



UNISON Scotland response: Abortion Services (Safe Access Zones) Scotland Bill

December 2023

Introduction

UNISON is Scotland's largest trade union with more than 150,000 members across the public, private and voluntary sectors. We welcome the opportunity to respond to the Health, Social Care and Sport Committee's call for views¹ on Gillian Mackay MSP's Abortion Services (Safe Access Zones) Scotland Bill².

Overview

We welcome this Bill and the Scottish Government support for it.

UNISON Scotland strongly backed a motion at the STUC Congress in Dundee in April 2023 which supported the Bill's aims in calling for buffer zones outside health care centres providing abortion services.

It is entirely wrong that women should be subject to criticism, distress, intimidation, harassment and abuse, which can come from some of the kinds of anti-abortion protests held as women seek healthcare which is their right. Health care workers providing this essential service in clinics, hospitals and other facilities are also impacted and often harassed during such protests.

As UNISON's Brenda Aitchison said in the STUC debate³: "All women should be free from harassment and intimidation whilst accessing health services..."

"Our bodies, our choices, free from harassment."

UNISON's National Women's Conference also debated a motion on buffer zones, which Scottish delegates amended to reflect what is going on in Scotland and which was passed unanimously. And National Delegate Conference in June 2023 reaffirmed the union's commitment to campaign for the decriminalisation of abortion⁴.

¹ <https://yourviews.parliament.scot/health/abortion-services-saz-bill/#factbank-8fcc2e3a4b7c4c98b18a186570339b5b>

² <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/abortion-services-safe-access-zones-scotland-bill/introduced/bill-as-introduced.pdf>

³ <https://unison-scotland.org/stuc-2023-protecting-womens-right-to-choose/>

⁴ <https://www.unison.org.uk/news/article/2023/06/conference-restates-unisons-campaign-for-abortion-rights/>

It is crucial of course to trade unionists that the legislation enables safe access zones while specifically excluding any restrictions from being used to limit trade union activities, including protests, pickets and wider action in support of industrial disputes in healthcare settings. We welcome the provision in the Bill for this purpose on pickets, but would seek reassurance other activity is also protected, if need be by an amendment.

UNISON Scotland Treasurer Davena Rankin wrote in 2021⁵ about the importance of defending the right of women to control their bodies. UNISON sees abortion as healthcare and supports a woman's fundamental right to choose.

Davena's article on the Abortion Rights website affirmed: "Abortion and the right to choose has and always will be both a trade union issue and a class issue. It has always been easier for the middle and upper classes to access birth control and, when necessary, abortion services. For working class women, who may be on precarious contracts, being unavailable for work can have substantial financial consequences for them."

Our responses to the specific questions in the detailed call for evidence are detailed below.

Call for Views Questions

Do you agree with the purpose of the Bill?

Completely. It is now long overdue to create safe access zones around all places providing abortion services in Scotland, primarily to support and protect women accessing healthcare, but also to protect NHS and other staff.

We note that the Policy Memorandum⁶ states:

"Whilst legalised abortion has always provoked strong and often polarised debate, in recent years, there has been an increase in activity occurring directly outside premises at which abortions services are provided. In the last five years, documented anti-abortion activity has occurred outside Queen Elizabeth University Hospital (QEUH), Aberdeen Maternity Hospital, Sandyford Clinic, Chalmers Clinic, Royal Infirmary of Edinburgh and Glasgow Royal Infirmary. This activity has included silent vigils, displays of images of foetuses, signs with language such as "murderer", and displays of religious iconography. The scale and frequency of this

⁵ <https://abortionrights.org.uk/abortion-rights-is-a-trade-union-issue/>

⁶ <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/abortion-services-safe-access-zones-scotland-bill/introduced/policy-memorandum-accessible.pdf>

activity varies from small groups to large vigils, and varies in intensity and frequency throughout the year. Testimonies of those accessing and providing abortion services provide clear evidence that this activity can be distressing; for some, it compounds what is already a difficult and painful experience.”

We support all those who have campaigned to protect women from such traumatising experiences when they are so vulnerable. We applaud Gillian Mackay for bringing forward this much needed legislation and the Scottish Government for supporting it. We urge all MSPs to support the principles of the Bill.

