

Safe Access (Abortion Services) Scotland Bill Consultation

Date: 11 August 2022

The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is the National Human Rights Institution for Scotland and is independent of the Scottish Government and Parliament in the exercise of its functions. The Commission has a general duty to promote human rights and a series of specific powers to protect human rights for everyone in Scotland.

www.scottishhumanrights.com

Table of Contents

1. Executive Summary	3
2. Introduction and background	5
3. Relevant Human Rights Provisions and Considerations	7
4. Human rights standards and protest	10
5. Access to abortion and human rights	18
6. Rights of abortion providers - access to safe and dignified workplaces.....	24
7. Balancing the rights of demonstrators with service users and providers.....	25
8. Application of necessity and proportionality to proposed safe access zones	28
9. Conclusion.....	35
Annex: Comments on the Questions Asked in the Consultation	37

1. Executive Summary

- 1.1. The Scottish Human Rights Commission ('the Commission') welcomes the opportunity to contribute our human rights analysis to the ongoing discussion on appropriate protections for women and people with the capacity to become pregnant¹ who seek legal abortion, and the expression of beliefs opposing abortion in the vicinity of premises where termination of pregnancy care is provided.
- 1.2. The Commission recognises abortion as a vital aspect of women's political, social and economic rights, and of gender equality. While human rights law is an evolving discipline that has not yet fully embraced a standalone right to abortion, multiple sources of international and domestic law have confirmed growing consensus that where abortion is permitted, interference in access can amount to a violation of human rights including health, privacy and in some cases the protection against torture and degrading treatment.
- 1.3. The Commission also reaffirms that rights connected to protest are fundamental – albeit not absolute – in a democratic society. Restrictions on the rights of assembly and free expression of views and beliefs should be carefully and narrowly constituted.
- 1.4. In circumstances where there is tension between the state's ability to respect, protect and fulfil the rights of different groups,

¹ The Commission recognises that people who do not identify as women can become pregnant and may require termination of pregnancy services for a multitude of reasons. We also recognise that inclusive and accurate terminology in this space is contested and evolving. In this submission we use the terms 'people [with the capacity for pregnancy]' and also 'women', explicitly recognising that restrictions on abortion are rooted in gender inequality. Trans men and non-binary gender people attempting to access abortion will also have specific needs in relation to meeting their privacy and dignity considerations regarding their trans status.

there is a standard and well understood mechanism for the law to balance human rights.

- 1.5. Any measure that seeks to interfere with individual human rights must demonstrate that it is (1) necessary to achieve a legitimate aim, and (2) that the interference with rights is proportionate, the least restrictive means needed to achieve the aim.
- 1.6. It is not the case that human rights law prevents limits on the ability to protest. However, the rights exercised by protestors are fundamental to democratic society and any restrictions must be narrowly justified and well-evidenced to meet the requirement of proportionality.
- 1.7. The Commission therefore supports the general proposition in favour of protection for individual access to abortion and the rights of those involved in the provision of healthcare. This could include restrictions on the location of protests that target individuals, provided that the need and negative impact of inaction is well-evidenced. The consultation document references some of the compelling evidence of the impact of protests on people using such services however this evidence needs to be enhanced and systematically recorded to support a human rights analysis in favour of safe access zones in Scotland.
- 1.8. This response to proposals for a Bill to introduce 'safe access zones' around premises where abortion is provided¹ includes a summary of the human rights considerations relevant to further defining the scope of proposed legislation. In an appendix, we then provide some comments on the specific questions asked in the consultation paper where there are additional or specific human rights considerations.

2. Introduction and background

- 2.1. In recent years, anti-abortion protests outside clinics and hospitals where termination of pregnancy services are provided have attracted significant attention.² Some of these demonstrations are regular, with a small number of individuals present outside some facilities daily or weekly. At other times, coordinated daily demonstrations attract a number of demonstrators to facilities across Scotland as well as other parts of the UK and the rest of the world.³ The precise scale and frequency of demonstrations in Scotland varies from facility to facility and has not yet been systematically recorded.
- 2.2. It is clear that these demonstrations cite opposition to abortion as a procedure beyond opposition to the legal framework for access. Regulation of abortion is devolved to Scotland following the Scotland Act 2016, however access to legal abortion continues to be governed by the Abortion Act 1967. The intentional ending of a pregnancy continues to be a criminal offence under Scots common law unless it falls within one of the permitted exceptions in the Abortion Act, as determined by two physicians.
- 2.3. This framework continues to be the subject of considerable political and moral debate. However, the demonstrations in question go beyond expressing opposition to this framework or calling for reform of either the common law or Abortion Act. Both the location and messages utilised in these particular demonstrations indicate the target of the message at individuals utilising and / or providing termination of pregnancy services without distinction as to reason.
- 2.4. The personal impacts of these demonstrations for individuals seeking and providing the care has been widely reported across a range of media. A wide range of behaviours at these demonstrations ranging from silent prayer to demonstration of messages, filming and photography and activities that may amount to verbal and physical harassment of individuals have

been displayed. All activity shares the primary aim of persuading individuals against accessing legally provided care in NHS and private facilities. This activity may be experienced as coercive by individuals.

- 2.5. The Scottish Government, COSLA, local authorities and health boards have all indicated growing concern about the location and targeting of individuals through these demonstrations. National policy as set out in the Women's Health Plan calls on:
- 2.6. *"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."*⁴
- 2.7. Despite this shared concern, there has remained significant disagreement on the best way to ensure the welfare of women and pregnant people, their partners / supporters and individuals providing abortion services – as well as other individuals seeking other forms of healthcare at facilities where termination of pregnancy is provided. While the impact of demonstrations on service users is a widely held concern, it is also beyond doubt that demonstrators' rights during protest must be protected.
- 2.8. The human rights engaged by a proposal to limit protest activities in particular settings are set out further in this response.
- 2.9. **Any measure that seeks to interfere with individual human rights must demonstrate that it is (1) necessary to achieve a legitimate aim, and (2) that the interference with individual rights is proportionate, including the least restrictive means needed to achieve the aim.**
- 2.10. This is a common and well understood test where rights of different groups must be balanced against one another or wider pressing social needs. The test must be satisfied in relation to the overall scheme and in each context it is applied.

2.11. This response to the consultation paper, published by Gillian Mackay MSP, sits within this context set out above. While we recognise the shared concerns and desire for a solution to be implemented, it is our strongly held view that the Scottish Government – who will ultimately be liable to defend any restriction in a legal challenge – must be able to demonstrate that the measure pursued satisfies the legal test, otherwise it will breach human rights laws and as a result be beyond the competence of (*ultra vires*) the Parliament and Government and other public bodies charged with implementing it.

2.12. We therefore recommend that before legislation is drafted and ultimately approved, Parliament satisfies itself that the legislation meets the legal test for limiting human rights of some individuals. A human rights based approach may support the Scottish Government and Parliamentarians to demonstrate their obligations have been met.

2.13. This response sets out the relevant human rights standards that must be considered in this proportionality assessment and further considers how limitations should be considered in developing further policy proposals around access to abortion and demonstrations.

3. Relevant Human Rights Provisions and Considerations

3.1. Under international law, states have an obligation to protect, respect and fulfil all human rights standards to which they have acceded.

3.2. A human rights based approach can help to ensure that human rights are at the centre of policy and its practical application. The PANEL principles can be a useful framework for this - Participation, Accountability, Non-Discrimination, Equality, Empowerment and Legality.⁵ Participatory processes including engagement with representative organisations are critical to ensure that the concerns of those whose human rights are

engaged by an issue can be comprehensively analysed. Formal consultation is just one way of doing so, however participation must be meaningful, transparent and responded to with clear reasoning in developing any measure that may positively or negatively impact rights.

- 3.3. Sufficient time for all stakeholders to meaningfully engage with concerns will also be necessary to ensure that the legal test associated with limits on the exercise of some rights is fulfilled.
- 3.4. Accountability is an equally important aspect of a human rights-based approach, requiring opportunities for challenge and redress of law and policy at all levels from development to implementation and application to specific facts.
- 3.5. It is accepted in the consultation paper that a number of rights protected by a range of international conventions to which the UK is a party are engaged by the consultation's proposals. In respect of the European Convention on Human Rights (the ECHR / the Convention), the following are primary considerations:
 - Freedom from torture and inhuman or degrading treatment or punishment (Article 3)
 - The right to respect for family and private life (Article 8)
 - Freedom of thought, conscience and religion (Article 9)
 - Freedom of expression (Article 10)
 - Freedom of peaceful assembly (Article 11)

Scottish authorities, including the Scottish Parliament and Scottish Government, must ensure that all legislation, policy and acts are fully compliant with the ECHR as per the Scotland Act 1998⁶ and s.6 of Human Rights Act 1998.⁷ In addition, the Scottish Government has committed to furthering domestic accountability for a number of international human rights treaties which are relevant to both protest and access to abortion services:

- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural (ICESCR)
- The Convention on the Elimination of all Discrimination Against Women (CEDAW)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

3.6. Existing ECtHR jurisprudence and UN treaty body interpretations allows us to indicate that freedom of expression does not bestow unfettered freedom as to the forum of the expression.⁸ In *Appleby v UK*, the Court stated that it was “not convinced [Article 10] created a right of access to any particular property, including public property, unless excluding protestors from that space would prevent the effective exercise of the right or destroy the essence of the right.”

