

Scottish Government Call for Evidence: Safe Access Zones (Scotland) Bill

Do you agree with the overall purpose of the Bill? (Please tick one option)

Yes

Partially

No

Don't know

Why do you oppose this Bill? (Please tick all that apply):

I think that protesters offer help to people seeking an abortion

I am concerned about the right to protest

I feel that the Bill will impact upon human rights

I feel that sufficient legislation already exists

Other [please provide further details]

1. The Bill is inadequately defined

The Scottish Government states: *'The Bill makes it an offence for people within a safe access zone to act in a way that might prevent a person from getting an abortion, or make them feel harassed while they are accessing abortion services.'*

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

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

The wording of the draft Bill seems to turn the subjective feelings of the service user into the defining criterion and measurement. If someone claims that the knowledge that a pro-life prayer vigil was held outside the abortion facility the night before her visit feels like harassment to her, will participants in that vigil be guilty of an offence? As it stands, the application of a law based on the wording of this Bill, we suggest, is impossible to police fairly.

One person's harassment is another's helpful provocation to think carefully before taking an irreversible decision. There is no shortage of anecdotal evidence that some women found the kindness, support and understanding, from 'pro-life protesters' outside an abortion facility, gave them the courage they needed to continue with their pregnancies and avoid making decisions they would later have come to regret.

How are police supposed to decide what is lawful, reasonable and proportional behaviour by protesters, and reasonable, proportional claims of harassment by 'victims?' Recent examples, in other UK jurisdictions where 'buffer zones' are in operation, of individuals arrested by police and charged with breaking the law for praying silently within zones, have not led to prosecutions. The perception of officers as 'thought police' is not a good look. We believe the Bill, as drafted, is unworkable.

2. The Bill elevates a 'lesser' freedom over 'greater' ones

Freedom of speech and freedom of peaceful assembly are foundational freedoms in the UK. Laws already exist effectively to limit the expression of these freedoms so that they do not lead to public unrest, disorder, riots, etc.

Showing tolerance towards those with different opinions is considered a virtue in UK culture. The willingness to 'hear' those whose views disagree with our own must surely be the way to learn to live together peaceably. This is especially important over issues that are most strongly contested, where feelings run high.

To secure a woman's right of access to an abortion facility at the expense of her neighbour's right peacefully to express her pro-life beliefs cannot be just.

3. The claim that pro-life protesters intend to harass is not credible

CMF is not in favour of creating Safe Access Zones. Appropriately behaved protesters, those offering information and support to women in turmoil, and those simply praying quietly or privately, should not be deemed guilty of causing harassment. In normal parlance, 'harassment' describes an activity intended to cause distress by attempts to obstruct, harangue, ridicule, etc. Intention is key.

It has not been shown that pro-life protesters commonly intend to cause distress. Much more commonly they gather to pray for women in already deep distress over an unwanted pregnancy, and/or to reach out with information and the offer of support. To represent their very presence as 'harassment' is to stretch the meaning of the word beyond credibility.

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

A safe access zone is made up of:

*the protected premises,
the public area of the grounds (if any) of the protected premises and
the public area of land that lies within a boundary that is 200 metres from the edge of the protected premises. (The 200-metre limit may be increased or decreased in particular cases.)*

Yes

No

Don't Know

The question invites responses to the Safe Access Zone being 'set' at a particular radius (200m). But in the third bullet point, we are told that this limit may be increased or decreased '*in particular cases.*' We are not told under what circumstances or in what cases the limit may be changed. How can we comment on the set radius without knowing when or why it may be reset?

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

We understand that a powerful PA system set up on public ground 250m from an abortion centre (or within 200m of protected premises but not on public land) could, theoretically, be used to address those accessing the facility and we agree that this should not be permitted. However, we would argue that the police already have sufficient existing powers to deal swiftly with this unlikely event, and that safe access zone legislation with built-in flexibility of zone radius is not needed.

What would be needed in such circumstances would be prompt action by the police. From the explanatory notes it sounds as though an application to change the size of a safe zone would need to be put to Scottish Ministers for consideration, a process that we anticipate taking days, weeks, or even longer.

