



## **Engender response to the consultation on the Proposed Abortion Services (Safe Access Zones) (Scotland) Bill**

August 2022

### **1. INTRODUCTION**

Engender is Scotland's feminist policy and advocacy organisation. We work towards a Scotland where women and men have equal access to power, safety, resources and rights, and to make visible the impacts of sexism. We wholeheartedly welcome the proposed Abortion Services (Safe Access Zones) Bill and the opportunity to respond to this consultation. Harassment of women seeking healthcare represents an egregious interference with women's basic human rights.

Engender unequivocally supports women's autonomy over our bodies and our lives; access to abortion is fundamental to women's rights and gender equality. Access to safe abortion healthcare is essential for the realisation of women's economic and social rights. All women must have a legal right to make choices around family planning. Quality and culturally sensitive abortion care and information must be accessible on an equal basis, regardless of age, disability, gender identity, immigration status, sexuality, race, or religion or belief. It is vital that this care is accessible without intimidation, coercion, harassment, or stigmatisation.

Yet abortion in Scotland remains highly paternalistic and stigmatised, and subject to legal and service restrictions that do not apply to any other healthcare. Women experience a number of barriers to quality care, including the requirement for two doctors to certify the approval for an abortion, the need for multiple appointments, and a lack of mid-term abortion care in many areas. This is despite abortion being the most common gynaecological procedure in the world, accessed by 1 in 3 women at some point in their lives.

We are presently witnessing regression regarding women's rights to abortion across the globe. Anti-choice 'protests' outside abortion clinics in Scotland and the UK have

escalated in recent years,<sup>1</sup> whilst the UK Government's unilateral removal of references to 'sexual and reproductive health and rights' and 'bodily autonomy' from an international policy statement in July 2022<sup>2</sup> is of serious concern. This direction of travel sits alongside a rollback in women's equality due to the pandemic that places women at greater risk of economic insecurity. Disabled women and younger women have been particularly likely to report increased financial precarity as a result of the pandemic.<sup>3</sup> The current cost of living crisis will further exacerbate women's economic inequality<sup>4</sup> with significant implications for health and wellbeing, and reproductive decision-making.

Within this context, it is particularly vital that the Scottish Government shows leadership and takes decisive action to legislate nationally for safe access zones, sending a clear message that harassment of women accessing routine and essential healthcare will not be tolerated in Scotland. This would be in line with Scottish Government's legal duty to respect and protect the rights to health, privacy, bodily integrity and non-discrimination of women and girls seeking guidance and care services without interference by harassment and intimidation.

## 2. QUESTIONS

### Aim and approach

**1. Which of the following best expresses your view of the proposed Bill? Please elaborate on your response.**

Fully supportive

Engender is resolute that women's human rights cannot be secured without access to abortion, and that commitments in Scotland to incorporate the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) are significantly weakened by a failure to protect women from interference with their rights through targeted harassment and intimidation.

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<sup>1</sup> BPAS (2022): <https://www.bpas.org/about-our-charity/press-office/press-releases/gillian-mackay-msp-has-launched-a-consultation-on-their-proposal-for-buffer-zones-around-abortion-clinics-in-scotland/>.

<sup>2</sup> The statement was issued by the UK Government as hosts of an international conference on the freedom of religion or belief. The original statement was signed by 22 countries. <https://www.gov.uk/government/publications/freedom-of-religion-or-belief-and-gender-equality-statement-at-the-international-ministerial-conference-2022> .

<sup>3</sup> Engender (2021) Joint briefing on the impact of COVID-19 on women's wellbeing, mental health and financial security. Available at: <https://www.engender.org.uk/content/publications/Close-the-Gap-and-Engender-Joint-briefing-on-the-impact-of-COVID-19-on-womens-wellbeing-mental-health-and-financial-security.pdf>.

<sup>4</sup> Women's Budget Group (2022) The gendered impact of the cost of living crisis. Available at: <https://wbg.org.uk/wp-content/uploads/2022/03/The-gendered-impact-of-the-cost-of-living-crisis.pdf>.

