

BUFFER ZONES .SCOT

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

A proposal for a Bill to introduce safe access
zones around healthcare settings that provide
abortion services.

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Central Scotland (Region)

18th May 2022

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Foreword



In recent years we have seen a rising number of protests outside of abortion clinics. Their scale and frequency has increased in recent years with protests this April and May seeing some of the largest numbers.

Let's be clear, for those who need it abortion is healthcare and healthcare is a right. No-one should be intimidated or harassed for exercising their bodily autonomy or their right to seek the healthcare they want or need.

Clinicians have told me of the impact this has had on patients. Not just those accessing abortions but other services such as rape counselling and sexual health services. Some of these services share campuses with other services that are impacted by noise and the

presence of protesters. This should not be the case and legislation now needs to be brought forward.

I want to ensure that everyone accessing these services can do so free from the presence of protesters. Free from the fear that someone will be judging you for your choices, or worse – attempt to approach you to influence your decision.

This is not about the moral right or wrong of abortion, it is about the right to access healthcare free from intimidation and harassment.

Gillian Mackay MSP
18 May 2022

How the Consultation Process works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at: [Scottish Parliament Standing Orders](#)

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

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Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website <https://www.parliament.scot/> under Bills and Laws/Proposals for Bills.

Aim of the Proposed Bill

Background

What is abortion

An abortion is a procedure to end a pregnancy. It's also sometimes known as a termination of pregnancy. The pregnancy is ended either by taking medication or having a surgical procedure.

It is estimated that 1 in 3 women and people who can get pregnant will have an abortion during their reproductive lives.¹

In 2020, there were 13,815 abortions provided in Scotland².

Abortion and the law

Abortion is legal in Scotland under the Abortion Act 1967. This enables a woman or pregnant person to end a pregnancy, subject to the approval of two doctors and as long as they meet one of the legal grounds for abortion.

One of the provisions of the Abortion Act 1967 is that abortions must be provided at NHS hospitals or licensed premises. As a result, abortion provision in Scotland is relatively centralised in communities – with comparatively few sites per Health Board providing abortion services. Across Scotland, abortion procedures are provided at general hospitals, maternity hospitals, and NHS premises that provide dedicated community health services.

In 2022, it is legal for women and pregnant people to have an abortion in the first 12 weeks of pregnancy at home using mifepristone and misoprostol (a combination of which safely and effectively ends early gestation pregnancies)³. In 2020, 37.9% of all abortions were undertaken with both of these medications being taken at home⁴. For some women and pregnant people, this will mean that they did not need to attend a hospital or healthcare setting and received their medication in the post, but there is no easy way to determine what proportion of these abortions were provided entirely remotely.

¹ Stone N, Ingham R Who presents more than once? Repeat abortion among women in Britain *Journal of Family Planning and Reproductive Health Care* 2011;37:209-215. <https://srh.bmj.com/content/37/4/209>

² <https://publichealthscotland.scot/publications/termination-of-pregnancy-statistics/termination-of-pregnancy-statistics-year-ending-december-2020/>

³ [https://www.sehd.scot.nhs.uk/cmo/CMO\(2020\)09.pdf](https://www.sehd.scot.nhs.uk/cmo/CMO(2020)09.pdf)

⁴ <https://publichealthscotland.scot/media/7976/2021-05-25-terminations-2020-report.pdf>

What's the problem?

Summary

In Scotland, as across the UK and Ireland, there are individuals and groups who gather outside healthcare sites that provide abortion services to attempt to influence decisions to access or provide abortion care. The majority of people involved in this type of activity are seeking to dissuade or deter access to or provision of abortion care. This activity is organised, widespread, and persistent. Women and pregnant people accessing abortion care have reported that they find this activity harassing, alarming, and distressing⁵. Abortion providers report that it has a negative impact on their patients, and that staff can also experience harassment and intimidation.

Prevalence

According to the British Pregnancy Advisory Service (BPAS) and Back Off Scotland, since 2017 there have been seven hospitals and clinics in Scotland that have experienced protests, and 70% of women of reproductive age live in a health board area that has hospitals or clinics that have been targeted by anti-choice groups in the past five years.

BPAS reports that the largest targeted anti-abortion gathering on record in the UK took place outside Glasgow Queen Elizabeth University Hospital in 2018, with around 200 people holding a candlelit vigil immediately outside the Maternity Wing entrance⁶. A similar presence was reported in 2022, with more than 100 people present outside⁷.

