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An t-Ionad Fiosrachaidh

Health, Social Care, and Sport Committee
Abortion Services (Safe Access Zones)
(Scotland) Bill Detailed Call for Views –
Summary of Evidence

Contents

Introduction	3
Understanding the context of this call for views	3
Respondent characteristics.....	4
Introductory questions.....	4
Reasons for supporting the Bill	6
Impact on people accessing abortion services.....	6
Appropriateness of the location of anti-abortion protests	7
Impact on people from marginalised and vulnerable groups who access abortion services	8
Impact on people providing abortion services	9
Impact on patients accessing other services at the premises	10
Influence of anti-abortion organisations.....	11
Support for the Bill from individuals and organisations who identified as Christian ..	11
Reasons for opposing the Bill	12
Impact on people accessing abortion services.....	12
Impact on freedom of speech and religious expression	13
Challenging perceptions of harassment and intimidation	15
Impact on those enforcing safe access zones.....	Error! Bookmark not defined.
Reasons for responding “Partially” or “Don’t Know”	16
The provisions of the Bill.....	16
Do you agree that the Safe Access Zone radius around protected premises should be set at 200 metres?.....	16
What is your view on the proposed processes within the Bill to extend or reduce Safe Access Zone distances around protected premises in the event that 200m is not appropriate?	17
Do you agree with the definition of “protected premises” outlined in the Bill and its accompanying documents?.....	19
Do you feel the criminal offences created by the Bill are proportionate in terms of the activities they cover?	20
Do you feel that the penalty for offences related to the Bill is appropriate?.....	29
What are your views on the impact of the Bill upon the rights enshrined under Articles 8, 9, 10, and 11 of the European Convention on Human Rights?.....	32
Do you think that the Bill’s intended policy outcomes could be achieved through another means, such as existing legislation?	46
Do you have any further comments to make about the provisions in the Bill?	49

Introduction

The Health, Social Care, and Sport Committee conducted a call for views to inform its scrutiny of the Abortion Services (Safe Access Zones) (Scotland) Bill between 27 October and 20 December 2023. Respondents were able to respond to two surveys: a short survey for those wishing to provide general views and comments on the Bill, and a structured call for views for those wishing to provide detailed comments on the specific provisions of the Bill. This report presents the findings of the structured call for views.

The call for views sought to explore the views of stakeholders and the public regarding the provisions of the Abortion Services (Safe Access Zones) (Scotland) Bill, and to identify potential areas of focus during the Committee's scrutiny of the Bill.

The information given to respondents on Citizen Space stated that the Bill does not concern the legality of abortion provision in Scotland, and that responses which focused on the broader topic of abortion, rather than the Bill itself, would not be published. This summary of evidence therefore presents the views of respondents in relation to the Bill as introduced, and does not explore any opinions shared by respondents regarding abortion outwith the context of the Bill.

Understanding the context of this call for views

The data gathered from the call for views is not intended to reflect a representative sample of the population, but rather to offer a snapshot of the experiences, opinions, and concerns expressed by those who responded. Respondents to the Scottish Parliament's calls for views are self-selecting, and though the submissions received offer a helpful insight into the key issues surrounding the topic in question, they do not reflect the views of the public as a whole, and should not be interpreted as such.

The Committee received 3,680 responses to this call for views. 41 responses were submitted by representatives of organisations, and 3,639 by individuals. A total of 3,535 of these individual responses were submitted to Citizen Space from the same IP address in London, expressing opposition to the Bill. Following investigation, these responses were confirmed to have been submitted by a third-party organisation as part of a coordinated campaign. The organisation distributed a modified version of the detailed call for views to its members across the United Kingdom, and gathered and submitted their responses automatically using a Python script. As it was possible to confirm in this instance that the submissions appeared to represent the genuine views of individuals, they were accepted and have been included in the summary of evidence. However, it is worth noting that, out of the overall total, only 145 responses were received that did not form part of the organised campaign.

Respondent characteristics

Respondents to the call for views were asked whether they lived in Scotland, to enable identification of responses from stakeholders who would be directly affected by the Bill. Of the 3,680 respondents, 664 stated that they lived in Scotland, and 3,016 said that they did not. The high volume of submissions received from respondents located outwith Scotland was largely due to the aforementioned organised campaign.

Respondents were also asked how they learned about the consultation. The majority (2,336) found out through social media, and 1,022 stated that they heard about the consultation through “other” means, including by email, through word of mouth, and through communications from churches, pro- and anti-abortion organisations, and other campaign groups.

The 41 organisations that submitted responses to the call for views represented a range of fields including healthcare providers, professional bodies representing healthcare sector employees, women’s rights and equalities organisations, trade unions, churches and faith organisations, pro- and anti-abortion groups, human rights organisations, local authorities, and legal and law enforcement bodies.

Introductory questions

Respondents to the detailed call for views were asked “**Do you agree with the overall purpose of this Bill?**” 3,678 respondents answered this question. 66 people agreed with the purpose of the Bill, and 3,602 disagreed, with 3 people stating that they partially agreed, and 7 responding “don’t know”.

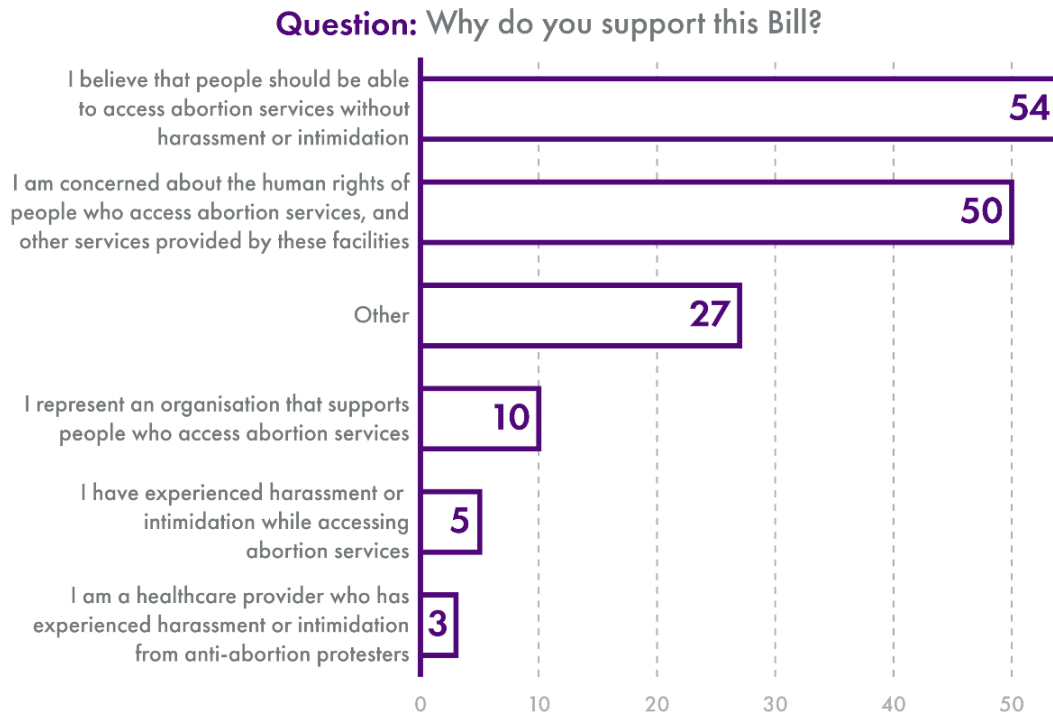
The high volume of submissions from the campaign organised by an anti-abortion group influenced responses to this question. Of the 145 responses that were not submitted from the IP address associated with the campaign, 56 agreed with the purpose of the Bill, and 83 did not. One respondent partially supported the Bill, and five responded “don’t know”.

Respondents were then invited to provide further detail of their reasons for supporting or opposing the Bill. A list of tick-box options was provided, along with the option to select “other” and provide further information. Those who responded “partially” or “don’t know” were also asked to provide further information. The responses shared by those who selected “other”, and those who shared why they partially supported the Bill or were unsure, were thematically analysed, and have been presented in the next section of this summary of evidence.

The question “**Why do you support this Bill?**” received 149 responses from 65 respondents, as some selected more than one option. The most common concerns reported by those supportive of the Bill were the belief that people should be able to access abortion services without harassment or intimidation, and the impact of anti-

abortion protests on the human rights of those who access abortion services and other healthcare services provided at the same facilities.

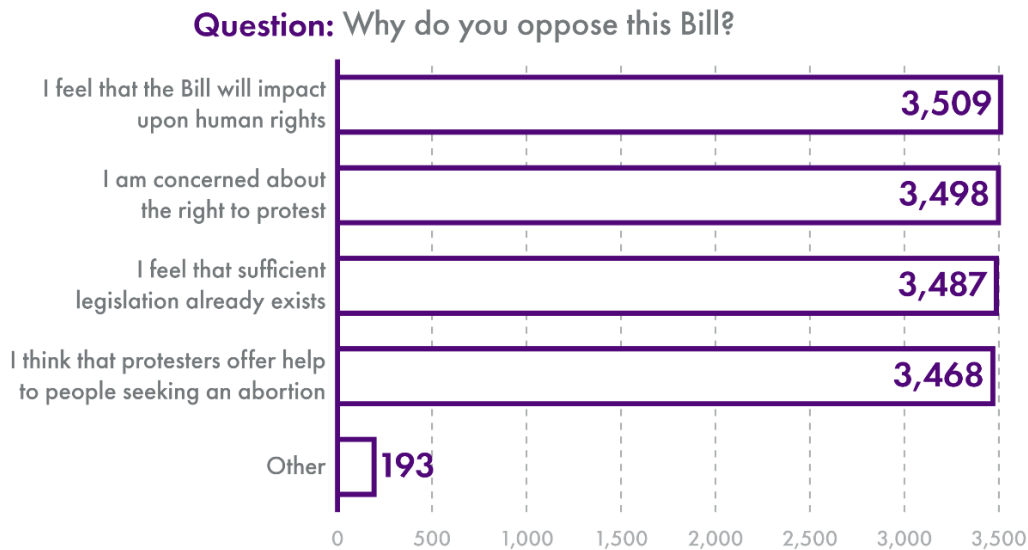
Question: Why do you support this Bill?



Source: Scottish Parliament

The question “**Why do you oppose this Bill?**” received 14,277 responses from 3,558 respondents, as most respondents selected more than one option. Respondents appeared equally concerned about the potential impact of the Bill upon human rights and the right to protest, felt that sufficient legislation already exists to address the issue, and believed that protesters offer help to people accessing abortion services.

Question: Why do you oppose this Bill?



Source: Scottish Parliament

Reasons for supporting the Bill

Impact on people accessing abortion services

One of the primary concerns expressed by respondents supportive of the Bill was the impact of anti-abortion demonstrations on people accessing abortion services. The grassroots organisation Back Off Scotland, which has campaigned for the introduction of safe access zones in Scotland, summarised the experiences of some of its members:

“We’ve heard first-hand the devastating impact that these anti-choice groups have had, having received testimonies from hundreds of patients and staff detailing the negative impact of this anti-choice activity.