Gendered harassment is a form of violence against women. Allowing the harassment of those seeking abortion and accessing other forms of sexual and reproductive healthcare to continue does not align with Equally Safe - Scotland's strategy for preventing and eradicating violence against women and girls.<sup>5</sup> The current harassment and intimidation of women seeking healthcare also undermines the work undertaken and recommended by the First Minister's National Advisory Council on Women and Girls Government, and Scottish Government policy frameworks aimed at advancing gender equality, including the gender pay gap action plan.<sup>6</sup>

A survey carried out in conjunction with Chalmers Street Sexual Health Centre between April and June 2020 found that 56% of people visiting the Edinburgh clinic felt very uncomfortable because of 'protesters'.<sup>7</sup> There is clear public support for restrictions on where anti-abortion 'protests' can occur – a poll from 2021 carried out by Survation on behalf of the Humanist Society found that 82% believed protesters should be kept a minimum distance away from those attending healthcare facilities.<sup>8</sup> Polling from Scotland on Sunday found that only 8% opposed the introduction of buffer zones, with 68% in support.<sup>9</sup>

Unlike typical protests against state or organisational action, the presence of anti-choice campaigners at services aims to disrupt individual women's pre-determined course of action. Women who experience multiple forms of discrimination may encounter harassment underpinned by not only sexism but imbued with racism, ageism, ableism or homophobia. Trans and non-binary people, or women who wish for additional privacy, such as younger women or women living in remote or close-knit communities, may feel yet more vulnerable.

Campaigners frequently carry materials directed at individual women, urging them to avoid abortion, often with extremely distressing images and messages. Some of the information disseminated is categorically inaccurate. Vigils and 'protests' have continued in several locations throughout the pandemic, often in spite of public health advice and at a time when women were required or encouraged to attend clinics alone.

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<sup>5</sup> Scottish Government (2018) Equally Safe. Available at: <https://www.gov.scot/publications/equally-safe-scotlands-strategy-prevent-eradicate-violence-against-women-girls/documents/>.

<sup>6</sup> Scottish Government (2018) A fairer Scotland for women. Available at: <https://www.gov.scot/publications/fairer-scotland-women-gender-pay-gap-action-plan/>.

<sup>7</sup> "Edinburgh Council backs abortion clinic 'buffer zones' after women harassed." Available at: <https://www.edinburghlive.co.uk/news/edinburgh-news/edinburgh-council-backs-abortionclinic-19901543>.

<sup>8</sup> "Poll: 82 per cent of Scots want end to abortion clinic protests." Available at: <https://www.thenational.scot/news/19035553.poll-82-per-cent-scots-want-end-abortion-clinic-protests/>.

<sup>9</sup> "Abortion Scotland: clinic buffer zones backed by huge majority of Scots, poll finds." Available at: <https://www.scotsman.com/news/politics/abortion-scotland-clinic-buffer-zones-backed-by-huge-majority-of-scots-poll-finds-3753590>.

Evidence from England supports the introduction of safe access zones. The buffer zone established around a Marie Stopes clinic in London has had a “dramatic” impact on the incidence of harassment,<sup>10</sup> where negative impacts had been routinely experienced and reported on by those accessing sexual and reproductive healthcare.

**2. What is your view of the proposal for safe access zones being introduced at all healthcare settings that provide abortion services throughout Scotland? Please explain the reasons for your response.**

Fully supportive

A robust and uniform approach to creating safe access zones is crucial, or else the existing postcode lottery regarding women’s reproductive rights in Scotland will be exacerbated. At present, access to mid-term abortion is unequal across Scotland’s NHS boards, with gestational limits differing significantly in different parts of the country.<sup>11</sup> One researcher found that the local gestational time limit for accessing services varied between 15 and 20 weeks, and was informed of a different local limit at every participating hospital.<sup>12</sup> This puts women under pressure to find a service, or make the choice between arranging and undertaking the demanding journey to England<sup>13</sup> or continuing with an unwanted pregnancy.

