

1. Do you agree with the purpose of the Bill?

The Bill pursues the legitimate aim of protecting access to abortion services across Scotland and ensuring that people can access those services without fear of, and free from intimidation, harassment or public judgement.

States have a positive obligation to ensure the human rights of all women, girls and people who can become pregnant, including the right to access quality abortion care and information, and to remove any barriers to exercising these rights. This includes addressing and preventing physical and social barriers to accessing clinics and facilities where abortion care is provided; protecting individuals from experiencing intimidation, harassment, assault, or other human rights violations while exercising their rights; and preventing and eliminating discrimination, stigmatization and negative stereotyping that hinder access to sexual and reproductive health care. “Safe access zones” can be a way to fulfil this obligation. Some contend that establishing them can interfere with the right to freedom of assembly and freedom of expression of those who are protesting outside of the clinics, however, these rights are not absolute. Where protest activity in the vicinity of abortion healthcare facilities interferes with the rights of users and healthcare providers, the presence or conduct of protesters may legitimately be restricted to protect the rights and freedoms of those seeking access to these facilities. The establishment of “safe access zones” may in certain circumstances, be justified as a necessary and proportionate interference with the rights to freedom of expression, in order to protect the rights of women, girls, and all pregnant people to access quality abortion care and information in an effective, safe, timely and respectful manner, as well as to protect the right of physical integrity of the medical and health providers or any other staff delivering abortion care.

In scrutinising the Bill we encourage the committee to consider whether the measures set out are necessary and proportionate. Amnesty’s view is that the Bill should be amended so that if “safe access zones” are implemented, it is in line with a human rights framework.

The development of a human rights framework for the implementation of “safe access zones” in Scotland will require that:

- It is clearly shown that less restrictive measures have been explored and found to be insufficient
- Evidence on anti-abortion activity outside of healthcare facilities and the impact on service users and staff is enhanced and systematically recorded to support a human rights analysis of the implementation of “safe access zones”.
- It is mandated that the implementation of “safe access zones” is periodically impact assessed and reviewed on human rights grounds.
- A clear rationale supports the criminalisation of anti-abortion activities, associated penalties as set out in the Bill and that those measures can be shown to be necessary and proportionate.

We emphasise the importance of freedom of expression, peaceful assembly and thought, conscience and religion as rights engaged by this Bill. Section 6 of the Human Rights Act makes it unlawful for a public authority - including the courts - to act in ways incompatible with the European Convention on Human Rights and that means that decisions of such state agencies must be subject to proportionality based review.

Amnesty International recognizes the right of everyone who can become pregnant to access abortion services in a manner that respects their rights, autonomy, dignity and needs in the context of their lived experiences, circumstances, aspirations and views. Indeed, states have a positive obligation to create an enabling and supportive environment for people to make autonomous decisions about their pregnancies.

Amnesty International's abortion policy calls for full decriminalization of abortion and universal access to abortion, post-abortion care and evidence-based, non-biased abortion-related information, free of force, coercion, violence and discrimination. The policy states that no one should be mistreated, humiliated, degraded, or be at risk of violence or social exclusion for seeking or obtaining abortion care.¹

Amnesty International recognises that protest at health facilities is a form of action that has been used across countries to deter or prevent pregnant people from having abortions and exercising their sexual and reproductive rights. These protests can act as a barrier to accessing abortion, post-abortion care, and evidence-based, non-biased abortion-related information. They may also lead to harassment and intimidation constituting obstruction of other people's human rights.

The Scottish Government analysis of a public consultation on 'safe access zones' published in 2023 sets out testimony from those accessing services, medical professionals, and women's groups describing intimidation and harassment by anti-abortion protestors in Scotland. According to the Scottish Government, anti-abortion activity in Scotland has been documented outside of six facilities in the last five years, and activity has included silent vigils, displays of images of fetuses, signs with language such as "murderer", displays of religious iconography, verbal abuse, and filming and photography of those accessing services.²

Amnesty International accepts that many of the activities described have the potential to undermine the human rights of people seeking abortions including the rights to health, equality and non-discrimination, freedom from torture and other ill-treatment, privacy, and to enjoy the benefits of scientific progress.

