compliance- in this case, the rights to freedom of expression and freedom of assembly (articles 10 and 11 ECHR).

I hope that the above is of assistance to the committee. If the Society can assist further, please do not hesitate to contact us.

Yours sincerely,

Catriona McMillian

Former Convener

Health and Medical Law Sub-Committee