This is part of the wider picture across the UK, where more than 50 healthcare facilities have been targeted since 2017⁸.

Anti-abortion activity outside healthcare facilities is reported by providers as having existed for many years, but that since 2014 there has been a notable upturn in the number, persistence, and vigour of these groups⁹.

Content

Activity in Scotland involves internationally-led groups, including 40 Days for Life, who have standard forms of action designed to 'end abortion'. There is first-hand evidence that these protests engage in activities such as displaying posters and graphic

⁵ Lowe, P., & Hayes, G. (2015). 'A Hard Enough Decision to Make': Anti--Abortion Activism outside Clinics in the Eyes of Clinic Users: A Report on the comments made by BPAS services users.

⁶ <https://www.youtube.com/watch?v=Z3P5gA9IZNE>

⁷ <https://www.heraldscotland.com/politics/20060097.campaigners-call-buffer-zones-anti-abortion-protest/>

⁸ BPAS figures, <https://back-off.org/recorded-harassment/>

⁹ Lowe, P., & Hayes, G. (2015). 'A Hard Enough Decision to Make': Anti--Abortion Activism outside Clinics in the Eyes of Clinic Users: A Report on the comments made by BPAS services users. https://publications.aston.ac.uk/id/eprint/41856/1/A_Hard_Enough_Decision_to_Make.pdf

images¹⁰, forming large marches or candlelit ‘vigils’¹¹, singing and praying loudly enough to be heard in waiting rooms¹², and handing out graphic and false medical information to deter or prevent women from accessing abortion care¹³. Organisations such as Back Off Scotland have also provided written testimonials from women who have encountered these protests and have experienced distress as a result – included under ‘Impact’ below.

Framing of purpose

People involved in this activity are very clear that they are not protests or demonstrations, but ‘prayer vigils’¹⁴. The decision to stand outside clinics is linked by them to their desire not to change the law, but to approach individual service users who are in the process of making decisions about their healthcare and deter or dissuade them from accessing abortion services.

Research into the motives of anti-abortion activity outside healthcare centres indicates that it is often a form of ‘bearing public witness’ – finding that “bearing witness to abortion involves public prayer and ‘pavement counselling’ at sites where abortion takes place, as a practical and symbolic act: to provide information to women entering and leaving clinics, and to make abortion visible, bringing it into a space where it can be named and opposed.”¹⁵

Pro-choice activity

There have been some isolated reports of pro-choice activity outside sites that provide abortion services, seemingly as a response to the perceived impact of anti-abortion activity at the same sites.

This consultation seeks opinions on restricting activities of any form which seek to influence the behaviour of abortion service users or providers in the vicinity of healthcare facilities, whether it is anti-abortion or pro-choice.

Impact

The campaign group Back Off Scotland has collated and shared with MSPs a number of accounts they have received directly from abortion service users and from staff regarding the impact this type of activity has had on them. These include:

¹⁰ <https://twitter.com/backoffscotland/status/1487401177138479105?s=20&t=btOBuneMC2vEGc2wIAne1g>

¹¹ <https://www.bbc.co.uk/news/uk-scotland-61111211>

¹² <https://www.glasgowtimes.co.uk/news/scottish-news/20131678.anti-abortion-protestors-demonstrate-outside-sandyford-glasgow/>

¹³ <https://twitter.com/backoffscotland/status/1445796698677301250?s=20&t=btOBuneMC2vEGc2wIAne1g>, <https://twitter.com/rachaelrclarke/status/1524751284124807168?s=20&t=btOBuneMC2vEGc2wIAne1g>

¹⁴ <https://www.dailyrecord.co.uk/news/scottish-news/scots-women-seeking-abortions-face-25039031>

¹⁵ Lowe, P., & Hayes, G. A. (2019). Anti-Abortion Clinic Activism, Civil Inattention, and the Problem of Gendered Harassment. *Sociology*, 53(2), 330-346. <https://doi.org/10.1177/0038038518762075>

"I experienced anti-choice protestors first-hand when I found out I was pregnant at 20 years old and attended Chalmers Clinic Edinburgh to seek an abortion. There were roughly seven protestors all standing on one side of the street, meaning they were impossible to ignore. I attended the clinic alone and felt targeted by the protestors. My memories around walking into the clinic are blurred and I believe this is due to the fear felt from their presence, leaving me to feel non-present... When I left the clinic, I felt anxious and scared at the thought of facing protestors again but knew I had no option." – Alice Murray

