

UCU Scotland response to consultation on buffer zones

UCU Scotland responded to Gillian Mackay MSP's consultation on introducing a member's bill to bring in buffer zones outside hospitals and clinics providing abortion services. The consultation questions and responses are copied below. UCU's responses are in italics.

Consultation text and responses:

You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g., whether it is the view of particular office-holders or has been approved by the membership as a whole).

UCU has pro-choice policy passed at congresses and affiliates to Abortion Rights, the national pro-choice campaign. It is UCU's position that access to free, safe, and legal abortion is crucial to women's economic, educational and social advancement. This submission has been agreed by the elected officers of UCU Scotland and is in line with UCU's policy.

Aim and approach

Which of the following best expresses your view of the proposed Bill?

Fully supportive

Partially supportive

Neutral (neither support nor oppose)

Partially opposed

Fully opposed

Unsure

Fully supportive

Please elaborate on your response.

- UCU Scotland believes that everyone accessing abortion services should be able to do so without fear of harassment and intimidation.*
- BPAS and Back Off Scotland estimate that 70% of reproductive age women live in a Scottish health board area that has been targeted by anti-choice groups in the past five years.*
- This problem is widespread, organised, and persistent, with individuals and groups seeking to dissuade or deter access to, or the provision of, abortion care.*
- The widespread harm that these protests have is evident across society. Those affected include people accessing abortion care including women ending a pregnancy as a result of a serious or fatal foetal anomaly diagnosis, staff providing abortion care, patients attending a clinic or hospital who have previously had an abortion, patients attending a clinic or hospital for care and treatment more generally – and including in some cases particularly maternity hospitals or sites where they may be experiencing a miscarriage or stillbirth, hospital staff, those living locally to the affected clinics and hospitals, and the general public.*

- *Buffer zones would stop activity taking place directly outside clinics and hospitals, but not have any impact on protests or activity anywhere else. They would apply equally to pro- and anti-choice groups, ensuring that abortion clients are not pressured as they access healthcare.*
- *Although questions about abortion law and provision may be political, the decision to access abortion care is not. It is an intensely personal healthcare decision made at an individual level – it is not a statement or political stance, and opposition to it shouldn't be treated as such.*
- *These groups themselves do not refer to this activity as a protest – it is not political speech, but organised street harassment of women doing something which she is legally entitled to.*
- *The Bill does not seek to stop anti-abortion protests or activity. We understand that people may oppose abortion but believe that the place to protest this should be done in a more appropriate location such as outside of the Scottish Parliament, and not a healthcare facility*

What is your view of the proposal for safe access zones being introduced at all healthcare settings that provide abortion services throughout Scotland?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Fully supportive

Please explain the reasons for your response.

- *Women across Scotland and the UK report that anti-choice harassment outside clinics and hospitals leaves them feeling harassed, alarmed, and distressed, with some feeling scared to access the treatment they are there for.*
- *Existing law in Scotland does not adequately cover clinic-based harassment, or the negative impact that it has on women. It is a combination of content and context which is unlike any other form of targeted street harassment. The targets of this harassment – women accessing abortion care – have an Article 8 right to access legal, confidential healthcare services.*
- *New legislation is needed to move these groups away from the clinic gate and to preserve the rights of women to access legal, essential healthcare.*
- *It is important that all hospitals, clinics, and sites that provide abortion care are treated equally and have a safe access zone in place – otherwise women in Scotland will be subject to patchwork protections.*

What is your view of the proposal for the 'precautionary' approach to be used, in which a safe access zone is implemented outside every site which provides abortion services?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed

Unsure

Fully supportive

Please explain the reasons for your response.

