

Humanist Society Scotland response to the Scottish Parliament Health, Social Care and Sport Committee's call for evidence on the Abortion Services (Safe Access Zones) (Scotland) Bill

December 2023

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

Yes.

The bill proposes a distance of 200 metres for the safe access zones. This distance is based on the evidence that anti-abortion protests can have a negative impact on people even when they are not directly confronted or approached by the protesters. For example, a study published in *Sociology*¹ quotes a number of women impacted by protestors when accessing abortion services at clinics across the UK:

I felt intimidated and scared to go into the clinic. I felt judged and uncomfortable. Not a nice feeling at all.

Though they did not approach me I felt harassed as I walked through the gate knowing that they watch me and they know the reason I am here

Therefore, a distance of 200 metres is necessary to ensure that women and staff can access abortion services without being exposed to the sight or sound of anti-abortion protests, which can affect their emotional and psychological wellbeing.

In our view, 200 metres is also sufficiently restricted in nature so as not to unwittingly curtail individuals' freedom of expression. Groups who carry out protests outside facilities often claim that their right to freedom of expression and/or freedom of religion/belief would be unlawfully restricted by a safe access zone. However, these rights under the ECHR are not absolute and can be restricted where appropriate and where done so proportionally. It seems a fair compromise to ensure that those accessing healthcare are supported to do so without harassment while ensuring those who oppose the law on abortion can carry out protest activity or advocacy in other spaces in the public sphere.

¹ Pam Lowe and Graeme Hayes, "Anti-Abortion Clinic Activism, Civil Inattention and the Problem of Gendered Harassment," [Sociology 53.2 \(2019 \[online publication 2018\]\)](#).

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?

A smaller distance, such as 100 metres, may not be sufficient to prevent the negative impact of anti-abortion protests, especially in areas where there are multiple entrances or exits, or where there are high levels of pedestrian or vehicular traffic. There is little information provided in the explanatory notes to the bill on why a provision for the reduction of safe access zones is required. We would not support a differential enactment of this policy across different areas of Scotland as we believe that anti-abortion protests would seek out facilities with smaller access zones. We would advise the committee during its evidence gathering session to request more detail from the proposing member and/or Scottish Government regarding the purpose of the bill section allowing zones to be less than 200 metres.

A larger distance, such as 250 metres, may be needed in some cases where there are exceptional circumstances that warrant additional protection, such as a history of violence or disruption by anti-abortion activists. We are content with the provisions within the bill to allow for the extension under application by healthcare providers or by ministers on consideration of the effectiveness of the zones.

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

Yes. To ensure that everyone accessing key services is protected from harassment and intimidation, safe access zones must be implemented outside every site that provides abortion services. Safe access zones must be implemented in the same way across Scotland to ensure a consistent approach for every person that requires abortion care. We are concerned that a localised approach would lead to a postcode lottery of protection from harassment, abuse, and intimidation for those using abortion clinic facilities.

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

Partially. We believe that there is ample evidence to suggest that abortion clinic protests can and do cause significant distress for people accessing abortion services and the medical staff working in them.

People who choose to breach buffer-zone regulations should face punishment in line with current punishments for those who breach non-harassment orders due to the similarity of the offences. This would take the form of a fixed penalty notice issued when there is reason to believe that a person has breached a safe access zone.

We would like to highlight the overwhelming evidence against the effectiveness of short-term prison sentences as evidenced in numerous academic and government research projects. We have welcomed the introduction of the “Presumption Against Short Periods of Imprisonment” by the Scottish Parliament in 2010 and 2019. We are therefore supportive of the bill not including imprisonment penalties.

However, in line with our position on justice reform, we would welcome the more widespread use of restorative justice programmes. Some people who take part in abortion clinic protests would benefit greatly from understanding the distress that they cause to victims. It is clear that many individuals who are taking part in protests outside healthcare facilities are doing so because they believe they are helping individuals. Activities to help offenders understand the impact of their behaviour on their victims have been shown to be successful in reducing reoffending and creating better community cohesion. However, restorative justice has to be managed very carefully and must place no pressure on victims of crime to participate.

