Response to the Scottish Government's Consultation on Proposed Abortion Services Safe Access Zones (Scotland) Bill

11 August 2022

The Scottish Women's Rights Centre (SWRC) is a unique collaborative project that provides free legal information, advice and representation to women affected by violence and abuse. The SWRC exists because of abuses of power and because a gap persists between women's experience of violence and abuse and their access to justice. The SWRC strives to fill these gaps by working with specialist solicitors and experienced advocacy workers. Informed by our direct work with victims/survivors of violence and abuse, we seek to influence national policy, research and training to improve processes and systems, and ultimately to improve the outcomes for women who have experienced gender-based violence (GBV). You can find out more about us here: www.scottishwomensrightscentre.org.uk.

Introduction

We welcome the opportunity to respond to this consultation and we have done so by drawing on our practical experience and expertise in providing legal advice and representation to women affected by gender-based violence, particularly domestic abuse. We provide free legal advice surgeries and information helplines to survivors of gender-based violence. Through our outreach we speak directly to victims/survivors and gain insight into the issues they face.

Within our response when we are referring to victims/survivors, we are referring to survivors of gender-based violence, particularly domestic abuse.

We have carefully considered the questions of this consultation and have answered those where we consider we can input from our expertise.

Aim and approach

Question 9. Which of the following best expresses your view of the proposed Bill?

Fully supportive

Please explain the reasons for your response

The Scottish Women's Right's Centre supports women affected by gender-based violence, including sexual violence, physical abuse, coercive control and economic abuse. Survivors of gender-based violence can be vulnerable as a result of their experiences of abuse.

Through the outreach services we provide we see that access to abortion services is a key health requirement for some victim/survivors. We have provided legal advice, representation, and advocacy support to those who experience rape, which can and does sometimes result in pregnancy and have also seen examples of pregnancy occurring within the context of abusive relationships. Victim/ survivors have a right to access abortion services.

We submit that victim/survivors should be able to access these services free from intimidation and harassment. The activities of anti-abortion protesters that target hospitals and clinics where women and pregnant people access abortion services increases the existing stigma associated with accessing abortion services. Accessing these services is something that can on its own be challenging. Any further abuse or harassment experienced from protesters can exacerbate mental health issues and symptoms of PTSD.

Where victim/survivors are dissuaded from accessing this healthcare it can have a detrimental effect to other areas of their lives: forcing them to remain in or return to an abusive relationship, having significant impact upon their mental health, financial hardship, and can lead to parental ties with their abuser and exertion of coercive control through child contact. In particular, we have become aware, through outreach work, that abusers use the child contact system to continue their control and abuse of victim/survivors.

We strongly believe that access to abortion services is a basic healthcare need and a right for the women we represent. Any barriers to accessing healthcare facilities will have a detrimental and disproportionate impact on survivors of gender-based violence and will put them at an even greater disadvantage.

We strongly support the introduction of legislation which would further protect women and pregnant people accessing essential abortion services without the fear of intimidation or harassment. We support the introduction of safe access zones around abortion clinics and healthcare settings which provide abortion services.

Article 8 of the European Convention on Human Rights (the ECHR), protects the right to private and family life, which includes personal autonomy and bodily integrity. It protects the right to make decisions about our lives and bodies. Safe access zones would allow women and pregnant people accessing abortion facilities to do so without fear of intimidation or harassment and therefore further protect those rights. Legislative change would ensure that everyone entering these facilities, regardless of where they are in Scotland would have the same expectation of safety and privacy.

The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) has outlined that, "*it is discriminatory for a State party to refuse to legally provide for the performance of*

certain reproductive health services for women" and that barriers to that care – legal or practical – should be removed (CEDAW General Recommendation 24 (1999) on women and health, para. 11).

Anti-abortion protests outside clinics have a clinical, emotional and psychological impact. The activities of anti-abortion protesters cause distress and have the potential to cause trauma to those accessing abortion services. These actions may cause women to defer their treatment or purchase illegal abortion pills online from unregulated providers. This impact has the possibility to be particularly acute for victims/survivors of gender-based violence.

The health care settings which house abortion clinics often serve the public for other medical interventions also. Therefore, there is also a notable effect on others accessing services in the same health care settings, such as sexual health services, and to staff who are harassed as they are trying to attend their place of work.

Access to safe, legal abortion is a fundamental element of women's rights to body autonomy, and reproductive choice and health. It is also a key component in achieving economic and social equality for women in Scotland, including access to education, paid work, financial autonomy, and the prevention of abuse. This is a healthcare issue, an education issue and a broader equality issue, in terms of disability, race and ethnicity, immigration status, sexual orientation and gender identity (https://www.engender.org.uk/content/publications/Our-bodies-our-choice---the-case-for-a-Scottish-approach-to-abortion.pdf).

We recognise that the introduction of safe access zones could raise the issue of potential interference with other Convention rights such as Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and Article 11 (freedom of assembly and association of the European Convention on Human Rights (ECHR) of anti-abortion protestors.