A recent Amnesty report highlighted the intimidation by anti-abortion activists outside clinics and hospitals in Northern Ireland.³ The report found that:

"this behaviour takes a significant toll on providers and women and other pregnant people seeking abortion services, as well as other patients and providers entering those

¹See Amnesty International's policy on abortion (POL 30/2846/2020), available at: <https://www.amnesty.org/en/documents/pol30/2846/2020/en/>. See also Amnesty International's policy on abortion: explanatory note (POL 30/2847/2020), available at: <https://www.amnesty.org/en/documents/pol30/2847/2020/en/>

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

³ Legal but not local: barriers to accessing abortion services in Northern Ireland. Amnesty International UK: https://www.amnesty.org.uk/files/2023-12/Legal%20but%20not%20local_Barriers%20to%20accessing%20abortion%20services%20in%20Northern%20Ireland.pdf?VersionId=TMIsqFC1MS2CogIE1kaZHcya0OSG_HYE

buildings. Almost every single person Amnesty International has spoken to has mentioned anti-abortion activists as a significant issue and barrier to accessing abortion services. Many recounted instances in which they have been shouted at and intimidated entering their workplace or going in for services and shared their fears of their privacy being compromised on a very stigmatised issue and during a very vulnerable time for them. Anti-abortion organisations and activists:

- *block entry into clinic buildings;*
- *physically chase people arriving for their EMA appointments, including all the way back to their cars in the clinic car parks;*
- *take videos of people entering the building and threaten to put their images online;*
- *force flyers filled with misinformation into peoples' hands or bags;*
- *shout and chant offensive statements over loudspeakers; and*
- *use props, such as plastic fetuses and little white coffins, and graphic images."*

It is critical to recognize that different people are affected differently by obstacles to accessing abortion-related health care services, commodities and information. As such, consideration of the rights engaged must take account of the distinct and compound forms of harm that may be experienced in different ways (depending, for example, on class, age, race, ethnicity, disability, gender, sex, religion, culture, and/or physical and mental health).

In summary, it is Amnesty's view that "safe access zones" can be a necessary and proportionate response to protect the rights of women, girls, and all pregnant people to access quality abortion care and information in an effective, safe, timely and respectful manner, as well as to protect the right of physical integrity of the medical and health providers or any other staff delivering abortion care. It is vital however to ensure a proportionate balance is struck between rights.

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

Any radius set out should meet the three part test of legality, legitimacy and proportionality. The rationale for a 200m radius should be clearly set out, and we invite the committee to gather further evidence on that.

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

Clause 7 of the Bill sets out that a service operator can apply to the Scottish Ministers for an extension of the safe access zone to the extent the ministers consider appropriate. More clarity is needed regarding the decision-making process ministers will follow when extending or reducing a zone. There should be a clear assessment process informed by the human rights framework. As we set out below, clear procedures for the regular monitoring and review of “safe access zones” will be a vital step towards meeting the test of legality, necessity and proportionality. The decision-making process followed by Ministers when responding to an application for an extension or reduction of a particular zone should be informed by and closely linked to a regular monitoring procedure.

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

Some clarity is needed. It is not clear the extent to which abortion advice services will be covered in the Bill (for example, a clinic which offers information, advice, counselling or referrals) and this should be clarified. Amnesty supports the clear inclusion of advisory and counselling services in the Bill. If, as with other measures, the same questions around proportionality can be satisfied.

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

The Bill sets out a number of offences and penalties, creating penalties of fines up to £10,000 on summary conviction, or unlimited on indictment.

The original consultation document proposed that a penalty of imprisonment comparable to that set out by the *Protection from Harassment Act 1997* may have been appropriate. European Court of Human Rights case law⁴ deals with the question of criminal sanctions imposed on demonstrators and states that the Court must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence.

As outlined below, the penalty imposed is a factor to be considered by the Committee in the proportionality assessment. It may be relevant for the Committee to note that Northern Ireland’s legislation gives constables powers to require a person to leave or stop filming and to remove them. The Act provides for a maximum penalty of up to £500, or £2,500 if an offender resists removal from a ‘safe access zone’. The rationale for the significantly higher penalties in this Bill is unclear and the committee should seek a clear rationale so that proportionality can be assessed.