3.7. Recent domestic case law also offers some guidance on how human rights should be applied to some specific measures aimed at anti-abortion protest at facilities.

3.8. In *Dulgheriu v Ealing Borough Council*⁹ The Court of Appeal in England and Wales considered at length Ealing Council’s use of a Public Spaces Protection Order (PSPO) pursuant to the Anti-social Behaviour, Crime and Policing Act 2014 s.59.¹⁰ The High Court and Court of Appeal relied on case law from the ECtHR in holding that abortion was an “intensely personal and sensitive matter” within the ambit of Article 8.¹¹ Protestors engaged the rights of those visiting clinics in terms of their decision to have an abortion as well as a reasonable expectation of privacy exceeding that which the users had conceded in accessing and leaving via public highways.¹²

3.9. While the protestors Article 9 rights were also engaged and significant, they Court found that this did not outweigh the Article 8 rights of clinic users. The requirement to use the least

restrictive means available in restricting Articles 10 and 11 were, in the particular case, met. The case is now the subject of a pending application before the ECtHR. Importantly, the power to make PSPOs does not extend to Scotland¹³ and there are no direct equivalent powers. This means that while a decision in Ealing may be instructive in the process assessment involved in balancing rights of all stakeholders, it does not provide us with directly applicable solution in terms of the permitted scope of any Scottish legislation.

3.10. Even more recently, in July 2022 the Supreme Court considered the legality of legislation introduced in Northern Ireland to create safe access zones around termination of pregnancy facilities. The legislation – the Abortion Services (Safe Access Zones) (Northern Ireland) Bill - makes provision for the establishment of safe access zones around abortion clinics and other premises which provide sexual and reproductive health services, in order to protect the people who use and work in those premises. It is a criminal offence to carry out certain behaviours set out in clause 5 of the Bill in a safe access zone.

3.11. The outcome of this case remains unknown at the time of writing however may offer further guidance on the scope of restrictions created by national legislation. What is clear from the available case law is that there is no priority between articles 8, 9, 10 and 11, and “*where there is a tension between their values, what is necessary is **an intense focus on the comparative importance of the rights being claimed in the individual case***”¹⁴ [our emphasis].

4. Human rights standards and protest

4.1. We set out below some of the relevant human rights considerations applicable to protest. This is a complex area of law and this summary cannot cover every aspect of human rights law associated with demonstrations nor every relevant decision from case law. However, we aim to set out in fairly general

terms the components of the main rights associated with demonstration relevant to proportionally assessment.

- 4.2. Any restriction on the manner and place of protest against abortion represents an interference with protestors' rights to freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10) and the right to freedom of peaceful assembly and to freedom of association with others (Article 11). Each of these rights is capable of restriction if certain conditions are satisfied as set out in paragraph (2) of each Article. Whether a case concerning a restriction on protest is considered under Article 10 or 11 is a decision of the European Court of Human Rights (ECtHR / the Court) based on the facts (subject to the doctrine of *lex specialis derogat legi generali* (a specific law overrides a general law) to assembly as a form of expression)¹⁵ as it is recognised that the two are closely linked.¹⁶
- 4.3. The ECtHR's judgement in *Handyside v UK* makes clear that Article 10 "*constitutes one of the essential foundations for a democratic society, one of the basic conditions for its progress and for the development of every man.*"¹⁷ It extends to "*not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb the state or any sector of the population.*"¹⁸
- 4.4. The Court takes a broad view on what constitutes an interference with Article 10 and undertakes an analysis of cases as a whole, looking at a range of factors to determine whether the limitation was justified.¹⁹ While freedom of expression is generally content neutral, it can be appropriate to take into account the general character of the views a part of the whole facts.²⁰ There is far more limited scope under Article 10 for restricting political expressions or debate in matters of public interest than other forms of expression.²¹
- 4.5. Both the content and manner of the expression are protected by Article 10. In *Women on Waves and others v.*

*Portugal*²², the Court established that campaigners – in this case pro-abortion campaigners – have a right to choose the most effective means to convey their message. Where ideas are shocking, disturbing or call into question the established order, the means of challenge can be of such importance that to restrict them may interfere with the subject of the right. The Court made clear that states have an obligation not to interfere with the right to express politically sensitive views in a place "that is by its nature an open public space."

4.6. However in the case of *Mouvement Raelien v Switzerland*²³ the access to campaign platforms in a public square could be restricted, especially in relation to an advertising or information campaign.²⁴ The Court reiterated that it was primarily for the states – "which are closer to the realities of their country" – to undertake the appropriate analysis of the necessity of measures limiting expression, and that only "serious reasons" would justify the court supplementing its own analysis under Article 10(2) with that of the state legislature and judiciary, for example, a failure to properly apply the legal test required. In this case, the facts as a whole, including the content of the posters banned from the public square, the availability of other campaign measures and the potential audience were all factors that justified the decision to apply the restriction. Depending on other factors, the Court will look at whether and what alternative means of expression were available in assessing whether a restriction amounts to a violation.²⁵

4.7. In the case of *Karacsony and others v Hungary*, the Court emphasised this distinction between "the content of expression" within a site of protest – in this case, the Hungarian parliament - where there could be little interference, from the "means of expression" ("time, place and manner") which allowed a much greater margin of appreciation. However regulation of process requirement cannot be wielded to restrict minority views and accessible administrative and ultimately judicial safeguards must exist.

4.8. It is clear from the Court's approach to Article 10 that states can adopt general measures affecting free speech even if this may result in individual hard cases.²⁶ In *Animal Defenders v UK*²⁷, the Court held that determining whether a general measure limiting Article 10 is proportionate involves undertaking an analysis of the quality of the domestic legislative process and judicial oversight:

*"The prohibition was therefore the culmination of an exceptional examination by parliamentary bodies of the cultural, political and legal aspects of the prohibition as part of the broader regulatory system governing broadcasted public interest expression in the United Kingdom and all bodies found the prohibition to have been a necessary interference with Article 10 rights."*²⁸

4.9. Further case law concerning Article 10 has demonstrated that there is closer scrutiny of a measure that prospectively limits an act of expression because of the risk of abuse for political purposes and the harm to society in not receiving certain information.²⁹ The rules that set out to the public the scope of any banned activity must be clearly set out in law and subject to a strict regularity framework with effective means to challenge any possibility of abuse.³⁰

4.10. The Court has attempted to set out the procedural obligations that derive from Article 10. States should, whenever limiting forms of speech, take into account: the geography of the material, their content, the general context, sensitive data, and the subject's own behaviours in terms of promotion and whether the impact of the speech will affect third parties, including inciting aggression or violence. In a series of cases concerning anti-abortion protest activities surrounding a clinic that provided abortion care, the Court placed significant weight on the fact that the applicant had not been prevented from criticising the doctor in general nor the practice of abortion in Germany.³¹

4.11. Assessing the legality of any restriction also includes an analysis of the severity of the penalty as part of the scope of the

impugned restriction.³² Administrative and criminal sanctions are closely scrutinised for necessity and proportionality due to concerns that encountering the prospect of harsh sanctions will lead to a chilling effect on expression.

- 4.12. In the case of the demonstrations taking place at termination of pregnancy facilities in Scotland, the nature of the speech is a factor separate to that of means of expression that forms part of the full analysis. That the location and messages are addressed to individuals who have already planned to access termination of pregnancy care and those whose job it is to provide this care as opposed to the general public or political decision-makers is a relevant factor.
- 4.13. The intended audience has been considered in comparable decisions such as the High Court of Australia, which stated that anti-abortion protest in safe zones “involve an attack upon the privacy and dignity of other people as part of the sending of the activists' message”.³³ In Canada, a challenge to buffer zones at abortion providers in British Columbia was unsuccessfully challenged, with the Court highlighting the fact that audience was unable to avoid the message if they chose.³⁴ The ECtHR has applied similar reasoning to cases involving Article 10 where a ‘captured audience’, especially one vulnerable due to their specific identity, was an important factor in determining the proportionality of a measure.³⁵
- 4.14. Although expression is subject to broad protection, the Court has also made clear Article 10 protection does not extend to hate speech.³⁶ Determining when ‘shocking or disturbing’ expression crosses into the territory of hate speech is complex.³⁷ The Court has reasoned that incitement to violence is just one factor in assessing whether a restriction on speech was justified.³⁸ Ongoing political discussions about potentially criminalising some forms of misogynistic expression in Scotland should be borne in mind as the scope of any restrictions is developed.³⁹

- 4.15. The freedom of association and peaceful assembly protected by Article 11 covers broad range of activities, including but not limited right to protest, and includes positive obligations on the state to facilitate secure conditions for exercise. Where the purpose of the assembly is to share ideas, Article 11 must be looked at as closely linked to Article 10.⁴⁰ It is not sufficient for the state to simply refuse to interfere in allowing assemblies to take place, but protecting and fulfilling the rights inherent in Article 11 – including the rights of campaign groups with aims contrary to the state or majority - sometimes requires positive measures to be taken by state authorities, even where the risk of restriction comes from other individuals.⁴¹ It is also clear that an assembly does not stop being peaceful simply because it is considered likely to or does in fact provoke a violent response in others.
- 4.16. As with freedom of expression, it is possible to limit the right of free assembly in accordance with the provisions of Article 11(2) – where the interference is “*prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.*”
- 4.17. Subject to the permitted limitations, Article 11 includes the right to choose the time, place and manner of conduct of the assembly.⁴² The specific location of a protest is sometimes important to the political goals of the demonstrators, however it may be possible for the state to limit all demonstrations relating to a sensitive subject in a particular place. In its decision in *Milan Rai, Almond and Negotiate Now v UK*⁴³, the ECtHR found that a general prohibition on protest relating to Northern Ireland in Trafalgar Square was not a violation of Article 11 because the restriction was implemented with sufficient clarity to guard against arbitrariness and that the subject of the protest was of such a nature to justify the restriction.