These testimonies have ranged from those of us that founded the campaign that had to pass protestors praying loudly on street whilst having an elective abortion after becoming pregnant at university after our contraception failed; to victims of sexual assault who have been called murderers at the gates of clinics that provide abortion services in addition to rape crisis services; to women that have had to terminate a much longed for pregnancy due to fatal foetal anomalies and have come out of the hospital to posters of mutilated fetuses held up at hospital traffic lights by anti-choice protestors aiming to cause maximum distress. We’ve also heard from a number of clinical staff across Scotland – doctors, midwives, support staff – who have felt targeted by

these groups and can't understand why safe access zones aren't already nationally enforced."

Organisations including the Scottish Women's Convention highlighted that abortion is a healthcare matter, and that women have the right to access abortion services. The Convention of Scottish Local Authorities (COSLA) noted that abortion services can be accessed for medical reasons, though their submission emphasised that people accessing abortion services for any reason should be able to do so without harassment. This statement was echoed by some individual respondents who expressed their support for the Bill, including one person who said:

"I support this Bill because abortion is legal healthcare and women in Scotland should be able to access it without fear of intimidation and harassment."

The Committee's call for views received submissions from a number of organisations representing healthcare providers, who expressed their support for the Bill. The Royal College of General Practitioners (RCGP) expressed concern that anti-abortion activity outside clinics could deter people from accessing vital healthcare. NHS Tayside's response referred to the emotional harm and trauma experienced by people who encounter anti-abortion demonstrations whilst accessing abortion services.

The British Pregnancy Advisory Service (BPAS) argued that although the topic of abortion may be political, the decision to access an abortion is not, and abortion clinics are therefore not appropriate locations for anti-abortion protests. As the Royal College of Obstetricians and Gynaecologists (RCOG) noted, demonstrations do not usually take place outside healthcare facilities in relation to other services:

"Anti-choice individuals and groups persistently organise themselves with the aim to dissuade or deter access to, or the provision of, abortion care. In no other area of healthcare would it be acceptable to harass patients, however the current legal protections in place are failing to prevent abuse at abortion clinics. The introduction of Safe Access Zones around a place that provides abortion services would not stop their ability to protest but it would stop the activity taking place directly outside of clinics and hospitals."

Appropriateness of the location of anti-abortion protests

Some respondents opposed to the Bill felt that anti-abortion protesters offered helpful support and information to people accessing abortion services. However, some of the respondents who supported the Bill questioned the appropriateness of conducting such activities outside abortion clinics. Back Off Scotland noted that the Bill does not prohibit people from expressing anti-abortion views in other locations, but that protesting outside a healthcare facility where people are receiving medical treatment is inappropriate.

The RCOG shared some examples of clinic harassment:

“‘Clinic harassment’ takes many forms, including the display of graphic images of dismembered fetuses; large marches that gather outside the clinic; filming women and staff members (many fear being identified and having images uploaded onto social media sites); following women down the street; and religious activity (sprinkling sites with holy water and singing hymns).”

Many respondents who expressed their opposition to the Bill stated that the behaviour of anti-abortion activists should not be labelled harassment, as people are largely holding prayer vigils and protesting peacefully. However, some of those who supported the Bill stated that the presence of anti-abortion activists is intimidating in itself, regardless of the actions undertaken.

Some respondents to the Committee’s call for views, including the Royal College of Obstetricians and Gynaecologists (RCOG), were concerned about the accuracy of the information provided by anti-abortion demonstrators. RCOG stated that some of the advice offered by anti-abortion protesters is inaccurate and could be harmful to women’s health:

“The leaflets that protestors hand out have been found to contain disturbing amounts of false information, including that abortion causes breast cancer and leads to depression and suicidal intentions. The RCOG has been especially concerned by unproven claims that progesterone can be used to ‘reverse’ an abortion, which not only causes further distress and confusion, but can also be dangerous for women’s health. We have previously [published a statement](#) outlining our opposition to so-called abortion reversal.”

St Columba’s Catholic parish in Edinburgh noted that vigils normally take place for a limited period (eg. “40 Days for Life” over Lent). It also noted that most abortions take place at home (quoting figures of 82% in Lothian NHS Board area and 81% in Greater Glasgow and Clyde NHS Board area). In its view, this meant that most people accessing abortion services would never see a vigil.

However, The ALLIANCE argued that, because most people have at home abortions, those using clinics are likely to be doing so for more complex medical reasons – eg. because of foetal abnormalities or because of risks to the health of the pregnant person. In its view, this made them more vulnerable.

Impact on people from marginalised and vulnerable groups who access abortion services

Several organisations that expressed support for the Bill highlighted the potential disproportionate impact of anti-abortion activity on people from marginalised and vulnerable groups.

The ALLIANCE noted that women and girls from marginalised groups, including disabled people, those experiencing socioeconomic disadvantages, and people from ethnic minority groups, are disproportionately affected by barriers to accessing

healthcare services, including abortion care, and may be more likely to encounter anti-abortion protests.

Engender Scotland added that anti-abortion activity outside abortion clinics could be detrimental to female bodily autonomy and gender equality:

“...we have seen a concerning rise in anti-abortion activity outside of healthcare facilities in Scotland in recent years. This activity works in effect to obstruct, harass, intimidate, and/or stigmatise those accessing or involved in the provision of abortion, and ultimately interferes in the delivery and experience of vital healthcare. Such action is deeply discriminatory and rooted in patriarchal opposition to gender equality, women’s enjoyment of bodily autonomy, and sexual and reproductive rights.”

Several respondents highlighted the impact of anti-abortion protests on survivors of sexual violence, who may be accessing abortion care and other services at these facilities. COSLA said:

“Victims and survivors of sexual violence also use abortion services and may be particularly vulnerable to anti-abortion protest. Protecting victims and survivors from harassment will also ensure they are safe to access rape counselling and forensic testing which take place at NHS sites that offer abortion services.”

The Scottish Women’s Rights Centre also commented on the importance of access to abortion services for survivors of abuse. According to the Scottish Women’s Rights Centre, not being able to access abortion can have significant mental health and financial impacts, with ongoing parental ties with an abuser leading to coercive control through child contact. The Scottish Women’s Rights Centre said it was aware that protests may cause women to defer treatment or purchase illegal abortion pills online.

The Equality Network stated that bisexual and lesbian women are more likely than heterosexual women to have an adolescent pregnancy, or an unwanted pregnancy resulting from sexual violence, which may lead them to decide to access abortion care. According to the Equality Network, trans and non-binary people can also experience unwanted pregnancy, potentially exacerbating feelings of gender dysphoria. Consequently, LGBTQ+ women and girls may be impacted by anti-abortion protests.

Impact on people providing abortion services

In addition to the impact on people accessing abortion services, respondents who supported the Bill expressed concerns regarding the impact of anti-abortion demonstrations on healthcare professionals who conduct or support the provision of abortion procedures. The Royal College of Nursing (RCN) stated its support for the Bill as a means of ensuring that its members, along with service users, can access and provide abortion services free from harassment:

“RCN Scotland supports the intention behind the Bill. Our members work in a variety of abortion services, as well as sites which include abortion services, and are therefore potentially impacted by protests. While we have not received a significant number of representations from members who feel threatened by protests at sites, we strongly support the principle that staff and services users should be able to access protected premises without any impediment or fear. We therefore support the creation of safe access zones around protected premises.”

Impact on patients accessing other services at the premises

Some respondents to the Committee’s call for views highlighted the impact of anti-abortion demonstrations on people accessing other services at premises where abortion services are provided. One person shared their experience of encountering protesters whilst accessing sexual health services:

“During severe lockdown restrictions I had an appointment at the Chalmer's clinic. I was shocked to see protestors across the street from the clinic. I had to pass them to get into the centre. During that time it was necessary to wait in the foyer before entering the clinic. The group of protestors made it known that they were watching me, staring at me from a few metres away. I was there for important health care, I should be allowed privacy and respect while taking care of myself. I felt so exposed and humiliated. When I had my appointment with an incredibly patient and professional nurse, I burst into tears. I am a resilient, adult choosing to have health tests. If I had been vulnerable for a number of reasons, I would have not been able to find the strength to enter that facility. Taking care of our sexual health can be life saving!”

Chalmers Sexual Health Service expressed concern that patients may be deterred from accessing other services offered at the clinic:

“Our service has been concerned that patients may feel intimidated by the presence of the protesters and may be less likely to access all of our other services too. We are concerned that young people and vulnerable groups may be particularly affected. We are also concerned that the presence of protesters may intimidate patients accessing nearby clinical buildings for example ophthalmology services or dental services.”

Chalmers Sexual Health Service added that anti-abortion demonstrations outside their premises have also affected passers-by, and led to incorrect information about abortion being shared with local schoolchildren:

“Our building is in close proximity to a public high school and the protesters have been handing out false information and displaying distressing images to school students on the street.”

Influence of anti-abortion organisations

Some of the respondents who expressed support for the Bill referred to the growing influence of international anti-abortion organisations in Scotland and the UK. One person said:

“I feel the importation of American right wing Christian protest politic practices abhorrent, and that this issue should've been sorted YEARS ago. I know healthcare workers who have been calling out for it for years to no avail.”

Dr Pam Lowe and Dr Sarah Jane Page of Aston University submitted a response to the Committee's call for views, in which they summarised findings from their research concerning protests outside abortion clinics. They shared details of the process by which anti-abortion demonstrations are often organised, and some of the issues they identified through their research:

“While there are some lead organisations involved in organising activities outside abortion services, such as 40 Days for Life, most activity is organised by local community networks. For example, in the case of 40 Days, a self-appointed leader pays a fee in each 40 Day period to the US organisation in order to be officially affiliated. The 40 Days organisation does not have any control over who is outside an abortion service at any point.

The local organiser may arrange a rota of their volunteers, and suggest an approach in line with the lead organisation's ethos, but our research has showed that it is the individuals present that decide what happens, and this can vary hour by hour. Individuals may be part of more than one organisation and network, or may act alone.

The variability of activities, and lack of accountability of activists outside abortion services, is an important finding from our research, and shows why the assurances from organisations like 40 Days are actually hollow as they have no ability to control or monitor the fluid community of activists who arrive and depart. Consequently, the only way to protect abortion seekers is through legally enforced safe access zones.”

Support for the Bill from individuals and organisations who identified as Christian

Anti-abortion demonstrations in the vicinity of clinics are commonly coordinated by groups that hold Christian beliefs. However, some Christian individuals and organisations submitted responses to the call for views to express their support for the Bill, and explained how their support aligned with their Christian values. One individual said:

“As a Christian I wholeheartedly agree that we require buffer zones to make the entrances as safe and as non-traumatic for those who may already be

dealing with emotional toils or negative mental health, as well as physical health needs.

People should not be harassed by placards & comments or faced with graphic misinformation when accessing healthcare. It is as simple as that.”

The Scottish Episcopal Church (SEC) acknowledged that its members may hold differing views regarding the ethics of abortion. However, in its response to the Committee’s call for views, the SEC emphasised that the Bill does not concern the legality or morality of abortion provision, but seeks to support people to access and deliver healthcare services without harassment. The SEC stated that it supports this underlying principle of the Bill.

The Church of Scotland stated that it does not hold a settled position on the Bill as an organisation, acknowledging the diversity of viewpoints on the topic among its members:

“We do not believe that there would be a consensus on this Bill within the Church of Scotland.