- *In order to make sure that all of those accessing and providing abortion services are protected from harassment and intimidation, safe access zones must be implemented outside every site which provides abortion services. Not only does this prevent a postcode lottery, it also means that sites where protests have not occurred will not face any new threats of protest if anti-choice groups are moved away from the current targeted sites.*
- *Local council byelaws, by comparison, would not fulfil the Bill's aim of protecting access for all those accessing abortion services for a number of reasons including; it would only apply to individual clinics and hospitals; it would create a patchwork of protection; it would place the onus on local authorities to take action and pay to defend their actions in court; have to be approved individually by ministers; and have to be renewed every 10 years.*
- *Similar measures are possible in England, but of the 42 clinics affected, only three have a local order in place – 4 years after the first one was introduced. As Newsnight has recently shown, in some areas more than 500 women have reported harassment, alarm, and distress to their local council and no action has been taken because the council claims this doesn't meet the 'evidentiary threshold' for a buffer zone.*
- *This is a proportionate response to the issue. A legal challenge in response to a buffer zone in the London Borough of Ealing, brought by a member of the local 'vigil', was dismissed first by the High Court and then by the Court of Appeal. The Supreme Court declined to hear the case. The court was clear that women had a right to access confidential abortion care and that the behaviour of the protesters was not exempt from restriction.*

What is your view of the proposed standard size of a safe access zone being 150 metres around entrances to buildings which provide or house abortion services?

Yes – Support this part of the proposal

No – Believe they should be a different standard size

No – Believe the size should be decided based on each site

No – Do not support the introduction of safe access zones in any form

Unsure

Other – please detail below

Yes – Support this part of the proposal

Please explain the reasons for your response.

- *150 metre buffer zones beginning at the perimeter of the sites in question were chosen by BPAS and Back Off Scotland because this distance means that all patients and staff at clinics or hospitals providing abortion services would be able to arrive by car or public transport and not have to walk past the protestors.*
- *150 metre buffer zones provide sufficient space so that those being treated or working within the sites will not be able to hear or see the protestors from inside. This has been an issue that we have seen at the Queen Elizabeth University*

Hospital in Glasgow, for example, where a significant portion of the maternity unit have windows facing the area in which protestors congregate.

• 150 metres is also a size of standard buffer zones that have been introduced in law elsewhere, such as in Victoria territory in Australia where their buffer zone law has been upheld by the High Court of Australia and where the relevant court judgment found “What the evidence does reveal is that the proscription of prohibited behaviour within the 150 m radius significantly compromises the ability of [protesters] to accost and harangue women and other persons as they attempt to access premises at which abortions are provided, and thereby to deter them from aborting their pregnancies or deter persons who support and treat them from aiding them to do so.”

What is your view of the proposal to ban all protests including both protests in support of and those in opposition to:

A person’s decision to access abortion services (ie a woman having an abortion)?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Fully supportive

Please explain the reasons for your response.

- Abortion is a legal right that women in Scotland can exercise. They should be able to do this without fear of intimidation and harassment.*
- The choice to have an abortion is personal, and we already know that all options are discussed between the patient and abortion provider during the consultation.*
- If any organisation wants to provide women with counselling, they should do so in a professional and regulated manner, not by the roadside outside the hospital.*

What is your view of the proposal to ban all protests including both protests in support of and those in opposition to:

A person’s decision to provide abortion services (ie a doctor, nurse, or midwife)?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Fully supportive

Please explain the reasons for your response.

- Clinicians should be able to attend their place of work without having to face protestors. It is unacceptable to expect clinicians to face political commentary on abortion – a legal, essential medical procedure – outside their places of work.*

• Clinicians in Scotland and elsewhere in the UK report that they are also harassed by people outside – as well as having to care for women who are upset by the activity. Dr Audrey Brown, the abortion lead at Greater Glasgow and Clyde Health Board, tweeted on 18th May 2022 “I was called a murderer at a distance of 10 metres last week. Didn’t really think he needed to use voice amplification when so close. Felt pretty harassing to me, nevermind to the people accessing care”

What is your view of the proposal to ban all protests including both protests in support of and those in opposition to:

A person’s decision to facilitate provision of abortion services (ie administrative or support staff)?

Fully supportive
Partially supportive
Neutral (neither support nor oppose)
Partially opposed
Fully opposed
Unsure

Fully supportive

Please explain the reasons for your response.

