

Emily Ottley
University of Winchester



28 February 2024

Health, Social Care and Sport Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Health, Social Care and Sport Committee,

I am writing to provide further details in relation to two questions from Members during yesterday's evidence session as part of the Committee's scrutiny of the Abortion Services (Safe Access Zones) (Scotland) Bill.

Question 1: Is the Scottish Bill the only (prospective) legislation that specifically mentions private dwellings? (Sandesh Gulhane MSP)

The Member refers to clause 5 of the Abortion Services (Safe Access Zones) (Scotland) Bill which makes it an offence to influence, prevent access, or cause harassment etc in an area visible or audible from the safe access zone. Although 'private dwellings' is not explicitly referred to in the Bill in relation to this offence, a private dwelling would be a relevant area for the purposes of section 5 if it were situated within the area between the protected premises and the boundary of the safe access zone. A private dwelling does not form part of the safe access zone itself because it is not a public area, as defined in clause 2(7) of the Bill. Therefore, it seems that a person *could* commit an offence by displaying a graphic poster in the window of their home, for example, if (i) the house is appropriately situated and (ii) the poster is visible from the safe access zone. Accordingly, I have revisited the legislation to establish whether any address the issue related to private dwellings identified by the Member. I excluded the US legislation from this review, as the nature of this is distinct (as set out in my full report).

England and Wales

The offence can only be committed by a person who is within a safe access zone. However, the definition of 'safe access zones' includes 'any location that is visible from a public highway, public right of way, open space to which the public have access, or the curtilage of an abortion clinic' and is within a boundary which is 150 metres from any part of an abortion clinic or any access point to any building or site that contains an abortion clinic. This

suggests that private dwellings **would** be covered. Indeed, the **draft** [non-statutory guidance](#) notes:

...discussion about abortion within a house or flat not impacting on relevant persons outside would not be unlawful. However, if people lean out of their windows or stand on their driveways and call out comments to passers-by about abortion, they could commit an offence.

Northern Ireland

The offence can only be committed by a person who is within a safe access zone, though no such limitation seems to exist in relation to the offence of recording a protected person. The safe access zone consists of the protected premises itself and the public area (ie. a place to which the public has access, without payment, as of right) outside the protected premises which lies within 100 metres from each entrance to, or exit from, those premises. This suggests that private dwellings are **not** covered.

New Zealand

The specified behaviour is prohibited only within the safe area, which is defined as the area around the premises having a boundary of not more than 150 metres. The legislation does not specifically address whether private dwellings would or would not be covered.

Isle of Man

Some behaviour is prohibited only when it occurs within an access zone, ie. the land on which the hospital or other premises stand and any public highway within the area designated by the order or notice. This suggests that private dwellings are **not** covered. However, other offences in the Act do not seem to be limited to the access zone – for example, recording or repeatedly communicating with someone who is within the safe area for the purpose of dissuading any person from providing or using abortion services.

Tasmania

A person must not engage in prohibited behaviour within an access zone, ie. an area within a radius of 150 metres from premises at which terminations are provided. Prohibited behaviour includes a protest in relation to terminations that is able to be seen or heard by a person accessing, or attempting to access, premises at which terminations are provided. The legislation does not specifically address whether private dwellings would or would not be covered.

Australian Capital Territory

A person only commits an offence if they engage in prohibited behaviour within the safe access zone, which must be a minimum of 50 metres at any point from the protected facility. The legislation does not specifically address whether private dwellings would or would not be covered.

Victoria

A person must not engage in prohibited behaviour within a safe access zone, ie. an area within a radius of 150 metres from premises at which abortions are provided. The legislation does not specifically address whether private dwellings would or would not be covered.

Northern Territory

A person commits an offence only if they engage in prohibited conduct within a safe access zone, ie. within 150 metres outside the boundary of the premises for providing terminations. The legislation does not specifically address whether private dwellings would or would not be covered.

New South Wales

The offence can only be committed by a person who is within a safe access zone (ie. the area within 150 metres of any part of the premises of a reproductive health clinic at which abortions are provided or a pedestrian access point to a building that houses a reproductive health clinic at which abortions are provided), though no such limitation seems to exist in relation to the offence of recording a person who is within the safe access zone. The legislation does not specifically address whether private dwellings would or would not be covered.

Queensland

Conduct is prohibited within the safe access zone (ie. not more than the 150metres/the prescribed distance from an entrance to the premises), through no such limitation seems to exist in relation to the offence of recording a person who is within the safe access zone. The legislation does not specifically address whether private dwellings would or would not be covered.

