Abortion Services (Safe Access Zones) (Scotland) Bill

Consultation Response from BPAS

In May 2022 Scottish Green MSP, Gillian Mackay, launched a consultation on her proposal for a Bill to introduce safe access zones around abortion clinics and healthcare settings that provide abortion services.

These safe access zones will create areas around abortion clinics and hospitals where certain kinds of protest or ‘vigil’ activity is not allowed. They are aimed to ensure that those accessing and providing abortion care do not feel harassed, alarmed, or distressed by action immediately outside. BPAS will be supporting the Bill through the Scottish Parliament, and our response to the consultation can be found below.

Aim and approach

8) 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

As the largest abortion provider in the UK, BPAS is unequivocal about the urgent need for national buffer zones to be enacted around clinics and hospitals providing abortion care. Based on national figures, 73% of reproductive-age Scottish women live in a health board area that has been targeted by anti-abortion groups in the past five years, and believe that it is unacceptable that patients and staff are living in fear of harassment and intimidation at the hands of anti-abortion groups. Despite over four years of work with local councils and police to protect abortion patients, it has become clear to us that existing law does not address the issues raised: anti-abortion activity is widespread, organised, and persistent – aiming to dissuade or deter access to, or the provision of, abortion care.

This proposal is narrowly targeted at the area immediately around healthcare facilities. Although questions about abortion law and provision may be political, the decision to access abortion care is not. It is an intensely personal healthcare decision made at an individual level – it is not a statement or political stance, and opposition to it shouldn’t be treated as such. As a result, we believe anti-abortion groups when they say this is not a protest – it is not, it is the organised, targeted harassment of women accessing reproductive healthcare.

Existing law in Scotland does not adequately cover clinic-based harassment, or the negative impact that it has on women. It is a combination of content and context which is unlike any other form of targeted street harassment. The targets of this harassment – women accessing abortion care – have an Article 8 right to access legal, confidential healthcare services. The targets of this harassment – women accessing abortion care – have an Article 8 right to access legal, confidential healthcare services. New legislation is needed to move these groups away from the clinic gate and to preserve the rights of women to access legal, essential healthcare.
9) 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

BPAS knows from our buffer zone advocacy across the rest of the UK that anti-abortion harassment outside clinics and hospitals leaves women feeling harassed, alarmed, and distressed, as well as fearful about attending clinics as a result of what they may encounter outside.

This is not a local problem – across Scotland, we know that 11 sites have been targeted by these groups in recent years. Across England and Wales, that figure is 50 – with seven new protests in the last two years alone.

Buffer zones have already been introduced in England in three local areas. These buffer zones have been the only intervention that has stopped the harassment of women outside clinics – but by their nature they only apply to individual clinics in individual council areas.

The end result is that if you need to attend a clinic in Richmond in South West London, you are protected from harassment – but if you attend in Clapham just 8 miles away, you are not.

These three clinics account for only 6% of the clinics targeted by anti-abortion groups in England and Wales – with the local approach, 5 years after the introduction of the first order, 94% of clinics being targeted are still without protection. As Newsnight has recently shown, in some areas more than 500 women have reported harassment, alarm, and distress to their local council and no action has been taken because the council claims this doesn’t meet the ‘evidentiary threshold’ for a buffer zone.

This leaves women’s safety and medical care up to the political positioning of individual councils and health bodies – subjecting them to patchwork protections. Replicating this in Scotland would mean that while pro-active health boards such as Glasgow or Lothian may protect women, women in health boards like Grampian where the Chief Executive has claimed there is no impact on patients would continue to have to deal with this harassment.

This is why BPAS has campaigned for years for the introduction of national legislation. We support this bill, and continue to push for a similar law in England and Wales.

10) 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

Anti-abortion groups are continuing to spread – across England and Wales, in the last two years alone, seven clinics have been targeted by these groups for the first time.
BPAS has provided substantial support and resources to local authorities in the implementation of PSPOs, but these orders do not protect clinics with newly-arising issues, or prevent groups from moving between protected and unprotected clinics. We’re clear that should a precautionary approach not be taken, these well-organised groups will travel to areas where a buffer zone is not in place which would leave more patients and staff vulnerable across previously unaffected areas of the country. This is the only approach that will work long term, and the only one which will prevent a postcode lottery.