"Everything had been going well with my pregnancy until I had my 20-weekscan. I had wanted this baby more than anything else in the world and I had to make the decision whether to finish the pregnancy and allow her to die, or to terminate. I had a few appointments between then and my termination and every time I had to pass by the protestors [trying to make] me feel like a monster for making the decision. It was so bad that I made my mum drive the longer way out of the hospital so that I didn't have to see them. I have PTSD [Post-Traumatic Stress Disorder] from them being there, even though five years have passed and I have a healthy baby." – Lauren Hunter

"For people accessing abortion care and the staff providing it, the presence of anti-choice activists at the entrance to clinics and hospitals is distressing and a form of emotional harassment. The language and images used on some of the placards is upsetting and offensive... these anti-choice protestors will further traumatise those who may be making a difficult decision." – Dr. Audrey Brown, Abortion Consultant

"I am haunted by an image from a poster, held by one of the protestors I spotted as I left Edinburgh Royal Infirmary. 2 weeks earlier, at my 20-week scan, we had had a diagnosis that our much longed for baby had a condition that was 'incompatible with life', meaning we had a very difficult choice to make. The most humane thing for us was to have a termination for medical reasons, which meant ending the pregnancy, delivering the baby and saying goodbye. Outside the hospital as I left, at a required distance but still very visible to all passing them, was 40 Days for Life protest holding signs and posters. I was in my car stuck at the traffic lights, sobbing, and there were placard and images that I can't forget even now making me feel so much worse about the termination I'd just gone through." – Anonymous

Law in Scotland

The argument has been made that anti-abortion individuals and groups could be prosecuted under existing laws. Examples of such laws, and their potential for successful use, are included here.

It remains the case, however, that abortion service users and providers have reported

experiencing harassment, alarm and distress outside healthcare facilities as a result of activity that has not been addressed under existing law.

- **S201-204 of the Local Government (Scotland) Act 1973** allows local councils to create byelaws that could be used to ban protests related to pregnancy choices outside abortion clinics or hospitals. *In terms of efficacy, the use of byelaws to address this issue would have the following disadvantages in that they:*
 - *apply only to individual clinics and hospitals;*
 - *create a postcode lottery of protection for abortion clients;*
 - *place the onus on local authorities to take action and pay to defend their actions in court;*
 - *have to be approved by Ministers;*
 - *must be renewed every ten years.*

Similar measures are possible in England but of the 42 clinics affected in England, only three clinics have a local order in place. For further information see 'Why legislation?' below.

- **Antisocial behaviour etc. (Scotland) Act 2004** allows police to issue a dispersal order which can order a group of two or more people to disperse. They can be issued where the public has been alarmed or distressed and where behaviour has become significant, persistent, and serious. *Dispersal orders can only be issued if other approaches have been tried and failed, and they only last for three months at which point the same test would need to be met again. The Act also provides for antisocial behaviour orders to be issued, but these are applied to specific, named individuals and not to groups or gatherings, and there is evidence from other areas that anti-abortion activists travel between protests, often over long distances.*
- **Section 14 of the Public Order Act 1986** allows the police to give written directions which impose conditions on public assemblies to prevent disorder or disruption, or to stop groups gathering to intimidate others with a view to preventing them doing something that they have a legal right to do. *This provision has been used before for this purpose by the Metropolitan Police in London but was retracted and the police force claimed it had been issued in error - so its practicability is questionable.*

- Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010** provides that a person commits an offence if they behave in a threatening or abusive manner likely to cause a reasonable person fear or alarm, and they intend their behaviour to cause the person fear or alarm or they are reckless as to whether their behaviour causes fear or alarm to another person. This offence includes behaviour of any kind, including things said or otherwise communicated and things done, and the offence can be committed by a single act or a course of conduct. *The police can use this provision to arrest persons who intimidate abortion service users and cause them fear and alarm only after the intimidating behaviour has occurred and an offence has therefore been committed. As such, this provision is unlikely to prevent such behaviour occurring in the first place, rather it focuses on punishing such behaviour after the harm has been done. Further, the existence of this offence has not dissuaded groups from engaging in behaviour aimed at abortion service users likely to cause fear and alarm thus far. An additional issue is that 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, which may be a difficult and painful experience for many. This is particularly true as it will require those who may be distressed or seeking to avoid further trauma to disclose to police and be open to giving evidence in open court about private medical treatment which they may not have disclosed to people they know.*¹⁶
- The common law offence of Breach of the Peace** provides for individuals to be arrested if they engage in 'conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community'. *This definition presents an issue in the case of clinic protests as much of this action is unlikely to 'threaten serious disturbance to the community' as their activity is targeted at individual women accessing services. The same concerns apply to this common law offence as those which apply to the offence in section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.*