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

The Bill creates offences within ‘protected premises’ if the person does an act with the intention of, or is reckless as to whether the act has the effect of—

⁴ Kudrevicius and others v Lithuania, Para 146: <https://hudoc.echr.coe.int/eng?i=001-158200>)

⁴ Paragraph 50 Explanatory Notes to the Public Order Act 2023

(a) influencing the decision of another person to access, provide or facilitate the provision of abortion services at the protected premises,

(b) preventing or impeding another person from accessing, providing or facilitating the provision of abortion services at the protected premises, or

(c) causing harassment, alarm or distress to another person in connection with the other person's decision to access, provide or facilitate the provision of abortion services at the protected premises, where in each case the other person is in the safe access zone for the purpose of accessing, providing or facilitating the provision of abortion services at the protected premises

(d) to do any of the above in an area visible or audible from the safe access zone

- Creates exceptions to offences relating to:

(a) accompanying with permission another person who is accessing (or attempting to access) abortion services at protected premises but only to the extent that the person's act affects the other person,

(b) providing, or facilitating the provision of, abortion services at protected premises,

(c) providing other health care at protected premises,

(d) engaging in conduct that is lawful under section 220 (peaceful picketing) of the Trade Union and Labour Relations (Consolidation) Act 1992

In relation to '(d) to do any of the above in an area visible or audible from the safe access zone', this may have the effect of *de facto* extending "safe access zones" significantly beyond 200m and we would welcome the committee's scrutiny of what consideration has been given to the implications of that and how it may affect the legislation meeting the legal tests of necessity and proportionality.

According to the Policy Memorandum one of the behaviours the legislation aims to tackle is filming and photographing of those accessing services, however this is not covered by the offences set out in the Bill and it is expressly covered by the Northern Irish legislation. The Committee may wish to take evidence on this point to establish whether extending the offences to cover filming and photographing is necessary and proportionate to achieve the aims of the Bill.

7. What are your views on the impact of the Bill upon the rights enshrined under Articles 8, 9, 10, and 11 of the European Convention on Human Rights?

The Scotland Act 1998⁵ provides that any provision of an Act of the Scottish Parliament is not law if it is not compatible with 'the Convention rights'.⁶ Scottish Government Ministers have 'no power to act' in a way that breaches these ECHR rights, including by making subordinate legislation.⁷ These proposals will involve necessary discussion of the balancing of ECHR rights, particularly the rights to respect for private and family life (ECHR art.8), of freedom of thought, conscience and religion (ECHR Art.9), freedom of expression (ECHR art.10), freedom of assembly and association (ECHR art. 11). The proposed Bill must demonstrate that the measures contained within it are necessary to achieve a legitimate aim, and that

⁵S.29

⁶ Defined in s. 1 Human Rights Act 1998

⁷ S.57

the interference with the rights of all involved, including protestors and those accessing and providing services is, proportionate, including being the least restrictive means needed to achieve the aim.

Evolving international human rights law and standards around sexual and reproductive rights increasingly recognise abortion as an integral component of sexual and reproductive healthcare, which is key to realizing individuals' reproductive autonomy and their full range of human rights.⁸ The UN treaty bodies have also recognised abortion access as fundamental to achieving gender equality and social and economic justice and called on states to reform abortion laws, policies and practices that restrict and undermine pregnant persons' rights to make autonomous decisions about their pregnancies. To this end, the UN Committee on Economic, Social and Cultural Rights (CESCR Committee) has explicitly identified increased access to abortion, as well as other sexual and reproductive health services, as part of states' obligation to "respect the right of women to make autonomous decisions" about their health.⁹ Furthermore, the UN human rights bodies have recognised that reproductive autonomy, health, and human rights are closely interlinked with social and economic justice and have pointed out that states have a positive obligation to create an enabling and supportive environment for people to make autonomous decisions about their pregnancies, as set out above. Furthermore, Scottish Government plans to introduce a new Human Rights Bill which will incorporate the International Covenant on Economic, Social and Cultural rights (ICESCR), the Convention on the Elimination of all Discrimination Against Women (CEDAW), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention on the Rights of Persons with Disabilities (CRPD), will give greater domestic enforcement to a number of rights¹⁰ regarding equality of access to healthcare services, including those relating to family planning,¹¹ and women's equal rights to decide freely and responsibly on the number and spacing of their children. It obliges states to adopt a substantive equality approach that demands going beyond formal (*de jure*) equality and implementing measures to achieve equal results for all with regards to human rights, opportunities, and access to essential goods and services. Scotland will therefore be required to consider access to rights, including healthcare, through a gender perspective and address structural barriers preventing women and girls, particularly those from marginalised groups facing intersecting and compound forms of discrimination, from fully exercising their human rights including their right to health.