“The committee which has prepared this response for the Church of Scotland (the Public Life and Social Justice Programme Group) believe patients, service users – including those who are there for reasons other than abortion, such as if they have experience miscarriage, still birth or neonatal death – and staff should have safe and unimpeded access to legitimate and lawful treatment. However, this perspective is one view within the Church of Scotland and does not represent an official or settled position on whether this legislation is justified and proportionate.”

Reasons for opposing the Bill

Impact on people accessing abortion services

For respondents who expressed opposition to the Bill, one of the primary concerns was the impact of prohibiting anti-abortion activity in the vicinity of clinics upon people accessing services. Many of the respondents opposed to the Bill believed that people participating in anti-abortion activity are motivated by a desire to help people who may be unsure about their decision to access an abortion, and felt that demonstrators offered information about support available to people if they wish to continue with a pregnancy. One respondent said:

“The first victims of this Bill would be the women accessing abortion facilities. They would be deprived by a chance to talk to someone who could potentially provide the support they are looking for, either because they found themselves under practical or financial difficulties, or because under emotional stress or, worse, because subjected to coercion.”

The Free Church of Scotland was among the respondents which suggested that people do not get accurate information about abortion from medical professionals. It

was also among those which thought that counselling should be face to face, rather than provided by phone or video calls (as it often will be for those accessing medication for an “at home” abortion) and that there should be more emphasis on alternatives to abortion. It stated:

“Any decision about a possible termination should occur only after appropriate face to face counselling with a healthcare professional. It is vital that this counselling is of a high standard, providing as much information as possible – including on abortion alternatives. Women considering abortion should be offered alternative emotional and practical support.”

Some respondents shared their personal experiences of accessing an abortion, or supporting those who regretted their decision to access abortion services. One person said:

“I worry that these buffer zones will prevent women who are unsure of their decision on abortion to explore options many peaceful volunteers seek to educate women on. This is so they can make a more informed decision about their pregnancy. This is important to me personally as two of my friends felt forced into abortion by their baby’s father and later suffered mentally as a result. If they had had a volunteer to educate them more on the options available, I believe they may have chosen differently and not have to live forever with the regret of their abortions.”

One respondent who had accessed an abortion and expressed their opposition to the Bill said:

“I wish someone had been there to offer me help and advice before I had an abortion. It was the biggest mistake of my life.”

Impact on freedom of speech and religious expression

Many respondents who expressed opposition to the Bill were concerned about the impact of safe access zones on their freedom of speech and religious expression. The Bishops’ Conference of Scotland said:

“The Bill’s Policy Memorandum explicitly anticipates that ‘praying audibly’ and ‘silent vigils’ will be criminalised under the Bill. The extraordinary and unprecedented move to criminalise peaceful prayer in parts of Scotland is completely unjust and an affront to democratic values.”

Some respondents also shared concerns about the broader implications of the Bill upon the right to protest. The Free Church of Scotland said:

“Not all members of the Free Church of Scotland would believe it to be wise or appropriate to engage in pro-life vigils. However, we are not persuaded that safe access zones are necessary or proportionate. The safe access zones proposal sets a dangerous precedent of the state being able to ban both

protests and efforts to persuade individuals to change their mind on this issue or any other controversial issue. Accordingly, we disagree with the purpose of the bill.”

Some respondents felt that the Bill discriminates against Christians and those who hold anti-abortion views. The Society for the Protection of Unborn Children said:

“This proposal is a direct assault on the rights of peaceful citizens who will be targeted not because of anything they have done but rather on the basis of their political opinions and religious beliefs. The Bill will have a disproportionate impact on members of religious minorities (in particular, Roman Catholics).”

Similarly, The Bishops’ Conference of Scotland said:

“It is concerning that the Bill’s Delegated Powers Memorandum (para 29) explicitly admits that the Bill makes “every effort” to “mitigate against...how anti-abortion activity may be expressed”, suggesting that an aim of the Bill is to silence those who disagree with abortion.”

The Archdiocese of St Andrews & Edinburgh emphasised the need for genuine dialogue concerning the implementation of safe access zones, and expressed frustration about the exclusion of pro-life groups from the Scottish Government’s engagement work, a sentiment shared by a number of respondents who were opposed to the Bill:

“There should be genuine dialogue around this issue. Pro-Life groups were excluded from Scottish Government’s Ministerial Working Group and not invited to the Ministerial “Abortion Summits.” Pro-Life organisations were only invited to a 1 hour meeting in 2023 which had no Ministerial attendance.”

Many of the individuals who expressed their opposition to the Bill described the proposed legislation as “draconian”, stating that the introduction of safe access zones would threaten their freedom of religious expression. Some felt that the Bill was representative of a broader curtailment of religious freedom in Scotland, including one person who said:

“Peaceful and respectful protest often offering help should not be curtailed and religious freedom is a cornerstone of Scottish society. With this bill, once again the Scottish government are attacking the fabric of Scottish society, attacking children’s rights, family structure and attempting a totalitarian control over Christianity. This is all too common with the Scottish government, dressing up draconian restriction on religion and free speech in a cloak pretending to protect people.”

Some respondents stated that hospital buildings and healthcare facilities are public places, and people should therefore have the right to protest in these spaces. One individual respondent said:

“If a building, i.e. a hospital is publicly funded then the public have a right to be present.”

Challenging perceptions of harassment and intimidation

Many of the respondents who expressed their opposition to the Bill challenged the notion that the actions of anti-abortion protesters could be considered harassment or intimidation. Respondents felt that anti-abortion protests and prayer vigils outside clinics are peaceful in nature, and that the experience of harassment or intimidation is subjective and could be difficult to enforce. The Christian Medical Fellowship said:

“All would agree that physically obstructing access to abortion facilities should not be permitted. The police already have sufficient powers to prevent this. But to make it an offence to cause someone to feel harassed whilst accessing those services is, we suggest, impossible to enforce fairly or consistently.

What constitutes harassment? Shouting abuse, forcing literature upon service users or staff, making available factual handouts, offering personal support, participating in silent prayer, etc - a spectrum of possible behaviours - but who is to judge what constitutes harassment and by what yardstick will it be measured?”

Some respondents shared their personal experience of participating in prayer vigils outside abortion clinics, including John Mason MSP, who said:

“No safe access zone is required of any radius. There have been no real problems at abortion facilities in Scotland. I accept that there have been problems in the United States and elsewhere. But it seems strange that we are apparently dealing with a problem that does not exist in this country...”

“...I myself have twice attended such vigils outside the Queen Elizabeth University Hospital in Glasgow. On both occasions there was a small group of mainly elderly and mainly religious folk quietly taking part in prayers and readings. There was nothing which could in any way be considered a threat to anyone.”

Another person who participates in prayer vigils expressed that in their view, the actions of anti-abortion demonstrators do not constitute intimidation:

“Set buffer zones are not necessary for our type of activity as it is peaceful and just offering the possibility of sharing information. It enables choice and sharing. There is no intimidation or forceful behaviour. These are not criminal acts. The bill could be used with amendments for our kind of activity. We agree with women’s choice. We just want the chance to share and support.”

One person opposed to the Bill suggested that the introduction of safe access zones could lead to a greater risk of confrontation between protesters and people accessing services:

“Setting a line invites confrontation for confrontation's sake.”

Reasons for responding “Partially” or “Don’t Know”

Nine respondents offered further detail regarding their reasons for partially supporting the Bill, or being unsure. Five of these responses were from organisations that did not wish to express a settled position on the Bill. Of the four individuals who responded to this question, three felt that peaceful anti-abortion activity outside clinics could potentially offer support to people who were unsure of their decision to access an abortion. One person stated that they trusted the Committee to decide.

The provisions of the Bill

Do you agree that the Safe Access Zone radius around protected premises should be set at 200 metres?

Respondents to the Committee’s call for views were invited to share their thoughts regarding the proposed 200-metre radius of safe access zones. Among those who were supportive of the Bill, a minority of respondents felt that the zones should be larger; however, the majority considered 200 metres to be appropriate. Back Off Scotland said:

“Scoping work undertaken by BPAS and Back Off Scotland during 2022 showed that the original proposal of 150 metres is not sufficient to protect patients and staff at the Queen Elizabeth University Hospital in Glasgow. 150 metres from the perimeter of this site would leave a small area of pavement on Hardgate Road (which you have to travel down to access services) accessible to anti-abortion groups.

Therefore, we believe that in the interest of the Bill, the standard safe access zone must be extended to 200 metres to make sure that the aims of protecting all patients and staff nationwide are fulfilled.”

The Scottish Women’s Rights Centre added that safe access zones should be large enough to allow unimpeded access to abortion facilities, incorporating all modes of transport and access:

“The safe access zone should be wide enough to allow for unimpeded, harassment-free access to abortion services by service users. This includes being mindful of transport links, public transport and parking facilities for abortion healthcare users and staff who may face other barriers to physically accessing services, such as disability, lack of childcare and low or limited income.”

Conversely, many of those who were opposed to the Bill felt that the proposed radius of 200 metres was too large, and would prohibit anti-abortion demonstrators from offering support to people who may be unsure about their decision to access

abortion services. Some respondents also felt that the proposed safe access zones were disproportionately large in comparison to those in the rest of the UK. The Society for the Protection of Unborn Children (SPUC) said:

“SPUC is opposed to the introduction of exclusion zones in principle. However, when compared to the 100-metre boundary set by the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023 and the 150 metres set by section 9 of the Public Order Act 2023, the terms of the Abortion Services (Safe Access Zones) (Scotland) Bill seem arbitrary and unnecessarily excessive. Not only is the initial 200 metres radius significantly greater than the measures introduced in the rest of the United Kingdom but the extent to which an exclusion zone can be expanded is not specified in the Bill. Ministers appear to have unlimited discretion to alter the perimeter of the zone “to an extent that they consider appropriate”.”

One individual submission stated:

“It is completely over the top. I am not aware of any other buffer zones as wide as this. People who want to offer support to pregnant women are not violent or dangerous. On the contrary, they want to protect life. Any exclusion zone is unnecessary but 200m is excessive.”

Some respondents expressed worry that safe access zones legislation could be applied to other forms of protest:

“I feel as long as no-one is threatening people going in or out. Or taking photos of them. Then to introduce a 200m area is unnecessary and if introduced will be used as a precedent against other protest groups.”

Many of those who expressed opposition to the Bill were concerned about the potential impact of the safe access zones legislation on people who live within the zones, and may wish to express anti-abortion views:

“Such a large buffer zone would likely include private homes and potentially infringe individuals' rights to discuss or demonstrate their opinions, even in their own homes -which would be a major infringement of freedom I believe.”

Amnesty International UK cautioned that the rationale for the size of the safe access zones should be clearly set out and justified:

“Any radius set out should meet the three part test of legality, legitimacy and proportionality. The rationale for a 200m radius should be clearly set out, and we invite the committee to gather further evidence on that.”

What is your view on the proposed processes within the Bill to extend or reduce Safe Access Zone distances around protected premises in the event that 200m is not appropriate?

Among some respondents who expressed their support for the Bill, there was concern that the provision in Section 8 for Ministers to reduce the size of a safe

access zone if they consider it appropriate could carry the potential for misuse. One respondent shared:

“I am concerned at the process for the relevant ministers to approve of reduction - for example, a bad actor who did not agree with abortion rights should not be able to set it at a token 1m. There should be strict guidelines under which the size may be reduced below 200m, or an appeal to the judiciary rather than simply posting it on a list.”