Relevant resources include the Sentencing Academy's work on [The Effectiveness of Sentencing Options](#) and the United Nations' [Handbook on Restorative Justice Programmes](#).

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

In Scotland it is a legal right to choose an abortion. This legal choice should come without harassment or intimidation from any parties, whether they identify as pro-choice or pro-life.

Pro-life groups that style themselves as "counselling services" for pregnant people unsure about termination are free to do so. But this service should be offered only to people who have actively sought it out, and certainly not at the entrance to clinics that provide abortion services. We strongly question the validity of counselling offered in this manner, and we do not believe self-styled roadside "counsellors" are able to offer objective guidance that would allow individuals a true choice about whether abortion is the right decision. Objective and informed support and information is already provided by healthcare providers, and medical practitioners working in this area already provide information about the different healthcare choices available and the consequences of any decisions taken.

Humanists believe in the importance of choice, and therefore in creating a society that allows people to make decisions free of harassment. If doctors, nurses, and clinicians choose to work in abortion facilities they should also be able to do so without harassment. The effect of anti-abortion harassment on staff can be significant. The Abortion Act includes clear provisions for conscientious objection, so healthcare practitioners are able to opt out of abortion care if this is contrary to their beliefs. We support these provisions as long as alternative provision can be sourced. However, it is not fair that humanist medical professionals (and other medical professionals who believe in bodily autonomy) can have their beliefs openly berated and attacked as they enter and leave their place of work.

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 our opinion, the proposed bill will have a positive impact under the terms of Article 9 ("freedom of thought, conscience and religion") for relevant individuals with philosophical beliefs supportive of bodily autonomy (such as humanist medical staff). Data from the USA shows that those with an atheist/humanist worldview overwhelmingly approve of legal and safe abortion access.²

² Pew research, ["Views about abortion among atheists."](#)

Humanists believe individuals should have the right to choose to terminate their pregnancy, and there is evidence to suggest that individual practitioners of many other faiths and belief groups believe this too. Anti-choice, pro-life positions are held by a small but vocal minority, and often represent a very small minority of people from faith and religious groups. It is true that the doctrine and leadership of numerous religions oppose abortion, but evidence shows that individual followers of religion often diverge from the leadership position.

This was clearly demonstrated during the campaign to remove the Eighth Amendment from the Constitution of the Republic of Ireland. While the Catholic Church in Ireland continues to see strong levels of attendance at places of worship and religious identity as compared to other western European countries,³ individual Catholics are increasingly unlikely to seek ethical or political guidance from church leadership.⁴ In research produced after the May 2018 Irish abortion referendum, only 12% of respondents cited religion as being an important factor in their decision-making on how to vote in the referendum.⁵

Speaking more generally, it is important to note that protesters come from a number of different denominations and that the numbers involved are low when compared to the number of believers who do not protest. Anti-abortion views are not a fundamental characteristic of any denomination, nor are they particular to one religion. Indeed, academic research has shown that within a number of denominations officially opposed to abortion, support for abortion access is often strong amongst individual members.⁶

The Bill would support members of faith and belief groups who disagree on a personal level with abortion but believe that people should be able to access all health-related services free from harassment or intimidation. Moreover, protesters who strongly oppose legal abortion in Scotland will still be able to pray or undertake other religious activities at their places of worship and elsewhere in the community.

Arguments have been made that Article 10 (“expression”) and 11 (“assembly”) rights would be unfairly restricted by the introduction of a buffer zone of protest activity. We do not agree with this assessment. We would strongly recommend the committee read the [Supreme Court decision of December 2022](#) in the reference by the Attorney General for Northern Ireland - Abortion Services (Safe Access Zones) (Northern Ireland) Bill. This specifically and in very detailed legal analysis looks at the provision of protest-free safe access zones and their interaction with Article 9, 10 and 11 rights.

Media commentary and public debate often implies that convention rights such as 9, 10, and 11 are sacrosanct and unable to be restricted in any way shape or form: the so-called “unlimited free speech” argument. It is attractive to present rights in a simplistic way like this. However, a clearer understanding shows that convention rights can be legally restricted in a proportionate way in certain contexts to achieve a legitimate aim. The Supreme Court judgement referenced above gives an in-depth commentary on this particular issue. It shows

³ Pew Research Centre, [“Being Christian in Western Europe.”](#) 2018.

