

Proposed Abortion Services (Safe Access Zones) (Scotland) Bill Consultation Response from the Free Church of Scotland

Questions

About you

The Free Church of Scotland is a Christian church with a network of around 115 congregations all across Scotland and over 13,000 of us gather at services every week to worship God, but our Christian faith affects all of our life, not just a Sunday at church. Our ministers and others are regularly involved in pastoral care which includes helping women affected by abortion. We also have a number of members involved in providing counselling services to those who are suffering trauma in the aftermath of an abortion and members who are medical professionals with experience of the current healthcare regime in Scotland. We have drawn on the experience of our members in preparing our response to this consultation.

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.

The Free Church of Scotland welcomes the opportunity to contribute to this consultation regarding the potential introduction of safe access zones around buffer zones. We recognise and share Gillian Mackay's compassion for women who find themselves seeking a termination and her concern to reduce the amount of trauma associated with abortion. Not all members of the Free Church of Scotland would believe it wise or appropriate to engage in pro-life vigils and we recognise that some protests have been misguided and ill-targeted. However, we are not persuaded that safe access zones are a necessary or proportionate response. In fact, we believe there are other significant issues surrounding the provision of abortion services which could substantially reduce trauma to women. Moreover, the safe access zones proposal sets a dangerous precedent of the state being able to ban both protests and efforts to persuade

individuals to change their mind on this issue or any other controversial issue. Accordingly, we fully oppose these proposals.

The decision of whether or not to have an abortion is one of the most serious decisions a woman can make during her lifetime. There are serious long-term consequences of a woman deciding to go ahead with an abortion. From pastoral experience we know that many women who underwent an abortion years ago still suffer trauma and grief associated with that decision. Organisations that offer post-termination counselling often encounter women who underwent abortions years ago (in some cases 10 or 20 years ago) who are still dealing with the psychological impact.

We would encourage those scrutinising the legislation to speak with organisations who counsel those who have experienced trauma following a termination to get accurate information on the extent that protests are impacting women. We have heard anecdotal evidence from one provider of counselling services who told us that in over 20 years of operation only one counsellor had encountered a woman who attributed trauma to the protests she encountered outside a clinic and that occurred in England. There is significant trauma associated with abortion but the evidence does not show that this is related to protests.

We are opposed to the proposals in the bill for the following reasons:

(1) It is unnecessary

The bill proposes a national approach where an exclusion zone would be created around every hospital and clinic in Scotland. However, research shows that there is not a widespread problem in Scotland.

Through Freedom of Information requests, Police Scotland have revealed there were no recorded incidents of intimidation or harassment at thirteen different locations across Scotland between 1 January 2016 and 31 December 2021 (<https://www.compassionscotland.com/general-7>).

We also note that in 2017, the Home Office considered the arguments for buffer zones in England and Wales but rejected them because they were unnecessary - existing legislation is capable of addressing any problems that might arise, they would be a disproportionate response to the complaints of abortion advocates and they represent an unwarranted infringement of fundamental human rights guaranteed in law such as freedom of expression and freedom of assembly. Only 36 out of 363 hospitals and clinics in England and Wales had experience anti-abortion demonstrations (<https://questions-statements.parliament.uk/written-statements/detail/2018-09-13/HCWS958>).

Accordingly, in the absence of sufficient evidence that there is a widespread issue in Scotland, we consider these proposals unnecessary and disproportionate.

Furthermore, the proposals are also unnecessary because existing legislation can already be used in a targeted and proportionate way where an individual hospital or clinic is experiencing issues. Harassment, intimidation and threatening behaviour are already criminal offences.

(2) It reduces support to vulnerable women

The proposed bill would criminalise the peaceful offer of emotional and practical support to vulnerable women.

There is mounting evidence that a number of women are coerced into abortion. A recent survey commissioned by the BBC found that 15% of British women had experienced pressure or coercion to have an abortion that they did not want. In addition, 3% of respondents said they had been given a substance or tablet to induce an abortion without their knowledge or consent. 5% said they had experienced physical violence with the intent to end their pregnancy (<https://comresglobal.com/polls/reproductive-coercion-poll-bbc-radio-4-8-march-2022/>). A coerced decision is not consent and more must be done to support women facing coercion. Support offered outside abortion clinics may be the last opportunity for women facing potential coercion.

There is also a strong and increasing association between deprivation and the rate of abortion. In 2021 the rate of abortion in the most deprived areas was almost twice as high as in the least deprived areas of Scotland (<https://www.publichealthscotland.scot/publications/termination-of-pregnancy-statistics/termination-of-pregnancy-statistics-year-ending-december-2021/>). Women from deprived areas are likely to be most in need of being signposted to practical help and support. Providing this support would enable more women to make informed choices regarding whether or not to go through with an abortion. Safe access zones eradicate any offer of practical support to women in need who may feel they have no choice but to have an abortion.

