

## **Call for Evidence on the Abortion Services (Safe Access Zones) (Scotland) Bill**

### **1. Do you agree with the purpose of the Bill?**

No. The terms “Safe Access Zone” and “protected premises” are intended to convey the impression that people participating in pro-life vigils present a danger to women considering abortion. Such accusations are without foundation and supporters of the Bill have consistently failed to provide evidence that the problem they say they wish to address exists. Data contained in responses to freedom of information requests available at Buffer Zones News [<https://buffer-zones.scot/abortion-vigils-in-scotland/>] demonstrate that participants in pro-life vigils pose no threat to anyone.

SPUC is fully opposed to this Bill for the following reasons:

- Exclusion zones are unnecessary, existing legislation can address any problems that might arise at pro-life events.
- This proposal is a direct attack on rights guaranteed by the Human Rights Act 1998 and the European Convention on Human Rights (ECHR).
- Harassment, intimidation, and threatening behaviour are already criminal offences. There is no evidence that people taking part in pro-life vigils engage in any of these offences.
- The Bill seeks to criminalise lawful, peaceful protest and as such represents a threat to everyone’s freedom of speech.
- It targets peaceful citizens, not because of anti-social behaviour but for their religious and political views.

The true purpose of this legislation is not the protection of women, rather it is a punitive measure targeting those prepared to express opposition to abortion in public. This is clear from section 5, which is an affront to human rights unprecedented in UK law. This section would permit a solitary individual, silently praying beyond the 200-metre perimeter and interacting with no one, to be fined up to £10,000 simply for being visible to someone within an exclusion zone.

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

No. 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” [§ 7(5)]. According to the Office of the Parliamentary Counsel: “Good law is necessary, effective, clear, coherent and accessible.” [Office of the Parliamentary Counsel, Cabinet Office, *When Laws Become Too Complex: A review into the causes of complex legislation*, March 2013. p 1.] The lack of precision in the Bill is a serious concern that the Committee ought to address as a matter of urgency.

### **3. 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?**

The provisions dealing with the alteration of boundaries are so vague and ill-defined that they can hardly be regarded as an administrative process. Section 7 would allow Ministers to:

- a) apply purely subjective criteria on whether to grant a request for the expansion of an exclusion zone and;
- b) to arbitrarily decide the extent to which it is increased.

## Call for Evidence on the Abortion Services (Safe Access Zones) (Scotland) Bill

As the Bill will have a direct impact on rights guaranteed by Articles 9, 10 and 11 of the ECHR a *carte blanche* approach is likely to invite a legal challenge under the Human Rights Act.

The judiciary “expect objectives of legislation (and intentions of legislators) to be clear and unambiguous.”<sup>1</sup> It is not enough for the supporters of the Bill to understand what is provided in section 7. In its current form, it fails to meet the longstanding standard required of legislation as set out by Stephen J in *In re Castioni*:

“...it is not enough to attain to a degree of precision which a person reading in good faith can understand; but it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it.”  
[*In re Castioni*: 2 [1891] 1 QB 149, 168]

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. The limitations and penalties set out in the Bill apply to private property (including domestic residences) adjacent to the exclusion zone. Under the terms of the Bill, residents and visitors to the area could face fines or prosecution for displaying a sign or emblem judged to be offensive regardless of their intentions. Theoretically, this could apply to a bumper sticker on a vehicle, a rosary hanging from a rearview mirror or a “ichthys” symbol (the so-called Jesus fish typically used to proclaim Christian affiliation). This level of interference would almost certainly engage Article 8 of the ECHR which protects private and family life from arbitrary or disproportionate intrusion by public authorities.

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

No. Section 10 gives Ministers the power to modify the meaning of “protected premises”. This permits the introduction of exclusion zones in the vicinity of GPs’ offices and pharmacies which prescribe and dispense abortion drugs. While such places do not attract pro-life demonstrations, the nature of the Bill would mean that occupants of private properties adjacent to an exclusion zone could face substantial fines or prosecution for displaying anything deemed offensive by abortion providers or their clients. This represents a serious and disproportionate limitation on the rights protected by Articles 8, 9 and 10 of the ECHR. Although Ministers must consult the operator of the building to be protected before introducing an exclusion zone for such premises, they are not required to consult any other interested parties unless they consider it appropriate to do so.