The right to health is protected in almost all human rights treaties including ICESCR (Article 12); CRPD (Article 25), CERD (Article 5): CEDAW (Article 12); CRC (Article 24). The CESCR General Comment No. 14 on the right to the highest attainable standard of health acknowledges that gender is increasingly recognised social determinant of health and that "[t]he realization of women's right to health requires the removal of all barriers interfering with access to health services, education and

⁸ See UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22 on the right to sexual and reproductive health (art. 12 of the International Covenant on Economic, Social and Cultural Rights), 2016, E/C.12/GC/22. See also UN Human Rights Committee (HRC). General Comment No. 36, Article 6 (Right to Life), 2019, CCPR/C/GC/35, para. 8; UN Committee on the Rights of the Child (CRC). General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, 2016, CRC/C/GC/20, para. 60.

⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 22 on the right to sexual and reproductive health (art. 12 of the International Covenant on Economic, Social and Cultural Rights), 2016, E/C.12/GC/22.

¹⁰ Art 12 CEDAW

¹¹ Art 16 CEDAW

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.¹² The CESCR, in its General Comment No. 22 on the right to sexual and reproductive health¹³ makes clear the importance of abortion access for women's access to human rights. Particularly CEDAW and CESCR when incorporated, may obligate Scotland to demonstrate in domestic courts that it has undertaken a gender-sensitive approach to the provision of healthcare including sexual and reproductive healthcare and in particular access to abortion services, information and post-abortion care.

There is relevant case law from the European Court of Human Rights which emphasises that whilst Article 8 ECHR does not confer a 'right to abortion', there are positive obligations inherent in an effective respect for private life.¹⁴ Once a legislature decides to allow abortion, the obligations include both the provision of a regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights. ECHR decision on the P. and S. v. Poland (**no. 57375/08**). **30.10.2012** also recognises that respect for a person's sensitive and confidential medical data is also fundamental to the right private life.

Furthermore, effective access to reliable information on the availability of lawful abortion services, access requirements and the relevant procedures to be followed, is essential for the exercise of a person's reproductive autonomy. Timely access to abortion services, information and post-abortion care is of critical importance and all procedures put in place must ensure that people seeking abortions do not experience any undue delays. The Court has also emphasised the importance of objective and appropriate medical counselling.¹⁵ The Supreme Court has considered that there is also a positive obligation on states, under article 8, to enable a pregnant person physically to access the premises where abortion services are lawfully provided, without being hindered or harmed.¹⁶

To this end it will also be necessary for Scotland to address significant gaps in existing access to and provision of abortion services. Specialist organisations such as Engender and Scottish Women's Aid have highlighted that currently, access to mid-term abortion is unequal across Scotland's NHS boards, with gestational limits differing significantly in different parts of the country.¹⁷ Access to abortion in Scotland remains restricted by a lack of available services and the requirement for two doctors to certify the approval for an abortion. Abortion is an integral part of comprehensive sexual and reproductive health services and as essential healthcare, it should not be treated as a criminal justice matter. To this end, Amnesty International calls for the full decriminalisation of abortion.

¹² ICESCR General Comment No. 14 on the Right to the Highest Attainable Standard of Health

¹³ 85 CESCR Committee General comment No. 22 (2016) on the right to sexual and reproductive health

¹⁴ A, B and C v. Ireland [GC], no. 25579/05

¹⁵ P and S v Poland, Fourth Section, 30th October 2012, Application no. 57375/08)

¹⁶ Reference by the Attorney General for Northern Ireland – Abortion Services ('safe access zones') (Northern Ireland) Bill [2022] UKSC 22 para 115

¹⁷ Engender (2016) Our bodies, our choice: The case for a Scottish approach to abortion. Available at: <https://www.engender.org.uk/content/publications/Our-bodies-our-choice---the-case-for-a-Scottishapproach-to-abortion.pdf>.