⁴ Tom Inglis, [“Catholic Identity in Contemporary Ireland: Belief and Belonging to Tradition.”](#) *Journal of Contemporary Religion* 22.2 (2007).

⁵ RTE, [“Exit poll indicates large majority vote to change abortion laws.”](#) 30 May 2018.

⁶ Samira Mehta, [“There is no one ‘religious view’ on abortion.”](#) *The Conversation*, June 13, 2022

that protecting access to abortion services without harassment is a legitimate aim and can be achieved in a proportionate way through safe access zones.

It is also important to note that Articles 9, 10 and 11 are often viewed in a transatlantic context due to cultural connections between the United Kingdom and the United States. It should be recognised that the US constitution First Amendment rights do not operate in the same way as Article 9, 10 and 11 in the European sphere. Responses to the pre-bill consultation carried out by Gillian MacKay MSP included repeated attempts to conflate ACHR articles 9-11 with a right to “unlimited free speech” arguments rooted in US First Amendment rights.

In our opinion, such responses frequently represent a deliberate attempt by lobbyists, often connected with religious movements, to misread legislators as to the nature of the relevant ECHR article rights. For example the following statements advocating for unlimited free speech, based on misrepresentation of ECHR articles, was submitted in the pre-bill consultation by religiously linked organisations:

“This is an assault on human rights. It doesn't matter what side you're on: people have the right to make protest.” Cardinal Winning, Pro Life Initiative

“If the Bill were passed, it would also discriminate against those whose peaceful protest outside abortion centres is an expression of their deeply held beliefs, religious or not. As such, it would contravene their rights as a protected 'category' under the terms of the 2010 Equality Act.” Christian Medical Fellowship

“It is vital to note that these well-established human rights, including freedom of thought, conscience and religion, freedom of expression, freedom to receive and impart information, and ideas without interference by public authority, and freedom of assembly and association, are enshrined both in domestic law and international convention.” Right to Life

“This proposal is a direct attack on civil rights guaranteed by the Human Rights Act 1998 and the European Convention on Human Rights. This proposal is part of the war on free speech promoted by cancel culture.” Society for the Protection of Unborn Children

“The Bill stands in danger of silencing free speech as enshrined in the Article 10 of the ECHR right to freedom of expression, and developed in the common law.” ADF

“This proposal is a direct attack on civil rights guaranteed by the Human Rights Act 1998 and the European Convention on Human Rights. These proposals seek to criminalise lawful, peaceful pro-life witness and as such represent a threat to everyone's freedom of speech.” The Helpers of God's Precious Infants

The fact is, through democratic decision-making, abortion is legal and opponents cannot be given free and unfettered ability to harass individuals going about accessing their legal rights or, in the case of medical professionals, carrying out legal duties. Protest against legislation – including laws relating to abortion – is legitimate and needs to be protected. But it is

parliamentarians and legislators who make laws, not medical practitioners or people seeking healthcare. There is no legitimate reason for protests against abortion to take place outside abortion clinics. We believe this represents an attempt to undermine the rights of individuals whom parliament has given legal rights to abortion care, and to create a climate of fear to dissuade their access to healthcare.

We would draw attention to the concluding points made by the Supreme Court justices in the Northern Ireland case on buffer zones:

The right of women in Northern Ireland to access abortion services has now been established in law through the processes of democracy. That legal right should not be obstructed or impaired by the accommodation of claims by opponents of the legislation based, some might think ironically, on the liberal values protected by the Convention. A legal system which enabled those who had lost the political debate to undermine the legislation permitting abortion, by relying on freedom of conscience, freedom of expression and freedom of assembly, would in practice align the law with the values of the opponents of reform and deprive women of the protection of rights which have been legislatively enacted.

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

No.

