



## THE SOCIETY FOR THE PROTECTION OF UNBORN CHILDREN

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### Submission to the Consultation on the Abortion Services (Safe Access Zones) Bill 2021

The Society for the Protection of Unborn Children (SPUC) is a human rights group established in 1966 and since then has been active in the field of public campaigning, debate and lobbying in relation to life issues. Its aims include, *inter alia*, the following:

- To affirm, to defend and promote the existence and value of human life from the moment of conception until its natural end.
- To examine existing or proposed legislation, regulations or public policies relating to the protection of human life and the promotion of human dignity and to support or oppose such as appropriate.

In furtherance of the above aims, SPUC has been involved in major litigation surrounding abortion, freedom of conscience and the right to life of vulnerable individuals over several years.

SPUC espouses the philosophical tradition that recognises the inviolability of human life and the prohibition on doctors taking the life of their patients set out by the Hippocratic Oath (c. 400-350 BC) when it states:

“I will neither give a deadly drug to anybody if asked for it nor will I make a suggestion to this effect. Similarly, I will not give to a woman an abortive remedy.”<sup>1</sup>

This tradition was reaffirmed in 1948 by the Universal Declaration on Human Rights, the International Code of Medical Ethics adopted by the World Medical Assembly and the Declaration of Geneva which bound doctors to “maintain the utmost respect for human life from the time of conception, even under threat,” and not to use their medical knowledge “contrary to the laws of humanity.”<sup>2</sup>

It is acknowledged that while the right to life is the foundation and prerequisite for all other rights, freedom of expression and freedom of assembly are also essential for the protection of fundamental human rights.

Considering the violation of human rights that the Abortion Services (Safe Access Zones) Bill 2021 would sanction and the dangerous precedent it would set if it were to be enacted, SPUC urges the Committee to reject this proposed legislation and for the sponsors of the Bill to withdraw it.

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<sup>1</sup> Ludwig Edelstein, *Ancient Medicine: Selected Papers of Ludwig Edelstein*, (eds, O Temkin and C Lilian Temkin, trans from German, C Lilian Temkin, John Hopkins Press, 1967) 6

<sup>2</sup> International Code of Medical Ethics, Duties of Doctors to the Sick: *A doctor must always bear in mind the importance of preserving human life from the time of conception until death*” 1948

**The Abortion Services (Safe Access Zones) Bill is an assault on fundamental freedoms**

The Abortion Services (Safe Access Zones) Bill is an attempt to limit the right to freedom of expression and freedom of assembly. These rights are guaranteed in both domestic and international law, most notably by Articles 10 and 11 of the European Convention on Human Rights.

Article 10 – Freedom of expression, states:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 – Freedom of assembly and association, states:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are 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. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Public authorities in the United Kingdom are legally obliged to uphold these rights by the terms of the Human Rights Act 1998.<sup>3</sup> Before restrictions can be placed on freedom of expression it must be shown that the action is lawful, necessary and proportionate with the purpose of:

- protecting national security, territorial integrity (the borders of the state) or public safety
- preventing disorder or crime
- protecting health or morals
- protecting the rights and reputations of other people

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<sup>3</sup> For more information see the Equality and Human Rights Commission, Article 10 Freedom of Expression. <https://www.equalityhumanrights.com/en/human-rights-act/article-10-freedom-expression>

- preventing the disclosure of information received in confidence
- maintaining the authority and impartiality of judges

Restrictions on freedom of expression may be legitimate if the views expressed could encourage racial or religious hatred or incite violence.

Freedom of assembly can only be legitimately restricted where an authority can show that its action is lawful, necessary and proportionate in order to:

- protect national security or public safety
- prevent disorder or crime
- protect health or morals, or
- protect the rights and freedoms of other people.

Public authorities must show that the restriction is ‘proportionate’, in other words that it is appropriate to the aim pursued and no more than necessary to address the issue concerned.<sup>4</sup>

The supporters of the Bill have not shown that: a) there is a problem of public disorder or criminal behaviour; b) that this can be attributed to the individuals and groups targeted by the Bill; and c) the existing laws are incapable of addressing any incidents which may arise in the future. The restrictions of human rights proposed by the Bill cannot be considered necessary nor proportionate under Article 10 and Article 11. It should, therefore, be rejected.

### **Section 6: Offences in respect of a safe access zone**

6.— (1) In this section, D means a person who is not a protected person.

(2) It is an offence for D to do an act in a safe access zone with the intent of, or reckless as to whether it has the effect of—

- (a) influencing a protected person, whether directly or indirectly,
- (b) preventing or impeding access by a protected person, or
- (c) causing harassment, alarm or distress to a protected person, in connection with the protected person attending protected premises for a purpose mentioned in section 4.