Law in the rest of the UK

In 2018, Ealing Council in England implemented a Public Spaces Protection Order (PSPO) around a Marie Stopes clinic. A PSPO is an antisocial behaviour tool that allows the Council to prohibit specified activities, and/or require certain things to be done by people engaged in particular activities, within a defined public area.

This was the first instance of a 'buffer zone' being enacted around an abortion clinic in the UK. This aimed to address certain behaviours by members of Pro-Life and Pro-

¹⁶ See page 14, BPAS response to the Home Office re existing legal provisions <https://www.bpas.org/media/2072/acp-review-appendix-4-online-consultation-response.pdf>

Choice groups outside and in the vicinity of the clinic.¹⁷ This was subject to legal appeal in 2019, but the challenge was dismissed first by the High Court¹⁸ and then by the Court of Appeal¹⁹. The Supreme Court declined to hear the case. There is therefore a legal precedent for buffer zones in the United Kingdom.

The buffer zone was also effective. The PSPO was renewed in February 2021, at which point the council reported that “council officers have engaged with the Clinic in regard to the diary it maintained, documenting instances where patients and family members had reported being distressed by activities outside the Clinic. Clinic management have confirmed that following introduction of the PSPO, these events stopped occurring and it has ultimately become unnecessary for them to maintain this record.”²⁰

Clare Bailey MLA’s Abortion Services (Safe Access Zones) Bill recently passed through the Northern Ireland Assembly. This legislation will require the Department of Health to establish ‘safe access zones’ around abortion clinics, in which anti-abortion activity cannot take place. It will be a criminal offence to harass people in a safe access zone around those clinics.²¹

Law in the rest of the world

Buffer zones also exist in other countries and states such as the Isle of Man, Canada, Australia and in some states in the USA.^{22 23 24 25}

Two such examples are Victoria, Australia and British Columbia, Canada:

Victoria, Australia

- Law passed in November 2015 to stop anti-abortion protesters harassing or filming women coming in or out of clinics
- 150 metre ‘safe access zone’ around places that carry out abortions, including GP surgeries
- Covers ‘besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding’, communicating in a way that is ‘reasonably likely to cause distress or anxiety’, ‘interfering with or impeding a footpath, road or vehicle’, and ‘intentionally recording’ people accessing or leaving clinics without

¹⁷https://www.ealing.gov.uk/downloads/download/4645/consultation_on_proposed_public_spaces_protection_order_around_marie_stopes_clinic

¹⁸ <https://www.bailii.org/ew/cases/EWHC/Admin/2018/1667.html>

¹⁹ <https://www.bailii.org/ew/cases/EWCA/Civ/2019/1490.html>

²⁰ [Ealing Cabinet papers, February 2021](#)

²¹ <http://www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/non-executive-bill-proposals/abortion-services-safe-access-zones-bill/>

²² https://legislation.gov.au/cms/images/LEGISLATION/PRINCIPAL/2019/2019-0001/AbortionReformAct2019_1.pdf

²³ https://www.bclaws.gov.bc.ca/civix/document/id/lc/statreg/96001_01

²⁴ <https://theconversation.com/explainer-what-are-abortion-clinic-safe-access-zones-and-where-do-they-exist-in-australia-98175>

²⁵ <https://www.cbsnews.com/news/supreme-court-abortion-clinic-buffer-zones/>

consent.

- This law was upheld by the High Court of Australia in [*Clubb v Edwards and Preston v Avery* \[2019\]](#).

