

Buffer Zones**Report by Kevin Anderson, Executive Director - Place****Report for Information****1 Recommendations**

Council is recommended to:

- i. note the action taken by the Chief Executive following Motion 7.2 to Council on 25 June 2019 and the responses received in August 2019.
- ii. note that the consultation period for the Safe Access (Abortion Services) Scotland Bill closed on 11 August 2022 and that a request for an extension was unfortunately not granted.
- iii. note that the mover and seconder of the original motion have submitted their response as outlined in Appendix 3.

2 Purpose of Report/Executive Summary

This report responds to a previous Motion to Council on 25 June 2019 relating to Buffer Zones. It also highlights the associated Safe Access (Abortion Services) Scotland Bill consultation which closed on 11 August 2022 and provides information regarding a submission made by the motion mover and seconder.

Date: 9 August 2022**Report Contact:**

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3 Background

- 3.1** [Motion 7.2 Buffer Zones](#), presented to Council on 25 June 2019 supported *‘the principle of buffer zones outside NHS Lothian reproductive health clinics and hospitals, to protect individuals from obstruction or harassment when accessing vital reproductive health services and advice’* and asked that the following actions be carried out:
- *Council instructs the Chief Executive to liaise with NHS Lothian & neighbouring Local Authorities, Police Scotland, COSLA and the Scottish Government to assess the legal instruments that could be used to implement such buffer zones within the Lothian Health Board boundary.*
 - *Council further instructs the Chief Executive to bring forward a report to this Council, detailing potential courses of action.*
- 3.2** In following up the motion the Chief Executive wrote to the Chief Executive of NHS Lothian, expressing the Council’s concerns as outlined in the motion. The Chief Executive received responses back in August 2019 outlining that Public Space Protection Orders (buffer zones) are not available in Scotland so the overall decision to ban or place restrictions on a gathering or protest lies almost exclusively with Police Scotland. In addition Midlothian do not have any clinics although Council noted that Midlothian residents do access these services within the NHS facilities within the City of Edinburgh.
- 3.3** The Ministerial-led Working Group on Buffer Zones around healthcare facilities was formed in 2021 to consider short, medium and long-term actions that may help to address the issue of protests/vigils that take place outside of abortion clinics or other facilities providing healthcare.
- 3.4** The group brings together representatives of affected Councils and Health Boards, along with representatives from the Convention of Scottish Local Authorities (CoSLA), the Society of Local Authority Lawyers and Administrators (SOLAR) and Police Scotland.
- 3.5** On 19 May 2022 the proposed Abortion Services Safe Access Zones (Scotland) Bill was presented to the Scottish Parliament and the [Safe Access \(Abortion Services\) Scotland Bill consultation](#) launched. The consultation closed on Thursday 11 August 2022.
- 3.6** In referencing the current Safe Access (Abortion Services) Scotland Bill consultation, members are asked to note the submission made by the motion mover and seconder shown in section titled ‘Your views on the proposals’ in Appendix C.

4 Report Implications (Resource, Digital and Risk)

4.1 Resource

There are no additional resource implications arising from this report.

4.2 Digital

There are no additional digital implications arising from this report.

4.3 Risk

There are no additional risks arising from this report.

4.4 Ensuring Equalities (if required a separate IIA must be completed)

There are no direct equalities implications arising from this report.

4.5 Additional Report Implications (Not applicable given the subject of the report)

Appendices

Appendix A – Additional Report Implications

Appendix B – Background information/Links

Appendix C – Motion Mover and Second Submission Sample

APPENDIX B

Background Papers/Resource Links

[7.2 Motion to Council 25 June 2019](#)

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

APPENDIX C

Original motion mover and seconder:

SAFE ACCESS (ABORTION SERVICES) SCOTLAND BILL CONSULTATION

Questions

About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Data protection declaration

☐ I confirm that I have read and understood the [Privacy Notice](#) to this consultation which explains how my personal data will be used.

2. If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

☐ Please ONLY tick this box if you are UNDER 12 years of age.