Women should not be denied the opportunity to receive genuine offers of help from pro-life people outside the facility where abortions are taking place. Safe access zones eradicate any offer being given of practical support to women.

(3) It is a disproportionate interference with Human Rights

The proposals undermine fundamental human rights, including freedom of expression, freedom of assembly and freedom of conscience which are protected by the European Convention on Human Rights. While these rights can be interfered with where it is necessary and proportionate, that standard has not been met in these proposals. We have already outlined that there is an insufficient evidence basis for there being a widespread problem in Scotland. This proposal targets peaceful citizens, not because of anti-social behaviour but for their pro-life views.

If the proposals are enacted, they will also have a chilling effect on freedom of speech around abortion issues in general. Making it illegal to discuss these matters within an exclusion zone makes a statement to society that it is inappropriate to ever express pro-life views. There is already a lack of balance in the presentation of pro-choice and pro-life views in the media in Scotland and these proposals would reinforce the idea that it is wrong to express pro-life views.

We also note that one of the arguments being used to advance this legislation within the consultation document is that the intention of those standing outside clinics is not to change the law but to dissuade individuals from accessing abortion services (page 7 of the Consultation Document). The document later indicates that protests should take place outside political sites (such as the Scottish Parliament) rather than outside healthcare facilities (page 17 of the Consultation Document). However, this operates on a misunderstanding of the extent of the convention rights – they are not restricted to political protest – they are fundamental rights to hold opinions and to receive and impart information and ideas without interference in any context the individuals determines appropriate. Within a free and democratic society we should be able to engage in robust debate and seek to persuade others of our views. It is also not for the government to decide where it is lawful for citizens to hold protests, except in the limited exceptions given within the convention.

We also note the Consultation document refers to vigils where prayer and singing take place and suggests these activities are harmful and should be prohibited. This is clearly an interference with convention rights of freedom of belief.

For these reasons the Free Church of Scotland opposes the introduction of national safe exclusion zones around abortion providers.

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.

The use of the term “safe access zone” is designed to create an impression that pro-life vigils present a danger to women. This is false and in fact in many
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cases they offer emotional and practical support to women facing difficult decisions. We know that many women attend an abortion clinic because they feel they have no other choice. If the proposals became law, women would be denied signposting for life-affirming emotional and practical support in the place where they need it most

As noted in our answer to question 9 there is no evidence that it is necessary and proportionate to introduce safe access zones around all healthcare setting in Scotland which provide abortion services. There is no evidence of widespread protests or harassment and intimidation. Accordingly, it is simply not necessary to introduce exclusion zones around every healthcare setting in Scotland.

Moreover, introducing exclusion zones with appropriate signage would actually draw attention to the provision of abortion services where currently the public might be unaware. This is particularly problematic where patients might attend the same healthcare setting for various healthcare procedures unrelated to abortion but people might now think they were attending for an abortion.

It is also the case that the areas outside many hospitals and clinics are public land and preventing the free assembly of citizens and the exchange of information on public land is an unjustified interference with Human Rights and undermines a free and open democratic society. Exclusion zones are intended to silence those who hold opinions abortion advocates find offensive. But as Lord Justice Sedley said “Freedom only to speak inoffensively is not worth having” (DPP v Redmond-Bate (1999) 163 JP 789: [2000] HRLR 249).

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.

The ‘precautionary’ approach is one of its most concerning aspects of the bill.

It is designed to punish people attending pro-life vigils before any offence has been committed.

In her consultation document, Ms MacKay lists five existing pieces of legislation that address criminal behaviour and public order offences. Ms McKay claims that existing laws against harassment and intimidation are insufficient because they criminalise behaviour after it has taken place. When discussing Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, she complains that this law:

“...focuses on punishing such behaviour after the harm has been done.”

“...the police may only arrest and charge individuals with this offence if a crime is reported to them and sufficient evidence is provided.”

“...This means that abortion service users would likely have to make a police report themselves...” (page 10 of the Consultation Document).

In her Bill, Ms McKay seeks to give the police the power to arrest and charge pro-life people without any crime being reported and without the need to provide any evidence of a crime. In other words, simply taking part in a pro-life vigil would be a breach of the buffer zone and enough for the police to intervene.

The proposal would condemn anyone taking part in a peaceful prolife vigil “on summary conviction for breaching a buffer zone for the first time to imprisonment of a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both such imprisonment and such fine.” However, this fundamentally undermines the rule of law - seeking to pre-emptively criminalise ordinary citizens without any evidence of criminal activity would set a dangerous precedent and has no place in a free and open democratic society.