*• All staff at clinical centres should be protected from this activity – whether or not they directly provide abortion care or not.
• Exempting these staff from these protections will likely lead to continued presence of protesters who claim they are seeking to influence people who are not covered by the law*

Which types of activity – when done for the purposes of influencing a person’s decision to access healthcare settings including abortion services - do you consider should be banned in a safe access zone? (tick as many from the list as you consider should be covered by the Bill))

Persistently, continuously, or repeatedly occupying the zone
Impeding or blocking somebody’s path or an entrance to abortion services
Intimidating or harassing a person
Seeking to influence or persuade a person concerning their access to or employment in connection with abortion services
Demonstrating using items such as leaflets, posters, and pictures specifically related to abortion
Photographing, filming, or recording a person in the zone
All of the above
None of these
Other (include details below)

All of the above

• UCU Scotland believes that any activity – when done for the purposes of influencing a person’s decision on accessing or providing abortion services – should be banned in the buffer zone. Not least because it can be distressing to patients and staff, but also to uphold our article eight right to medical privacy.

- *We understand that all of this activity has been observed, documented, and reported in relation to the groups who protest outside hospitals in Scotland. We need to make sure that the legislation leaves no potential for anti-choice groups to capitalise on.*

What is your view on the potential punishments set out in the proposal for breach of a safe access zone (see pages 15 to 16 of the consultation document)?

Fully supportive
Partially supportive
Neutral (neither support nor oppose)
Partially opposed
Fully opposed
Unsure

Fully supportive

Please give reasons for your response, including commenting on whether this should be a criminal offence.

- *We know that this type of activity causes great distress. Persons who breach a safe access zone should be punished with a fine (including by way of a fixed penalty notice where the police or procurator fiscal has reason to believe that a person has breached a safe access zone) or in serious cases with a prison sentence.*
- *It is correct that the punishments associated with this activity should be similar to those available to people who breach Non-Harassment Orders as this is a similar crime and deserve a comparable sentence.*

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

Yes
No
Unsure

No

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

- *The legislation must be national, and unequivocal in making sure that all of those accessing abortion services can do so without running the risk of encountering intimidation or harassment. Primary legislation is needed to ensure progress on the issue while also preventing a postcode lottery developing, whereby some local authorities implement buffer zones, but others do not.*
- *Legal advice made public by the Convention of Scottish Local Authorities (COSLA) on 12 November 2021 found that local council byelaws could not be used to implement buffer zones at NHS reproductive health facilities. This is directly in opposition to the Scottish Government opinion which states that local councils should be able to address this issue.*
- *In England, this activity has been persistent and groups like BPAS have worked for many years to address the issues. Although local buffer zones have worked in the areas they are in place, they have no impact elsewhere and the number of protests has increased since the first buffer zone was introduced. BPAS has also made clear*

in the press that other forms of action like dispersal orders aren't adequate for dealing with this particular type of action. We should learn from other places and introduce national buffer zones.

Financial implications

Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal could have if it became law?

a significant increase in costs
some increase in costs
no overall change in costs
some reduction in costs
a significant reduction in costs
I don't know

no overall change in costs

Please explain the reasons for your answer, including who you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively.

- *We believe any potential costs will be offset by savings to the health service and police force in having to address the presence and impact of the protesters.*
- *In Ealing where a buffer zone is in place, police have gone from having to attend every week to attending three times in three years.*

Equalities

Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

What impact could this proposal have on particular people if it became law?

Positive
Slightly positive
Neutral (neither positive nor negative)
Slightly negative
Negative
Unsure

Positive

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

- *The proposed Bill will affect identified characteristics protected by the Equality Act 2020. There will be positive effects on sex, pregnancy and maternity.*

Sustainability

Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?

Yes

No

Unsure

Yes

Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

• We believe that the proposed Bill would have no impact on sustainability principles but will fulfil the government's responsibility to provide legal healthcare unimpeded by intimidation or harassment.

General

Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

As a trade union we would recommend these restrictions do not extend to wider protests linked to industrial action by trade unionists in pursuit of legitimate industrial disputes in health care settings.