(3) It is an offence for D to record a protected person who is in a safe access zone without the consent of that person, with the intent of, or reckless as to whether it has the effect of—

- (a) influencing a protected person, whether directly or indirectly,
- (b) preventing or impeding access by a protected person, or
- (c) causing harassment, alarm or distress to a protected person, in connection with the protected person attending protected premises for a purpose mentioned in section 4.

(4) It is a defence for D to show that D did not know, and had no reasonable way of

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<sup>4</sup> For more information see the Equality and Human Rights Commission, Article 10 Freedom of Assembly and Association. <https://www.equalityhumanrights.com/en/human-rights-act/article-11-freedom-assembly-and-association>

knowing, that the protected person was in a safe access zone.

- (5) An offence under this section is punishable on summary conviction by a fine not exceeding level 2 on the standard scale.

The crucial provisions of the Bill are contained in section 6. Obstructing or impeding public access in general is already prohibited by law as is harassment or causing alarm or distress to an individual. The Bill, therefore, introduces nothing new in relation to such behaviour. The wording of 6(2)(a), however, represents a potentially dangerous departure from the legitimate grounds for the restriction of the rights guaranteed by Articles 10 and 11 set out above.

The Bill seeks to make ‘influencing’ a person a criminal offence. Although influence is not defined, the explanatory notes suggest this should be understood as anything which *might* influence a ‘protected person’. (Emphasis added) This is a not only vague but entirely subjective and would apply to anyone outside the category of ‘protected person’ regardless of their actions. While the Bill is promoted as a measure to protect women it also makes no distinction between women and employees of an abortion facility.

As stated previously, haranguing members of the public or deliberately blocking their access to a building can result in prosecution under existing laws. The only example that is given of an activity not already unlawful is ‘handing out leaflets’. No account is taken of the nature of the material. If the Bill were to become law, a peaceful individual with the perceived intention of influencing a protected person by offering a bible tract or scripture verse would be subject to the same penalty as someone behaving in an aggressive or obstructive manner. Similarly, someone standing or kneeling in prayer — whether silent or vocal — who was perceived as having a possible influence on a ‘protected’ person could be prosecuted as if she was engaged in intimidation and liable on conviction to a fine of up to £500.

It should be clear from this that the Bill is not a response to a pressing need to maintain public order or the protection of women. Rather it appears to be motivated by a desire to prohibit the expression of opinions which the sponsors of the Bill find intolerable. This impression is confirmed by the recent efforts by the Green Party to amend the bye-laws of Belfast City Council for the purpose of excluding any expression of pro-life views from the city centre.

### **This Bill would set a very dangerous precedent.**

In 2017, the Home Office considered the possibility of introducing ‘buffer’ zones around abortion facilities in England and Wales but Sajid Javid, the Home Secretary, rejected the idea. He told Parliament that the move “would not be a proportionate response”.<sup>5</sup> He pointed out that:

“...legislation already exists to restrict protest activities that cause harm to others. For example, under the Public Order Act 1986, it is an offence to display images or words that may cause harassment, alarm or distress.”

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<sup>5</sup> Statement from the Home Secretary: Outcome of the Abortion Clinic Protest Review made on 13 September 2018. <https://questions-statements.parliament.uk/written-statements/detail/2018-09-13/HCWS958>

He noted: “In this country, it is a long-standing tradition that people are free to gather together and to demonstrate their views. This is something to be rightly proud of.”

Parliament is currently considering the Higher Education (Freedom of Speech) Bill which received its Second Reading on 12 July 2021.<sup>6</sup> *Freedom of Speech in Universities*, the fourth report of the Joint Committee on Human Rights, revealed serious barriers to free speech in universities, and frequently referenced the experiences of student pro-life societies.<sup>7</sup>

The Abortion Services (Safe Access Zones) Bill should be understood in the context of so-called cancel culture. It is an attempt to ‘deplatform’ and criminalise anyone who would peacefully seek publicly to express an opinion that an unborn child is a human being and that abortion is therefore wrong.

For freedom of speech to be meaningful, the law must protect the expression of views which are unpopular, controversial and even offensive to some. When one section of society can successfully curtail the civil and political rights of individuals or groups, no matter how unpopular their views maybe, it endangers the rights of all citizens. Legislation which seeks to regulate free speech and peaceful assembly are essential for safeguarding political stability and the rights of all sections of the community.

The law should seek to address disorderly or threatening behaviour. It should not attempt to regulate the free expression of views and opinions or penalise peaceful assemblies.