NHS Tayside stated that in its view, reducing the radius of a safe access zone below 200 metres should not be permitted:

“Disagree with the caveat that a zone can be reduced in size. This undermines the purpose of the Bill. Support the amendment of Section 8 to

- Reflect the provisions of Section 7 – including involvement of the abortion provider and consideration about whether a reduced zone would adequately protect patients and staff, and
- Limit the ability of the Minister to reduce the size of a zone, so that no zone can be any less than 200m.”

The Humanist Society Scotland queried why a provision to reduce the radius of a safe access zone would be necessary:

“There is little information provided in the explanatory notes to the bill on why a provision for the reduction of safe access zones is required. We would not support a differential enactment of this policy across different areas of Scotland as we believe that anti-abortion protests would seek out facilities with smaller access zones.”

RCN Scotland suggested that it may be beneficial for trade unions to be granted authority to request the extension of a safe access zone:

“Currently, section 7 only allows for the operator of protected premises to apply for an extension of a safe access zone, if the current boundary does not adequately protect persons who are accessing, providing or facilitating abortion services.

RCN Scotland believes it would be beneficial for trade unions to have the power to apply to Scottish Ministers for an extension of a safe access zone in situations where members report a specific problem at a site. This could give trade unions the ability to ensure greater protection for our members in future. An alternative approach could be to set out in the Bill that trade unions have a formal role in being able to notify an operator that they believe an extension to a safe access zone should be applied for, with the operator being required to consider and respond to such requests.”

Conversely, some respondents who opposed the Bill felt that the provisions for amendment of safe access zones radii were too vague, and could be exploited by Ministers. The Society for the Protection of Unborn Children (SPUC) said:

“Arguably, the power conferred by section 7 is so sweeping that it would be impossible to predict with any certainty what decision a Minister is likely to reach. This is a threat to the public good given that the Scottish proposals are particularly intrusive.”

One individual respondent said:

“This is giving too much power without due process under the law and would not be good for democracy.”

The Bishops’ Conference of Scotland suggested that the Parliament could consider introducing an upper limit for the extension of safe access zones to prevent misuse of this provision:

“The Parliament is invited to consider seriously that legislation of this type ought to include a reasonable upper limit to which the governing authorities are bound and should not allow for the unrestrained ability to punitively increase the distance.”

Amnesty International UK highlighted the need for a clear assessment process, informed by the human rights framework, to guide decisions around extension and reduction of safe access zones:

“More clarity is needed regarding the decision-making process ministers will follow when extending or reducing a zone. There should be a clear assessment process informed by the human rights framework. As we set out below, clear procedures for the regular monitoring and review of “safe access zones” will be a vital step towards meeting the test of legality, necessity and proportionality. The decision-making process followed by Ministers when responding to an application for an extension or reduction of a particular zone should be informed by and closely linked to a regular monitoring procedure.”

Do you agree with the definition of “protected premises” outlined in the Bill and its accompanying documents?

Although respondents who supported the Bill broadly agreed with the definition of “protected premises”, some respondents felt that the definition should be broadened to include other services involved in abortion care. Examples included counselling and doula services, GP practices, pharmacies, and premises providing care for survivors of sexual assault. The Terrence Higgins Trust suggested that the definition of “protected premises” should explicitly include sexual health and family planning centres. The Royal College of General Practitioners (RCGP) expressed concern that without extension of the definition of “protected premises”, anti-abortion protests may be relocated to premises not currently covered by the definition:

“RCGP Scotland has concerns that in the case that protests are prohibited at premises which provide abortion, then other premises linked to the procurement of abortion may become the new target of these demonstrations. The Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023 extends the definition of “protected premises” to places which provide

‘information, advice or counselling relating to treatment for the termination of pregnancy’. The addition of a similar amendment to the Abortion Services (Safe Access Zones) (Scotland) Bill could ensure safety for patients and staff at GP practices.”

On the contrary, many of those opposed to the Bill felt that the definition of “protected premises” was too broad, and could lead to the prohibition of anti-abortion activity in other settings, including private premises. The Bishops’ Conference of Scotland said:

“Notwithstanding opposition to the Bill in principle, the definition of ‘protected premises’ is extremely wide and is worded as such to potentially include GP surgeries, sexual health clinics, pharmacies and counselling services which could result in hundreds more zones being set up and thus hundreds more locations where basic human rights are infringed and offers of support denied to vulnerable women.

Moreover, the inclusion of “relevant area” under section 5, disturbingly creates criminal offences within private properties, including residential properties, within the outer boundary of the “safe access zone”.

We are extremely concerned that the Bill’s provisions would apply to other buildings, such as schools and churches.”

Do you feel the criminal offences created by the Bill are proportionate in terms of the activities they cover?

Summary

Respondents to the call for views who opposed to the Bill generally did not think the criminal offences created by the Bill were proportionate. Key concerns were:

- that new offences were not needed
- that protests outside abortion clinics actually provided support for those accessing services and should therefore not be considered a criminal offence
- that the new offences could criminalise peaceful prayer, alongside activity in one’s own home or church
- that it was unclear what behaviour the offences in the Bill as drafted would cover
- that the offences unfairly targeted only one point of view in a complex moral argument.

Comments also reflected significant concern for the human rights implications of the proposals, particularly in relation to freedom of expression, freedom of assembly and freedom of religion. These issues are mentioned here but discussed in more detail under the question heading which asks specifically about human rights.

New offences are not needed

A number of respondents argued that existing offences, around harassment and public order control, were sufficient to address genuinely concerning behaviour. These could be used if protesters blocked access to facilities, caused a general disturbance in the area or harassed people entering a clinic. One individual respondent commented:

“... there are laws against harassment and, used properly, these are sufficient to protect everyone in a fair way”.

The Evangelical Alliance suggested that, if gaps or weaknesses have been identified, existing laws should be strengthened, rather than creating new, catch-all offences. It stated:

“We are very keen to ensure that this legislation solely focuses on the harassment of women and girls rather than establishing in law that a certain worldview should be silenced.”

Respondents also stated that there was no evidence of public order issues in relation to current protests outside abortion clinics in Scotland.

The Archdiocese of Edinburgh and St Andrews was among those respondents highlighting that the Financial Memorandum records only 16 incidents being reported to Police Scotland in the first 10 months of 2022. It reported that freedom of information requests to Police Scotland demonstrated that most of these incidents were notifications or complaints to the police about the existence of a protest, rather than relating to more concerning behaviour. It stated that there are no records of arrests, charges or cautions relating to anti-abortion vigils.

SPICe notes that Police Scotland stated in a July 2023 [Freedom of Information request response](#) that it currently has no incident classification for protests outside abortion clinics, and incidents are therefore logged under a variety of classifications, and are difficult to accurately identify in its incident logging system.

Some respondents noted that Police Scotland had not called for new powers in order to be able to deal with anti-abortion protests. This was confirmed by Police Scotland's submission, which stated that they considered existing legal powers to be sufficient. However, they also agreed that the offences which would be created by the Bill were proportionate and align with similar legislation.

However, among those who supported the Bill, there was a view that criminal offences were necessary to deter behaviour which they saw as harmful. It was also noted that evidence gathered as part of the member's consultation on the Bill showed the negative impact anti-abortion vigils have.

Protests as a form of support

There was a strong view from those opposed to the Bill that protests outside abortion clinics were intended as a form of support for those accessing abortion services. A number of respondents who made this point also highlighted incidents of women who were grateful for an intervention from protesters.

Respondents also noted what they see as the risk of psychological harm as a result of having an abortion. The Evangelical Alliance argued that many women who have experienced abortion state that it caused distress and trauma. It is of the opinion that the current system fails to take their voices seriously. It challenged the idea, which in its view the Bill embodies, that abortion equals care for women while harm comes from those offering alternatives.

The RCOG challenged this view in its response. It stated:

“Research states there is no evidence of emerging regret after an abortion, with 97.5% of women believing that their decision was the right one after 8 days, increasing to 99% after five years.

Another common view under this theme was that people accessing abortion services may be unsure of their decision. Denying them additional information or support could therefore be seen as unethical or unfair. It was suggested that using the law in the way proposed in the Bill amounted to government censorship of alternative options.

Respondents also spoke to the motivations of protesters, arguing that it was unfair to criminalise people who only wanted to offer support, empathy and compassion. It was pointed out that most crimes deal with the intention to do harm while, in the view of many respondents, those protesting outside abortion clinics intended to protect service users.

As one individual respondent put it:

“Are we seriously going to criminalise and convict grannies praying?”

Many respondents were also concerned about removing support from people who may be being coerced into having an abortion. They saw protests outside abortion clinics as the last line of support for people in this situation. The Free Church of Scotland discussed this issue in detail. It called for more to be done to support women who are being coerced and quoted research commissioned by the BBC as finding¹:

¹ Savanta. (2022) Reproductive Coercion Poll – BBC Radio 4 – 8 March 2022. Available at: <https://savanta.com/knowledge-centre/poll/reproductive-coercion-poll-bbc-radio-4-8-march-2022/> [Accessed 5 February 2024].

- 15% of those surveyed said they had experienced pressure or coercion to have an abortion they did not want
- 3% of those surveyed said they had been given a substance to induce abortion without their knowledge
- 5% of those surveyed said they had experienced physical violence with the intention of ending their pregnancy.

The Free Church of Scotland also noted that the abortion rate is almost twice as high for those in the most deprived areas in comparison to the least deprived areas. In its view, women in this situation are most likely to benefit from practical offers of help and support from protesters. St Columba's Catholic parish in Edinburgh saw these figures as evidence that there are socio-economic reasons why some people are accessing abortion.

However, in the view of NHS Tayside, there was no reason why people needed to be provided with information on alternatives at the point of accessing abortion services. It stated that there are multiple avenues to get support with continuing a pregnancy or access counselling via regulated healthcare staff. It also highlighted the risk of additional emotional trauma from graphic imagery or other communication which may be seen as intimidatory.

The Humanist Society fundamentally challenged the usefulness of pavement counselling. It also believed objective and informed support will already have been provided by healthcare staff. It states:

“... we do not believe self-styled roadside “counsellors” are able to offer objective guidance that would allow individuals a true choice about whether abortion is the right decision.”

Criminalising peaceful prayer

There was significant concern from respondents opposed to the Bill that the Bill would – either intentionally or because offences were widely worded – criminalise peaceful or silent prayer. Many respondents noted that people had faced penalties under similar legislation in England. In particular, they highlighted the case of a woman in Birmingham who had received a fixed penalty notice for praying in a manner not connected to any wider demonstration.

The Bishops' Conference of Scotland noted that paragraph 63 of the Policy Memorandum makes it clear that the Bill is intended to prevent praying audibly and silent vigils.

The Evangelical Alliance had “deep reservations” about the impact of the Bill on silent prayer and silent thought. It found it difficult to see any circumstances where this could be justified. The Christian Institute characterised the restrictions as

creating “thought crime”. In the view of the Archdiocese of Edinburgh and St Andrews, silent prayer should not be targeted as it is not intimidation or harassment and does not stop women from accessing abortion clinics.

Restrictions on the right to freedom of religion are discussed under the question dealing with human rights below.