For those who organize, participate in or otherwise support protests in the vicinity of abortion-related healthcare facilities, the rights potentially engaged are the rights to freedom of expression, peaceful assembly and to manifest one's religion or belief (Art 9,10,11 ECHR).

The right to freedom of expression extends to the expression of ideas that shock, offend or disturb any sector of the population.¹⁸ Furthermore, the European Court of Human Rights has held that protesters have a right to choose what is the most effective way of conveying their message¹⁹ – including politically sensitive views in 'open public spaces'.²⁰

The right of peaceful assembly includes 'the right to choose the time, place and modalities of an assembly within the limits established in paragraph 2 of Article 11.'²¹ The UN Human Rights Committee has noted that '[a]ny 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.'²² And that, '[b]lanket restrictions on peaceful assemblies are presumptively disproportionate' and 'broad locational perimeters around particular buildings where assemblies may not take place should 'generally be avoided' and that 'any restrictions on assemblies in and around such places must be specifically justified and narrowly circumscribed.'²³

The right to manifest one's religion or belief in worship, observance, practice and teaching 'does not always guarantee the right to behave in the public sphere in a way which is dictated by a belief.'²⁴ The European Court of Human Rights has noted that the term 'practice' in Article 9 ECHR 'does not cover each act which is motivated or influenced by a religion or belief.'²⁵

¹⁸ Amnesty's policy summary on freedom of expression ([POL 30/2437/2013](#)) states: 'The right to freedom of expression applies to information and ideas of all kinds including those that may be deeply offensive. See UN Human Rights Committee, [General Comment No. 34](#), para. 11; ECtHR, [Handyside v UK](#), App no 5493/72, 7 December 1976, para. 49.

¹⁹ E.g. ECtHR, [Annen v Germany](#), App no. 3690/10, 26 November 2015, para. 62, noting that 'the applicant's choice of presenting his arguments in a personalised manner, by disseminating leaflets indicating the doctors' names and professional address in the immediate vicinity of the day clinic, enhanced the effectiveness of his campaign.'

²⁰ ECtHR, [Women on Waves and others v Portugal](#), App no 31276/05, 3 February 2009, para. 39 (*translation*): 'in certain situations the mode of dissemination of the information and ideas which are intended to be communicated is of such importance that restrictions such as those imposed in the present case may essentially affect the substance of the ideas and information in question. This is particularly the case when the persons concerned intend to carry out symbolic activities of challenging legislation which they consider unfair or infringing on fundamental rights and freedoms.' This case concerned restrictions on three associations that sought to *promote* the decriminalization of abortion in Portugal.

²¹ [Sáska v Hungary](#), App no 58050/08, 27 November 2012, para. 21.

²² UN Human Rights Committee, [General Comment No.37](#), para. 38.

²³ UN Human Rights Committee, [General Comment No. 37](#), para. 56.

²⁴ [Van den Dungen v. the Netherlands](#), App no 22838/93, admissibility decision, 22 February 1995.

²⁵ In [Van Schijndel, Van Der Heyden and Leenman v the Netherlands](#), App no 30936/96, 10 December 1997, the European Commission did not rule out the possibility that a communal praying session in a corridor of an abortion clinic (without permission from and against the will of the clinic) *might* be regarded as an expression of a belief within the meaning of Article 9(1). The Commission nonetheless found that the applicant's conviction for breach of the peace was justified as a necessary limitation to protect the rights and freedoms of others. The Commission recalled that Article 9 of the Convention 'does not always guarantee the right to behave in the public sphere in a way which is dictated by a belief. The term "practice" in [Article 9] of the Convention does not cover each act which is motivated or influenced by a religion or belief.'

