



## THE SOCIETY FOR THE PROTECTION OF UNBORN CHILDREN

82 Union Street, Glasgow, G1 3QS

### Proposed Abortion Services (Safe Access Zones) (Scotland) Bill

#### Introduction

The Society for the Protection of Unborn Children (SPUC) is a human rights group established in 1966 and since then has been active in the field of public campaigning, debate and lobbying in relation to life issues. Its aims include, *inter alia*, the following:

- To affirm, defend and promote the existence and value of human life from the moment of conception until its natural end.
- To examine existing or proposed legislation, regulations or public policies relating to the protection of human life and the promotion of human dignity and to support or oppose such as appropriate.

In furtherance of the above aims, SPUC has been involved in major litigation surrounding abortion, freedom of conscience, freedom of expression and the right to life of vulnerable individuals.

SPUC espouses the philosophical tradition that recognises the inviolability of human life and the prohibition on doctors taking the life of their patients set out by the Hippocratic Oath (c. 400-350 BC) when it states:

“I will neither give a deadly drug to anybody if asked for it nor will I make a suggestion to this effect. Similarly, I will not give to a woman an abortive remedy.”<sup>1</sup>

This tradition was reaffirmed in 1948 by the Universal Declaration on Human Rights, the International Code of Medical Ethics adopted by the World Medical Assembly and the Declaration of Geneva which bound doctors to “maintain the utmost respect for human life from the time of conception, even under threat,” and not to use their medical knowledge “contrary to the laws of humanity.”<sup>2</sup>

While the right to life is the foundation and prerequisite for all other rights, freedom of expression and freedom of assembly are essential for the protection of fundamental human rights. SPUC has successfully defended challenges to its freedom of speech before the Advertising Standards Authority and the European Court of Human Rights.<sup>3</sup>

Guidance on Article 11 of the European Convention on Human Rights 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

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<sup>1</sup> Ludwig Edelstein, *Ancient Medicine: Selected Papers of Ludwig Edelstein*, (eds, O Temkin and C Lilian Temkin, trans from German, C Lilian Temkin, John Hopkins Press, 1967) 6

<sup>2</sup> International Code of Medical Ethics, *Duties of Doctors to the Sick: A doctor must always bear in mind the importance of preserving human life from the time of conception until death*” 1948

<sup>3</sup> See *Bowman v The UK* App No 141/1996/760/961 (ECHR 19 February 1998)  
<https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-58134%22%5D%7D>

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, therefore, it should be rejected.

### **Response to the Questions**

#### **1. Data protection declaration**

I confirm that I have read and understood the Privacy Notice

**3.** This submission is made on behalf of the Society for the Protection of Unborn Children

**5.** SPUC can be categorised as: Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)

#### **Experience and expertise in the subject-matter of the consultation.**

While the right to life is the foundation and prerequisite for all other rights, freedom of expression and freedom of assembly are essential for the protection of fundamental human rights. SPUC has first-hand experience in fighting censorship. It has successfully defended challenges to its freedom of speech before the Advertising Standards Authority and the European Court of Human Rights. Although SPUC does not organise pro-life vigils at abortion facilities, members of the Society frequently take part in these peaceful demonstrations. It, therefore, has an interest in defending the human rights of its supporters engaged in the activities the Bill unjustly seeks to criminalise.

**6.** I am content for this response to be published and attributed to my organisation.

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### **Views on the proposal**

#### **9. Which of the following best expresses your view of the proposed Bill?**

- Fully opposed
- Buffer zones are unnecessary, existing legislation is capable of addressing any problems that might arise at pro-life events.
- This proposal is a direct attack on civil rights guaranteed by the Human Rights Act 1998 and the European Convention on Human Rights.

- 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 represent a threat to everyone's freedom of speech.
- This proposal is part of the war on free speech promoted by cancel culture.
- It targets peaceful citizens, not because of anti-social behaviour but for their religious and political views.

**10. What is your view of the proposal for safe access zones being introduced at all healthcare settings that provide abortion services throughout Scotland?**

- Fully opposed
  - The use of the term "safe access zone" is designed to create an impression that pro-life vigils present a danger to women. This is entirely false.
  - Abortion advocates have provided no evidence to justify their accusations of harassment, intimidation or anti-social behaviour.
  - Buffer zones are intended to silence those who hold opinions that abortion advocates find intolerable.
  - Abortion is not health care, it is an act of lethal violence directed at an unborn child and violence against children can never be justified.

**11. What is your view of the proposal for the 'precautionary' approach to be used, in which a safe access zone is implemented outside every site which provides abortion services?**

- Fully opposed

The consultation document lists 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 complains 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..."

Judging from the information provided in the consultation document, the 'precautionary' approach is intended to punish people attending pro-life vigils without any offence being committed. This proposal seeks to give the police the power to arrest and charge an individual without a crime being reported to them and without the need for evidence of a crime to be provided.