British Columbia, Canada

- Been in place since 1996
- Access Zones established 50m around clinics, 160m around residences of doctors and service providers, and up to 20m around doctors' offices
- Restricts activities like 'sidewalk interference', bans graphic recording, and bans harassment in an access zone
- Punishment on first conviction is up to CAD5000 and/or imprisonment up to 6 months. Subsequent convictions result in a fine between CAD1000 and CAD10,000 and imprisonment for not more than 1 year.
- Upheld by the Province's Supreme Court and Court of Appeal in *Spratt v Watson* [2008]²⁶

Ireland is also in the process of considering the introduction of legislation that would introduce buffer zones.

Why legislation?

The Scottish Government's Women's Health Plan was published on 20 August 2021 and it included the following commitment: "NHS, Local Authorities, Justice agencies and Scottish Government to work together to find ways of preventing women feeling harassed when accessing abortion care due to protests or vigils." However, progress has stalled.

The Scottish Government has stated that local authorities should be able to address this issue using a byelaw under section 201 of the Local Government (Scotland) Act 1973. However, the Local Authority Professional Association of Lawyers and Administrators stated in May 2021 that byelaws cannot be used for the implementation of buffer zones. Glasgow City Council and the City of Edinburgh Council subsequently sought the written opinion of Gerry Moynihan QC on behalf of SOLAR and this stated that local authorities cannot use byelaws to implement buffer zones at NHS reproductive health facilities. COSLA made this legal advice public on 12 November 2021.²⁷

It now seems clear that to progress the implementation of buffer zones, primary legislation is required. This would ensure progress continues on this issue while also preventing a postcode lottery developing, whereby some local authorities implement buffer zones, but others do not.

²⁶ <https://www.bccourts.ca/Jdb-txt/CA/08/03/2008BCCA0340.htm>

²⁷ https://www.cosla.gov.uk/_data/assets/pdf_file/0032/28697/21-11-12-CWB-Board-Item-4.1-Buffer-Zones-fz.pdf

Detail of the Proposed Bill

The Bill would provide a safe access zone around abortion clinics and healthcare settings that provide abortion services. These would be implemented across all sites by the legislation, with no requirement for NHS bodies or local authorities to make applications or undertake any further work to receive permission to establish a zone. Additional powers may be required to allow local authorities to vary zones where necessary.

Specific aspects of the Bill as proposed include:

- The introduction of safe access zones at all sites that provide abortion care, within which it is unlawful to influence or attempt to influence a person from accessing, providing, or facilitating the provision of abortion care;
- A list of behaviour which is banned (see 'Detail' below);
- A standard size of safe access zone with a perimeter of 150 metres from the entrance to any site which provides abortion care; and
- The creation of a criminal offence of contravening the provisions of a safe access zone.

Scope

The Bill needs to simultaneously restrict limitations to activity undertaken regarding abortion (and not affect, for instance, industrial action), and be wide enough to cover the forms of activity reported by women in Scotland and undertaken by related groups in other parts of the UK.

It is proposed that the content of the Bill is limited to demonstrations in support of or in opposition to any person's decision to access, provide or facilitate the provision of abortion services.

Implementation

Safe access zones can be implemented at a national or local level. In England, for instance, they have been introduced in three council areas to address particularly acute issues (Ealing, Richmond and Manchester). Birmingham is currently consulting on introducing a similar zone.

This local approach places a burden on local authorities which can dissuade them from taking action. When Ealing renewed its safe access zone after three years as legally required, the council disclosed that it had spent £144,000 in court costs alone defending

its decision²⁸.

The ultimate impact of this framework is that councils may be liable for significant time and financial commitments to introduce safe access zones, and that while they gather evidence for individual zones, women are subjected to harassment without intervention.

It is proposed that:

- Safe access zones are introduced with a ‘blanket’ provision, applying to all sites across Scotland that provide abortion care without evidence of local harassment being required;
- Responsibility for establishing these safe access zones sits at a national level and not with local councils or health boards. Councils could be given the power to vary these zones depending on individual site circumstances; and
- Breaches of the terms of these zones could be addressed by police intervention, with the potential for those breaching the terms of the zone being charged with a criminal offence.

Behaviour

Based on the accounts of individual women and staff, evidence gathered over at least five years by groups including Back Off Scotland and BPAS, and international models, academic studies, and media accounts linked to throughout this document, it is proposed that the Bill prohibits:

- Persistently, continuously, or repeatedly occupying a safe access zone;
- Impeding or blocking somebody’s path or an entrance to abortion services;
- Intimidating or harassing a person;
- Seeking to influence or persuade a person concerning their access to or employment in connection with abortion services;
- Demonstrating using items such as leaflets, posters, and pictures specifically related to abortion; and
- Photographing, filming, or recording a person in the zone.