Criminalising behaviour in churches, schools and private homes

There were also concerns that the Bill would criminalise behaviour in private premises such as churches and homes. There was some confusion as to how the offence in section 5 of the Bill would operate. However, as drafted, it could prevent certain behaviour from private premises which were within a safe access zone but not covered by it. This could happen if the behaviour could be seen or heard from the safe access zone.

A number of religious organisations expressed concerns that people could be prevented from demonstrating anti-abortion views in their own homes or churches. The Christian Institute noted that the Explanatory Notes confirmed that displaying anti-abortion signs in a private home would be caught by the offence. It asked if churches would also be prevented from displaying “biblical teachings on the personhood of unborn babies”.

The Evangelical Alliance asked for greater clarity on the impact of the Bill on churches within safe access zones. SPICe notes that, where they cannot be seen or heard from outside, activities within a church building will not be affected. However, land surrounding a church may form part of a safe access zone.

Several respondents also flagged the increasing intrusiveness of these proposals if safe access zones were extended beyond 200m or applied to a wider range of premises.

Offences being unclear

There was a range of concerns from respondents about the unclear nature of the offences contained in the Bill.

Some concerns centred around the fact that the offences in the Bill are based on intention. The Policy Memorandum (paragraph 57) states that there does not need to be a demonstrable effect on a specific individual for an offence to be committed. Instead, behaviour can be captured if it has the intention of achieving any of the prohibited effects (or is reckless as to whether it would have such an effect).

For some respondents, this suggested a reduction in the normal evidential requirements for prosecuting a crime. The Society for the Protection of Unborn Children stated this would:

“ ... give the police the power to arrest and charge someone without a crime being reported to them and without the need for evidence of a crime to be provided. The ‘precautionary’ approach reflected in this Bill is an unprecedented departure from the rule of law and should be categorically rejected.”

Building on this, the Christian Medical Fellowship argued that the offences would be impossible to enforce fairly and consistently. The Evangelical Alliance was concerned about the potential for confusion and unnecessary prosecutions.

However, some respondents welcomed the way the criminal offences were framed. Engender welcomed the fact that this would shift the onus from those accessing and providing abortion services to those alleged to have committed the offence. The Law Society of Scotland noted that it would remove the need for individual service users to report incidents to the police, be able to identify alleged perpetrators and for prosecutors to demonstrate that the behaviour was, for example, threatening.

- **Influencing**

The Bill would prohibit behaviour carried out with the intention of “influencing” the decision of someone accessing, providing or facilitating abortion services. There was significant concern from respondents that this concept was not sufficiently defined. Some gave examples of unintended behaviours which they feared could leave people open to prosecution, such as walking through a safe access zone with a bible or other Christian symbol.

Many respondents also expressed the view that influencing happens all the time in society. Influencing someone to change their mind was a normal activity in most walks of life, so it was considered inappropriate to use it to create a wide ranging criminal offence. As one individual respondent said:

“Democracy is based on influencing other people. We are allowed to hold opinions and express them.”

Some respondents challenged the idea that women accessing services were not capable of making their minds up themselves, arguing that they could reject approaches they were not interested in. One commented:

“The Bill would criminalise free and open discussion between consenting adults.”

The Christian Medical Fellowship saw abortion as a product promoted by an industry with commercial interests. In its view, legislation which allowed the abortion industry to influence people by presenting abortion as a neutral or positive choice but does not allow other people to use their influence was unfair.

The Society for the Protection of Unborn Children was concerned that the Bill portrays attempts to present someone with alternatives as inherently coercive. It argued that denying people information about practical support is taking choice away from them.

- **Harassment**

The Bill would prohibit behaviour carried out with the intention of “causing harassment, alarm or distress”. The Christian Medical Fellowship listed behaviours from shouting abuse and forcing literature on people to offering support or silent prayer and asked who would judge what constituted harassment. In its view, harassment was normally used to describe behaviour which was intended to cause distress and should not cover things like offering information or praying quietly.

However, Unison welcomed the recognition in the Policy Memorandum (paragraph 65) that, because protesters can control the space they must walk through, people accessing abortion services can experience behaviour as harassment, even if they are not approached aggressively.

- **Need for greater definition**

Several respondents called for greater clarity in relation to what behaviour would be covered by the offences. The Convention of Scottish Local Authorities recommended an indicative list.

The Evangelical Alliance was concerned that the range of behaviours potentially covered by the offences was purposefully wide and undefined. However, NHS Grampian welcomed the current approach, so that offences were not so specific that loopholes could be exploited.

- **Concerns around flexible enforcement**

The Policy Memorandum (paragraph 57) states that enforcement agencies will have flexibility “to account for the nuances of particular situations”. Engender was cautious about this approach on the basis that it puts decision-making too much into the hands of Police Scotland, especially given concerns about ongoing misogyny and racism within its ranks.

Engender noted that attitudes around abortion are still rooted in structural gender inequality. It stated:

“The gendered stigma that still surrounds abortion must not be allowed to undermine implementation of the Bill.”

Engender further noted that Police Scotland would need to take a measured approach to enforcement if human rights concerns are to be addressed. It called for

clear guidance and training for Police Scotland to avoid enforcement which was sexist or not human-rights compliant. Amnesty International called for police training on the human rights of those accessing abortion services to support access which was effective, safe and respectful.

The Evangelical Alliance also expressed concerns that the Bill would rely on enforcement authorities making their own decisions around whether the law had been breached (Policy Memorandum paragraph 64). The Christian Medical Fellowship feared that police would be asked to implement legislation which was unenforceable. The Archdiocese of Edinburgh and St Andrews suggested that this could lead to confusion and increased costs.

There were also concerns about police resources from both those who supported and those who opposed the Bill. Those who opposed the Bill were concerned about wasting police and court time. It was noted that there had eventually been a decision to take no further action against one of the individuals facing criminal penalties for praying in England.

Those who supported the Bill were concerned that the police did not have sufficient resources to be effective in preventing behaviours prohibited by the Bill in safe access zones. The Young Women's Movement asked whether resources would allow either the police or NHS staff to actively monitor activities in safe access zones.

- **Indicating the location of safe access zones**

Several respondents also commented on the need for a clear understanding of which places were covered by safe access zones. The Law Society of Scotland argued that an objective radius for zones would help provide clarity.

The Evangelical Alliance welcomed recognition in the Policy Memorandum of the need for effective communication around the location of zones. The ALLIANCE called for communication about the areas covered by safe access zones and the behaviours prohibited within them in a variety of formats and languages. It also suggested that this should include an effective route to complain about or challenge restrictions – alongside gender and trauma sensitive routes to challenge activities which breach the requirements of the legislation.

Unison called for safe access zones to be clearly signposted. This would help the public understand where certain behaviours would not be allowed. In their view, it would also help reassure patients that they were in a safe access zone.

Unfairly targeting anti-abortion views

A number of respondents felt that the proposals in the Bill were designed specifically to silence anti-abortion views. Some suggested protestors in other areas – for

instance on environmental issues – were not targeted in this way. Others argued that abortion was an industry driven by profit. To stop alternative views being expressed was essentially the same as giving it a monopoly.

Statements by individual respondents included:

“Abortion has always been a contentious issue based on differing moral and ethical standpoints. To remove the voice of one standpoint by introducing excessive criminal offences, is overstepping government boundaries in my opinion.”

“Those who have crafted this bill care nothing for the deeply held beliefs of their opponents.”

One individual respondent stated that, in fact, it was people with anti-abortion views who were often subject to threatening behaviour and damage to their property when campaigning.

Other issues

Several other points relevant to scrutiny of the Bill were made in response to this question.

- **Power of arrest**

Police Scotland noted that the choice to legislate for a fine only as a penalty had implications for the power of arrest. Usually, a police constable can arrest without a warrant where they have reasonable grounds to suspect that an offence is being – or has been – committed. However, where a prison sentence is not an option for an offence, a constable can only arrest someone if they are “satisfied that it would not be in the interests of justice to delay the arrest in order to seek a warrant for the person’s arrest”².

As a result, Police Scotland envisaged that enforcement would usually be by way of making a report to the Procurator Fiscal. This option can be used with or without arresting people suspected of engaging in criminal behaviour.

- **Filming and photography within a safe access zone**

Engender questioned whether filming or photographing someone entering an abortion clinic was sufficiently covered by the offences in the Bill. Amnesty International noted that the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023 specifically gives the police the power to require a person to leave, or

² Section 1 of the Criminal Justice (Scotland) Act 2016 deals with the use of the power of arrest by police constables.

stop filming in, a safe access zone. Police can remove people who do not follow these instructions.

Amnesty International suggested that the Committee should take evidence on whether extending offences to explicitly cover filming and photography was appropriate. The Young Women's Movement called for the Bill to contain a ban on the use of technology for the purpose of intimidating services users from within – or just outside – a safe access zone.

- **Trade union activity**

The Bill contains an exemption from the restrictions on behaviour in a safe access zone for peaceful picketing in relation to a recognised trade dispute. However, several respondents raised concerns that trade union activity which could come within the ambit of the Bill's restrictions went beyond picketing.

The RCN noted that trade union activities were at risk of contravening section 4(1)(a) of the Bill, in that they could be seen as influencing the decision of staff members to provide or facilitate the provision of abortion services. It called for the exemption to be widened to cover activities carried out in advance of industrial action, for example, to give information about the dispute or to support the balloting of members.

Both Unison and the RCN suggested that the Bill may need to be amended to achieve this.

Do you feel that the penalty for offences related to the Bill is appropriate?

Summary

Respondents who opposed the Bill did not think the penalty for offences was appropriate. It was commonly described as over the top, draconian or disproportionate.

The reasons for this often related to the issues discussed in the previous section. Many people did not think the behaviour covered by the Bill should be criminal and therefore did not agree with any penalty. Human rights issues were another ongoing theme, with respondents arguing that such a significant penalty was a further factor in weighing human rights concerns.

Key issues included:

- that fines at these levels were unjustified
- that the scale of the fine was disproportionate when compared to penalties for serious criminal activity
- that decisions about the level of fine would be subjective

Those who supported the Bill also had concerns about the penalty for offences. Some welcomed a fine as a proportionate response which was more likely to meet human rights requirements.

However, some thought that stronger penalties may be needed to effectively deter the behaviours covered by the Bill. A number of respondents were concerned that even large fines would not be sufficient to deter behaviour supported by well-funded, international anti-abortion lobby groups.

Significant fines unjustified

Many respondents objected to the penalties in the Bill on the basis that they did not think the behaviour covered should be criminal. Others argued that large fines were disproportionate to the alleged criminal behaviour covered by the Bill.

One individual respondent commented that:

“standing silently is not and should never be deemed a crime.”

The Society for the Protection of Unborn Children, while remaining concerned about fine levels, welcomed the fact that proposals for prison sentences discussed in the member’s consultation on the Bill had been dropped. In its view though, the severity of the penalties proposed in the consultation demonstrated that this was about punishing anti-abortion views rather than deterring criminal behaviour.

The Free Church of Scotland was also relieved that the Bill did not include the potential for prison sentences. However, it remained concerned that significant fines and a criminal record could result for “peaceful expression of widely held beliefs in a democracy”.

Back Off Scotland was among the respondents who argued that reducing the fine to something akin to a fixed penalty notice would not be appropriate. In its view, this would bring the penalty in line with things like speeding offences, which would not reflect the harm they believed anti-abortion protests caused.