The explanatory notes indicate that individuals outside a buffer zone who are capable of being seen by someone within it could be charged with an offence even if they remain on their own property. Paragraph 22 states:

“For example, if a person who lives in a building in the area within the boundary of the safe access zone displays an antiabortion sign in the window of their building with the intention of influencing another person’s decision to access abortion services at the nearby protected premises and leaves that sign on display, an offence could be committed if an affected person sees or could have seen the sign at any time.”

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.

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

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<sup>1</sup> *ibid* p 21

No. Paragraph 23 of the Explanatory Notes states: “A fine not exceeding the statutory maximum (being £10,000 on the date of introduction of the Bill), or (on conviction on indictment) to an unlimited fine.” This is completely disproportionate and inappropriate. The median fine imposed by the courts on individuals in 2020-21 was £280. The fine issued by police for public order offences including breach of the peace, vandalism, being in charge of a child whilst drunk in public, and urinating or defecating in public, is £40. Looking at recent assault cases, a Musselburgh man was fined £180 for “repeatedly punching” his victim, an Eddleston barber was fined £300 for punching a man in the head, and a Greenock man was fined £370 for physically assaulting two police officers. Why are vastly larger fines being proposed for “influencing” someone over abortion than for the offences of battery and grievous bodily harm?

The creation of the offence of intentionally or recklessly “influencing” someone should alarm anyone who values human rights and the rule of law. The enactment of legislation that portrays a peaceful attempt to present another person with a different point of view as inherently coercive would set a dangerous precedent. A woman who opts for an abortion because of a difficult financial situation may well be “influenced” to keep her baby if she is made aware of practical support. Denying her the opportunity to receive an offer of support takes a choice away from her.

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

No. 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.

Public authorities must show that the restrictions on human rights are ‘proportionate,’ that it is appropriate to the aim pursued and no more than necessary to address the issue concerned. The supporters of the Bill have not shown that:

- a) there is a problem of public disorder or criminal behaviour;
- b) that this can be attributed to the individuals and groups targeted by the proposed Bill; and the existing laws are incapable of addressing any incidents which may arise in the future.

**7. 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?**

This legislation is neither a response to a pressing need to protect women nor maintain public order. Instead, it is motivated by a desire to prohibit the public expression of opinions that supporters of the Bill find intolerable. Under the Human Rights Act 1998 before restrictions can be placed on freedom of expression it must be shown that the action is lawful, necessary, and proportionate with the purpose of:

- protecting national security, territorial integrity (the borders of the state) or public safety
- preventing disorder or crime
- protecting health or morals
- protecting the rights and reputations of other people
- preventing the disclosure of information received in confidence
- maintaining the authority and impartiality of judges

Restrictions on freedom of expression may be legitimate if the views expressed could encourage racial or religious hatred or incite violence. Freedom of assembly can only be legitimately restricted where an authority can show that its action is lawful, necessary, and proportionate in order to:

- protect national security or public safety

## Call for Evidence on the Abortion Services (Safe Access Zones) (Scotland) Bill

- prevent disorder or crime
- protect health or morals, or
- protect the rights and freedoms of other people.

While the Bill does not explicitly mention prayer, in 2022 the Northern Ireland Attorney General referred the Abortion Services (Safe Access Zones) (Northern Ireland) Act to the UK Supreme Court. [It should be noted that the terms of the Northern Ireland legislation are significantly less punitive than the current Bill.] The court found that it was compatible with UK human rights law and the ECHR. It concluded that clients and staff of abortion facilities have a right not to “witness silent prayer which is unwanted, unwelcome and intrusive.” It is difficult to understand how silent prayer is intrusive, but this statement shows that it is the beliefs of pro-life activists that are considered offensive, not their behaviour.