Size

In order to ensure a blanket introduction of safe access zones, rather than a patchwork of design and introduction, it is proposed that there be a standard size of safe access zone measuring 150 metres from a site or any access point to any site that provides abortion services. It may be necessary to allow Councils to extend these zones dependent on site.

²⁸ p38, <https://ealing.moderngov.co.uk/Data/Cabinet/202102091900/Agenda/Agenda%20Document%20Pack%20-%20Cabinet%20-%202009-02-2021.pdf>

This distance is similar to that used in existing provisions in other countries – including Victoria in Australia as detailed earlier in this consultation document. It provides an area large enough to restrict sightlines of those who may be accessing treatment or staff who are attending for work purposes, preserving their privacy, reducing the noise impact on surrounding hospital buildings and serving to protect public transport links and parking to avoid people having to walk through any gathering on the boundaries of a zone.

Criminal offence and punishment

There is in existing statute a criminal offence of ‘Breach of a non-harassment order’, under s9 of the Protection from Harassment Act 1997. This is a comparable offence, in which an individual has been prohibited from harassing an individual and has violated that order.

The punishment for this crime is: on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or both such imprisonment and such fine; or on summary conviction, to imprisonment for a period not exceeding six months or to a fine not exceeding the statutory maximum, or to both such imprisonment and such fine.

It is therefore proposed:

- That there be a criminal offence of breach of a safe access zone
- That a single breach be treated differently to repeated breaches
- That in the first instance punishment could be up to:
 - On summary conviction, 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.
- That on further instances punishment could be up to:
 - 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
 - On summary conviction, to imprisonment for a term not exceeding twelve months or to a fine, or both such imprisonment and such fine

Potential impact of the Bill

The Bill would predominantly affect those who are accessing abortion services and those seeking to protest in the vicinity of abortion services. The Bill may also have an impact on staff entering the building – as per the account above from Dr Audrey Brown regarding the impact on staff attending work and having to pass protesters. There may also be an impact on those who may have to enforce the safe access zone.

Human Rights

It is recognised that this Bill will engage the human rights of individuals both in terms of women seeking to access abortion care (Article 8 – Right to a private and family life), and individuals seeking to gather to oppose this access (Article 9 – Freedom of thought, belief, and religion; Article 10 – Freedom of expression; and Article 11 – Freedom of assembly and association).

These rights are all ‘qualified rights’ – meaning that the State can interfere with them to protect the rights of another person or in the wider public interest. Engagement of these rights, therefore, does not mean that this Bill is incompatible with any of the Convention rights.

Court judgments in England on the introduction of a local safe access zone in the London Borough of Ealing have upheld the right of the local authority to interfere with the rights of protesters in order to protect the rights of women accessing care^{29 30 31}. Of particular note is the following finding in the High Court judgment:

“97. In the circumstances of this case, I do not doubt that there has been a significant interference with the rights of activists under Article 9, 10 and 11. I do not underestimate the seriousness of taking steps which are bound to conflict with that special degree of protection afforded to expressions of opinion which are made in the course of a debate on matters of public interest. Nevertheless I am satisfied that the defendant was entitled to conclude on the entirety of the evidence and information available to it that the making of this PSPO [introduction of a safe access zone] was a necessary step in a democratic society. There was substantial evidence that a very considerable number of users of the clinic reasonably felt that their privacy was being very seriously invaded at a time and place when they were most vulnerable and sensitive to uninvited attention.”

Impact on those accessing abortion services

The Bill would have a positive impact for those accessing abortion facilities. The introduction of buffer zones would allow those accessing abortion facilities to do so without fear of intimidation or harassment. Legislative change would ensure that everyone entering these facilities, regardless of where they are in Scotland would have the same expectation of safety and privacy.

It would also strengthen the right to healthcare. It is not anticipated that there would be any negative impacts of the Bill on this group.

²⁹ <https://www.bailii.org/ew/cases/EWHC/Admin/2018/1667.html>

³⁰ <https://www.judiciary.uk/wp-content/uploads/2019/08/Final-Judgment-Dulgheriu-v-LB-Ealing.pdf>

³¹ <https://cornerstonebarristers.com/news/supreme-court-refuses-permission-appeal-ukrsquot-s-first-abortion-clinic-lsquot-buffer-zonersquo/>

General public

The proposal would have no impact on the general public unless they were part of one of the protest groups.