3. Are you responding as:

☐ an individual – in which case go to Q4

☐ on behalf of an organisation? – in which case go to Q5

4. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)

☐ Politician (MSP/MP/peer/MEP/Councillor)

☐ Professional with experience in a relevant subject

☐ Academic with expertise in a relevant subject

☐ Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

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5. Please select the category which best describes your organisation:

☐ Public sector body (Scottish/UK Government or agency, local authority, NDPB)

☐ Commercial organisation (company, business)

☐ Representative organisation (trade union, professional association)

☐ Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)

☐ Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: 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).

6. Please choose one of the following:

- ☐ I am content for this response to be published and attributed to me or my organisation
- ☐ I would like this response to be published anonymously
- ☐ I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

7. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

8. Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

9. 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

Please elaborate on your response

We would not oppose the Bill as framed as this would be a reasonable step to take in ensuring free access to the health services in line with the law.

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

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

Please explain the reasons for your response.

We support the principal scope of the Bill being on such health care facilities. However, we have also recognised anecdotal evidence that access to other healthcare and research facilities have taken place with respect to COVID-19 vaccination centres. In the future science sceptic demonstrations and picketing might create a hostile environment to people seeking support or going about their lawful business. It may be helpful if the Bill can allow secondary legislation to cover such issues.

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

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

Please explain the reasons for your response.

The only hesitation here is that an absolute ban could be seen as unnecessarily inhibitive of the right to free speech and not proportionate to the issue where there has been no historical picketing of this sort.

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

- ☐ Yes – Support this part of the proposal
- ☐ 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

Please explain the reasons for your response.

Again, the reason for hesitation is that a proportionate approach is likely to be site specific. However, a standardised baseline for safe access zones might be helpful, from which local variations take into account local and site specific circumstances.

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

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

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

Please explain the reasons for your response.

It is important that there should be no interference in the free access to healthcare facilities by service users, employees of the services or others associated with either of these. An exclusion zone for protests would not exclude the possibility of protests taking place elsewhere in more neutral environments.

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

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

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

Please explain the reasons for your response.

See 13 above.

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

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

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

Please explain the reasons for your response.

See 13 above.

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

- ☐ 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)

Similar arguments exist over similar activities that involve obstruction to other healthcare and research facilities.

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

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

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

Our view is that the primary purpose of the Bill should be normative and result in

people no longer acting in ways that intimidate lawful access to healthcare facilities either as a service user or for employment and associated advice & support. The proposition that single breaches are treated differently from persistent action seems entirely reasonable.

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

- ☒ Yes
☐ No
☐ Unsure

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

Our position is that local decision making informed by local circumstances is more proportionate in addressing this important matter, and that a legal framework that facilitates this is likely to be better for ownership of the matter by and accountability to local communities. (Local referring to the service location and the wider communities and local authorities served)

Financial implications

19. 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

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.

A concern is that locally informed decision-making, or an approach that requires locally informed input (which is not proposed in the consultation document) will incur a cost on those gathering, presenting and deciding on such information. Also it is clear the greater the element of local variation and discretion the greater the chance is that legal challenges could be made. This is the cost of local democratic engagement. The quantum would be dependent on the nature of the Bill and could end up being in the area that has been cited in the consultation document.

Equalities

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

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

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

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

Sustainability

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

- ☐ Yes
- ☐ No
- ☐ Unsure

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?

General

22. 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)?

How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

If possible, please submit your response electronically preferably through the survey at this link <https://www.smartsurvey.co.uk/s/bufferzonesscotland/>. Alternatively you can submit your response to the email address below in a MS Word document. Please keep formatting of this document to a minimum.

Please make clear whether you are responding as an individual (in a personal capacity) or on behalf of a group or organisation. If you are responding as an individual, you may wish to explain briefly what relevant expertise or experience you have. If you are responding on behalf of an organisation, 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).

Please include with your response contact details (e-mail if possible, or telephone or postal address) so we can contact you if there is any query about your response.

Where to send responses

Responses prepared electronically should be sent by e-mail to:

gillian.mackay.msp@parliament.scot

Responses prepared in hard copy should be sent by post to:

Gillian Mackay MSP
Room MG.15
Scottish Parliament
Edinburgh EH99 1SP

You may also contact Gillian Mackay's office by telephone on (0131) 348 6341.

Deadline for responses

All responses should be received no later than **11:59pm on Thursday 11 August 2022**. Please let me know in advance of this deadline if you anticipate difficulties meeting it.

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