The proposals would amount to a disproportionate breach of fundamental human rights. No evidence of a significant problem has been provided to justify a departure from Human Rights. The “precautionary approach” where mere occupation of public land could be a crime clearly infringes upon convention rights and no evidence has been provided of a significant problem to warrant such a radical interference.

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.

As already explained in the answers to other questions the proposals are unnecessary and a disproportionate interference with fundamental human rights. Moreover, they will negatively impact vulnerable women by denying them access to emotional and practical support.

It should also be noted on a practical level that for several abortion clinics in Scotland a 150m exclusion zone could include churches and residential homes.

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.

Protecting the peaceful exercise of the rights to freedom of expression and freedom of assembly is fundamental to the rule of law in a free and democratic society. No one should be punished for peacefully expressing their views on abortion or any other controversial issue therefore we are fully opposed to the proposed ban.

However, if the ban were to be introduced it is right that it would cover protests in support of abortion as well as protests in opposition to abortion. Otherwise, the legislation would be one sided and could be seen as discriminating against particular beliefs and practices.

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.

Protecting the peaceful exercise of the rights to freedom of expression and freedom of assembly is fundamental to the rule of law in a free and democratic society. No one should be punished for peacefully expressing their views on abortion or any other controversial issue accordingly we are fully opposed to the proposed ban.

Moreover, harassment and intimidation are already criminal offences – accordingly, the existing law already protects abortion providers and provides the same guarantee for their safety as every person in Scotland.

However, if the ban were to be introduced it is right that it would cover protests in support of abortion as well as protests in opposition to abortion. Otherwise, the legislation would be one sided and could be seen as discriminating against particular beliefs and practices.

- 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.

Protecting the peaceful exercise of the rights to freedom of expression and freedom of assembly is fundamental to the rule of law in a free and democratic society. No one should be punished for peacefully expressing their views on abortion or any other controversial issue accordingly we are fully opposed to the proposed ban.

Moreover, harassment and intimidation are already criminal offences – accordingly, the existing law already protects facilitators of abortion services and provides the same guarantee for their safety as every person in Scotland.

However, if the ban were to be introduced it is right that it would cover protests in support of abortion as well as protests in opposition to abortion. Otherwise, the legislation would be one sided and could be seen as discriminating against particular beliefs and practices.

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)

We do not believe it is right to intimidate or harass someone – however, we fear that the current wording is not clearly defined. It is not clear who decides if behaviour is intimidating or harassing – is this an objective or subjective standard? Increasingly people expressing a contrary opinion have been accused of harassment or intimidation with no objective evidence and we fear if the terms are not sufficiently well defined the legislation could be open to abuse. We prefer the objective standard expressed in section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 - 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.

However, in general we believe that existing legislation is sufficient to criminalise the types of activities which should be criminalised wherever they occur in Scotland. Any new legislation would risk criminalising peaceful protestors and those offering support to vulnerable women. Everyone has the right to communicate peacefully and respectfully with anyone else. Women considering abortion also have the right to hear about alternatives to abortion, the availability of financial assistance, the emotional harm and physical risks associated with abortion and so on.

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.

The consultation document compares breach of a safe access zone to breach of a non-harassment order. This is the wrong comparison – of course where there is genuine harassment this is reprehensible and should be punished (as it would be under existing legislation) – however, the legislation would elevate peaceful protest and even silent protest to the level of harassment. The proposals essentially impose a blanket non-harassment order on every single member of society without the need to show any prior evidence of harassment. The legislation would criminalize genuine offers of support and care.

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:

The bill's aims of targeting harassment and intimidation could be achieved by better enforcement of existing laws. Such offences ensure that true criminal behaviour can be prosecuted without criminalising the offer of compassionate help or causing a disproportionate breach of fundamental human rights.

Moreover, if MSPs are genuinely concerned about reducing the trauma to women accessing abortion services we would suggest that there are many other issues which MSPs should seek to address.

We note that the consultation document suggests false medical information is given at vigils (page 7 of the Consultation Document). Obviously, we believe it is wrong to give false medical information, however, if it is the case that false information is being given out at vigils, surely the most effective counter measure would be for healthcare professions to offer proper medical information to those considering an abortion. This

would ensure consent is genuinely informed and could also reduce the trauma associated with those who do choose to undertake an abortion. For example, women are often given no prior warning that during an abortion procedure they may witness signs of life and that can be deeply traumatising for women.

The trauma associated with abortion, where women feel later that they made the wrong decision, could also be reduced by proper discussion with healthcare professions prior to arranging the abortion of the support services available to them. Women considering abortion should be offered alternative emotional and practical support.