- 4.18. In *Milan Rai, Almond and Negotiate Now*, it was extremely important that a proposed alternative venue was accessible for demonstrators that meets their objectives.⁴⁴ A blanket ban on protest of a specific type or in a specific place will be closely scrutinised and cannot be justified by the views and beliefs of the majority. The Court has been clear that protection of minority views is part of the Convention's aims and their expression or demonstration is not conditional on acceptance by the majority.⁴⁵
- 4.19. Freedom of religion and belief protected by Article 9 of the Convention is also engaged by any consideration of demonstrations at termination of pregnancy providers. While the right to hold an opinion such as the opposition to abortion is absolute,⁴⁶ the manifestation of that religion is capable of limitation on similar grounds to Article 8, 10 and 11, as per Article 9(2).
- 4.20. The European Commission of Human Rights (EComHR)⁴⁷ has declared that a suspended sentence of a fine for several protestors opposing abortion who entered a clinic and began praying was within the scope of Article 9 the interference complained of had been clearly justified in the light of Article 9 § 2.⁴⁸ In the similar case of *Van den Dungen v The Netherlands* the applicant argued a breach of his Article 9 and 10 rights due to an injunction prohibiting him from being within 250 meters of an abortion clinic where he would regularly demonstrate to attempt to dissuade individuals from an abortion. The Commission on Human Rights held that "*the applicant's activities were primarily aimed at persuading women not to have an abortion. The Commission considers that the activities at issue do not constitute the expression of a belief within the meaning of Article 9 para. 1 (Art. 9-1) of the Convention.*"⁴⁹
- 4.21. As per Article 17 of the ECHR, the rights set out in the Convention cannot be relied upon to undermine the rights of others.⁵⁰ While there is no explicit right to abortion in Convention there may be specific examples where a related right is so undermined that absolute freedom of expression cannot be

justified. Anything that impedes access to abortion in such circumstances might not be considered protected protest. Although this is highly fact specific, it might include deliberate misinformation campaigns, physical violence, or personalised harassment amounting to threat.

4.22. Beyond the ECHR, freedom of expression, of thought, conscious and belief and of assembly are each protected in a number of international and regional treaties, and a host of soft law instruments. In particular, ICCPR Articles 18, 19 and 21 are similarly constituted to the ECHR in that they allow for some limitation where prescribed by law and necessary for specified reasons including the rights and freedoms of others.

4.23. Article 21 of the ICCPR applies to a similarly broad range of peaceful assemblies. The Human Rights Committee (HRCmt) in General Comment 37 makes clear that the onus is on the authorities to justify any restrictions, and that authorities must be able to demonstrate “that any restrictions meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions”.⁵¹ They further make clear that “*The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.*”

4.24. The HRCmt offer further guidance that “*Any restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly concerned. Blanket restrictions on peaceful assemblies are presumptively disproportionate*”. Where restrictions are imposed for the protection of “the rights and freedoms of others” this must be to an extent beyond disruption, amounting to a “disproportionate burden” which is justified in detail.⁵²

4.25. In general, the HRCmt adopts a similar analysis to the ECtHR on assembly, however additionally indicates a stronger preference for content neutrality in any restrictions. In General Comment 37, the Committee states “*Central to the realization of the right is the requirement that any restrictions, in principle, be content neutral, and thus not be related to the message conveyed by the assembly. A contrary approach defeats the very purpose of peaceful assemblies as a potential tool of political and social participation that allows people to advance ideas and establish the extent of the support that they enjoy.*”⁵³

4.26. The Committee’s General Comment 34 on Freedom of Opinion and Expression also notes the rights and freedoms of others when limiting expression may relate to a community or individuals and that proportionality applies to the “*form of expression at issue as well as the means of its dissemination.*”⁵⁴ As the doctrine of margin of appreciation is a ECtHR tool the HRCmt makes clear that it reserves to itself the final decision on whether an interference amounts to a violation of the right, but that the State party carries the onus to “*demonstrate in specific fashion the precise nature of the threat that has caused it to restrict freedom of expression.*”⁵⁵

5. Access to abortion and human rights

5.1. The Commission recognises the vital role of abortion services and reproductive rights for the realisation of human rights, quality of health and women’s equality. The World Health Organisation (WHO) is clear that abortion services should be provided at the most local level possible and without stigma: “*As with any other health services, abortion care needs to respect the decisions and needs of women and girls, ensuring that they are treated with dignity and without stigma or judgement.*”⁵⁶

5.2. The European Convention does not recognise a human right to abortion in all circumstances, either within the text or within the Court’s jurisprudence. Access to abortion has been understood

as falling within the ambit of “private life” protected by Article 8(1).⁵⁷

5.3. Article 8 is not absolute and as with Articles 9, 10 and 11, paragraph (2) sets out that limitations as prescribed by law and necessary in a democratic society are permissible provided they fulfil one of the legitimate aims of the “interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

5.4. Most abortion in Scotland is now carried out under early medical abortion at home (EMAH) procedures, reducing but in no way eliminating the need (for personal and medical reasons) to attend clinic.⁵⁸ As a result, those attending clinic for post-12 week abortion are proportionately more likely than the average to be using it for complex medical reasons such as risk to the life and health of the mother or foetal abnormality or because they have not been able to access EMAH safely. We further note that the fact that service users have no choice but to access medical treatment at facilities is directly relevant, as noted at 4.13 above.⁵⁹

5.5. While a range of behaviours have been reported at demonstrations in the vicinity of termination of pregnancy service, the Commission highlights evidence that even silent presence of protesters can have serious physical and mental impact on women and pregnant people. Providers have reported that some patients have deferred treatment during periods of planned sustained demonstration to avoid protestors, increasing physical and psychological impacts and risks.⁶⁰ The Court of Appeal explicitly noted in *Dulgheriu* that:

“...service users visiting the Centre are women in the early stages of pregnancy. Some are children. Some are victims of rape. Some are carrying foetuses with abnormalities, even fatal abnormalities. Some may not have told friends or family. Their

*very attendance at the Centre is a statement about highly personal and intimate matters. They may be in physical pain and suffering acute psychological and emotional issues both when attending and leaving the Centre. There is no alternative way of arriving at and leaving the Centre except across a public space, which they would naturally wish to cross as inconspicuously as possible.*⁶¹

- 5.6. Privacy concerns are likely to be even more acute for transgender and non-binary people, in addition to women living in rural areas and women of colour, young women and victim-survivors of gender-based violence who all may face particular intersectional forms of stigma and psychological pressure that undermine their privacy rights under Article 8.
- 5.7. Termination of pregnancy in Scotland is mostly delivered medically (99%) and from 2020 the majority of these (53%) have been carried out at home.⁶² For women and pregnant people who attend clinic, services are comparatively concentrated at a limited number of sites, predominantly hospitals and community NHS premises.⁶³ The impacts are therefore not equally geographically distributed and site specific considerations might emerge.
- 5.8. Case law at the ECtHR concerning abortion is relatively minimal. The European Commission on Human Rights gave a unanimous decision in 1977 that not every decision relating to abortion was an issue of a woman's right to respect for her private life.⁶⁴ While the scope of Article 8 has proven more flexible over time, cases concerning abortion are still relatively rare. In *A, B and C v Ireland* the ECtHR described "private life" as a broad concept which encompasses the right to personal autonomy and personal development, including decisions both to have and not to have a child,⁶⁵ although the Court stated that Article 8 cannot be interpreted as conferring a right to abortion. However the Court went on to note that where abortion was sought for reasons of physical health or wellbeing it does fall within the scope of Article 8.

- 5.9. The ECtHR grants a broad margin of appreciation to regulation of abortion, given ethical sensitivities involved.⁶⁶ This approach is generally an attempt to recognise a lack of consensus in Europe on a particular issue. However given the vast majority of state parties to the convention do provide some form of access to legal abortion, the appropriateness of the extremely broad MoA has been questioned.⁶⁷
- 5.10. While the Court has been reticent to look at abortion from a substantive rights perspective, the Court has been more comfortable engaging in a procedural analysis under Article 8. In *Tysi c v. Poland* the Court indicated that Article 8 requires a State to refrain from interference with a woman's right to choose abortion and to ensure that an effective and accessible procedure is in place so that a pregnant woman can realistically exercise all of the options as legislated for by the state.⁶⁸ Once abortion is permitted in all or some circumstances, the state has a positive obligation to ensure that it is practically accessible.
- 5.11. A series of cases also concerning Poland have raised the question of whether denial abortion in some instances amounts to a violation of Article 3. In *Tysi c v. Poland*⁶⁹ and in *A, B and C* the restrictions were found not to meet the severity threshold of Article 3. In *A, B and C*, the Court reasoned that because Ireland tolerated travel to access abortions abroad and offered the possibility of some support or post-abortion care in the jurisdiction the severity threshold was not met. However in both *R.R. v Poland*⁷⁰ and *P & S v Poland*,⁷¹ the threshold for Article 3 was found to be met. In both these cases the behaviours of the clinicians was a relevant factor in determining that the applicants had been humiliated and subject to degrading treatment.. In *P & S* the authorities had not only failed to protect the applicant but had in fact compounded her treatment, and the applicant was recognised as young and particularly vulnerable.⁷²
- 5.12. If Article 2 and Article 3 rights are engaged in some fact-specific cases, the Court's role in scrutiny will be different to an Article 8 analysis. Article 3 is absolute and in respect of Article 2

a pregnant person's right to life is increasingly subject to clear consensus in Europe, regardless of uncertainty over the rights of a foetus.⁷³ The vast majority of Council of Europe state laws allow for abortion to save the life⁷⁴ and in most cases physical health of the pregnant woman or person.⁷⁵ In both cases it seems likely that the rights of the woman or pregnant person will prevail over a protester's Article 10 and 11 rights if a court is required to balance these rights.