Fines disproportionate when compared to other criminal penalties

A number of respondents discussed the penalties for other crimes and compared them to those proposed in the Bill. The Archdiocese of Edinburgh and St Andrews commented that offences like minor assault and driving without a licence can attract fines up to the statutory maximum, whereas activities like toxic waste dumping and health and safety breaches leading to death could lead to unlimited fines. In its view, to apply similar penalties to activities like silent praying, holding placards and giving out leaflets was not justified or proportionate.

The Society of the Protection of Unborn Children also noted that serious offences, like being drunk in charge of a child, or assault, resulted in much lower fines. An individual respondent stated:

“When I read the papers and see the fines for other serious offences, it is clear that the proposed fines are disproportionate and in fact look vindictive.”

SPICe would note that the penalties discussed (the statutory maximum for a summary conviction and an unlimited fine for a solemn conviction) represent the maximum available to the court. In most cases, the fines actually issued are likely to be much smaller than this.

Fine decisions would be subjective

There were also concerns that having such a wide margin within which a fine could be issued would result in subjective decisions. It was not clear to many respondents how it would be decided what level of fine particular behaviour would attract. An individual respondent suggested there should be a set of clearly defined fines related to the nature of the alleged “offence” committed.

However, the Law Society of Scotland welcomed the discretion the penalties in the Bill offered to the court. In its view, this would allow the court to exercise its sentencing powers in line with current sentencing guidelines. NHS Tayside and The ALLIANCE welcomed the flexibility to tailor a fine to the circumstances of the offence.

Balancing human rights requirements

Amnesty International noted that there needed to be a clear rationale for the imposition of criminal penalties in order to satisfy the requirement that human rights infringements were necessary and proportionate. It highlighted that decisions of the European Court of Human Rights require that particular scrutiny is given to situations where prison sentences are imposed by national authorities for non-violent conduct

A number of supporters of the Bill, including BPAS noted that the approach in the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023 involved fines and had been found to be proportionate by the UK Supreme Court. However, Amnesty International stated that it was unclear why the fines proposed in this Bill were significantly higher than those available in Northern Ireland. In Northern Ireland fines of £500, rising to £2,500 where someone refuses to leave a zone, can be issued.

The Humanist Society supported fines as an approach in line with similar offences. It stressed that there was evidence against the effectiveness of short-term prison sentences. It did not believe the Bill should contain custodial options.

The Humanist Society also called for more widespread use of restorative justice. It noted that activities which help offenders understand the impact of their behaviour have been shown to reduce re-offending and help build community cohesion. In this situation, many people take part in anti-abortion protests because they believe they are helping those accessing services. In its view, they could benefit greatly from insight into the distress caused to some service users. It emphasised though that restorative justice initiatives must be managed carefully and should put no pressure on victims to participate.

The Scottish Women's Convention agreed that a fine was an appropriate penalty in the context of the Bill. However, it stressed that wider action was needed to address the problem. In its view, misogyny and sexism, coupled with women's continued disadvantage, underlies the behaviours the Bill seeks to tackle.

Penalties should be stronger

Several respondents who supported the Bill called for stronger penalties including, in some cases, prison sentences. Other options included court orders which would ban people from engaging in certain behaviours. There were also concerns that fines would be insufficient to deter protests, especially if the provisions in the Bill were not regularly enforced by what some considered to be an overstretched police service.

A key issue of concern for supporters of the Bill was that fines may be paid by well-funded international anti-abortion lobby groups. This could significantly limit the effectiveness of the Bill's provisions. As one individual respondent put it:

“If the punishment for breaking a law is a fine then it is only a law for those without funding. The people likely to break this law frequently have overseas funders with extremely deep pockets.”

There were calls for increased fines, or prison sentences, for people who repeatedly breached the Bill's requirements. It was also suggested that, where activity is organised as part of a group, any fine should take the size of the group into account. One individual respondent suggested that the police should be given powers to investigate international funding links as part of the Bill.

What are your views on the impact of the Bill upon the rights enshrined under Articles 8, 9, 10, and 11 of the European Convention on Human Rights?

Summary

The main view expressed by respondents opposed to the Bill was that the Bill breached all of the human rights highlighted above. For many, infringement of these

rights was unjustified, or could not be considered to be necessary and proportionate, as required by human rights law.

Another common thread was that the Bill breached the human rights of those with anti-abortion views. It was frequently described as undemocratic. Others saw it as setting a dangerous precedent for other forms of protest or belief systems.

Several human rights organisations made comments on the legal framework for balancing human rights. Some also referenced other international human rights obligations with relevance to the subject matter of the Bill. There were suggestions for amendments to the Bill to ensure it was human rights-compliant.

When discussing the impact of the Bill on article 8 of the European Convention on Human Rights, a key issue was competing views on the nature of anti-abortion protests. The vast majority of respondents characterised these as peaceful and respectful, carried out with a desire to support those accessing abortion services.

However, supporters of the Bill noted that people had a right, under article 8, to access abortion services without harassment or intimidation and in a manner which respects privacy. In their view, there was evidence that anti-abortion protests prevent this from happening.

Opponents of the Bill were also concerned about breaches of article 8 rights for those who lived in safe access zones or for those who wanted to live by their anti-abortion convictions more generally.

The key concern around article 9 was the impact of the Bill on those who saw action against abortion as an integral part of practising their faith. The potential criminalising of peaceful or silent prayer was seen as unacceptable and unjustified by many.

For article 10, respondents argued that the right to express and share anti-abortion views was being unfairly targeted. Many expressed the view that this was state censorship of alternative viewpoints. Some also argued that people accessing abortion services had a right to receive alternative information, which would be denied by the Bill's provisions.

In relation to article 11, opponents of the Bill argued that the ability to protest on anti-abortion issues was being unjustifiably infringed. For some, this was also linked to their ability to practice their religion by praying in community with other people.

Views on the legal framework for balancing human rights

Amnesty International noted the requirements of the Scotland Act 1998 in relation to legislative competence. Legislation from the Scottish Parliament is “not law” (ie. it has no legal effect) to the extent that it is incompatible with the rights in the European Convention on Human Rights (ECHR).

The Scottish Human Rights Commission (SHRC) emphasised that it was the job of the Scottish Parliament to examine the evidence base to decide whether the restrictions on human rights in the Bill were proportionate for the purpose of supporting access to abortion services.

A number of respondents discussed the court judgment from the reference by the Attorney General of Northern Ireland on the Abortion Services (Safe Access Zones) (Northern Ireland) Bill. This looked at whether similar legislation in Northern Ireland was within the competence (on human rights grounds) of the Northern Ireland Assembly. It found that the approach was necessary and proportionate and therefore ECHR compatible.

The SHRC noted that the judges commented on the wide “margin of appreciation” national authorities have when dealing with balancing rights in sensitive situations. The “margin of appreciation” is a concept developed by the European Court of Human Rights. It accepts that national authorities (such as governments and legislatures) are best placed to understand how rights should be balanced in the context of their societies. The court will therefore not unduly interfere with their decisions.

The SHRC stated its view that striking the balance between the competing rights engaged by the Bill would be challenging. However, it was satisfied that the purpose of the Bill – to create safe access zones around abortion clinics – represented a legitimate aim.

Both the SHRC and the Scottish Women’s Rights Centre highlighted the tests applied by the UK Supreme Court in the Northern Ireland case. These were:

- **Does the restriction of the rights in articles 9,10, and 11 pursue a legitimate aim?** The court found that it did.
- **Is the aim sufficiently important to justify the interference with these fundamental rights?** The court found that it was.
- **Is there a rational connection between the means chosen and the aim?** The court found that there was – noting research highlighting that lack of control in relation to encounters outside abortion clinics caused some women to feel distressed, even where they were not being approached aggressively.
- **Are there less restrictive alternative means to achieve the aim?** The court found that the Northern Ireland restrictions were proportionate.
- **Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?** The court found that there was, considering various vulnerabilities of people accessing abortion services.

Amnesty International and the Law Society of Scotland noted that the current Bill goes further than the Northern Ireland legislation. The maximum fines available are

significantly larger, and the zones are bigger and can be extended further. The Law Society also flagged that there is explicit reference in the Policy Memorandum (paragraph 111) to the fact that the approach taken in this Bill represents the most significant interference in ECHR rights of all the options considered.

- **Steps to make the Bill human rights compliant**

Several organisations with expertise in human rights³ discussed steps to be taken in relation to the Bill to make it human-rights compliant. These can be summarised as follows:

- a requirement to explore all options available to meet the outcomes of the Bill and to show that the option chosen is the least restrictive
- a requirement to collect evidence, on an ongoing and systematic basis, of anti-abortion activity and the impact of safe access zones
- a requirement to undertake periodic reviews, using the evidence collected as described above, on the ongoing effectiveness and appropriateness of safe access zones.

The SHRC put particular emphasis on the requirement to show that the radius of the safe access zone was the least restrictive. It recommended consideration of the Northern Ireland legislation and the Organisation for Security and Co-operation in Europe's Guidance on Freedom of Peaceful Assembly (not available online).

The SHRC was among those calling for the Bill to be amended to contain duties on those responsible for implementation to monitor and report on effectiveness in a human rights context. In its view, this developing evidence base would be particularly important to decisions around adjusting zone sizes or applying restrictions to a wider range of premises.

BPAS argued that the Bill should take a precautionary approach. It stated that, in order to build up an evidence base, women would have to be harassed, staff fearful of attending work and procedures disrupted before action could be taken. In its view women should not have to experience harassment at every clinic to justify the measures being taken in the Bill.

One Member of the Scottish Youth Parliament also commented on this issue. They said:

“... everywhere should be made safer and not just places already identified to be unsafe. Therefore, precautionary measures are vital.”

³ See, for example, the submissions from the Scottish Human Rights Commission and Amnesty International.

- **Other human rights considerations**

The SHRC was one of the respondents which highlighted Article 3 of the ECHR. This states that no one shall be subjected to torture or to inhuman or degrading treatment. A decision of the European Court of Human Rights found that failing to meet legal requirements in relation to access to abortion can constitute inhuman or degrading treatment.

A number of individual respondents to the Bill highlighted Article 2 of the ECHR. This protects the right to life. SPICe would note that it has not so far been developed to cover an embryo at the point of conception or a foetus at any specific stage of development in the womb.

A further group of individual respondents criticised an approach to balancing rights based on the ECHR because, in their view, it provided insufficient protection to the “unborn”. As one individual respondent put it:

“The most vulnerable life is the life of the unborn, what has the European Convention of human rights done for them? Abandoned them.”

- **Impact of extending the radius of safe access zones or the definition of protected premises**

Some respondents chose to highlight their concerns about the human rights implications of some of the mechanisms within the Bill. Concerns were focused around:

- arrangements to adjust zone size, and
- arrangements to change the definition of protected premises.

These concerns are discussed in more detail under the question headings above dealing with the mechanisms in question. However, in broad summary, a number of respondents were concerned that extending the areas covered by restrictions had implications for balancing human rights.

As well as impacting on those protesting, extended zones would catch more homes and other buildings – such as churches or schools – where people’s ability to communicate anti-abortion views would be affected.

Several organisations highlighted the particularly far-reaching implications of extending the definition of protected premises. St Columba’s Catholic parish in Edinburgh argued that extending the definition to cover GP surgeries, pharmacies and counselling services would “effectively remove” any expression of anti-abortion views in town or city centres.