We are aware that the Attorney General for Northern Ireland has requested the Supreme Court consider whether the Northern Irish Bill introducing safe zones is compatible with human rights legislation and whether it disproportionately interferes with protestors' rights to peaceful assembly and freedom of expression. However, if clause 5(2)(a) of the Abortion Services (Safe Access Zones) (Northern Ireland) Bill is determined by the court to be within the competence of the Assembly, the bill may proceed to become law.

This issue is being considered in real time; it is highly topical and due to its consideration at UK Supreme Court level it is necessary to be dealt with through primary legislation. We acknowledge that if legislation is introduced, then that legislation should only go as far as necessary to allow women and pregnant people safe access abortion services safely without intimidation or harassment, whilst keeping interference with protesters rights to a minimum. We consider that the proposals balance these rights appropriately.

In the case ***Dulgheriu (and another) (Appellants)* v *London Borough of Ealing (Respondent)*** **[2019] EWCA Civ 1490, On appeal from: [2018] EWHC 1667 (Admin)** the Court of Appeal in England and Wales found in favour of similar restrictions after completing a balancing exercise. In this case, the court found that a Public Spaces Protection Order (PSPO) and the exclusion of the protests to "designated zones" 100 meters away from an abortion clinic, although restricting the protestor's rights, was proportionate to the aim of protecting the Article 8 rights of those accessing abortion services. The Court paid specific attention to the impact the protestors' actions were having on those trying to access the services of the clinic. Finding, that the tactics employed by the protestors caused lasting psychological and emotional harm to the service users. Therefore "*a PSPO was necessary to*

strike a fair balance between, on the one hand, protecting those important interests of the service users and, on the other hand, the rights of the protesters." (para. 89).

Based on this analysis, we would strongly support the introduction of safe access zones which would support safe access to abortion service, such as in the proposed Bill.

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

Please explain the reasons for your response

We support that safe access zones should be introduced at all healthcare settings providing abortion services. If safe access zones were limited only to environments where protests and harassment of service users is prevalent, there is a significant risk that protestors would move to other healthcare settings without safe access zones and continue to harass and intimidate service users in these settings. Women and pregnant people accessing these services need to be reassured that they will enjoy equal access to abortion services, regardless of where they live in Scotland.

We would submit that blanket provision of safe access zones at all healthcare settings providing abortion services:

- protects the safety and privacy of healthcare providers and staff;
- protects patients' health by reducing the risk of complications (due to emotional distress from the presence of protesters and refusal to access medical treatment when required)
- protects the Article 8 ECHR rights of women and pregnant people accessing abortion services, as well as staff and as others seeking sexual and reproductive health services;
- fosters community peace due to a decrease in disruption and nuisance; and
- Is a proportionate interference with the right of anti-abortion protestors' in relation to Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and Article 11 (freedom of assembly and association) ECHR, as they are free to protest elsewhere, outside of the limited areas designated as buffer zones.

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

Please explain the reasons for your response

See answer to question 10, we support that the safe access zones be introduced at all healthcare facilities providing abortion services.

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

Please explain the reasons for your response.

The safe access zone should be wide enough to allow for unimpeded, harassment-free access to abortion services by service users. This includes being mindful of transport links, public transport and parking facilities, for abortion healthcare users and staff who may face other barriers to physically accessing services, such as disability, lack of child care and low or limited income.

In Victoria, Australia the law prohibits communicating about abortion in a manner "*reasonably likely to cause distress or anxiety*" within a zone of 150 metres around abortion clinics (*Clubb v Edwards; Preston v Avery* [2019] HCA 11 [116]; Section 185D of the *Public Health and Wellbeing Act 2008* (Vic)).

In Tasmania, the law prohibits *a protest in relation to terminations "that can be seen or heard by a person accessing a clinic within 150 metres*" (Section 9(2) of the Reproductive Health (Access to Terminations) Act 2013 (Tas)). The distance of 150 metres was seen as lawful, as although it does to a small extent infringe upon expression rights, it does so only to "*serve the purpose of protecting the safety, wellbeing, privacy and dignity of persons accessing premises where terminations are provided*", whilst allowing protestors to express their rights from a distance (Clubb [99]–[100]; Preston [120]–[123]).

This is reinforced by the Office of the United Nations High Commissioner for Human Rights (OHCHR), who state that procedures to ensure that abortion services are safe and accessible to women and girls without discrimination are necessary. States have obligations to respect, protect and fulfil women's rights related to abortion services; (https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/SexualHealth/INFO_Abortion_WEB.pdf).

We agree with the proposal that Local Authorities should have discretion to increase this distance, if it is necessary to facilitate harassment-free access to services in certain settings (e.g. to facilitate access to public transport stations out with the 150m radius). As set out above, this should be done so in a proportionate manner to minimise the impact upon the rights of protesters.

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

Please explain the reasons for your response.

We do not see that it would be necessary nor proportionate to ban *all* protests surrounding a person's decision to access abortion services whether they be in support of or against.
We are, however, strongly opposed to the expression of those sentiments within the proposed safe access zones outlined in the Bill, those which would interfere with the service provision of essential abortion healthcare to women and pregnant people.