Ultimately, the question is whether we believe it to be proportionate that women have to experience harassment, alarm, and distress at each individual clinic to justify the measures we are seeking. BPAS is clear that we do not.

If the law does not take a precautionary approach, this is precisely the impact – in order to evidence the impact, there has to be one. That means women being harassed, staff being fearful of attending work, and procedures being disrupted or delayed as a result of the activity outside. The bottom line is that having a patchwork approach relying on local evidence does not solve the problem – and does not preserve the rights of women to access essential abortion care without harassment.

11) 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

150-metre safe access zones appear sufficient to move protestors away from the gates of, and roads leading up to, a hospital or clinic that provides abortion services. This means that all patients and staff would be able to arrive by car or public transport and not have to run the gauntlet of these groups. 150 metres also provides sufficient space so that those being treated or working within the sites will not be able to hear or see the protestors from inside. This has been an issue that we have seen at the Queen Elizabeth University Hospital in Glasgow, for example, where a significant portion of the maternity unit have windows facing the area in which protestors congregate, and prayers and singing from the group could often be heard from these wards which caused great upset to both patients and staff.

Comparatively, 150 metres is also a size of standard buffer zones that have been introduced in law elsewhere, such as in Victoria territory in Australia where their buffer zone law has been upheld by the High Court of Australia and where the relevant court judgment found “What the evidence does reveal is that the proscription of prohibited behaviour within the 150 m radius significantly compromises the ability of [protesters] to accost and harangue women and other persons as they attempt to access premises at which abortions are provided, and thereby to deter them from aborting their pregnancies or deter persons who support and treat them from aiding them to do so.”

Recent scoping work undertaken by BPAS and Back Off Scotland has shown that 150-metres is a sufficient distance for all medical facilities providing abortion in Scotland apart from the Queen Elizabeth University Hospital in Glasgow. 150-metres from the perimeter of this site would leave a small area of pavement on Hardgate Road (which you have to travel down to access services) available to protest on outwith the suggested 150 metres.
Therefore, we believe that in the interest of the Bill, the safe access zones should be extended to between 175 metres and 200 metres to make sure that we fulfil the Bill’s aims and protect all patients and staff accessing services.

12) 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

One third of UK women will have an abortion during their lives, and they have a legal right to do so. BPAS believe that women should be able to do this without fear of intimidation and harassment.

The choice to have an abortion is personal, and we have collected thousands of testimonies of women across the UK who have been negatively affected by the presence of protestors when accessing these services.

We do not seek to ban protests related to abortion – we simply believe that the space immediately outside the clinic is not an acceptable place to do it. Although groups have their right to free speech, they do not have the right to an audience – and that’s what gathering outside a clinic does. Women do not have a choice about attending a medical site to access healthcare – and they deserve to have that access protected by the law.

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 provide abortion services (ie a doctor, nurse, or midwife)?

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

BPAS is the largest abortion provider in the UK, and we know first-hand the impact that anti-abortion protestors have on our clinical staff. We believe that clinicians should be able to attend their place of work without harassment, alarm, or distress. It is unacceptable to expect clinicians to face political commentary on abortion – a legal, essential medical procedure – outside their places of work.

The harassment of staff providing and supporting the provision of abortion services is not an issue of politics, but of the obstruction of the provision of legal and essential healthcare. This kind of activity is not only likely to contravene the state’s responsibility to protect public health, but also risk indirect discrimination of clinicians whose beliefs underpin their decision to provide abortion care to women.
We’ve worked closely with clinicians in Scotland who are harassed by people outside – as well as having to care for women who are upset by the activity. Dr Audrey Brown, the abortion lead at Greater Glasgow and Clyde Health Board, tweeted on 18th May 2022 “I was called a murderer at a distance of 10 metres last week. Didn’t really think he needed to use voice amplification when so close. Felt pretty harassing to me, nevermind to the people accessing care”.

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 facilitate provision of abortion services (ie administrative or support staff)?

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

Through our previous work with PSPO legislation in England, we are adamant that the legislation should include all staff at clinical centres as being protected from these activities – whether or not they directly provide abortion care or not. Exempting these staff from these protections will likely lead to continued presence of protesters who claim they are seeking to influence people who are not covered by the law.