- The 'precautionary' approach is an unprecedented departure from the rule of law and should be categorically rejected.
- This approach seeks to punish people who have committed no crime and would allow the police to arrest and charge people without evidence of a crime. Such a proposal has no place in a free society.
- The proposal would condemn anyone taking part in a peaceful pro-life vigil "on summary conviction for breaching a buffer zone for the first time to imprisonment of a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both such imprisonment and such fine." Such a law should have no place in Scottish society.

**12. What is your view of the proposed standard size of a safe access zone being 150 metres around entrances to buildings which provide or house abortion services?**

- No – We do not support the introduction of safe access zones in any form
  - Buffer zones are unnecessary, existing legislation is capable of addressing any problems that might arise at pro-life events.
  - This proposal is a direct attack on civil rights guaranteed by the Human Rights Act 1998 and the European Convention on Human Rights.
  - 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.
  - These proposals seek to criminalise lawful, peaceful protest and as such represent a threat to everyone's freedom of speech.
  - This proposal is part of the war on free speech promoted by cancel culture.
  - It targets peaceful citizens, not because of anti-social behaviour but for their religious and political views.

**13. What is your view of the proposal to ban all protests including both protests in support of and those in opposition to:**

**A person's decision to access abortion services (ie a woman having an abortion)?**

- Fully opposed
  - Legal protection for free speech is only necessary for opinions that other individuals find objectionable. Protecting the peaceful exercise of the rights to freedom of expression and freedom of assembly is fundamental to the rule of law in a free society. No one should be punished for peacefully expressing their views on abortion or any other controversial issue.
  - In 2015, the Grand Chamber of the European Court of Human Rights in the case of *Kudrevičius and Others v Lithuania* (App No. 37553/05) 15 October 2015, stated: "...any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles do a disservice to democracy and often even endanger it (see *Fáber v Hungary*, no. 40721/08, § 37, 24 July 2012)" at [82].

**14. What is your view of the proposal to ban all protests including both protests in support of and those in opposition to: A person's decision to provide abortion services (ie a doctor, nurse, or midwife)?**

- Fully opposed
  - See the points listed above.
  - Harassment and intimidation are already criminal offences. The existing law already guarantees abortion providers the same level of security and legal protection shared by everyone in Scotland.

**15 What is your view of the proposal to ban all protests including both protests in support of and those in opposition to: A person's decision to facilitate provision of abortion services (ie administrative or support staff)?**

- Fully opposed
  - The Abortion Services (Safe Access Zones) (Scotland) Bill unlawfully seeks to criminalise and deprive peaceful demonstrators of their human rights. In *Fáber v Hungary* (App No 40721/08) 24 October 2012, the European Court of Human Rights stated: "The Court considers, however, that the freedom to take part in a peaceful assembly is of such importance that it cannot be restricted in any way, so long as the person concerned does not himself commit any reprehensible act on such an occasion (see *Ezelin*, cited above, § 53)" at [47].

**16. Which types of activity – when done for the purposes of influencing a person’s decision to access healthcare settings including abortion services - do you consider should be banned in a safe access zone? (tick as many from the list as you consider should be covered by the Bill)**

- None of these
- This question shows that the proposal is aimed not at curbing criminal or anti-social behaviour but at any activity seen as an attempt to influence someone entering a facility. It does not specify that posters or leaflets need to be graphic or offensive and praying silently in the vicinity of an abortion venue would be a breach of the proposal.
- The introduction of buffer zones is unnecessary as existing legislation is sufficient to deal with any criminal or threatening behaviour.
- Everyone has the right to peacefully communicate with anyone else. Women considering abortion also have the right to hear about alternatives to abortion, the availability of financial assistance, the emotional harm and physical risks associated with abortion and so on. With the pro-life message heavily censored in the media, a pro-life vigil may represent the only opportunity that some women will have to hear about these things.

**17. What is your view on the potential punishments set out in the proposal for breach of a safe access zone (see pages 15 to 16 of the consultation document)?**

- Fully opposed
- This proposal is not a response to a pressing need to maintain public order or the protection of women. It is motivated by a desire to prohibit the expression of opinions which supporters of the Bill find intolerable. The responses to freedom of information requests which can be seen at Abortion Vigils in Scotland (<https://abortionvigils.scot/>) prove that accusations levelled at people participating in pro-life events are unfounded.
- 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
  - prevent disorder or crime
  - protect health or morals, or
  - protect the rights and freedoms of other people.
- This proposal is not a response to a pressing need to maintain public order or the protection of women. It is motivated by a desire to prohibit the expression of opinions which supporters of the Bill find intolerable.
- 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

- c) the existing laws are incapable of addressing any incidents which may arise in the future.