Amnesty International acknowledges the rights of those who seek to protest in the vicinity of abortion – related healthcare facilities, and that a peaceful demonstration may annoy or give offence to persons opposed to the ideas or claims that it seeks to promote.²⁶ However, a restriction of those rights can be justified as proportionate and necessary, for example where there is evidence of a risk to the privacy of service users being very seriously invaded at a time and place when they are “*most vulnerable and sensitive to uninvited attention, namely just before and just after they had undergone a highly personal medical procedure.*”²⁷

Restrictions on the rights of those engaging in anti-abortion protest activity must be necessary and proportionate however. An assessment of proportionality of this Bill involves weighting, in the particular context of Scotland, the impact of interference upon the rights of protestors against the resultant benefit to the rights of those seeking access to abortion-related healthcare, commodities or information.⁵⁶ The duty to robustly assess whether rights are being correctly balanced lies with the state.

In 2023 the UK Supreme Court ruled on a reference by the Attorney General for Northern Ireland in relation to provisions of the Abortion Services (‘safe access zones’) Act (Northern Ireland) 2023.²⁸

The legal challenge focussed on the argument that since clause 5(2)(a) (acting with the intent to, or reckless as to the effect of, influencing a protected person, directly or indirectly) of the Bill creates an offence which is unqualified by any defence of lawful or reasonable excuse, it cannot be read or applied in a way which would permit an assessment of the proportionality of any restriction of protestors’ rights under articles 9, 10 and 11 in individual cases.

The Supreme Court disagreed overall. In doing so they emphasised that not all activities of protestors will be protected by articles 9 – 11, for example spitting, chasing, threatening, assaulting and verbal abuse, either because it does not fall within scope or because it is excluded by article 17. However, holding a vigil, praying and engaging in non-violent actions may fall within scope and creating an offence without a defence of lawful or reasonable excuse may amount to a restriction of those rights.

However that restriction is prescribed by law and pursues the legitimate aim of ensuring safe access to premises for treatment or advice concerning lawful termination of pregnancy under conditions that respect their privacy and dignity, and to ensure that staff are able to access their place of employment without harassment or intimidation.

The court then considered whether the legislation strikes a fair balance between the rights of the individual and the general interest of the community, including the rights of others, considering seven factors which are of relevance when assessing similar legislation in other jurisdictions:²⁹

²⁶ *Identoba and Others v Georgia*, App No 73235/12, 12th May 2015, para 95

²⁷ *Dulgheriu v London Borough of Ealing and Liberty* [2018] EWHC 1667 (Admin) para 93

²⁸ Reference by the Attorney General for Northern Ireland – Abortion Services (‘safe access zones’) (Northern Ireland) Bill [2022] UKSC 22

²⁹ Paragraphs 125 - 131

1. protection of the private lives and autonomy of people seeking to access the service who may be under acute psychological and emotional strain
2. the reasonable expectation of accessing clinics / hospitals through public spaces without having autonomy challenged and diminished
3. The bill does not prevent exercise of article 9/ 10/ 11 rights, but merely imposes a limitation upon the places where those rights may be exercised.³⁰
4. Those wishing to access reproductive health facilities, and the staff who work there, are a captive audience for protestors.
5. The Bill was intended to implement a specific recommendation relating to the situation in Northern Ireland by the CEDAW committee
6. The maximum penalty for an offence under clause 5 is a fine of up to £500. A higher fine, of up to £2,500, can be imposed under clause 6 if the offender resists removal by the police or refuses to obey a direction to leave the safe access zone
7. the wide margin of appreciation in a context, such as abortion, which raises Page 47 sensitive and controversial questions of ethical and social policy

Given that the Scottish Bill similarly represents an interference in relation to article 9 – 11 rights by creating legal offences without the defence of lawfulness or reasonableness, in order to strike the correct balance, and one which may withstand legal challenge, the Scottish Bill should be considered against factors the Committee considers relevant, including these seven.

Regarding the third criteria, it may be relevant to note that the proposed ‘safe access zones’ in Scotland are wider than the Northern Irish equivalent by 50m. In both jurisdictions a service operator can apply to extend the zone but in Northern Ireland this is limited to a further 150m whereas in Scotland the proposal is that there would be no limit. The Scottish legislation also covers acts capable of being seen or heard by another person who is within the “safe access zone” which in practice may *de facto* extend the zone. The Committee may also wish to explore the distinction between the Northern Irish system which requires individual services to notify the department of health that a ‘Safe Access Zone’ has been designated.