The harassment of staff providing and supporting the provision of abortion services is not an issue of politics, but of the obstruction of the provision of legal and essential healthcare. This kind of activity is not only likely to contravene the state’s responsibility to protect public health, but also risk indirect discrimination of clinicians whose beliefs underpin their decision to provide abortion care to women.

15) Which types of activity – when done for the purpose of influencing a person’s decision to access healthcare settings including abortion services – do you consider should be banned in a safe access zone?

- 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 the above
- Other

We understand that all of this activity has been observed, documented, and reported in relation to the groups who protest outside hospitals in Scotland. We need to make sure that the legislation leaves no potential for anti-abortion groups to capitalise on.
16) What is your view on the potential punishments set out in the proposal for breach of a safe access zone?

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

We know that this type of activity causes great distress. Persons who breach a safe access zone should be punished with a fine (including by way of a fixed penalty notice where the police or procurator fiscal has reason to believe that a person has breached a safe access zone) or in serious cases with a prison sentence.

Although ‘protest’ is an easy shorthand for the activity outside clinics, it is important to recognise that the people engaged in this activity do not consider what they are doing a protest. They do not believe they are protesting a political or democratic decision or trying to change the law. Their presence outside clinics is varying referred to as a ‘vigil’, ‘bearing witness’, ‘education’, or ‘pavement counselling’.

It is therefore clear that this is not a protest. This is a conscious decision to continue to undertake actions that these groups have been repeatedly informed are distressing and being perceived as harassment in order to intimidate women into changing their minds about a personal healthcare decision. It is therefore correct that punishments associated with this activity should be similar to those available to people who breach Non-Harassment Orders as this is a similar crime and deserves a comparable sentence.

17) Do you think there are other ways in which the Bill’s aims could be achieved more effectively?

☐ Yes
☐ No
☐ Unsure

Clinic protests are a national problem in need of a national solution. There is no solution under the current law which has been able to stop the activities and impact related to clinic protests. The variability in enforcement, eagerness to act, and tactics of protesters mean there is no law which is applicable to all instances of activity which causes harassment, alarm, or distress.

As made clear in the evidence supplied in this consultation, clinic protests are a national problem. They are not isolated, they are not small, and they are not easily dispensed with. Their impact is very real and is caused by religious extremists attempting to deny women their legal right to abortion care.

Leaving this problem up to local councils or police forces is to misunderstand the systematic nature of the issue, including national and international co-operation, learning, and radicalisation of groups - and to leave tens of thousands of women open to harassment.

In England, this activity has been persistent and we have worked for many years to address the issues. Although local buffer zones have worked in the areas they are in place, they have no impact elsewhere and the number of protests has increased since the first buffer zone was introduced.
In addition to this, legal advice made public by the Convention of Scottish Local Authorities (COSLA) on 12 November 2021 found that local council byelaws could not be used to implement buffer zones at NHS reproductive health facilities.

Therefore, legislation must be national, and unequivocal in making sure that all of those accessing abortion services can do so without running the risk of encountering intimidation or harassment. Primary legislation is needed to ensure the protection of women across the country, and to avoid the ongoing harassment of women as evidence is gathered to support targeted, local measures.

Financial implications
18) Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. Which 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

We believe any potential costs will be offset by savings to the health service and police force in having to address the presence and impact of the protestors. In Ealing where a buffer zone is in place, police have gone from having to attend every week to attending three times in three years.

Equalities
19) 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

The proposed Bill will affect three of the identified characteristics protected by the Equality Act 2020. There will be positive effects on sex, pregnancy and maternity. Whilst it may be argued that there will be a negative impact on religion and belief we believe that this will only exist for those who hold an anti-choice belief and wish to protest against abortion services. We believe that this will be balanced and a positive impact on religion and belief will occur for those who hold an anti-choice belief but think that women should be able to access these services free from harassment and intimidation.

It is also important to note that people involved in this activity are from a number of different denominations, and that the numbers involved are comparatively small compared to the number of believers. This is not a fundamental aspect of any denomination, nor one that is particular to one religion. These individuals will still be able to pray or undertake other religious activities at their churches and elsewhere in the community.
Sustainability

20) Any new law can have an 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

We believe that the proposed Bill would have no impact on sustainability principles but will fulfil the government’s responsibility to provide legal healthcare unimpeded by intimidation or harassment.