Whilst we recognise that there are challenges to overcome, we strongly oppose the suggestion that discretion and decision-making around this issue should sit with local authorities that face extreme budgeting pressures and are potentially subject to the anti-choice views of personnel in key positions. Certain local authorities have already indicated that they do not see a need for buffer zones in their areas.<sup>14</sup>

**3. 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? Please explain the reasons for your response**

Fully supportive

To prevent women from harm, safe access zones must be systematically implemented outside all facilities that provide abortion services. Otherwise, current patchy access that

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<sup>10</sup> [Here’s How Things Have Changed At The First UK Abortion Clinic To Have A Buffer Zone \(buzzfeed.com\)](https://www.buzzfeed.com/uk/here-s-how-things-have-changed-at-the-first-uk-abortion-clinic-to-have-a-buffer-zone).

<sup>11</sup> Engender (2016) Our bodies, our choice: The case for a Scottish approach to abortion. Available at: <https://www.engender.org.uk/content/publications/Our-bodies-our-choice---the-case-for-a-Scottish-approach-to-abortion.pdf>.

<sup>12</sup> Beynon-Jones (2011) Timing is everything: The demarcation of ‘later’ abortions in Scotland.

<sup>13</sup> Abortion for non-medical reasons is not normally provided after 18-20 weeks in Scotland.

<sup>14</sup> BPAS (2022) Safe access zones around abortion clinics in Scotland. Available at: <https://images.bpas-campaigns.org/wp-content/uploads/2022/05/19115435/How-to-respond-BPAS-and-Back-off-Scotland-guide.pdf>.

undermines women's access to healthcare and reproductive rights<sup>15</sup> will be deepened. For women in rural areas or women who use particular services due to cultural competence, inclusivity or accessibility, a reduction in options could undermine their ability to access safe and legal abortion, with resounding implications throughout their lives. Accessing quality healthcare is already a significant issue for women of colour, disabled women, trans women, refugee women and other minoritised groups of women in Scotland, and Scottish Government must do all that it can to ensure that services are consistently accessible across the country.

Evidence from England demonstrates that local authorities are highly unlikely to prioritise, develop and resource safe access zones when this is discretionary. Following the introduction and success of the UK's first buffer zone around a facility in Ealing, it was hoped that many more would follow. However, despite interest and formal discussion within various councils, only two more have been established.<sup>16</sup>

The Scottish Government has set out its view that abortion is a matter of women's healthcare and women's human rights. The Women's Health Plan accordingly establishes the aim that "All women will be able to access timely abortion care without judgment" and commits "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."

The First Minister's commitment, in June 2022, to overcome previously cited barriers and introduce national legislation for buffer zones in Scotland is an overdue and critical part of the broader picture on abortion rights. This shift in position, from the Programme for Government 2021-22 commitment to "support any local authority who wants to establish bylaws to create protest-free buffer zones outside clinics that provide abortion services,"<sup>17</sup> must be consolidated over the coming months in order to uphold the Scottish Government's commitments on women's rights and on women's health.

When the UN CEDAW Committee examined Northern Ireland's previously extremely restrictive abortion laws, it stated that "the delegation of government powers does not negate the direct responsibility of the State party's national or federal Government to fulfil its obligations to all women within its jurisdiction."<sup>18</sup> In line with this principle, we

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<sup>15</sup> Engender (2016) *Our Bodies, Our Choice: The case for a Scottish approach to abortion*. Available at: <https://www.engender.org.uk/content/publications/Our-bodies-our-choice---the-case-for-a-Scottish-approach-to-abortion.pdf>.

<sup>16</sup> "The bitter fight over abortion clinic protests". Available at: <https://www.bbc.co.uk/news/health-61473721>.

<sup>17</sup> Scottish Government (2021) *A fairer, greener Scotland Programme for Government 2021-22*. Available at: <https://www.gov.scot/publications/fairer-greener-scotland-programmegovernment-2021>.