Any decision about a possible termination should occur only after appropriate face to face counselling with a healthcare professional. It is vital that this counselling is of a very high standard, providing as much information as possible with alternative options. The trauma associated with abortion, where women feel later that they made the wrong decision could also be reduced by proper discussion with healthcare professions prior to arranging the abortion of the support services available to them. Women considering abortion should be offered alternative emotional and practical support.

Physicians and Counsellors know how important it is to see someone face to face when making such decisions. Phone calls or video calls, are completely inadequate for the level of care required in this sensitive area. The healthcare professional and the woman need to be able to discuss the options in a relational and non-judgmental way that gives proper respect to the person making the decision and allows space for reflection. This also helps the healthcare professional to identify signs of potential coercion.

Furthermore, post-termination support is not readily available. Often, charities are relied on to provide such counselling. Proper provision should be made to either provide post-termination support within the NHS or to properly fund private providers.

We also note that the bill is also aimed at protecting healthcare professionals and facilitators of abortion services with protection from trauma. Currently, little help or support is given to them at all if they are involved in a distressing experience.

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.

The consultation document acknowledges that the proposal would incur the expense of a nationwide awareness campaign as well as the cost of investigating alleged violations and the prosecution of those accused of violations (page 18 of the Consultation Document). The consultation document estimates these costs as minimal to moderate but provides no basis for this assumption.

The Consultation document does not, however, consider the potential cost of defending the legislation against the legal challenges for infringing on Human Rights. The consultation document notes that Ealing Council in London spent £144,000 defending the introduction of a buffer zone in its area (page 13 of the Consultation Document). The expense to Scottish taxpayers could be even higher if a successful challenger was awarded costs.

Any extra expense resulting from this proposal would be a waste of money as there is insufficient evidence that a problem exists that cannot be addressed through existing legislation. The money spent on publicising and policing safe access zones would be a completely unnecessary expense and the funds could be better spent on providing proper counselling services to women both before and after a termination.

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.

As noted already the proposals undermine fundamental human rights, including freedom of expression, freedom of assembly and freedom of conscience which are protected by the European Convention on Human Rights. While these rights can be interfered with where it is necessary and proportionate that standard has not been met in these proposals. There is insufficient evidence of a widespread problem in Scotland which needs addressed. This proposal targets peaceful citizens, not because of anti-social behaviour but for their pro-life views. Accordingly, the law disproportionately targets individuals because of their religion or beliefs.

The Consultation Document indicates protest could still take place outside political sites (such as the Scottish Parliament) rather than outside healthcare facilities (page 17 of the Consultation Document). However, that is still an unwarranted interference with people's religious beliefs. Within a free and democratic society we should be able to engage in robust debate and seek to persuade others of our views. It is also not for the government to decide where it is lawful for citizens to hold protests, except in the limited exceptions given within the convention.

We also note the Consultation document refers to vigils where prayer and singing take place and suggests these activities are harmful and should be prohibited. This is clearly an interference with convention rights of freedom of belief.

Restricting freedom of speech on the basis of political opinion and religious belief is not only unlawful under the terms of the European Convention of Human Rights, it is a threat to a functioning democratic society.

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?

There is evidence of a strong and increasing association between deprivation and the rate of abortion. In 2021 the rate of abortion in the most deprived areas was almost twice as high as in the least deprived areas of Scotland (<https://www.publichealthscotland.scot/publications/termination-of-pregnancy-statistics/termination-of-pregnancy-statistics-year-ending-december-2021/>). Women from deprived areas are likely to be most in need of being signposted to practical help and support. Providing this support would enable more women to make informed choices regarding whether or not to go through with an abortion. Safe access zones eradicate any offer of support to women in need who may feel they have no choice but to have an abortion. Accordingly, the legislation is undermining effect to create a strong, healthy and just society.

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)?

For all the reasons we have outlined in our response, safe access zones are not necessary and are a disproportionate interference with human rights. Moreover, they prevent vulnerable women from receiving appropriate support when making life altering decisions.

As Christians we believe all human beings have inherent worth and value, having been made in the image of God. We also believe it is right for the church to speak up on issues such as abortion provision and to strive for a more just society. Proverbs 31:8-9 tells us to “Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy.” As a church we are concerned for the rights of the unborn child and believe more needs to be done to protect the child in the womb.

While not all members of the Free Church of Scotland would believe it wise or appropriate to engage in pro-life vigils we do not believe the state should ban such actions. The safe access zones proposal sets a dangerous precedent of the state being able to ban both protests and efforts to persuade individuals to change their mind on this issue or any other controversial issue. Accordingly, we fully oppose these proposals.