5.13. Although it is open to the Court to consider limits on abortions as engaging gender-based discrimination under Article 14, the Court has not engaged a gendered analysis in its approach thus far.⁷⁶ In *P & S* for example, the Court declared Article 14 (in conjunction with both Articles 3 and 8) as inadmissible without giving reasons. This can be contrasted with cases concerning domestic abuse and gender-based violence, where the ECtHR increasingly looks to gendered analysis through explicit reference to sources of obligations such as CEDAW.⁷⁷ In *A, B and C*, discrimination on the basis of socio-economic status was raised but the Court proceeded to deal with the case solely on the basis of Article 8. While neither has been comprehensibly ruled out, the Court so far appears unwilling to open up this avenue of analysis.

5.14. CEDAW obliges states to adopt a substantive equality approach that demands more than formal *de jure* equality. In this way, Scotland will be required to consider access to rights, including healthcare, through a gender perspective. Under Article 2 of CEDAW, states are required to “condemn discrimination against women in **all its forms**” and “**to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise**” [our emphasis].

5.15. Although the CEDAW Committee has firmly located reproductive rights within the ambit of health, outlining that measures that criminalise healthcare only required by women amount to discrimination within the meaning of the Convention,⁷⁸ recognition of a specific right to abortion has been limited within

the Convention and the ICCPR. However international law has adopted a more overt gender-based perspective than Strasbourg in approaching regulation of women's access to abortion as a harmful form of discrimination. For example, in the CEDAW Committee's Inquiry into Northern Ireland's restrictive abortion laws the Committee found the UK was responsible for:

*“Grave violations of rights under the Convention considering that the State party’s criminal law **compels women** in cases of severe foetal impairment, including [fatal foetal anomaly], and victims of rape or incest **to carry pregnancies to full term**, thereby subjecting them to severe physical and mental anguish, **constituting gender-based violence against women.**” [our emphasis]⁷⁹*

5.16. The Committee further found that Northern Ireland's public policy and socio-cultural context surrounding abortion contributed to discriminatory gender stereotypes on women's role in society. They specifically recommended that the UK Government “Protect women from harassment by anti-abortion protestors by investigating complaints, prosecuting and punishing perpetrators”.⁸⁰ In its 2019 UK Concluding Observations, the Committee repeated its recommendation that the UK should ensure that all women and girls have access to abortion in circumstances where not doing so is likely to cause severe pain and suffering.⁸¹

5.17. The right to health is further protected by Article 25 of the Universal Declaration of Human Rights; ICESCR Article 12; Article 25 of the Convention on the Rights of Persons with Disabilities (UNCRPD); Article 5 of International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), in Articles 11.1 and 12 CEDAW and in Article 24 of the Convention on the Rights of the Child (UNCRC). The European Social Charter to which the UK is party⁸² also covers a right to health, as do a number of soft law materials.

5.18. ICESCR General Comment No. 14 on the Right to the Highest Attainable Standard of Health provides that gender is increasingly understood factor in understanding health.⁸³ General Comment 14 is even more specific, calling on states to integrate a gender perspective to the delivery of healthcare and:

*“The realization of women’s right to health requires the **removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.** It is also important to undertake preventive, promotive and remedial action to **shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.**”* [our emphasis]⁸⁴

5.19. The CESCR has also produced a General Comment specifically on Sexual and Reproductive rights⁸⁵ in which it makes clear the importance of abortion access for women’s access to human rights. The Committee directs states to include in their reports the effect of any laws and practices that may interfere with women’s right to enjoy privacy and take efforts to eliminate those interferences.⁸⁶

5.20. In summary, while the ECHR and other sources of law do not recognise a clear right to abortion, it is clear that when abortion is permitted by the state, Article 8 requires processes to meaningfully access the right. In some fact-specific contexts, access to abortion may be secured within the ambit of Articles 2 and 3. However CEDAW and ICESCR, especially when incorporated, may require Scotland to demonstrate in domestic courts that it has undertaken a gender-sensitive approach to the provision of healthcare. If measures result in a discriminatory impact on women’s right to the highest attainable standard of health, including reproductive healthcare, this may fall within a violation of the state’s obligations.

6. **Rights of abortion providers - access to safe and dignified workplaces**

- 6.1. In addition to representing an interference with women's rights to access healthcare, protests may engage the rights of staff and practitioners. The UN Convention Against Torture and the CEDAW Committee have both stated that the state has a responsibility to protect patients and their doctors from "criminal sanctions or other threats".⁸⁷ "Other threats" in this context are not clearly defined but would seem to include threats of violence and undue administrative sanction.
- 6.2. The right to work is a key aspect of the right to private life protected by Article 8 of the ECHR.⁸⁸ The rights of providers as well as service users has been considered in cases concerning anti-abortion protest. In the *Annen v Germany*⁸⁹ cases concerning various forms of action directed at a particular clinic and its staff, the Court showed an unwillingness to enter into detailed considerations of the risk to medical personnel in providing abortion.⁹⁰ However this case focused predominantly on the reputational risk to the doctors performing terminations of pregnancy rather than their physical and mental safety.
- 6.3. It is clear that at least some individuals and groups associated with protests occurring in Scotland explicitly aim to see workers stop providing abortion as a result of their activities.⁹¹ If workers abandon their post or refuse to carry out a procedure that has a direct impact on the rights of the pregnant woman or person to a procedure they have a legal right to, this would engage the human rights of patients directly.⁹²

7. Balancing the rights of demonstrators with service users and providers

- 7.1. In circumstances where a convention right is engaged – as the consultation paper explicitly recognises is the case in relation to proposed safe access zones – the ECHR includes a common approach assessing to Articles 8, 9, 10 and 11 where limitation of the enjoyment of the right is permitted subject to certain qualifying conditions. The ECtHR has developed a systematic approach to assessing whether the conditions are met that is

echoed in the approach of domestic courts and similar to the approach taken by the HRCmt in respect of the ICCPR.

- 7.2. The ECtHR expresses its role as exercising a “supervisory jurisdiction” where the state authorities demonstrate robust human rights-based decision-making that reflects the approach of the Court. The state must rely on the provisions of the Convention in creating any limitation in law (see also Article 18 ECHR). Exceptions to the rights included in the Convention are interpreted narrowly and strictly exhaustive.⁹³
- 7.3. In each case, any restriction imposed on free exercise of the right must be “in accordance with the law” or “prescribed by law” i.e. there must be a clear legal basis in national law that is accessible to individuals and reasonably foreseeable. The limitation in the specific case must then be shown to be in pursuit of a legitimate aim.
- 7.4. The legitimate aims set out within the articles are rarely subject to significant interrogation – where a democratic body has determined that there is a need to restrict a right, the presence of that need is generally accepted. Articles 8, 9, 10 and 11 each allow for limitation in pursuit of the rights of others, a broad aim covering a range of matters including environmental preservation, best interests of a child and community cohesion. The four articles allow the state to restrict rights on the basis of the protection of health or morals which in some cases may also be relevant to the needs of pregnant women and people.
- 7.5. Similar formulations exist in international treaties, for example Article 21 ICCPR provides that any restrictions to peaceful assembly must be “necessary in a democratic society”, with General Comment 37 further noting that any restrictions must be “**necessary and proportionate in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient...** They must also be the **least intrusive among the**

measures that might serve the relevant protective function⁹⁴
[our emphasis].

- 7.6. Unlike the presence of the legitimate aim, assessing necessity and proportionality requires close scrutiny and there is an appropriately high bar. Necessity must be “convincingly established” and a “compelling reason” for the restriction evidenced. The measure must address a “pressing social need.” And it must be proportionate, requiring a clear relationship between the measure and achieving the legitimate aim and it must go no further than is necessary to achieve that aim.
- 7.7. The court has to look at the case as a whole and determine whether the necessity and proportionality assessment is met. The classic test for proportionality was set out by the Court in *Silver v UK*.⁹⁵
- 1) Necessary is not synonymous with indispensable, neither has it the flexibility of such expressions as ‘permissible’ ‘ordinary’ ‘useful’ ‘reasonable’ or ‘desirable’;
 - 2) States enjoy a certain but not unlimited margin of appreciation but it is for the court to give a final ruling on whether restrictions are compatible with the convention;
 - 3) Necessary in a democratic society means that to be compatible the interference must correspond to a pressing social need and be proportionate to the legitimate aim pursued, and;
 - 4) Paragraphs allowing for exception are to be narrowly constituted.
- 7.8. Ensuring that any restriction such as proposed safe access zones are necessary and legislated for in a proportionate manner requires careful and well-evidenced process that puts it beyond doubt that all parties’ needs have been carefully considered, evidenced and subject to rigorous proportionality assessment.