<sup>18</sup> CEDAW (2019) *Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland*. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/072/08/PDF/N1907208.pdf?OpenElement>.

urge all parties to ensure that buffer zones are implemented at the national level as part of women's access to routine, vital healthcare.

#### **4. 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?**

##### Fully supportive

The 150 metre safe access zone has been established in international precedent as an adequate size for the protection of those accessing healthcare services and staff working at health facilities. In Australia, where all states and territories have legislated to establish safe access zones, a minimum distance of 150m around facilities providing abortion has been recommended in various law reform reports and has been found to be sufficient in meeting the object of the legislation.<sup>19</sup> As outlined in the consultation document, certain premises may require larger demarcated safe access zones depending on the specifics of layout.

Scottish Government should follow suit and establish a national framework in line with international best practice.

#### **5. 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 (i.e., a woman having an abortion)?**

##### Fully supportive

As repeatedly stated by the First Minister,<sup>20</sup> directly targeting people attending health facilities with 'protest' against their rights to bodily autonomy and family planning is unacceptable. We agree with her position that the appropriate place for exercising the right to freedom of speech is outside relevant legislatures and decision-making forums such as the Scottish Parliament. Equally, demonstrations in support of women's right to choose would not be curtailed by the introduction of safe access zones.

The introduction of buffer zones at national level would help to: reduce anti-choice harassment, ensure safer passage for patients and staff accessing clinics, protect women's health by reducing the possibility of complications caused by appointment cancellation and distress, protect facilities from damage, and reduce noise and disorder that impacts on surrounding areas' peace.<sup>21</sup>

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<sup>19</sup> Marie Stopes Australia (2020) Safe access zones in Australia: Legislative considerations. Available at: <https://www.mariestopes.org.au/wp-content/uploads/Safe-Access-Zones-in-Australia.pdf>.

<sup>20</sup> Including during FMQs at the Scottish Parliament and at the summit on abortion care in Scotland <https://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=13699&mode=pdf>.

<sup>21</sup> Abortion Rights Coalition of Canada (2022) Safe access zones and court injunctions in Canada. Available at: <https://www.arcc-cdac.ca/wp-content/uploads/2020/06/Bubble-Zones-Court-Injunctions-in-Canada.pdf>.

**6. What is your view of the proposal to ban all protests including protests in support of and those in opposition to: a person’s decision to provide abortion services (i.e., a doctor, nurse or midwife)?**

Fully supportive

The presence of ‘protests’ or vigils outside abortion care services affects not only women accessing abortion but also causes harm to staff and others seeking sexual and reproductive healthcare. This interference with patient access undermines privacy and dignity and can dissuade people from accessing vital and urgent treatments, including but not limited to abortion. Staff simply doing their jobs may face such activities daily, creating an environment of fear and intimidation at their workplace.

Healthcare providers can also be the target of intimidating behaviour and harassment. Research has shown that staff have been subject to a range of threatening and abusive behaviours whilst attending work at healthcare facilities and can live in fear of physical harm and the unpredictability of ‘protesters’.<sup>22</sup>

Clearly, it is unacceptable for staff providing lawful healthcare to be subject to intimidation and harassment that has an impact on their wellbeing both at work and beyond. As above, all organised forms of protest should be targeted at decision-makers and lawmakers.

**7. 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 (i.e., administrative or support staff)?**

Fully supportive

All people attending healthcare facilities, whether for appointments or as staff, are potentially subject to the impacts of intimidation and harassment by anti-choice protesters. All workers in Scotland should be able to earn a living without running a gauntlet to access their place of employment. This is also a health and safety at work issue, with potentially severe ramifications for mental health, that employers have very little leverage to address.

Scottish Government and Scottish Parliament must now ensure that a robust national framework designed to offer maximum protection for workers, as well as those accessing health services, is designed and implemented.

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<sup>22</sup> Sifris and Penovic (2018) Anti-abortion protest and the effectiveness of Victoria’s safe access zones: an analysis. Available at: [https://www.monash.edu/\\_data/assets/pdf\\_file/0005/1815323/Vol-44-No2\\_Sifris-and-Penovic.pdf](https://www.monash.edu/_data/assets/pdf_file/0005/1815323/Vol-44-No2_Sifris-and-Penovic.pdf).