South Australia

A person commits an offence only if they engage in prohibited conduct within the safe access zone, ie. any public area located within 150 metres of the protected premises. 'Public area' means an area or place that the public, or a section of the public, is entitled to use or that is open to, or used by, the public or a section of the public (whether access is unrestricted or subject to payment of money, membership of a body or otherwise). This suggests private dwellings are **not** covered.

Western Australia

A person commits an offence only if they engage in prohibited conduct within the safe access zone, ie. within 150 m outside the boundary of premises at which abortions are provided. The legislation does not specifically address whether private dwellings would or would not be covered.

British Columbia

Some behaviour is prohibited only when it occurs within an access zone, which includes the parcel on which the facility is located and a prescribed area that extends out a distance not

exceeding 50 m from the boundaries of the parcel on which the facility is located. The legislation specifically states that an access zone **does not** include private property outside the parcel on which the facility is located. However, there are separate offences for recording persons who are within an access zone and harassment that are not limited to the access zone.

Newfoundland and Labrador

Some behaviour is prohibited only when it occurs within an access zone, which includes the parcel on which the facility is located and a prescribed area that extends out a distance not exceeding 50 m from the boundaries of the land on which the facility is located. The legislation specifically states that an access zone **does not** include private property outside the land on which the facility is located. However, there are separate offences for recording persons who are within an access zone and harassment that are not limited to the access zone.

Quebec

Demonstration/intervention prohibited within a distance of 50 metres from the grounds on which a facility of premises providing voluntary termination of pregnancy services are situated. The legislation does not specifically address whether private dwellings would or would not be covered.

Ontario

Most behaviour is prohibited only when it occurs within an access zone – not exceeding 150 metres from the boundaries of the property. The legislation explicitly notes that the access zone for a clinic or facility **does not** include real property that one or more persons has the exclusive right to use or occupy if none of those persons is the occupier of the clinic or facility. However, there is a separate offence for harassment that is not limited to the access zone.

Alberta

Some behaviour is prohibited only when it occurs within an access zone, which includes the parcel of land on which the facility is located and an area that extends a distance of 50 metres from the boundaries of the parcel of land on which the facility is located. The legislation explicitly notes that an access zone **does not** include private property outside the parcel of land on which the facility is located. However, there are separate offences for recording persons who are within an access zone and harassment that are not limited to the access zone.

Nova Scotia

Some behaviour is prohibited only when it occurs within an access zone, which includes the parcel of land on which the facility is located and an area that extends a distance of 50 metres from the boundaries of the parcel of land on which the facility is located. The legislation explicitly notes that an access zone **does not** include private property outside the parcel of land on which the facility is located. However, there are separate offences for recording persons who are within an access zone and harassment that are not limited to the access zone.

Ireland [Bill only]

The specified conduct is prohibited only within the safe area, ie. any place within 100 metres of an entrance to the relevant healthcare premises. The definition of ‘place’ includes: any doorway, entrance, or opening, including a window, abutting or otherwise open to a public place; any garden or land abutting a public place; and any land or car park adjoining and open to a public place. This indicates that private dwellings **would** be covered.

In summary, much of the legislation does not address whether private dwellings would or would not be covered. However, private dwellings are explicitly (Canadian legislation except Quebec) or implicitly (Northern Ireland, Isle of Man, and South Australia) excluded in some jurisdictions. Further, it seems possible to commit an offence from a private dwelling, provided certain conditions are met, under both the English and Welsh legislation and the Irish Bill (as passed by the Dáil Éireann in November 2023).

Question 2: Is Scotland unique in typically providing abortion services in a hospital setting, as opposed to stand-alone clinics? (Gillian Mackay MSP)

The fact that abortion services are typically provided in a hospital setting in Scotland is a point of distinction from the English and Welsh context, where abortions are typically provided by stand-alone clinics. In [2021](#), 77% of abortions in England and Wales were performed in the independent sector (though the vast majority were funded by the National Health Service). However, Scotland is not *unique* in providing abortion services in this way – for example, no independent clinics in [Northern Ireland](#) currently offer abortions. Another example (from outside the United Kingdom) is the [Republic of Ireland](#), where abortions are more commonly provided by publicly funded General Practitioners’ surgeries and hospitals than stand-alone clinics (though the [Irish Family Planning Association](#) has two stand-alone clinics in Dublin City Centre and Tallaght).

Yours faithfully,
Emily Ottley
Lecturer in Law