Freedom of speech and of assembly are fundamental rights in all free societies but they are particularly important in Northern Ireland. Vaguely worded legislation which would target the views of individuals rather than their actions and behaviour, could easily be applied to a wide range of demonstrations, protests and gatherings seen as contentious or offensive. It is in the interest of all sections of civic society to defend these fundamental human rights.

### **Pro-Life Vigils are a Lifeline to Women**

Peaceful pro-life vigils are a lifeline to vulnerable women considering abortion. In the UK, women from the most deprived communities have abortion rates twice as high as women from wealthy areas. In areas of high deprivation, women can feel forced into abortion by circumstance. Peaceful pro-life vigils offer these women another option, through witness and sign posting to practical support.

There are many complex reasons women consider abortion and many women report feeling ambivalent at the time of their abortion. This could be because a partner or family member is pressurising them into a decision. In a study of London clinics, there was a six times higher rate of intimate partner violence in women undergoing abortion compared with women receiving antenatal care.<sup>8</sup> Or they feel as though they need to choose between their child and

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<sup>6</sup> The debate on the Bill’s second reading is available at [https://hansard.parliament.uk/commons/2021-07-12/debates/3E5A48AD-72E6-420A-910A-9F1863983743/HigherEducation\(FreedomOfSpeech\)Bill](https://hansard.parliament.uk/commons/2021-07-12/debates/3E5A48AD-72E6-420A-910A-9F1863983743/HigherEducation(FreedomOfSpeech)Bill)

<sup>7</sup> House of Commons House of Lords Joint Committee on Human Rights *Freedom of Speech in Universities Fourth Report of Session 2017–19*

<https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/589/589.pdf>

<sup>8</sup> TT Wokoma, M Jampala, H Bexhell, K Guthrie & S Lindow (2014) A comparative study of the prevalence of domestic violence in women requesting a termination of pregnancy and those attending an antenatal clinic. *BJOG* 121:627-633.

their studies; or their financial situation makes them feel as though they have no alternative. Instead of truly meeting the material and emotional needs of these women, abortion is presented as the only solution. Many women report feeling as though they had ‘no choice’ but to have an abortion.

Pro-life vigils present an alternative in a peaceful and compassionate way. The campaign to criminalise these vigils is not based on the facts but instead reflects a desire to silence those professing pro-life views.

We would invite all members of the Committee to watch this brief video from Amy, a young woman from England who had an abortion when she was 18. She was desperate for someone who could present an alternative but found no one. She now participates in pro-life vigils in order to help women like herself. She presents a viewpoint which deserves to be considered. The video is available at <https://www.youtube.com/watch?v=hZ11wxRFQxE>

### **Conclusion**

While SPUC does not organise pro-life vigils in Northern Ireland, many of our supporters have participated in them. We understand that many people hold strong opinions about abortion, often linked to their own experience. That does not mean, however, that it is acceptable to remove the freedom of speech, freedom to assemble peacefully and to penalise people who have not broken the law. It is of the utmost importance that the Northern Ireland Assembly protects these rights.

As a piece of legislation the Abortion Services (Safe Access Zones) Bill is poorly drafted in that it is vaguely worded, sweeping in its potential scope and unnecessarily punitive. SPUC would, therefore, urge the Committee for practical reasons as well as a matter of principle to reject it as incompatible with a free society and the terms of the 1998 Agreement which reaffirmed the protection of fundamental human rights.

## **Annex**

There are nine core United Nations Human Rights agreements including the Convention on the Elimination of Discrimination Against Women (CEDAW). No reference to abortion is made in the texts of any of these instruments let alone recognition of a human right to access abortion. This is acknowledged by Brandon Lewis in paragraph 7.7 of the *Explanatory Memorandum to the Abortion (Northern Ireland) Regulations 2021* when it states that the CEDAW committee’s “recommendations are not binding and do not constitute international obligations”.<sup>9</sup>

Freedom of expression and freedom of assembly are protected as fundamental rights not only in the European Convention on Human Rights, but in the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights.

### **Universal Declaration of Human Rights 1948**

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association.  
(2) No one may be compelled to belong to an association.

### **International Convention on Civil and Political Rights 1966**

#### ARTICLE 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

#### ARTICLE 21

The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in their interests of national security or public safety, public order (ordre public), their protection of public health or morals or the protection of the rights and freedoms of others.

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<sup>9</sup> EXPLANATORY MEMORANDUM TO THE ABORTION (NORTHERN IRELAND) REGULATIONS 2021, No. 365 <<https://www.legislation.gov.uk/ukxi/2021/365/memorandum/contents>> Accessed 11 August 2021.