**8. 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)**

All of the below

- 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 these actions constitute intimidating and harassing behaviour. Those targeted perceive that many of them hold an implicit threat of escalation into physical violence.<sup>23</sup>

These behaviours also potentially breach a range of human rights. Women and girls have the right to access sexual and reproductive healthcare safely.<sup>24</sup> The right to bodily integrity is potentially compromised not only by the ultimate objective of the harassment but by tactics used, including impeding or blocking access, and intimidating or harassing a person. The rights to privacy and confidentiality<sup>25</sup> are clearly violated by the use of photography, filming or recording, and more broadly by any activity that disrupts access to sexual and reproductive healthcare. Activity explicitly aimed at disrupting women’s rights to access healthcare and family planning<sup>26</sup> also constitutes a particularly egregious violation of the right to privacy with untold potential harmful consequences in women’s lives and those of their families. All of these tactics and others employed by ‘protesters’ inherently violate women’s rights to dignity<sup>27</sup> and to non-discrimination.<sup>28</sup>

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<sup>23</sup> Sifris and Penovic (2018) Anti-abortion protest and the effectiveness of Victoria’s safe access zones: an analysis. Available at: [https://www.monash.edu/data/assets/pdf\\_file/0005/1815323/Vol-44-No2\\_Sifris-and-Penovic.pdf](https://www.monash.edu/data/assets/pdf_file/0005/1815323/Vol-44-No2_Sifris-and-Penovic.pdf).

<sup>24</sup> CEDAW, arts 10 and 16; CEDAW General Recommendation 24; CESCR General Comments 14 and 22; Beijing Platform for Action. More information at: <https://www.ohchr.org/en/node/3447/sexual-and-reproductive-health-and-rights>.

<sup>25</sup> UDHR, art 12; ICCPR, art 17; CESCR General Comment No. 14, paras 12(a) and 23; amongst others.

<sup>26</sup> CEDAW, art 14; CESCR General Comment 14; UDHR, art 25; Proclamation of Tehran, para 16; amongst others.

<sup>27</sup> UDHR, art 1.

<sup>28</sup> Human Rights Act, art 14; UDHR, art 7; CESCR, arts 2(2) and 3; CEDAW General Recommendation 25, art. 4; CESCR General Comment 14, art. 12; ECHR, art 14.



**9. 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 support

The harassment and intimidation of women and others accessing healthcare, as well as staff, should be treated as a serious offence. We agree with proposals that the breach of safe access zones should be a criminal offence and penalised in line with the existing offence of ‘breach of a non-harassment order’.

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

No

Learning from other parts of the UK and more broadly clearly points towards the introduction of national legislation. The piecemeal and very limited introduction of safe access zones in England has yielded positive results at the clinics in question, but unrestricted harassment of women accessing abortion care continues in the vast majority of cases. Meanwhile, legislative approaches at state level in Australia and Canada demonstrate their effectiveness at helping to ensure consistency of services.

## **Financial implications**

**11. 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? 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.**

- 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

Don’t know

It has been outwith the scope of this exercise for Engender to undertake an analysis of associated costs. We are therefore unsure whether net costs would be reduced, incurred or unchanged. Primarily and fundamentally, however, we reject any argument that uses a cost-benefit analysis of safe access zones to advocate against their introduction. The potential costs to women’s lives of being lobbied to continue with an unwanted

pregnancy far outweigh any financial implications for the balancing of public sector books.

This notwithstanding, we also note the following points in relation to financial implications, with a view to challenging any assertion that safe access zones would be too costly.

Women attempting to access safe and legal abortion can suffer trauma as a result of strangers accosting them with upsetting images, props, verbal abuse (e.g., “murderer”) and written materials containing false medical information (such as abortion causes cancer). In addition to manifest implications regarding ethics, human rights and equality, this can have an impact on the public purse in terms of mental and physical health impacts.