Regarding the fifth criteria it may be relevant to note that there is no equivalent specific recommendation by the CEDAW committee directed towards the situation in Scotland. In the absence of this, the Scottish Parliamentary Committee will require a robust evidence base to justify the zones.

Regarding the sixth criteria, the Scottish Bill sets out a number of offences and penalties. The original consultation document proposed that a penalty of imprisonment comparable to that set out by the *Protection from Harassment Act 1997* may have been appropriate. European Court of Human Rights case law³¹ deals with the question of criminal sanctions imposed on demonstrators and states that the Court must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence. Amnesty International encourages the Committee to consider whether the penalties imposed for engaging in prohibited conduct within these zones are in line with international standards as they may be disproportionate. For example, Northern Ireland’s legislation gives constables powers to require a person to leave or stop filming and to remove them. The Act provides for a maximum penalty of up to £500, or £2’500 if an

³⁰ in *Appleby v United Kingdom* (2003) 37 EHRR 38, the court observed at para 47, in relation to article 10, that “[t]hat provision, notwithstanding the acknowledged importance of freedom of expression, does not bestow any freedom of forum for the exercise of that right”

³¹ *Kudrevicius and others v Lithuania*, Para 146: <https://hudoc.echr.coe.int/eng/?i=001-158200>

offender resists removal from a “safe access zone”. The rationale for the significantly higher penalties in this Bill is unclear. The Committee may want to hear evidence on the appropriate and proportionate penalty.

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

According to the Policy Memorandum prior to the drafting of this Bill the Scottish Government and stakeholders, including Police Scotland and Local authorities identified a number of non-legislative options which might be capable of meeting the policy aim of protecting access to abortion services including relying on local authority byelaws, relying on existing police powers, and relying on mediation and enhanced guidance. It was concluded that only legislation introducing “safe access zones” could deliver adequate protection for both service users and providers. An evidence-based and situationally specific assessment of the necessity and proportionality of the zone is vital to ensuring the legislation complies with the human rights framework, and we recommend that the Committee request further detail from ministers, officials and Ms. Mackay about the assessments that have been made, and press for an enhanced and systematically recorded evidence base to support the necessity and proportionality of “safe access zones” in Scotland. In order for the legislation to be human rights compliant we also recommend that clear procedures are set out for keeping “safe access zones” under periodic review on human rights grounds and a monitoring system put in place to assess the effectiveness, in terms of meeting the state’s human rights obligations, of measures taken by the police in implementing legislation governing ‘safe access zones’.

9. Do you have any further comments about the Bill?

The draft Bill does not define ‘protected persons.’ According to the Bill’s policy memorandum it is intended that the following people will benefit from its protection:

- anyone attending for the purpose of accessing treatment, information about treatment, advice about treatment, follow-up appointments/ aftercare;
- and anyone who provides or facilitates the treatment, information, or advice around abortion in buildings providing abortion services.

More clarity is needed on the face of the Bill around the definition of a protected person to ensure that it meets the stated aims and particularly to clarify whether the definition includes anyone accompanying a person to access abortion services.

Amnesty recommends that:

- It is clearly shown that less restrictive measures have been explored and found to be insufficient
- Evidence on anti-abortion activity outside of healthcare facilities and the impact on service users and staff is enhanced and systematically recorded to support a human rights analysis of the implementation of “safe access zones”.

- It is mandated that the implementation of “safe access zones” is periodically impact assessed and reviewed on human rights grounds.
- A clear rationale supports the criminalisation of anti-abortion activities, associated penalties as set out in the Bill and that those measures can be shown to be necessary and proportionate.
- A monitoring system is put in place to assess the effectiveness, in terms of meeting the state’s human rights obligations, of measures taken by the police in implementing legislation governing “safe access zones”;
- Police receive appropriate training on the rights of pregnant people to access abortion care in an effective, safe, timely and respectful manner in accordance with the state’s international human rights obligations.

December 2023