7.9. In the case law concerning protest, UK courts have outlined a series of sub-questions to support a proper assessment of proportionality:

- (1) Is the aim sufficiently important to justify the interference?
- (2) Is there a rational connection between the means chosen and the legitimate aim?
- (3) Is the measure the least restrictive alternative means available to achieve that aim?
- (4) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?⁹⁶

7.10. It is therefore clear that the rights of protestors are capable of some limitation in order to protect the rights of people using or providing abortion services. However the link between the measure selected and the aim must be narrowly and strictly justified. UK Courts must, under s.5(2) of the Human Rights Act, read any legislation creating some power to intervene in protest “in a way which is compatible with the Convention rights”. As per the Scotland Act, the Scottish Parliament cannot legislate in a way incompatible with convention rights. This applies to the legislation as a whole if subject to judicial review and to individual conviction or other application.

7.11. In the case of *DPP v Ziegler* the High Court of England and Wales examined the “fair balance” of the rights of protestors and service users (in this case public road users) and clarified that even where a general restriction applies “different considerations may apply to the proportionality of each of those restrictions”.⁹⁷ The court also set out a “usual enquiry” for protests that engage Articles 9, 10 and 11.

8. Application of necessity and proportionality to proposed safe access zones

8.1. At present, the methods employed by participants in protests at a range of sites across Scotland are contested. The consultation paper references a range of behaviours “*based on the accounts of individual women and staff, evidence gathered over at least five years by groups including Back Off Scotland and BPAS, and international models, academic studies, and media accounts*” in the consultation paper.⁹⁸ These include:

- “Persistently, continuously, or repeatedly occupying a safe access 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; and
- Photographing, filming, or recording a person in the zone.”⁹⁹

8.2. We note that demonstrators and their supporters deny some of these activities, and describe their primary activities as prayer vigils rather than protests.¹⁰⁰

8.3. While we do not wish to undermine the specific experiences recorded in the source material referenced, we are not convinced that this summary alone is sufficient to discharge the obligations inherent in the proportionality test. There is currently no comprehensive analysis of behaviours recorded at Scottish sites. There is limited empirical evidence on the impact of protest at termination of pregnancy sites, which clearly indicates severe impacts for patients and in one case has been reportedly linked with teenage girls engaging in self-harm and attempted suicide.¹⁰¹ Other research makes clear that the mere presence of anti-abortion campaigners is inherently threatening and distressing.¹⁰²

8.4. Evidencing the impact, consultation, and reasoning is essential to enable courts to be satisfied that measures are proportionate. While local evidence should be weighted accordingly, it would also be appropriate to look at available empirical evidence and comparative research. The English Court of Appeal has offered recent useful and thorough guidance on the process requirements in its decision in Ealing Borough Council. The Court of Appeal relied on the High Court Judge's analysis of evidence analysed by Ealing Borough Council to support the introduction of the restriction, which included:

- a "resident engagement exercise" from 2017;
- Evidence collected in the course of an investigation by officers comprising:
 - thirteen formal witness statements;
 - photographs of the activists outside the Centre and excerpts from the Centre's log of incidents;
 - Evidence packs from the Good Counsel Network;
 - evidence packs and submissions from Marie Stopes, BPAS and Sister Supporter;
 - Minutes of officers' meetings with pro-life and pro-choice supporters;
 - A consultation report and the full text of all consultation responses;
 - an equalities analysis assessment;
 - a consultation carried out under the terms of the enabling statute; and
 - an online survey, including personal experience and witnessed campaign methods at the site.¹⁰³

In total, the evidence base “ran to thousands of pages.” The Court of Appeal confirmed the High Court comment that “There was substantial evidence that a very considerable number of users of the clinic reasonably felt that their privacy was being very seriously invaded at a time and place when they were most vulnerable and sensitive to uninvited attention. It also follows that, in this regard, I am also satisfied that the defendant was entitled to conclude that the effect of the activities of the protestors was likely to make such activities unreasonable and justified the restrictions imposed in satisfaction of the requirements of section 59(3) (b) and (c) of the 2014 Act.”¹⁰⁴

8.5. The judgement is clear that the decision “*does not give the green light to local authorities to impose PSPOs as a matter of course upon areas in the immediate vicinity of abortion clinics. Each case must be decided on its own facts.*”¹⁰⁵

8.6. While we recognise that a need for further evidence may cause frustration among supporters of a ban, interfering with fundamental rights, even in pursuit of an accepted legitimate aim, requires significant care. A variety of evidence is required to meet the very high bar required under human rights law to limit the activities of protesters. This evidence can include already available materials, and the outcome of this consultation may support the process with qualitative evidence from people affected by protests in Scotland, data from health boards on frequency and activities recorded on specific dates. However the more evidence of impact that can be gathered locally, such as police activity, hospital staff complaints, patient feedback, the stronger the case for intervention will be. Evidence that Parliament has undertaken detailed scrutiny of the full range of factors and impacts will also be important to show that procedural obligations of proportionality have been met.¹⁰⁶

8.7. Once the shape and scale of demonstrations at termination of pregnancy facilities is determined, we are satisfied that restriction of harmful activities at termination of pregnancy sites would be in pursuit of at least one legitimate aim in protecting the

rights of others under Article 8, as per *Van den Dungen v The Netherlands*.¹⁰⁷

- 8.8. A critical aspect of applying the legal test is whether the measure is the least restrictive measure of actually achieving the legitimate aim. The precise scope and application of any legislation must correspond to the evidence gathered as part of this process. The Commission does not have the evidence nor locus necessary to conduct a full analysis of the measure that would best achieve a legitimate aim of protecting the rights of others. Scottish Government, in partnership with Parliament, local authorities, campaign groups and legal experts, must scrutinise all available options and make records at the first stage of any assessment.
- 8.9. The least restrictive option available to all bodies is inaction. If the process of evidence gathering suggests that demonstrations are having a negative impact on the rights of service users and providers, the existing law may be shown to be inadequate due to either drafting or application.
- 8.10. This requires some analysis of why existing powers are not effective or able to be utilised to limit the negative impact of protests. While a prospective limitation is subject to greater scrutiny, it is questionable whether a dispersal power would meet the legitimate aim as it would imply harm has to be caused before an intervention. The time permitted for an individual dispersal in designated areas is 24 hours.¹⁰⁸ The designation must be renewed every 3 months.
- 8.11. In any measure that requires an officer to make a judgement on an individual case-by-case basis, again harm would have occur. The particular officer would have to be shown to be capable of carrying out a proportionality assessment in the moment, creating a burden on the state to ensure this capacity. The impact on individuals accessing services may in fact be increased if the officer is required to gather evidence of impact before imposing a restriction.

- 8.12. Having established the existing law is not achieving the legitimate aim, the next level of limitation would be some form of individual clinic approach using local regulation where there is evidence that demonstrations at the site are infringing the rights of others. We note here the discussion of the use of byelaws by local authorities as being legally appropriate or not.
- 8.13. As we have not had access to the legal opinion relied upon by COSLA drafted by SOLAR, we are not in a position to comment on that legal advice. The publically available information does not make it clear that it would be unworkable or inadequate to use existing council powers. However, the summary produced by COSLA makes clear that several member councils have raised concerns about barriers to women accessing NHS Reproductive Clinics or other facilities.¹⁰⁹ The reports of “intimidation and distress” experienced as a result of the protestors activity are further supported by evidence provided from practitioners at the clinics and individual women who have shared their experiences publically.
- 8.14. A location-by-location approach as per the English application of PSPOs in a particular locality could be the next least restrictive approach. However requiring individual local authorities to undertake separate locally evidenced proportionality assessment is likely to be a huge undertaking and unlikely to deliver consistency. As such, all persons utilising services across Scotland would not have their rights protected to the same extent and clarity to those who wish to protest would be more difficult to ensure. This may increase risk of discrimination towards minoritised women, trans and non-binary people or women in rural communities or from religious groups subject to greater privacy concerns. The approach taken under the Northern Ireland regime – currently subject to a reference to the Supreme Court – allows for either the Department of Health or the local authority to establish a safe access zone. An individual police officer has the power to move on demonstrators who refuse to comply, (all police activity remains subject to s.6 of the Human

Rights Act.) Another option is delegating authority to a Minister to establish safe access zones at some facilities or all facilities based on localised evidence.

- 8.15. Depending on local authority willingness to utilise a local power¹¹⁰ may lead to unequal protection for women seeking abortions in different regions. The under-representation of women in local government must be a further consideration in leaving the power to local authorities alone, a trend particularly acute in rural localities where privacy and stigma has been recognised to be of greater general concern.
- 8.16. If a local approach is found to be inadequate it may be appropriate to have national legislation creating safe access zones. It may be less restrictive to have site-specific safe access zones subject to some form of individual analysis of the precise needs of the service. The Northern Ireland Human Rights Commission has recommended that the Department conduct a human rights impact assessment on a case-by-case basis in considering the introduction of any safe access zone under recent Northern Ireland legislation currently subject to a reference to the UK Supreme Court.¹¹¹
- 8.17. At the same time, in accordance with the need for legislation to be reasonably foreseeable, we recommend that any legislation is clear about the geographical extent and restricted activities in any space it is deemed harmful for protestors to be engaging in. We would suggest that supporting guidance is drafted in accessible language and easily found.
- 8.18. National legislation establishing safe access zones at some or all facilities providing abortion and / or general healthcare would represent the greatest limit on the rights of protestors and as such should be subject to the greatest scrutiny of the state's justification but would ensure the greatest consistency. Decisions on whether safe access zones should be opt in or out at the request of a particular facility may also be considered.