Women’s access to well-paid, secure employment is undermined by a host of issues related to motherhood and unaffordable childcare that drive the gender pay gap. This has an impact on the public purse in terms of social security. Other implications surrounding the costs of women lacking full control of reproductive decision-making are clear. Household finances play a large part in family planning, and women coerced into continuing with unwanted pregnancies may be pushed into economic insecurity, particularly in light of the ongoing consequences of COVID-19 and the emerging cost of living crisis. In turn, this has an impact on services provided by local authorities and Scottish Government. We make this point to highlight the need for a broad and gendered approach to any analysis of financial implications.

Placing the onus and responsibility for creating safe access zones on individual local authorities has also left them responsible for absorbing costly legal challenges, including the defence of appeals.<sup>29</sup> National legislation would mean any legal challenge could be more definitively dealt with at governmental level, where costs are more easily absorbed, avoiding the risk of multiple cases recurring across the country in a context of restrictive local authority budgets.

Finally, we note points made by BPAS and Back Off Scotland regarding policing costs currently incurred at ‘protests’. For instance, the introduction of a safe access zone in Ealing has had a huge impact on the need for police presence, reduced from a weekly occurrence to an average of once per year.

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<sup>29</sup> “How we secured a buffer zone outside an abortion clinic”. Available at: <https://www.lgcplus.com/idea-exchange/how-we-secured-a-buffer-zone-outside-an-abortion-clinic-11-11-2019/>.

## Equalities

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

### Positive

National legislation to create safe access zones would have a positive impact on women. Women are the overwhelming majority of those seeking abortion care services. Women are also the vast majority of those that are likely to be negatively impacted by harassment whilst accessing other health services, for example, due to previous experiences of abortion care, issues with pregnancy and fertility, or the experience of difficult reproductive decision-making. Women are also the majority of workers across health services and therefore likely to be disproportionately impacted as members of staff.

National legislation to create safe access zones would not discriminate against people on grounds of religion or belief. People with anti-choice views that are rooted in a particular faith or belief are entitled to hold those views, to act in accordance with them and to express them outside the Scottish Parliament and other decision-making forums.

Similarly, whilst we acknowledge thorny issues at the intersection of abortion and disability rights,<sup>30</sup> we do not believe that national safe access zones would be discriminatory on grounds of disability. People facing decisions regarding fetal anomalies must be supported to make these by healthcare professionals in line with best practice standards. They must not be faced with harassment and intimidation whilst accessing care.

## Sustainability

**13. 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?**

### No

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<sup>30</sup> The 1990 Human Fertilisation and Embryology Act abolished an upper time limit in cases where 'there is substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped'. Disability rights advocates have raised concerns that this provision devalues disabled people and emphasise that families must be given adequate information to make informed decisions, as well as improved support for those with disabled children.

## 14. Do you have any additional comments or suggestions on the proposed Bill?

### Balancing human rights

Women, girls and others accessing services where abortion care is provided have the rights to access sexual and reproductive healthcare safely.<sup>31</sup> People attending clinics and staff members have the rights to bodily integrity,<sup>32</sup> privacy and confidentiality,<sup>33</sup> non-discrimination,<sup>34</sup> and dignity.<sup>35</sup> Protestors have the rights to freedom of expression,<sup>36</sup> peaceful assembly<sup>37</sup> (which includes the right to choose the time and place of the assembly)<sup>38</sup> and freedom of thought and religion.<sup>39</sup>

Arguments against the use of safe access zones often lean heavily on the rights to freedom of expression and peaceful assembly. However, these rights are not absolute. They can be restricted when prescribed by law, in the pursuit of legitimate aims (such as protecting public safety, preventing disorder or crime, and protecting the health or rights of others), and where necessary (no 'less stringent measures' are available) and proportionate to the aims pursued.<sup>40</sup> All of these criteria can be applied to the introduction of safe access zones,<sup>41</sup> particularly given that this would simply limit the exact location where these rights can be exercised.