For those who are part of the protest groups, they will still be free to protest, albeit further away from their target healthcare facility. It has been repeatedly noted by the First Minister that anti-abortion groups are free to – and indeed should – protest outside Parliament or other political sites, rather than outside healthcare facilities³².

The purpose of the Bill is not to limit protest but to ensure that those accessing healthcare can do so free from harassment.

Impact on staff

It is anticipated that the Bill will have a positive effect on staff.

As noted above, some staff have come forward to say they have been targeted by protesters. For those staff, the proposed Bill will ensure they can access their work without being targeted.

As stated above, there is a need for the terms of the proposed Bill to ensure unrelated industrial action is able to take place and that it is not negatively affected by the buffer zones. I would welcome views in response to this consultation including options for ensuring this activity is not prevented.

Impact on those enforcing buffer zones

Evidence from areas of England where buffer zones have been introduced is that when buffer zones are in place, there are few to no attempted breaches, and therefore no reports from staff or service users of harassment, alarm or distress. The pressure on police has therefore declined substantially.³³

Financial Implications

Should the Scottish Government and related services provide resources and public information to share awareness of buffer zones and their implications, there would be an associated cost. There is no proposal to make these a part of the Bill, but I believe they would be valuable non-legislative measures accompanying any new law.

³² https://www.parliament.scot/chamber-and-committees/official-report/what-was-said-in-parliament/meeting-of-parliament-21-04-2022?meeting=13699&iob=124302#orscontributions_M1848E394P731C2395767

³³ Evidence on renewal of the Ealing safe access zone, 9 February 2021. p28, <https://ealing.moderngov.co.uk/Data/Cabinet/202102091900/Agenda/Agenda%20Document%20Pack%20-%20Cabinet%20-%2009-02-2021.pdf>

Potential costs could include:

- Scotland-wide information campaign to raise awareness of the change in law (estimated as moderate)
- Additional costs associated with investigating alleged breaches of the buffer zones, assuming there is a rise in reporting (estimated as minimal)
- Consequences of any criminal convictions (estimated as minimal)

These costs would fall on the Scottish Government, bodies such as Police Scotland and judicial services and on local authorities.

Equalities implications

The Bill will affect three of the identified characteristics protected in law by the Equality Act 2010 – sex (positive), maternity (positive), and religion or belief (negative/positive). The Bill will impact positively on the two characteristics mentioned above as they will improve unimpeded access to abortion services.

The impact on religion or belief may be both positive and negative as it could allow more people to freely exercise their belief or make others feel that theirs was not being heard.

Questions

About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Data protection declaration

☐ I confirm that I have read and understood the [Privacy Notice](#) to this consultation which explains how my personal data will be used.

2. If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

☐ Please **ONLY** tick this box if you are **UNDER 12** years of age.

3. Are you responding as:

- ☐ an individual – in which case go to Q4
☐ on behalf of an organisation? – in which case go to Q5

4. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)

- ☐ Politician (MSP/MP/peer/MEP/Councillor)
☐ Professional with experience in a relevant subject
☐ Academic with expertise in a relevant subject
☐ Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

5. Please select the category which best describes your organisation:

- ☐ Public sector body (Scottish/UK Government or agency, local authority, NDPB)
☐ Commercial organisation (company, business)
☐ Representative organisation (trade union, professional association)
☐ Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
☐ Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

6. Please choose one of the following:

- ☐ I am content for this response to be published and attributed to me or my organisation
- ☐ I would like this response to be published anonymously
- ☐ I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

7. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

8. Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

Aim and approach

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

- ☐ Fully supportive
- ☐ Partially supportive
- ☐ Neutral (neither support nor oppose)
- ☐ Partially opposed
- ☐ Fully opposed
- ☐ Unsure

Please elaborate on your response.

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 supportive
- ☐ Partially supportive
- ☐ Neutral (neither support nor oppose)
- ☐ Partially opposed
- ☐ Fully opposed
- ☐ Unsure

Please explain the reasons for your response,

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 supportive
- ☐ Partially supportive
- ☐ Neutral (neither support nor oppose)

- ☐ Partially opposed
- ☐ Fully opposed
- ☐ Unsure

Please explain the reasons for your response.