Dorothy Bain KC, the Scottish Lord Advocate and the Scottish government’s chief legal advisor intervened in the Supreme Court’s consideration of the Northern Ireland legislation. She insisted that silent prayer is more damaging to women seeking abortions than noisy protests. The establishment of buffer zones in England under Anti-Social Behaviour Orders has already given rise to the spectacle of solitary individuals being arrested and fined for silent prayer in the proximity of abortion facilities.

The first paragraph of Article 9 states:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.”

Regardless of the assertions of Ms Bain and the Supreme Court, all attempts to police private thoughts and prayers or to criminalise citizens for their religious convictions violate the ECHR.

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

Yes. In terms of maintaining public order, existing legislation is more than capable of dealing with any eventuality that might arise. However, public order is not the intended policy outcome of this Bill. The purpose of this Bill was made clear in a consultation document published by Gillian MacKay MSP on 19 May 2022. This listed five existing pieces of legislation that address criminal behaviour and public order offences. When discussing Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, the document complained that this law:

“...focuses on punishing intimidating behaviour after the harm has been done.”

“...the police may only arrest and charge individuals with this offence if a crime is reported to them and sufficient evidence is provided.”

“...This means that abortion service users would likely have to make a police report themselves...”

Ms MacKay’s intention in advocating this ‘precautionary’ approach was to penalise people attending pro-life vigils without an offence being committed. Her proposed penalty for breaching a buffer zone for the first time was imprisonment of a term not exceeding six months or a fine not exceeding the statutory maximum or both. The document proposed:

That further instances punishment could be up to:

- o on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both such imprisonment and such fine; or
- o on summary conviction, to imprisonment for a term not exceeding twelve months or to a fine, or both such imprisonment and such fine [Proposed Abortion Services (Safe Access Zones) (Scotland) Bill, Consultation by Gilliam MacKay, 19 May 2022, p 15]

It is clear from this text that the authors of the Bill do not seek to deter criminal behaviour but instead

wish to punish attitudes to abortion of which they disapprove. While it is to be welcomed that the threat of imprisonment has been dropped, the use of law to punish people for holding the wrong political or religious opinions should have no place in Scottish society. The revised version would still 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.

#### **9. Do you have any further comments about the Bill?**

Guidance on Article 11 of the ECHR makes clear that State Parties have a positive legal obligation to protect freedom of assembly when it says:

“States must not only refrain from applying unreasonable indirect restrictions on the right to assemble peacefully but also safeguard that right. Although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities with the exercise of the rights protected, there may in addition be positive obligations to secure the effective enjoyment of these rights (Kudrevičius and Others v Lithuania [GC], 2015, § 158; Djavit An v Turkey, 2003, § 57).

“A positive obligation to secure the effective enjoyment of freedom of assembly is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation (Bączkowski and Others v Poland, 2007, § 64).”

The enactment of the Abortion Services (Safe Access Zones) (Scotland) Bill would breach the legal obligation on the Scottish Parliament to safeguard the peaceful exercise of Article 11 rights and should, therefore, be rejected.

If they pass the Abortion Services (Safe Access Zones) (Scotland) Bill, MSPs will introduce “thought crime” into Scottish law for the first time since freedom of religion was recognised as a human right. Illegitimate restrictions of fundamental human rights — such as freedom of speech and freedom of assembly — of any group, have a negative impact on the human rights of everyone. Any limitation on these rights must fall within the exceptions set out in Article 10 and Article 11 of the ECHR. 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). This may also amount to unlawful discrimination and therefore risks violating Article 13 of the ECHR in conjunction with violations of Articles 9, 10 and 11. The purpose of the Bill is the protection of the rights of the clients and staff of abortion facilities to be shielded from beliefs or opinions they may find objectionable. However, this alleged right cannot be used as a pretext to remove fundamental human rights. Article 17 of the ECHR on the Prohibition of abuse of rights states:

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

The genuine rights of clients and staff of abortion facilities are already protected under existing legislation. The enactment of the Abortion Services (Safe Access Zones) (Scotland) Bill will not change that. This legislation is, however, a serious threat to universal, fundamental human rights and should be rejected.