As highlighted above, several human rights organisations called for systematic collection and review of evidence in relation to the impact of safe access zones. This was considered by many to be an important part of making human rights-compliant decisions in relation to extending zones.

The Law Society of Scotland noted that the Ministerial Guidance provided for in section 11 of the Bill would address some of these issues. However, in its view, principles covering decisions on zone sizes would be better on the face of the Bill.

- **Wider human rights and equality issues**

Some respondents sought to link the proposals in the Bill into wider human rights and equality developments.

Amnesty International noted that the Scottish Government's forthcoming human rights bill would seek to incorporate various additional human rights conventions into the domestic law of Scotland. This would include incorporating rights covering equality of access to healthcare services. The Scottish Women's Rights Centre noted that the Convention on the Elimination of Discrimination Against Women was one of the conventions covered by the human rights bill.

In the view of both organisations, further incorporation of human rights requirements would involve tackling structural barriers to women and girls accessing healthcare. The ALLIANCE stated that failing to protect women from targeted harassment and intimidation when accessing abortion services undermined the Scottish Government's commitment to wider human rights incorporation.

Views on the impact of the Bill on articles 9, 10 and 11 of the ECHR

This section looks specifically at respondents' views of the impact of the Bill on articles 9, 10 and 11 of the ECHR, taken together. The Policy Memorandum (paragraphs 13 and 14) acknowledges that the proposals will limit the exercise of these rights.

Comments relating to article 8, 9, 10 or 11 individually are discussed in more detail below. There was much overlap in the way respondents expressed their views on these issues.

The most widely expressed sentiment of those responding to the call for views was that the Bill would have an unjustifiable or negative impact on articles 9, 10 and 11. A large number of respondents also thought the Bill would have a negative impact on the article 8 rights of those who opposed the Bill.

One of the key concerns of opponents of the Bill was that there was insufficient evidence of a problem to justify the restrictions. In other words, the restrictions would not be proportionate. The Society for Protection of Unborn Children noted that it was

up to the proposers of the Bill to demonstrate that restrictions were proportionate to the aim and no more than is necessary to address the problem. It stated:

“The supporters of this Bill have not shown that there is a problem of public disorder or criminal behaviour on the part of those targeted by the legislation. Nor have they shown that existing laws are incapable of addressing any incidents which may arise in the future. The proposed restrictions on human rights cannot be considered necessary nor proportionate under Articles 8, 9, 10 and 11 of the ECHR.”

It further noted that the Bill’s supporters had not shown that any problems relating to protests outside abortion clinics could be attributed to those who would be targeted by the Bill.

The Free Church of Scotland made a similar analysis. It argued that the approach:

- was unnecessary – in that safe access zones would apply to all clinics in Scotland when the problem was not widespread. It saw this as a disproportionate response to “abortion campaigners”
- would reduce support to vulnerable people accessing abortion services – by criminalising offers of emotional and practical support. Its concerns around those being coerced into an abortion and those accessing abortion due to poverty are discussed above
- was a disproportionate interference in human rights – because there was insufficient evidence of genuinely problematic behaviour outside clinics.

In the view of the Bishops’ Conference of Scotland, the impact of the Bill would be to criminalise people for expressing certain views and being in certain places.

Individual respondents to the call for views made a range of comments characterising the restrictions as unjustified, disproportionate and undemocratic. There was a view that they unfairly targeted Christians or those with anti-abortion views. One individual commented:

“This bill will predominantly effect Christians or pro-lifers who are being told where they can and can’t pray and who they are allowed to offer help to.”

Another common theme was that restrictions on anti-abortion protests would be the “thin end of the wedge”, with the approach soon being copied in other areas. An individual respondent stated:

“And where will this end? What other peaceful activities will be targeted? It will no longer be enough to have peaceful intentions and actions but one will have to check if one's views agree with the government or a current political or philosophical trend.”

Another concern was that there would be court challenges to the Bill due to the fact it was not human rights-compliant. This was categorised as a further waste of public money.

Those supporting the Bill highlighted that articles 9, 10 and 11 are not absolute. They can be restricted on the grounds set out in the second paragraphs to each right – in particular, to support the rights of others or for reasons of public order or health.

Another popular point was that the Bill did not seek to prevent people with anti-abortion views communicating or protesting in relation to their viewpoint generally. Instead, it only prevented them doing so outside abortion clinics. In the view of a number of supporters of the Bill, there were more appropriate places to protest, such as outside the Scottish Parliament.

NHS Tayside argued that the Bill wouldn't stop people from protesting against abortion. Instead, it would prevent them from targeting those accessing legal healthcare. The RCGP suggested that anti-abortion protests appear to have the aim for deterring people from accessing abortion services. It noted that the rights in articles 9, 10 and 11 did not overrule the right to access medical care in a confidential manner.

The Humanist Society quoted from the UK Supreme Court judgment in the Northern Ireland case. The judge stated:

“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.”

However, the Free Church of Scotland sought to counteract this line of argument. It noted that it misunderstood the nature of freedom of expression. The right to give and receive information was not limited to the political arena.

Themes among individual respondents who supported the Bill were that the rights enshrined in articles 9, 10 and 11 did not extend to harassment and intimidation; and that no one was entitled to exercise a right in a way that deprived other people of their rights.

Police Scotland made some specific points in relation to its work. It noted that the legislation would create an obvious tension between protecting the rights of those accessing services and those protesting. Any interference in rights in the course of enforcement or prosecution would have to be necessary and proportionate to be human rights-compliant.

Police Scotland stated it had a track record of facilitating peaceful protest (with protests during the COVID pandemic given as an example). In its view, police commanders were used to balancing articles 9, 10 and 11 when considering how best to police protests.

Article 8 – respect for private and family life

Article 8 provides for the right to respect for private and family life, home and correspondence. The right to access abortion, within the legal framework of the state in question, has been held by the European Court of Human Rights to be covered by Article 8.

Supporters of the Bill argued that anti-abortion protests prevented people from accessing abortion services in the manner protected by article 8. A number noted that evidence gathered during the member's consultation on the Bill demonstrated the negative effect anti-abortion protests had on those accessing abortion services, as well as those accessing other healthcare in the vicinity. In the view of NHS Tayside, protests caused emotional harm to service users at a level which was discriminatory.

The SHRC noted that article 8 was clear – there could be no interference in the right unless provided for in the second paragraph of the right. Existing court cases provide guidance on how to balance this right against the “rights and freedoms of others” (from paragraph 2 of article 8).

A number of respondents noted that the court judgments in both the Northern Ireland case and *Dulgheriu and Orthova v the London Borough of Ealing* had found restrictions in relation to articles 9, 10 and 11 justified in order to protect the article 8 rights of those accessing abortion services. The Scottish Women's Rights Centre described *Dulgheriu* as finding article 8 engaged both from the perspective of the right to autonomy and in relation to a reasonable desire and legitimate expectation of privacy when attending a clinic.

In *Back Off Scotland's* view, the current law in Scotland does not adequately protect people's access to abortion services free from harassment in accordance with article 8. NHS Tayside stated that the existing law doesn't cover targeted, clinic-based harassment, which is specifically aimed at people accessing abortion services.

Some respondents highlighted the article 8 right of staff at abortion clinics to be able to attend work without intimidation. The Law Society of Scotland noted that the judgment in the Northern Ireland case had specifically noted that abortion clinic staff had a right to enter their place of work unharassed under article 8.

NHS Grampian raised concerns about staff being harassed or intimidated. The RCN stated that it had not received a “significant number” of representations from

members who feel threatened by protests. However, it strongly supported the principle that staff and service users should be able to access services without fear.

However, some respondents who opposed the Bill suggested it would create a hierarchy of rights, prioritising article 8 over articles 9, 10 and 11. The Christian Medical Fellowship described the Bill as elevating a “lesser freedom” over what it saw as the “foundational freedoms” of freedom of speech and freedom of peaceful assembly.

Amnesty International was among those respondents discussing the role access to abortion played in the wider rights framework for women. It noted evolving recognition of abortion as an integral component of reproductive healthcare which supported reproductive autonomy. This, in turn, linked to gender equality and social and economic justice. The Scottish Women’s Rights Centre noted that reproductive choice supported equality for women and access to education, paid work, financial autonomy and the prevention of abuse.

The Young Women’s Movement and The ALLIANCE noted the Scottish Government’s commitment in the Women’s Health Plan (2021-24) “to find ways of preventing women feeling harassed when accessing abortion care due to protests or vigils”.

A number of individual respondents who opposed the Bill also saw the article 8 rights of people with anti-abortion views as being infringed by the proposals. This was primarily because of the limits placed on anti-abortion communications which could be seen or heard from a safe access zone and the impact this would have on people living in homes within zones. However, there was also a view that the restrictions would prevent people being able to live by their anti-abortion convictions more generally.

One individual suggested the restrictions would have a “chilling effect in discussions in affected family homes”.

A further theme from individual respondents who opposed the Bill was that it did not in fact protect women at a vulnerable point in their lives. One individual commented:

“This Bill does not protect women and their reproductive rights. It fails women in every sense and only protects the providers of services.”

Impact of anti-abortion protests

Perhaps the key point of contention in relation to the human rights implications of the Bill was differing views of the impact of anti-abortion protests on those accessing abortion services. Supporters of the Bill characterised protests as causing people to feel intimidated or harassed, even when they were not directly confrontational.

Opponents of the Bill saw protests as peaceful, respectful and intended as a means of support for those accessing abortion services.

Views on the negative impact of anti-abortion protests are discussed in detail under the Reasons for supporting the Bill question in the section entitled “Impact on people accessing abortion services”. Views on the positive impact of anti-abortion protests are discussed in the section under the criminal offences question entitled “Protests as a form of support”.

Article 9 – freedom of religion

Article 9 protects freedom of thought, conscience and religion, including the right to practice one’s religion in public and private and in community with other people.

Many opponents of the Bill argued that it was an unjustified interference in freedom of religion, including peaceful or silent prayer. Some of these concerns are discussed under the heading dealing with the proportionality of criminal offences above. A number of respondents noted several examples of people facing criminal penalties for silent prayer under similar restrictions in England.

The Free Church of Scotland noted that the Bill’s provisions were designed to catch prayer vigils. In its view, this was clearly an interference with article 9. In addition, its view was that individuals were being targeted by proposals because of their religion and belief.

The Free Church was also concerned about restrictions on what could be done on private property within the zone – in particular that churches would be restricted in what they could communicate about their own doctrines on their own property if it was within a safe access zone.

Deeside Christian Fellowship Church did not believe the evidence provided reached the high bar necessary to justify curtailing religious freedom.

St Columba’s Catholic parish in Edinburgh questioned whether praying could objectively interfere with someone’s article 8 rights. It stated:

“Although the act of someone praying may cause subjective discomfort for certain clinic visitors, it does not amount to an objective violation of their Article 8 rights. The European Court of Human Rights (ECtHR) frequently distinguishes between subjective discomfort and the actual infringement of rights.”

The Society for the Protection of Unborn Children argued that it was difficult to see silent prayer as intrusive. In its view, this showed that it was the beliefs of anti-abortion protesters that were being targeted by the Bill, not their behaviour.