8.19. There should also be a clear right to challenge restrictions that may be arbitrary or disproportionate, so the authority responsible for the decision must be easily identified and responsive. Reasons for the restrictions should be given and clearly communicated.¹¹² Building in opportunity for post-legislative review may be an appropriate way of maintaining the proportionality of the measure(s) settled upon, for example the scale of any restrictions, the need for facilities to be added or removed from inclusion or the behaviours listed and the utilisation of other means of expressing opposition to abortion.

9. Conclusion

9.1. The Commission recognises the significant impact of anti-abortion protest at termination of pregnancy facilities on the physical and mental wellbeing of women and pregnant people as well as other users of these facilities. We support the human rights of individuals seeking abortion to do so without coercion, harassment or intimidation. At the same time the Commission makes clear that curtailment of protest method and content is subject to a high bar.

9.2. This response sets out a general overview of the aspects of rights that must be balanced against one another in this context. To do so, the legal test of necessity and proportionality must be satisfied by evidence and procedurally.

9.3. It is unhelpful at this stage to prejudge what the outcome of an analysis of the evidence will show. The least restrictive means must be judged in response to evidence of scale and impact of protests outside abortion facilities. The Consultation paper suggests that a national prospective ban is the most appropriate solution, in our view insufficiently giving justification as to why less restrictive measures are unsuitable or would fail to meet the legitimate aim.

9.4. Determining which approach to protest is the most proportionate and least restrictive means of achieving the aim of

protecting the rights and health of others requires further evidence and analysis, which we recommend the Scottish Government undertake as swiftly as possible in a process of widespread consultation with service users, service providers and other interested parties.

Before creating any new legislation, we recommend that Parliament is satisfied that it has:

Access to sufficient evidence of activities undertaken in the vicinity of clinical care from service users and providers. This should be geographically representative and involve both quantitative and qualitative evidence of the scale, nature and impact of protest activities.

Undertaken detailed equality and human rights impact assessment of all options based on geographical and activities restrictions to inform the content and scope of a Bill.

Undertaken further human rights analysis of comparable measures in other jurisdictions;

Included the development of clear processes for requesting, implementing and monitoring any restrictions. This should include opportunities to consult stakeholders and for persons to challenge any application of a restriction they deem an interference with human rights.

Annex: Comments on the Questions Asked in the Consultation

General views on the proposed bill

As abortion and human rights engaged by demonstrations are politically and morally contested spaces, it is highly likely that the Scottish Government will be challenged on the compliance of any legislation with human rights in all or nearly all cases, and that other public authorities may be challenged on individual application of any restriction. Public authorities must be able to demonstrate that they comply with human rights in applying the law in each circumstance under s.6 of the Human Rights Act.¹¹³

Both the Ealing and Northern Ireland Reference cases demonstrate clearly the volume of evidence needed to justify the restrictions with very clear evidence and the importance of applying the evidence to the context to identify the least restrictive means of achieving that aim. In addition, a human rights-based approach to policymaking requires a fully participatory approach that may be satisfied by consultation, but that consultation must be meaningful and informed by the views of all stakeholders.

The requirement to demonstrate these features may be better served by the resource of Scottish Government, especially as it is likely to be Government who is called upon to defend any legislation. At the very least, parliamentary scrutiny of the Bill must be extremely thorough to demonstrate that the amount and detail of debate and scrutiny secured a proper balancing of the rights involved, including opportunities for public consultation, so that impacts can be shown to have been considered. As part of a procedural analysis, courts will undertake a high level review of the quality of Parliament's consideration and balancing of all relevant issues.

The proposal for safe access zones being introduced at all healthcare settings that provide abortion services throughout Scotland / a 'precautionary' approach

We do not believe that a ‘precautionary’ approach is an appropriate starting point for assessing the scale and impact of protest in accordance with the legal test of necessity and proportionality. The measure must be the least restrictive means of protecting the rights of others. As a general position, blanket approaches are subject to strict scrutiny and are harder to justify than tailored approaches.¹¹⁴ The OSCE guide on protest and human rights law suggest that any blanket application of legal restrictions tends to fail a proportionality assessment because it does not consider specific circumstances.¹¹⁵

However, the Commission does not consider that a nationally created safe access zone law for all services would be *necessarily* disproportionate if it demonstrated that other levels of interference would not be an effective means of properly or adequately addressing the impacts of demonstrators for both service users and providers.

Proposed standard size of safe access zones of 150 metres around entrances to buildings which provide or house abortion services

Establishing the geographical extent of any restrictive zone must demonstrate that the least restrictive means has been employed in order to protect the Article 8 rights of patients and staff and a proportionate and therefore necessary interference with the Article 9, 10 and 11 rights of protestors.¹¹⁶ Existing ECtHR case law offers little clarity on appropriate geographic reach of restrictions. In one case 250 meters was deemed proportionate¹¹⁷ while in another activity in the “immediate vicinity of the day clinic” was deemed permissible, indicating that geography is not entirely determinative.¹¹⁸

The Organisation for Security and Cooperation in Europe (OSCE) Guidelines on Freedom of Peaceful Assembly has emphasised the need for demonstrators to have ‘sight and sound’ of their target.¹¹⁹ It may be that it is necessary to take the specific geography of a setting into account, such as entrances to clinic, layout of public highways, availability of alternative sites for protest or entry points for service users, auditability and visibility or public transport stops. Additionally, the nature of audience as a captive group of patients, some of whom may be vulnerable may alter the balance of rights.

Comparative examples of geographical limits may be useful as part of the wider evidence gathering. The PSPO unsuccessfully challenged in the Ealing case is 100 meters. The Northern Ireland legislation provides for 100 meters up to 250 meters, subject to individual assessment. Individual application of safe access zones would be subject section 6 of the Human Rights Act. Beyond the jurisdiction of the Convention, conversely a 10 meters exclusion zone in Vermont was found unconstitutional in America, while in Victoria, Australia, the standard exclusion zone is within 150 meters (164 yards) of an abortion clinic.

Content neutrality of limitations on protest

It may be advisable to consider a content neutral approach, which is generally encouraged by the UN HRCmt.¹²⁰ this would mean that protests concerning other forms of healthcare and / or in favour of abortion would also be limited. This approach has some precedent in other CoE states. An analysis of abortion-related protest limitations conducted by the Irish Oireachtas shows that Croatia, Macedonia and Lithuania had some general prohibition around protest in or around a hospital, for example limiting the protest where it may disturb the peace of patients.¹²¹ However, this may still create an indirectly discriminatory result due to disproportionate impacts for some religious or irreligious beliefs, and accordingly must still be strictly proportionate.

Types of activity to be limited in a safe access zone

While there is no single list of behaviour carried out by protesters at Scottish sights, reports and evidence from individuals refers to a range of behaviours from silent prayer and presence to use of upsetting campaign materials to recording, photographing and directly engaging with patients accessing services. Some qualitative evidence and empirical research makes clear that the mere presence of anti-abortion campaigners is inherently threatening and distressing for women and pregnant people, some of whom have particular cultural or personal privacy needs or who may be additionally vulnerable.¹²²

We take no view at this stage on the necessary proscriptions and believe that this should be based on further analysis of evidence.

Any restriction must have a formal legal basis that carefully frames any discretionary or otherwise limits on the form of individual expression or assembly. The least restrictive means of achieving a legitimate aim should be given preference, and the principle of proportionality should mean that typically the restrictions do not alter the character of the event.

In addition, the restrictions should not directly or indirectly discriminate on the basis of a protected characteristic, specifically religion.

Restrictions framed around prayer or religious text in a specified zone could be framed as discrimination against religious belief in addition to a breach of Article 9 rights.

Looking at comparators, the Isle of Man Abortion Reform Act 2019 creates access zones, in which – following a warning by a constable – it is an offence to engage in pavement interference, protest about abortion services or counselling with the intention of dissuading anyone from access the service or observe premises for the purpose of dissuading anyone from availing or providing abortion services. The prohibition extends to photographing, filming or communicating by other means another person in the safe access zone without their consent.

France has a provision in the Code of Public Health which allows a judge to impose a sentence of up to 2 years imprisonment or a fine of up to 30,000 Euros where a person:

“prevents or attempts to prevent the practice of an interruption of pregnancy, or the prior acts, by any means, including electronically, including the dissemination or transmission of allegations...by disrupting access to the establishments...the free movement of persons within these establishments or the working conditions of medical and non-medical personnel...by exerting moral and psychological pressure, threats or any act of intimidation against persons seeking information about an abortion, medical and non-medical personnel working in the establishments...women who have come to resort to voluntary termination of pregnancy or their entourage.”¹²³

Five Australian jurisdictions have safe access zone legislation and the South African Choice on Termination of Pregnancy Act prohibits a person from "preventing the lawful termination of a pregnancy" or

"obstructing access to a facility for the termination of a pregnancy", imposing a penalty of up to ten years' imprisonment. In the US, the Freedom of Access to Clinic Entrances Act¹²⁴ prohibits the use of force or threat of force to interfere with access to reproductive healthcare facilities. The law does not extend to protests at clinics, which have been found to be protected by the First Amendment.