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

While we largely agree that this distance has been chosen following research, and is likely to be sufficient, it is sensible that there are provisions to ensure that there would be the opportunity if required, for the operators of protected premises to “apply for an extension of a safe access zone if they consider that the existing zone does not adequately protect those accessing, providing or facilitating abortion services from conduct prohibited by the Bill.”

But see our answer below re changing this.

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

We are satisfied that this is a suitable way to provide for ‘future proofing’ if needed, as part of the purposes of the Bill. However, re Section 8, we would support an amendment detailing a range of points which should be considered before Scottish Ministers decide to reduce the area. We would not want to see a situation where Scottish Ministers who oppose these zones could reduce the area in ways that go against and undermine the purpose of the Bill.

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

Yes, but we see the provisions for extending this if required as essential - to help protect women from protesters moving to target other premises.

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

Yes.

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

Yes, and we welcome the provisions which will ensure, as described in the Policy Memorandum, “that there does not need to be a demonstrable effect on a specific person; the offence is intended to capture all activity that has the intention of

achieving any of the effects above, or is reckless as to whether it has such effects. This is an essential part of the provisions to counter some of the drawbacks to existing law, which require those accessing services to make police reports, or recount deeply personal experiences, before action can be taken.”

It is also welcome that due recognition has been given to the fact that while many protesters do not believe that their activities are harmful and some of the activities described “do not obviously appear to cause a level of harm that should result in a criminal offence”, the Scottish Government believes it has struck the right balance, quoting (in the Policy Memorandum) Dr Lowe and Dr Hayes⁷:

“When accessing abortion, women’s ability to exercise any control over who is watching, or to avoid encounters, is removed; they can do little but walk through or past activists, who (through positioning and address) are able to control the space of the encounter...The relationship between surveillance, privacy and fear explains why women experience encounters with anti-abortion activists as harassment, even when they are not being approached aggressively.”

The Scottish Government also quotes the Supreme Court judgment on the Reference by the Attorney General for Northern Ireland in relation to the then Bill for the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023, in which the Supreme Court notes⁸:

“...women wishing to access reproductive health facilities, and the staff who work there, are a captive audience for protesters who wait outside the premises, so that the women and staff are compelled to listen to speech or witness silent prayer which is unwanted, unwelcome and intrusive.”

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?

We believe it strikes the correct balance. We welcome the fact that a range of organisations correctly see the Bill as supporting human rights. These are organisations, like ours, which stand up for human rights in general and of course support rights to protest and to freedom of expression. They include the Scottish Human Rights Commission. The policy memorandum also refers to successful similar legislation in other countries. We note that the Irish Council for Civil Liberties’ ‘Rights Based Analysis of Safe Access Zones’, said⁹:

“ICCL supports safe zones because we believe this is an example of where one right – the right to protest- should be limited to protect the rights of others...”

“In the context of access to abortion services, relevant rights that must be protected include privacy, dignity, bodily integrity, including mental and physical health,

⁷ “Anti-Abortion Clinic Activism, Civil Inattention and the Problem of Gendered Harassment” (2019) 53 Sociology 330

⁸ <https://www.supremecourt.uk/cases/docs/uksc-2022-0077-judgment.pdf>

⁹ <https://www.iccl.ie/wp-content/uploads/2020/01/ICCL-Investigation-Abortion-Safe-Zones.pdf>

access to healthcare, and the right of medical providers to access their place of work safely. ICCL firmly supports the right of everybody to peaceful protest, including the rights of anti-choice activists. However, we support legislating for safe zones as a form of narrow, exceptional and necessary limit on this right, which must be done in accordance with relevant human rights law.”

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

No.

Do you have any further comments about the Bill?

As mentioned in our overview, re the provision to ensure trade union activity can continue within the safe access zones, we would want reassurance and possibly an amendment if needed, to ensure that the welcome restrictions around anti-abortion protests cannot be extended to include wider protests linked to industrial action by trade unions in pursuit of legitimate industrial disputes in health care settings. In other words, that a range of activities as well as pickets are still allowed.

We believe that safe access zones should be signposted, with clear signage, so that the public is aware, helping to make it clear the kind of protests covered in the Bill are not allowed. This would also help reassure patients that they are in a safe access zone. This could be done through regulations rather than an amendment to the Bill.

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