Any interference with access to services has potentially negative implications whether this is from pro-choice or anti-abortion groups.

The protests that have been evidenced to have a detrimental impact on women and pregnant people have been from anti-abortion protestors at abortion service sites;

(https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2019/2019-11-18_l-rs-spotlight-the-impact-of-anti-abortion-protest-on-women-accessing-services-a-rapid-evidence-assessment_en.pdf). The tactics they have deployed involve targeting women attending the clinics, passing out distressing information in leaflets and pictures and displaying such messages on banners. The most concerning behaviour which we have seen evidence of is these anti-abortion protestors targeting women in a bid to challenge them or deter them from having an abortion or receiving healthcare (https://www.msichoices.org.uk/media/3345/marie-stopes-uk-position-paper-the-need-for-safe-access-zones-mar-2020.pdf).

We are not aware of any pro-choice activity which has had a detrimental impact on survivors of gender-based violence, or which has acted as a barrier to and prevented access to healthcare. However, pro-choice activity outside an abortion health care facility could also be inappropriate and have potential to cause harm, if they have the effect of stigmatising access to abortion services and traumatising people seeking to access those services.

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

Please explain the reasons for your response.

See answer to question 13, the same protections should apply for those providing abortion services.

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

Please explain the reasons for your response.

See answer to question 13

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))

All of the above

Women and pregnant persons attending abortion services can feel vulnerable, stigmatised and fearful for the violation of their privacy. Many rape and sexual violence survivors experience psychological disorders such as PTSD, depression and eating/sleeping disorders; all of which can make it difficult for women to realise their pregnancy and seek medical help (National Resource Centre on Violence Against Women (2011) *The psychological consequences of sexual trauma*). The SWRC feels that this deterrence of users seeking medical help is only perpetuated by allowing all types of anti-abortion activity to take place outside of abortion clinics, as this further prevents women from seeking the help they need.

Testimonies from those affected by anti-abortion protesters show that service users can find invasive behaviour from anti-abortion groups outside service providers extremely distressing- and it can often re-ignite past trauma. "*Even a solitary protester simply praying, or staring can be intimidating, especially to those with mental health issues or where this may trigger memories of past abuse or trauma*"(https://bills.parliament.uk/Publications/46828/Documents/1962).

In the case of *Clubb v Edwards* it was stated that "*[s]ilent but reproachful observance of persons accessing a clinic for the purpose of terminating a pregnancy may be as effective, as a means of deterring them from doing so, as more boisterous demonstrations*"

It is submitted that all of these activities have potential to have detrimental impact to those accessing clinics. Banning all types of anti-abortion activity within the safe access zones, therefore ensures that women and pregnant people accessing abortion services can do so in a way that ensures their safety and human rights.

In the SWRC's view, based on our legal analysis detailed in our answer to question 9, this is a proportionate restriction of the rights of anti-abortion groups, as they are free to exercise their right out with these zones.

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)?

We submit that any punishment for the breach of the safe access zone should be sufficient to act as an effective deterrent to committing such a criminal offence.

In our view, there should be a sufficient punishment to act as a deterrent to committing an offence of breaching a safe access zone and the proposed punishments are proportionate.

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

Aim: "No-one should be intimidated or harassed for exercising their bodily autonomy or their right to seek the healthcare they want or need."

No

Please elaborate on your response if you'd like to:

The Bills aim to introduce safe access zones is seen as an effective way to eliminate the intimidation and harassment women and pregnant people experience when exercising their bodily autonomy and reproductive rights. The SWRC considers the Bill necessary as one means of safeguarding access to these healthcare rights for women and pregnant people.

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

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 stated previously, the introduction of safe access zones would positively impact women and pregnant people allowing them to access healthcare free from harassment.

As discussed above, it is accepted that this new law will impact on the Articles 9, 10 and 11 rights of those who wish to protest near hospital and clinics where abortion services are delivered, whether that be due to religious or other beliefs. However, we submit this is a reasonable interference in order to achieve the legitimate aim of protecting women in this way. The introduction of safe access zones is necessary in order to facilitate safe access to health services for those seeking these services (protecting their Article 8 rights). Legislating on the issues would ensure that any restrictions on the human rights of those wishing to protest is "prescribed by law", an essential part of accountability.

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

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?

SWRC supports women victim/ survivors of gender-based violence, sexual violence, domestic and economic abuse. Barriers to accessing healthcare facilities will have detrimental and disproportionate impact on survivors and will put them at an even greater disadvantage. Steps towards removing these barriers are needed if we wish to create a strong, healthy and just society for all.

A just society is one in which everyone is free to exercise their bodily autonomy free from harassment and intimidation, as protected by Article 8 ECHR, and where any restrictions on rights are necessary, proportionate and prescribed by law.

Limiting access to abortion services can have the effect of introducing further barriers justice, education, employment and financial independence for women.