Potential sanctions

The level of sanction is an important aspect of the proportionality assessment. For example, in the series of *Annen* cases, the Court was generally more tolerant of restrictions that fell below criminal sanction, such as interdicts on particular forms of language.

However, criminal penalties are not inherently disproportionate. It may be that sanctions can be escalated for repeat breaches of order, and it may be legitimate for the state to seek to deter protest activity that amounts to physical or mental harm to patients, provided that this does not create a wider chilling effect. For example, the French Public Health code offence allows for a significant fine of up to 30,000 euros and up to two years imprisonment.

Other ways in which the Bill's aims could be achieved more effectively

The Commission is strongly of the view that all options from doing nothing up to and including national legislation introducing a standard safe access zone around healthcare facilities must be explored as part of the process required for assessing proportionality of any restriction on anti-abortion protest. The impact of each and the extent to which it protects the legitimate aim of ensuring access to healthcare, the personal dignity and privacy of individuals seeking or providing abortion for any legal reason must be assessed on merits.

Impacts on minoritised or protected groups

The Commission considers that a restriction on protest at termination of pregnancy services is likely to have positive impacts for individuals seeking abortion or other sexual and reproductive healthcare provided in

the same settings will have positive impacts for young people, disabled people, trans people, women, pregnant people and new mothers, women of colour and lesbian and bisexual women and men who attend these services, each of whom will benefit from increased privacy and the removal of a possibly coercive force as they attempt to access care. If the measure is content neutral, the pool of beneficiaries may be wider, for example, a general ban on protest outside a hospital may have positive impacts for individuals with protected characteristics accessing other forms of care.

The Commission considers that restricting protest has negative impacts for religion and belief for the reasons considered above. Individuals seeking to exercise their freedom of expression will have an avenue denied to them by which they can express views. However some mitigations could be explored, such as a designated protect space for protest as instituted in Ealing, where it is made clear that anti-abortion protest is welcome at political institutions and that demonstration about abortion in general or individual choice.

Ends.

¹ [Safe Access \(Abortion Services\) Scotland Bill Consultation](#).

² See for example media including [Anti-abortion protesters gather outside Scots maternity hospital in 'disgusting' 40-day 'vigil' - Daily Record](#); [Insight: Should buffer zones be introduced around Scotland's abortion clinics? | The Scotsman](#).

³ [40 Days for Life](#).

⁴ [Women's Health Plan: A plan for 2021-2024 \(www.gov.scot\)](#) pg 36.

⁵ See [Scottish Human Rights Commission](#) and [SHRC PANEL Self-Assessment Tool](#)

⁶ [Scotland Act 1998 \(legislation.gov.uk\)](#).

⁷ [Human Rights Act 1998 \(legislation.gov.uk\)](#).

⁸ [Appleby and Others v. The United Kingdom \(Application No. 44306/98\) \(Coe.Int\)](#).

⁹ [Dulgheriu v Ealing Borough Council \[2019\] EWCA Civ 1490](#).

¹⁰ This legislation does not extend to Scotland.

¹¹ [Dulgheriu v Ealing Borough Council \[2019\] EWCA Civ 1490](#) at §53.

¹² [Dulgheriu v Ealing Borough Council \[2019\] EWCA Civ 1490](#) §57.

¹³ [Anti-social Behaviour, Crime and Policing Act 2014 \(legislation.gov.uk\)](#).

¹⁴ [Annen v Germany \(App no. 3690/10\)](#).

¹⁵ [Milan Rai, Gill Allmond \(Negotiate Now\) v United Kingdom - 25522/94 \[1995\] ECHR 111 \(bailii.org\)](#).

-
- ¹⁶ Rainey, Wicks & Ovey: Jacobs, White and Ovey: The European Convention on Human Rights 7e dn.
- ¹⁷ [n v. The United Kingdom \(Coe.Int\) Application No. 5493/72](#)).
- ¹⁸ [Handyside v. The United Kingdom \(Coe.Int\) Application No. 5493/72](#)).
- ¹⁹ [Perinçek v Switzerland Application no. 27510/08](#)), §100.
- ²⁰ See [Director of Public Prosecutions \(Respondent\) v Ziegler and others \(Appellants\) \(supremecourt.uk\)](#) §40.
- ²¹ [Annen v Germany](#) (App no. 3690/10) §§ 52 and 53
- ²² [Women on Waves and Others v. Portugal \(no. 31276/05\)](#)
- ²³ [Mouvement Raélien Suisse v. Switzerland Application no. 16354/06 ECHR \(columbia.edu\)](#)
- ²⁴ However in contrast, a dissenting opinion argues the judgement was not sufficiently clear on state neutrality in these circumstances.
- ²⁵ [Appleby and others v UK \(Application no. 44306/98\)](#) §48.
- ²⁶ [Ždanoka v. Latvia \[GC\], no. 58278/00, §§ 112-115.](#)
- ²⁷ [Animal Defenders v UK \(2013\) 57 EHRR 21.](#)
- ²⁸ [Animal Defenders v UK \(2013\) 57 EHRR 21](#) §114.
- ²⁹ [Mosely v UK \(Application no. 48009/08\)](#)
- ³⁰ [Çetin and Others v. Turkey, App. Nos. 40153/98 and 40160/98 \(2003\)](#)
- ³¹ [Annen v Germany \(App no. 3690/10\)](#) §70-73.
- ³² [Murat Vural v. Turkey, \(Application no. 9540/07\)](#) §66.
- ³³ [Clubb v Edwards \[2019\] HCA 11](#) §82.
- ³⁴ [R. v. Watson; R. v. Spratt \(2008\) 2008 BCCA 340 \(CanLII\).](#)
- ³⁵ [Vejdeland and Others v. Sweden \(Application no. 1813/07\)](#) §56
- ³⁶ [Belkacem v Belgium \[2017\] ECHR No 34367/14.](#)
- ³⁷ See the approaches to Article 10 and Article 17 outlined in the reasoning of [Vejdeland and Others v. Sweden](#), including separate opinions of Judge Spielmann joined by Judge Nußberger; Judge Zupančič; and Judge Yudkivska joined by Judge Villiger.
- ³⁸ [Yefimov \(Application Nos 12385/15 and 51619/15\)](#)
- ³⁹ [Scottish Government Misogyny and Criminal Justice Working Group recommendations: response.](#)
- ⁴⁰ [Ezelin v. France \(26 April 1991, § 37, Series A no. 202, 1991, § 37.](#)
- ⁴¹ [Plattform "Ärzte für das Leben" \(Doctors for the Right to Life\) v. Austria, 5/1987/128/179](#)
- ⁴² [Sáska v. Hungary, \(Application no. 58050/08\) 2012, § 21\).](#)
- ⁴³ [Milan Rai, Gill Allmond \(Negotiate Now\) v United Kingdom - 25522/94 \[1995\] ECHR 111 \(06 April 1995\) \(bailii.org\)](#)
- ⁴⁴ [Suleyman Celebi And Others v Turkey \(No 2\) \(Application no.s 22729/08 and 10581/09\).](#)
- ⁴⁵ [Aleksyev v Russia, Application nos 4916/07, 25924/08 and 14599/09](#)
- ⁴⁶ [Knudsen v. Norway, Commission decision of 8 March 1985; Van Schijndel and Others v. the Netherlands, Commission decision of 10 September 1997](#)
- ⁴⁷ The European Commission of Human Rights was the precursor to the ECtHR.
- ⁴⁸ Van Schijndel and Others v. the Netherlands, Commission decision of 10 September 1997
- ⁴⁹ [HUDOC - European Court of Human Rights \(coe.int\).](#)
- ⁵⁰ For further information, see [Guide on Article 17 of the Convention – Prohibition of abuse of rights \(coe.int\).](#)
- ⁵¹ [General comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\) §38.](#)
- ⁵² [General comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\) §48.](#)
- ⁵³ [General comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\) §48.](#)
- ⁵⁴ [General comment No. 34 Article 19: Freedoms of opinion and expression §34.](#)
- ⁵⁵ [General comment No. 34 Article 19: Freedoms of opinion and expression §35.](#)
- ⁵⁶ [WHO issues new guidelines on abortion to help deliver lifesaving care | UN News.](#)
- ⁵⁷ Note that the UK Supreme Court has indicated more support for abortion rights within the UK context, for example in [Re Northern Ireland Human Rights Commission \[2019\] 1 All ER 173](#), Lord Kerr at §261 held that while the Northern Ireland Human Rights Commission lacked the standing necessary to challenge the then legal position of abortion in Northern Ireland, the denial of abortion meant that women were “forbidden to do to their own bodies that which they wish to do; they are prevented from arranging their lives in the way that they want; they are denied the chance to shape their future as they desire.”
- ⁵⁸ [Termination of pregnancy statistics - Year ending December 2021 - Termination of pregnancy statistics - Publications - Public Health Scotland.](#)

⁵⁹ Comparison may also be drawn with the [Supreme Court of British Columbia in R v Lewis \(1996\) 24 BCLR \(3d\) 247](#), §146, where the Court noted that the fact that the messages were received just before entering a medical facility was of particular consequence: “The adverse effects of the negative and harsh messages delivered just before a person enters the clinic intrudes upon a woman's person by affecting her health, in even a temporary fashion. Such turmoil outside a medical facility, created to affect a group of health care users, is incompatible with the character and function of a medical facility and the public areas surrounding it.” A majority of judges would have found the near total prohibition of abortion a violation of Article 8, at least in some cases.