**18. Do you think there are other ways in which the Bill's aims could be achieved more effectively?**

This Bill is an unnecessary and illegitimate attempt to curtail the civil and political rights of peaceful citizens it should, therefore, be scrapped.

- A primary aim of the Bill appears to be the creation of a chilling effect on freedom of assembly. As such it fails to comply with the Guidance on Article 11 of the European Convention on Human Rights which states: "In considering the proportionality of the measure account must be taken of its chilling effect. In particular, a prior ban of an assembly may discourage the participants from taking part in it."<sup>4</sup>
- The result of the Bill would be unnecessary and disproportionate restrictions on human rights. It should, therefore, be rejected.

**19. Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal could have if it became law?**

- a significant increase in costs
- The consultation document acknowledges that the proposal would incur the expense of a nationwide awareness campaign as well as the cost of investigating alleged violations and the prosecution of those accused of violations.
- Despite the assertion that these costs would be minimal to moderate there is no basis for this assumption. Nor does it consider the potential cost of defending the legislation against the legal challenges which are almost certain to follow its implementation.
- The consultation document notes that Ealing Council in London spends £144,000 defending the introduction of a buffer zone in its area. The expense to Scottish taxpayers could be even higher if a successful challenger was awarded costs.
- Any extra expense resulting from this proposal would be a waste of money as there is no credible evidence that a problem exists that cannot be addressed by current means.
- The money spent on publicising and policing buffer zones would be a completely unnecessary expense since there is no justification for prohibiting members of the public from peacefully expressing their views on abortion.
- The use of public funds to prosecute members of the public for exercising freedom of speech and freedom of assembly is entirely illegitimate.
- Should this proposal become law it will almost certainly face a legal challenge. The cost of defending it in court would be disproportionate to the alleged problem it claims to address.

**Equalities**

**20. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation.**

- Negative
- 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

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<sup>4</sup> See *Christian Democratic People's Party v Moldova*, 2006, § 77

everyone. Any limitation on these rights must fall within the exceptions set out in Article 10 and Article 11 of the European Convention on Human Rights (ECHR) or the Human Rights Act 1998 (See the response to question 17). This proposal is a direct assault on the right of peaceful members of the public who will be targeted not because of anything they have done but on the basis of the political opinions and religious beliefs they wish to express.

Targeting individuals because of their opinions may also amount to unlawful discrimination and therefore would violate Article 13 of the ECHR in conjunction with violations of Articles 10 and 11. The alleged purpose of the proposal is to protect the rights of the clients and staff of abortion facilities, however, it will have no human rights implications in this regard. Being shielded from beliefs or opinions which we find wrong or objectionable is not a human right. The genuine rights of clients and staff of abortion facilities are already protected under existing legislation and this will not change.

- Restricting freedom of speech based on political opinion and religious belief is not only unlawful under the terms of the European Convention on Human Rights, it is a threat to a functioning democratic society.
- Supporters of this proposal have provided no concrete evidence of criminal or threatening behaviour linked to pro-life vigils. This attempt to criminalise peaceful demonstrators, not for anything they have done but for the opinions they express is unlawful discrimination which represents a threat to everyone who may wish to express an unpopular opinion.
- The prosecution of peaceful protestors for their political opinions or religious beliefs is something usually associated with oppressive regimes. It should have no place in Scottish society.

**21. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?**

It is not necessary for SPUC to answer this question which is routinely included in all consultations of this kind.

**22. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?**

It is a mistake to believe that people who take part in pro-life vigils do not identify with the clients of the abortion industry. More than fifty years after the passage of the Abortion Act, there is hardly a family in the UK that has not been directly affected by the tragedy of abortion. Most will be familiar with:

- the harm abortion has done to friends or family members;
- the lack of assistance provided for women who feel they have no alternative to abortion;
- the plight of a woman who, perhaps under pressure from a partner or her family, had to abort her baby;
- a family subjected to pressure from the medical profession to abort a baby with a disability.

The recent ruling by the US Supreme Court that access to abortion is not a right within the American Constitution has led abortion advocates in the UK to adopt extreme measures to silence the pro-life message. This proposal should be understood in the context of increasing pressure to prohibit the display of any pro-life material in the public arena. At present, this message is routinely subjected to distortion and censorship in the press and broadcast media. Pro-life posts and advertising on social media are frequently shadow-banned. In universities, pro-life student groups commonly face discrimination, harassment and threats of violence. However, the danger posed by the Abortion Services (Safe Access Zones) (Scotland) Bill goes beyond all these problems. The criminalisation of peaceful demonstrators will have consequences not just for the

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pro-life movement but for the freedom to express an opinion deemed to be intolerable.

In light of the concerns outlined above and the violations of human rights that the Abortion Services (Safe Access Zones) (Scotland) Bill would sanction and the dangerous precedent it sets, SPUC urges the sponsors of the Bill to withdraw it.