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

Yes

No

Don't know

CMF does not agree with the creation of Safe Access Zones. We are not convinced that there is sufficient evidence to warrant the creation of 'protected premises' as outlined in the Bill. We are, however, aware of numerous stories told by women who have been grateful to those who handed them a leaflet explaining the abortion procedure and/or offered support outside an abortion centre, which gave them space to think again and change their minds. We do not wish to see legislation that would deprive such women of those opportunities.

We understand the definition of 'protected premises' used in the Bill and agree with it. What we disagree with is the decision to create safe access zones in the first place and the designation of protected premises in that context.

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

Yes

No

Don't know

a) Influencing the decision of another.

For many women, choosing to have an abortion is the least bad of the options they face. They may be coerced by the baby's father, or by family, or the threat of job loss, financial difficulties, etc. They may have existing children whom they love. Some have come to clear decisions after due consideration with supportive family, friends and professionals. But some arrive at the abortion facility still in two minds, already distressed and pressurised, wrestling between what they want to do and what they feel they must do.

Imagine one such conflicted woman being met outside the abortion facility by a friendly-faced stranger with a caring manner and wearing a T-shirt bearing the message 'I was desperate; I had an

abortion; We can support you to keep your baby; I'm here to help you.' Would that 'protester' be guilty of a criminal offence for 'influencing?' Or is she offering this distressed woman the opportunity she needs to talk to an empathetic person who has been in her shoes, to consider her options, and to be supported in whatever choice she then makes?

A woman with an unwanted pregnancy has several options before her and many voices in her ears. The abortion industry influences her to go one way because that is in its commercial interest - abortion is its product. To present abortion as a neutral or even positive option is, itself, to exercise influence. A law that says it is legal for the powerful abortion industry to exercise its influence but forbids others to exercise theirs would be unjust.

(b) Preventing or impeding

It should not be permitted for protesters to form a physical barrier or restraint that prevents access to an abortion facility, whether for clients or providers.

We note that the wording does not include the term 'physical' and are concerned that the lack of descriptive precision leaves open the door to wider interpretation. Would our hypothetical lady protester in the T-shirt, above, be guilty of impeding access simply by being on hand and expressing a readiness to offer support?

Our appeal is that the final draft should not leave room for ambiguity.

(c) Causing harassment, alarm or distress

We refer you to our earlier comments about harassment. We contend that for someone to be held culpable for causing 'harassment' the intention to cause distress must be demonstrated. Otherwise, the interpretation of the law is vulnerable to the subjective emotions of women at what is inevitably a distressing time. We do not envy the plight of a police officer faced with a woman in distress and having to discern if her distress is a natural feeling of someone about to have an abortion, or is caused by the sight of a prayer vigil taking place near the abortion facility. Or both, but in what proportion?

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

Yes

No

Don't know

To impose a heavy fine on someone who is exercising their right to free speech peaceably and courteously, seeking not to add to another's distress but to alleviate it, would be a travesty of justice.

In our opinion, there is no need for Safe Access Zones to be created. We believe the police have sufficient existing powers to deal with inappropriate behaviour and that such behaviour is, in any case, exceptional.

Further, we believe that the draft legislation is poorly worded, ambiguous, and unenforceable.

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

In brief (for we have cited these Human Rights in earlier answers) we believe that women should not be prevented from accessing abortion facilities - their freedom of choice must be respected.

Their right to receive sufficient information to enable their fully informed consent must also be respected. In our view, this should include access to non-directive counselling (ie, independent of the abortion agency) and a cooling-off period, to minimise the risk of post-abortion regret.

We are grateful that the 1967 Abortion Act includes a provision for freedom of conscience for doctors, but we believe that the same level of protection should be included for nurses and midwives.

We believe that Safe Access Zones, if legalised in Scotland, will unfairly interfere with both the freedom of expression and the freedom of assembly of those who hold pro-life convictions. Such legislation would, in effect, capitulate to the interest of the abortion lobby.

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

Yes. The police already have the powers to safeguard access to facilities that provide abortion and to ensure that protests are conducted appropriately. We are concerned for the police, that they will be asked to deliver on legislation that is as unenforceable as it is unnecessary.

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

None. Thank you for the opportunity to contribute to this call for evidence.

RJT December 2023