⁶⁰ Royal College of Obstetricians and Gynaecologists and The Faculty of Sexual and Reproductive Healthcare, “Submission to Home Office Abortion Clinic Protest Review” (2018).

⁶¹ [Dulgheriu v Ealing Borough Council \[2019\] EWCA Civ 1490](#), §58.

⁶² [Termination of pregnancy statistics - Year ending December 2021 - Public Health Scotland](#)

⁶³ There is only one ‘approved place’ in Scotland for abortion services, all other abortion is carried out at home or NHS facilities, see - [The name and city for each hospital or clinic in Scotland which is currently an approved place for abortion: FOI release - gov.scot \(www.gov.scot\)](#)

⁶⁴ [Bruggemann and Scheuten v. Federal Republic of Germany, \(Application No. 6959/75\)](#)

⁶⁵ [A, B and C v. Ireland \(Application no. 25579/05\)](#).

⁶⁶ [A, B and C v. Ireland \(Application no. 25579/05\)](#).

⁶⁷ The Grand Chamber judgement in [A, B and C v. Ireland \(Application no. 25579/05\)](#) referred to a lack of consensus as to the “beginning of life” across Europe and under Art 2 ECHR. This position attempts to justify a less intensive scrutiny than might otherwise be expected of Article 8 however ignores that most states even in refusing to legislate when life begins acknowledge that in a variety of circumstances clearly without consensus— physical, mental or social – women’s rights are granted protection over the foetus through the very existence of legal abortion. The dissent by Judges Rozakis, Tulkens, Fura, Hirvekia, Malinverni and Poalelungi considers this issue at length.

⁶⁸ Rainey, Wicks & Ovey: Jacobs, White and Ovey: The European Convention on Human Rights 7edn., page 443.

⁶⁹ [Tysiac v. Poland, Appl. No. 5410/03](#)

⁷⁰ [R.R. v. Poland \(Application no. 27617/04\) R.R. v. POLAND \(coe.int\)](#)

⁷¹ [P. and S. v. Poland \(Application no. 57375/08\)](#)

⁷² [P. and S. v. Poland \(Application no. 57375/08\)](#) §164

⁷³ See dissent in [A, B and C v. Ireland \(Application no. 25579/05\)](#), discussed at supra note 68

⁷⁴ [Council of Europe: Women's sexual and reproductive health and rights in Europe](#)

⁷⁵ Only two CoE states do not have a ‘life of the pregnant woman’ exception - Andorra and Malta. Malta has a total ban on abortion, except in an ectopic pregnancy on a case-by-case basis. The Council of Europe Commissioner for Human Rights has described this as a human rights abuse - Council of Europe Commission for Human Rights: [Need to reform abortion law in Malta - Malta - Country monitoring](#).

⁷⁶ Corina Heri, [The Problem with Insularity: On the Court's View of Anti-Abortion Campaigning in Annen v. Germany - Strasbourg Observers](#)

⁷⁷ ‘Abortion jurisprudence’ at Strasbourg: deferential, avoidant and normatively neutral?’ Daniel Fenwick (2014)

⁷⁸ [General Recommendation No. 24: Article 12 of the Convention](#)

⁷⁹ [Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#)

⁸⁰ [Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women §86](#)

⁸¹ [Committee on the Elimination of Discrimination Against Women Concluding observations on the 8th periodic report of United Kingdom of Great Britain and Northern Ireland](#).

⁸² Although the UK is a signatory to the Charter, it is not a party to the Optional Protocol Providing for a System of Collective Complaints.

⁸³ [ICESCR General Comment No. 14 on the Right to the Highest Attainable Standard of Health §12](#)

⁸⁴ [ICESCR General Comment No. 14 on the Right to the Highest Attainable Standard of Health §21](#)

⁸⁵ [CESCR Committee General comment No. 22 \(2016\) on the right to sexual and reproductive health](#)

⁸⁶ [Treaty bodies Download \(ohchr.org\)](#)

⁸⁷ [Report of the inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination](#)

[against Women; UN Committee Against Torture Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland](#)

⁸⁸ [The Right to Work in the European Convention on Human Rights by Rory O'Connell: SSRN](#)

⁸⁹ [Annen v. Germany \(Application no. 3690/10\)](#)

⁹⁰ Corina Heri, [The Problem with Insularity: On the Court's View of Anti-Abortion Campaigning in Annen v. Germany - Strasbourg Observers.](#)

⁹¹ Campaign [40 Days for Life](#) claims that due to protest presence at clinics, 242 individual workers have left their roles and 120 centres have closed across 64 nations (at 10 August 2022.)

⁹² [Conscientious objection in Italy | Journal of Medical Ethics \(bmj.com\)](#)

⁹³ [CASE OF SIDIROPOULOS AND OTHERS v. GREECE \(Application no. 57/1997/841/1047\)](#)

⁹⁴ [Human Rights Committee: General Comment No. 37 on Article 21 \(Right of peaceful assembly\)](#)

⁹⁵ [Silver And Others v. The United Kingdom \(Application no. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75\) §97](#)

⁹⁶ See [Director of Public Prosecutions \(Respondent\) v Ziegler and others \(Appellants\) UKSC 23, \[2022\] AC 408 §125](#)

⁹⁷ [DPP v Ziegler \[2021\] UKSC 23, \[2022\] AC 408, §57\)](#)

⁹⁸ [Safe Access \(Abortion Services\) Scotland Bill Consultation.](#)

⁹⁹ [abortion-services-safe-access-zones-consultation-document_final.pdf \(parliament.scot\)](#)

¹⁰⁰ See for example [40 Days for Life](#) Edinburgh Campaign, which references a "Statement of Peace" which includes the statement "I will pursue only peaceful, prayerful and lawful solutions to the violence of abortion by supporting life from natural conception to natural death."

¹⁰¹ R Sifris and T Penovic, "[Anti-abortion protest and the effectiveness of Victoria's safe access zones: an analysis](#)" (2018)

¹⁰² G Hayes and P Lowe, "['A Hard Enough Decision to Make': Anti-Abortion Activism outside Clinics in the Eyes of Clinic Users](#)" (2015); G Hayes and P Lowe, "[Anti-Abortion Clinic Activism, Civil Inattention and the Problem of Gendered Harassment](#)" (2019)

¹⁰³ Ealing Borough Council [Court of Appeal Judgment Template \(judiciary.uk\) §14](#)

¹⁰⁴ Ealing Borough Council [Court of Appeal Judgment Template \(judiciary.uk\) §65](#)

¹⁰⁵ Ealing Borough Council [Court of Appeal Judgment Template \(judiciary.uk\) §65](#)

¹⁰⁶ [R \(SC\) v SSWP \[2022\] AC 223 \("SC"\)](#), §142

¹⁰⁷ [Van den Dunugen v The Netherlands](#)

¹⁰⁸ [Standard Operating Procedure \(SOP\) Review Template \(scotland.police.uk\)](#)

¹⁰⁹ [COSLA: Buffer Zones Report 2021](#)

¹¹⁰ [FSRH/RCOG statement on buffer zones outside abortion clinics \(2018\)](#)

¹¹¹ [NIHRC response Abortion Services Safe Access Zones Bill November 2021.pdf](#)

¹¹² [OSCE Guidelines on Freedom of Peaceful Assembly, 2nd edn.](#)

¹¹³ [RR v SSWP \[2019\] 1 WLR 6430](#), §§27-30

¹¹⁴ [General comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\) §48](#)

¹¹⁵ [OSCE Guidelines on Freedom of Peaceful Assembly, 2nd edn.](#)

¹¹⁶ [NIHRC response Abortion Services Safe Access Zones Bill November 2021.pdf](#)

¹¹⁷ [Van den Dunugen v The Netherlands](#)

¹¹⁸ [Annen v Germany \(Application no. 3690/10\) §62](#)

¹¹⁹ [OSCE Guidelines on Freedom of Peaceful Assembly](#)

¹²⁰ Human Rights Committee: [General comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\) §48](#)

¹²¹ [Lianne M. Reddy, Parliamentary Researcher, Oireachtas Library & Research Service L&RS Note: Safe access zones – What do other countries do?](#)

¹²² G Hayes and P Lowe, "['A Hard Enough Decision to Make': Anti-Abortion Activism outside Clinics in the Eyes of Clinic Users](#)" (2015); G Hayes and P Lowe, "[Anti-Abortion Clinic Activism, Civil Inattention and the Problem of Gendered Harassment](#)" (2019)

¹²³ [Article L2212-1 of the Code of Public Health](#), English translation taken from [Lianne M. Reddy, Parliamentary Researcher, Oireachtas Library & Research Service L&RS Note: Safe access zones – What do other countries do?](#)

¹²⁴ [Freedom of Access to Clinic Entrances Act of 1994 | The First Amendment Encyclopaedia \(mtsu.edu\)](#)