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?

- ☐ Yes – Support this part of the proposal
- ☐ No – Believe they should be a different standard size
- ☐ No – Believe the size should be decided based on each site
- ☐ No – Do not support the introduction of safe access zones in any form
- ☐ Unsure
- ☐ Other – please detail below

Please explain the reasons for your response.

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 supportive
- ☐ Partially supportive
- ☐ Neutral (neither support nor oppose)
- ☐ Partially opposed
- ☐ Fully opposed
- ☐ Unsure

Please explain the reasons for your response.

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 supportive
- ☐ Partially supportive

- ☐ Neutral (neither support nor oppose)
- ☐ Partially opposed
- ☐ Fully opposed
- ☐ Unsure

Please explain the reasons for your response.

- 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 supportive
- ☐ Partially supportive
- ☐ Neutral (neither support nor oppose)
- ☐ Partially opposed
- ☐ Fully opposed
- ☐ Unsure

Please explain the reasons for your response.

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))

- ☐ Persistently, continuously, or repeatedly occupying the zone
- ☐ Impeding or blocking somebody's path or an entrance to abortion services
- ☐ Intimidating or harassing a person
- ☐ Seeking to influence or persuade a person concerning their access to or employment in connection with abortion services
- ☐ Demonstrating using items such as leaflets, posters, and pictures specifically related to abortion
- ☐ Photographing, filming, or recording a person in the zone
- ☐ All of the above
- ☐ None of these
- ☐ Other (include details below)

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 supportive
- ☐ Partially supportive
- ☐ Neutral (neither support nor oppose)
- ☐ Partially opposed
- ☐ Fully opposed
- ☐ Unsure

Please give reasons for your response, including commenting on whether this should be a criminal offence.

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

- ☐ Yes
- ☐ No
- ☐ Unsure

Please elaborate on your response if you'd like to:

Financial implications

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
- ☐ some increase in costs
- ☐ no overall change in costs
- ☐ some reduction in costs
- ☐ a significant reduction in costs
- ☐ I don't know

Please explain the reasons for your answer, including who you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively.

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.

What impact could this proposal have on particular people if it became law?

- ☐ Positive
☐ Slightly positive
☐ Neutral (neither positive nor negative)
☐ Slightly negative
☐ Negative
☐ Unsure

Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

Sustainability

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?

- ☐ Yes
☐ No
☐ Unsure

Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

General

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)?

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How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

If possible, please submit your response electronically – preferably in a MS Word document. Please keep formatting of this document to a minimum.

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, you may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

Please include with your response contact details (e-mail if possible, or telephone or postal address) so we can contact you if there is any query about your response.

Where to send responses

Responses prepared electronically should be sent by e-mail to:

gillian.mackay.msp@parliament.scot

Responses prepared in hard copy should be sent by post to:

Gillian Mackay MSP
Room MG.15
Scottish Parliament
Edinburgh EH99 1SP

You may also contact [name]'s office by telephone on (0131) 348 6341.

Deadline for responses

All responses should be received no later than **11:59pm on Wednesday 10 August 2022**. Please let me know in advance of this deadline if you anticipate difficulties meeting it.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website [www.bufferzones.scot]. Published, responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

I expect to prepare a summary of responses that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The summary may cite, or quote from, your response (unless it is “not for publication”) and may name you as a respondent to the consultation (unless your response is anonymous).

If I lodge a final proposal, I will be obliged to provide copies of responses (other than confidential responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as **anonymous**, please state this clearly. You still need to supply your name, but if the response is treated as anonymous, only an anonymised version will be published or provided to SPICe. If you request anonymity, it is your responsibility to ensure that the content of your response does not allow you to be identified.

If you wish your response to be treated as “not for publication” please state this clearly. If the response is treated as confidential it will not be published or provided to SPICe.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually. One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a

justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for your response not to be published. I will not publish your signature or personal contact information.

Information on how I process your personal data is set out in my **privacy notice**, which can be found here [www.bufferzones.scot/privacy-notice]. Please confirm that you have read the privacy notice by ticking the box below.

- ☐ I confirm that I have read and understood the **privacy notice** (referred to above) to this consultation which explains how my personal data will be used.

If a respondent is under 12 years of age, I will need contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

- ☐ Please tick this box if you are under 12 years of age.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.