It further noted that the Bill would have a disproportionate impact on members of religious minorities, in particular Roman Catholics. This may amount to unlawful discrimination, in breach of article 13 of the ECHR.

An individual respondent to the call for views argued that supporters of the Bill were well aware that vigils were focussed on prayer rather than harassment or intimidation (as evidenced by the lack of arrests highlighted in paragraph 28 of the Financial Memorandum). In their view, the purpose of the Bill was to ban prayer:

“It is only 200 years since the Catholic Emancipation Act of 1829 removed the last penal laws against the Catholic religion in the UK. This Bill is a worrying return to the days when religious activity was a criminal offence.”

The Society for Protection of Unborn Children also argued that the Bill’s provisions were an attempt to police the private thoughts and prayers of individuals. Along with a number of individual respondents to the call for views, it characterised this as introducing “thought crime”.

One individual respondent commented:

“The ultimate loss of human rights is to be told what one can and cannot think.”

The Law Society noted that the Bill would go further than the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023. It cautioned that the Scottish Government had been found to have failed to adequately consider freedom of religion before (*William JU Philip and others v Scottish Ministers* [2021] CSOH 32). This case dealt with COVID regulations which closed places of worship.

The Humanist Society argued that it was unfair that abortion clinic staff who believe in bodily autonomy can have their beliefs openly attacked as they enter and leave their place of work. In its view, the Bill would have a positive impact on the article 9 rights of those who believe in bodily autonomy.

Many individual respondents who supported the Bill argued that it did not prevent people having anti-abortion views or beliefs, it just stopped them trying to impose them on others. As one individual respondent commented:

“Freedom of religion is not a stick with which to beat people who don’t believe the same thing as you.”

Article 10 – freedom of expression

Article 10 protects freedom of expression, including the right to hold opinions and the right to give and receive information without interference by public authorities.

The Free Church of Scotland was of the view that the proposals in the Bill would have a chilling effect on freedom of speech around abortion. It saw proposals to make it illegal to discuss abortion in safe access zones as making a statement to society that it was inappropriate to express anti-abortion views. It argued that it was already difficult to openly discuss abortion issues as portrayal in the media was imbalanced.

The Church of Scotland noted that, while the intention of the legislation may be to protect people using and providing abortion services, the symbolism was that expressions of anti-abortion opinion were wrong. It highlighted risks to an approach which involved a more powerful side trying to use the law to delegitimise the views of a minority.

The Society for the Protection of Unborn Children was strongly of the view that the purpose of the Bill wasn't to protect women accessing services or to maintain public order. It saw proposals as motivated by a desire to prohibit the expression of anti-abortion opinions.

Concerns around restrictions on anti-abortion communications from private property within but not covered by safe access zones (such as homes, churches or private businesses) were also raised. The Society for the Protection of Unborn Children stated:

“It is an outrageous infringement of human rights to threaten to fine someone for putting a sign in a window of their own home. This goes far beyond the protection of women visiting abortion facilities.”

St Columba's Catholic parish in Edinburgh was among those arguing that criminalising the sharing of anti-abortion literature in safe access zones was a breach of the article 10 rights of both those attending anti-abortion protests and those accessing abortion services to give and receive information.

The Christian Institute noted that part of the argument behind the Bill was to enable women to make autonomous decisions around abortion. However, proposals would deny those who were less sure of a particular option the opportunity to hear other points of view. It stated:

“To shelter women from alternative viewpoints just because of their proximity to an abortion clinic is condescending. It infantilises women.”

Many respondents noted that there were examples of people who had welcomed information and support from anti-abortion protesters outside clinics.

However, opponents of the Bill characterised anti-abortion protests as trying to intimidate users of abortion services rather than express a viewpoint. BPAS said:

“[Abortion] is an intensely personal healthcare decision made at an individual level – it is not a statement or political stance, and opposition to it shouldn’t be treated as such. As a result, we believe anti-abortion groups when they say this is not a protest – it is not, it is the organised, targeted harassment of women accessing reproductive healthcare.”

Amnesty International noted that the European Court of Human Rights has held that protesters have a right to choose the most effective way of conveying their message. This can include expressing politically sensitive views in open public spaces.

The Free Church of Scotland argued that suggesting the right to express opinions was limited to the political arena was to misunderstand the nature of the right. Article 10 protects the right to hold views and receive and impart information any context an individual deems appropriate (subject to the restrictions in paragraph 2 of that right).

Article 11 – freedom of assembly

Article 11 protects the right to freedom of peaceful assembly and to freedom of association with others. Concerns about the impact of the Bill on freedom of assembly were tied up with concerns around freedom of religion – eg. taking part in prayer vigils. They were also tied up with freedom of expression – eg. conveying alternative information about abortion via protests.

Individual respondents who opposed the Bill saw it as restricting the right to protest in an undemocratic way. Another theme was that the Bill was an attempt to criminalise anti-abortion protests by those with opposing views.

The Society for the Protection of Unborn Children noted [guidance on Article 11 from the European Court of Human Rights](#)⁴. This notes that states have a positive obligation to ensure that citizens can effectively exercise their right to freedom of assembly. This is particularly important for those with unpopular opinions or for minorities who might be victimised for their views.

Amnesty International noted that the right of peaceful assembly includes the right to choose the time, place and “modalities” of the meeting (within the limits of paragraph 2 of the right). It further noted comments from the United Nations Human Rights Committee that restrictions on peaceful protest should be based on individual assessments – with broad restrictions on location to be avoided.

However, those who supported the Bill argued that people with anti-abortion views were still free to exercise their right to protest in a range of other locations, including outside the Scottish Parliament. One individual commented that people did not have

⁴ European Court of Human Rights. (2022) Guide to Article 11 of the European Convention on Human Rights. Available at: https://www.echr.coe.int/documents/d/echr/guide_art_11_eng [Accessed 12 February 2024]

the right to freedom of assembly wherever they wanted – for example, people could not choose to protest in the middle of a motorway.

Both those supporting and those opposing the Bill made comments about control of public spaces. The Scottish Women’s Rights Centre highlighted that the judgments in both the Northern Ireland and *Dulgheriu* cases noted those accessing abortion services had no choice but to do so via public spaces controlled by protesters. SPICe notes that the issue of controlling the space in this context is discussed in paragraph 65 of the Policy Memorandum.

However, the Evangelical Alliance saw the restrictions in the Bill as an attempt to control what should happen in spaces that were otherwise available to the general public.

Do you think that the Bill’s intended policy outcomes could be achieved through another means, such as existing legislation?

Summary

There was a strong view among those opposing the Bill that existing criminal offences around harassment and public order were sufficient to deal with any problematic behaviour at anti-abortion protests. Many also emphasised their view that protests were peaceful and respectful so there was no need for additional powers.

However, those who supported the Bill argued that existing powers could not be sufficient while anti-abortion protests outside abortion clinics continued to take place.

A number of respondents who supported the Bill highlighted problems with the option of using local byelaws as an alternative approach. This was seen to place an undue burden on local authorities; be likely to result in a patchwork of protection as local authorities would take different approaches; and be open to costly legal challenges.

A specific concern was the risk that, without a standard, national approach, protest activity would move to unprotected sites.

Existing laws are sufficient

A number of respondents who opposed the Bill expressed the view that there were already laws which could be applied to public order issues, harassment or breaches of confidentiality. If these things were taking place outside abortion clinics, they could already be the subject of legal action. One individual respondent commented:

“Enforce existing laws before adding burdens to those who obey them.”

However, respondents who opposed the Bill also highlighted a lack of evidence of any problems at anti-abortion protests. In particular, they suggested that no arrests or other issues of concern had been recorded by Police Scotland at existing protests. This is discussed under the criminal offences question above. The Christian Institute argued that there was no evidence that women were being prevented from accessing abortion – and certainly not by behaviour which was not already covered by the criminal law.

The Society for the Protection of Unborn Children was of the view that current legislation was more than capable of dealing with any issues which may arise from protests. However, it expressed the view that the “precautionary approach” taken in the Bill was more about penalising people who attended anti-abortion protests than dealing with problematic behaviour.

Police Scotland was also of the view that existing powers and offences were sufficient to address unlawful behaviour in relation to anti-abortion protests outside clinics. (Note though that it also thought the offences proposed in the Bill were proportionate – as discussed in the criminal offence question above.)

The Free Church of Scotland suggested that using existing laws would target actual problem behaviour without criminalising those offering compassionate support via anti-abortion protests.

A number of respondents who supported the Bill argued that the current criminal law was obviously insufficient to deal with problematic protests outside abortion clinics. This was evidenced by the fact that those protests continued to happen. Back Off Scotland noted that it had been working hard for three years on options to stop what it viewed as harassment. It stated:

“It is abundantly clear to us that new primary legislation is needed to move these groups away from the clinic gate and to preserve the rights of women to access legal, essential healthcare.”

The Law Society of Scotland, NHS Tayside and the RCGP were among those organisations which thought that current legislation was not sufficient.

The Scottish Women’s Convention argued that, even if behaviour was potentially covered by other legislation, taking the Bill forward highlighted the impact of protests on the wellbeing of those accessing abortion services and showed that it would no longer be tolerated.

Use of local authority byelaws

A number of respondents who supported the Bill commented on the use of local authority byelaws as an alternative to the proposals in the Bill. This option is discussed in paragraphs 80 to 84 of the Policy Memorandum.

Comments highlighted concerns that this approach placed both the onus and the risks of taking action on local authorities. The process was seen as administratively demanding and would need to be renewed every 10 years. The Humanist Society noted that local authorities would also be responsible for covering the costs of any legal challenges to rules.

A key concern was that leaving the issue to local authorities would result in a “piecemeal” approach, with different levels of protection in different areas. Several respondents also flagged budget and staffing constraints within local authorities as barriers. Engender said:

“We strongly oppose the suggestion that discretion and decision-making around this issue should sit with local authorities that face extreme budgeting pressures and are potentially subject to the personal or politicised views of staff in key positions.”

Respondents noted that action via this route had only benefited a small number of abortion clinics in England. BPAS highlighted that it had worked with local authorities on the introduction of buffer zones in England. In its view, these were effective for the services they covered but had no impact on protests elsewhere. It noted that there were more protests now than when buffer zones were first introduced.

The Convention of Scottish Local Authorities was among the respondents expressing concerns that patchy implementation would lead to anti-abortion protests relocating to other sites with less protection. The RCGP referred to the risk of a local approach creating a “postcode lottery”.

BPAS highlighted a [legal opinion commissioned by the Society of Local Authority Lawyers and Administrators in Scotland](#) (SOLAR) which stated that local authority byelaws could not be used to introduce buffer zones⁵. It also argued that leaving this issue to local authority or local police discretion misunderstood the systematic nature of the problem. In its view, anti-abortion protests were the product of national and international co-operation, learning and radicalisation.

The Scottish Women’s Rights Centre argued that a national approach would provide assurance that people would have equal access to abortion services, regardless of where in Scotland they lived.

⁵ Convention of Scottish Local Authorities. (2021) Community Wellbeing Board item 4.1 – Buffer Zones, November 2021. Available at: [Buffer Zones \(cosla.gov.uk\)](https://www.cosla.gov.uk) [Accessed 13 February 2024]

Do you have any further comments to make about the provisions in the Bill?

Respondents were asked to share any further comments about the Bill. Responses to this question were incorporated into the relevant sections of this evidence summary.