Legislating for buffer zones would support women to access abortion care services, in line with their rights to healthcare, dignity, bodily integrity, privacy and confidentiality, and non-discrimination. It would not ban or prevent the rights to freedom of expression

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<sup>31</sup> See CEDAW, arts 10 and 16; CEDAW General Recommendation 24; CESCR General Comments 14 and 22; The Beijing Platform for Action. More information at: <https://www.ohchr.org/en/node/3447/sexual-and-reproductive-health-and-rights>.

<sup>32</sup> OHCHR (2017):

<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf>.

<sup>33</sup> UDHR, art 12; ICCPR, art 17; CESCR General Comment No. 14, paras 12(a) and 23; among others.

<sup>34</sup> UDHR, art 7; ICESCR, arts 2(2) and 3; CEDAW General Recommendation 25, art. 4; CESCR General Comment 14, art. 12.

<sup>35</sup> UDHR, art 1.

<sup>36</sup> UDHR, art 19; ICCPR, art 19; ECHR, art 10.

<sup>37</sup> UDHR, art 20(1); ICCPR, art 21; ECHR, art 11.

<sup>38</sup> Scottish Human Rights Commission (2020) The right to freedom of peaceful assembly: Article 11 of the European Convention on Human Rights (ECHR). Available at: [https://www.scottishhumanrights.com/media/2101/article-11\\_right-to-freedom-of-assembly-iag.pdf](https://www.scottishhumanrights.com/media/2101/article-11_right-to-freedom-of-assembly-iag.pdf).

<sup>39</sup> ICCPR, art 18. Debate at: <https://lawandreligionaustralia.blog/category/exclusion-zones-and-abortion-clinics/>.

<sup>40</sup> ICCPR arts 19(3) and 21, HRC General Comment 34, para 22; ECHR arts 10(2) and 11(2). See also Scottish Human Rights Commission (2020) The right to freedom of peaceful assembly: Article 11 of the European Convention on Human Rights (ECHR). Available at: [https://www.scottishhumanrights.com/media/2101/article-11\\_right-to-freedom-of-assembly-iag.pdf](https://www.scottishhumanrights.com/media/2101/article-11_right-to-freedom-of-assembly-iag.pdf).

<sup>41</sup> See CEDAW General Recommendation 25, art. 4; CESCR General Comment 14, art. 12.

or peaceful assembly, but allow women “a meaningful choice about whether they wish to engage with these activities or not”.<sup>42</sup>

## One part of the puzzle

Implementation of safe access zones around healthcare facilities must be part of an overarching and strategic plan to ensure all women and pregnant people can safely and legally access abortion at the point of need. Such a plan must be robustly intersectional.

Scottish Government has committed to improving access to abortion services within the Women’s Health Plan, including with regards to the provision of mid-term abortion care. However, this is not ambitious enough to ensure that all women are able to access safe abortion when needed.

A range of measures are needed to achieve this in Scotland. As we have set out in policy reports and briefings, Engender is also calling on the Scottish Government to:

- Decriminalise abortion and remove the requirement for the ‘two doctors’ rule
- Standardise access to abortion across Scotland, including with regards to regional variations in gestational time limits
- Make permanent arrangements to allow early medical abortions at home
- Develop capacity to perform non-medical abortions up to the legal gestational threshold in Scotland
- Ensure that abortion care meets the needs of disabled women, women of colour, LGBTI people, refugee women, young women and other minoritised groups
- Ensure that no woman is unable to access abortion due to lack of financial support.

### FOR FURTHER INFORMATION

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### ABOUT US

Engender is Scotland’s feminist policy and advocacy organisation, working to increase women’s social, political and economic equality, enable women’s rights, and make visible the impact of sexism on women and wider society. We work at Scottish, UK and international level to produce research, analysis, and recommendations for intersectional feminist legislation and programmes.

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<sup>42</sup> “Northern Ireland Assembly passes buffer zone law to protect women accessing abortion services.” Available at: <https://humanists.uk/2022/03/25/northern-ireland-assembly-passes-buffer-zone-law-to-protect-women-accessing-abortion-services/>.