Local council bylaws would not fulfil the bill's aim of protecting access for every person accessing abortion services for a number of reasons. Local bylaws would only apply to individual clinics and hospitals instead of the whole network of Scottish medical facilities. They would offer an irregular patchwork of protection. They would place the onus on local authorities to take action and pay to defend their actions in court. This approach would have to be approved individually by ministers and would need to be renewed every ten years.

Similar bylaw measures are currently possible in England, but of the 42 clinics affected, only three have a local order in place, four years after the first was introduced. As Newsnight recently reported, some local council areas in England have received in excess of 500 reports of harassment, alarm, and distress from people accessing abortion services, yet no action has been taken. Councils have claimed these reports don't meet the evidentiary threshold for a buffer zone, despite hundreds of complaints and the distressing nature of some of the complaints.

Buffer zones have been proven to be a proportionate response to the issue. A legal challenge to a buffer zone brought by a member of a local protest vigil in the London Borough of Ealing was dismissed, first by the High Court and then by the Court of Appeal [[Dulgheriu Vs Ealing Borough 2019](#)]. The judgements were clear that pregnant people had the right to access confidential abortion care, and that the behaviour of the protesters was not exempt from the restriction. The Supreme Court declined to hear the case in 2020.

It is also important to note that [legal advice made public](#) by the Convention of Scottish Local Authorities (COSLA) on 12th November 2021 found that local council bylaws could not be used to implement buffer zones at NHS reproductive health facilities.

Do you have any further comments about the Bill?

Humanist Society Scotland believes that everyone has the right to easy, unimpaired access to healthcare, including abortion services. UN Committees have stated that denying women access to abortion can amount to violations of the rights to health (Committee on the Elimination of Discrimination against Women, *L.C. v. Peru*), privacy (Human Rights Committee, *Whelan v. Ireland & Mellet v. Ireland*), and, in certain cases, the right to be free from cruel, inhumane and degrading treatment (*Mellet V. Ireland*).

The Human Rights Committee has confirmed that "although States parties may adopt measures designed to regulate voluntary terminations of pregnancy, such measures must not result in violation of the right to life of a pregnant woman or girl, or her other rights under the Covenant."⁷

The importance of the right to safe access to abortion is underlined in the World Health Organisation's Preventing Unsafe Abortion paper from 2019. This notes that around 8% of maternal deaths are related to unsafe abortions, with the most likely to be affected being women and girls living in poverty or those who are part of marginalised communities. Almost all deaths from unsafe abortion occur in countries where there are severe legal restrictions on abortions.

We believe it is wrong that protesters are allowed to cause distress and harm to pregnant people undergoing abortions and other healthcare services. We welcome this bill to stop widespread, organised, and persistent harassment of patients and staff. We agree that protest-free buffer zones would be the most balanced way to stop this, whilst protecting the right of those opposed to abortion services to express their views freely and appropriately at a distance that is acceptable for those seeking abortions and other healthcare.

The bill does not seek to stop anti-abortion protests or activities. We understand that people may oppose abortion. In a democratic society the right to protest and express disagreement with government policy is important. However, the right to freedom of expression has always been a qualified right. Public authorities have the right to restrict freedom of expression where it is necessary and proportionate to protect health and to protect the rights of other people.⁸

The Council of Europe handbook includes detail on the interplay between freedom of expression rights and legitimate restrictions.⁹ Protests against the Abortion Act could take

⁷ Human Rights Committee, General Comment 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, para. 8.

⁸ ECHR, Article 10.2 – Freedom of expression.

⁹ Council of Europe, *Protecting the Right to Freedom of Expression under the ECHR: A handbook for legal practitioners* (2017). See Chapter 4: Systems of Restrictions.

place in a location related to policy-making decisions, such as outside the Scottish Parliament, and not at healthcare locations where people are seeking treatment.

In addition polling carried out by Humanist Society Scotland in 2021 showed overwhelming public support for the introduction of protest buffer zones. 82% of people in Scotland agreed with the key ask of this bill that "Anti-abortion protesters should be required to keep to a minimum distance from those accessing services at clinics and hospitals." It is notable that only 4% of the Scottish public disagree with the overall policy aim of the bill.¹⁰



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¹⁰ The National, [Poll: 82 per cent of Scots want end to abortion clinic protests](#), 2021: