

# Abortion Services (Safe Access Zones) Bill

## British Pregnancy Advisory Service response to Bill Committee

### Introduction

BPAS is the largest abortion provider in the UK and leads the Back Off campaign to introduce buffer zones (safe access zones) outside abortion clinics. As part of this work, we maintain a database from around the UK of thousands of accounts from abortion clients and staff who have been negatively affected by targeted harassment outside clinics.

BPAS agrees with the premise of this bill that Province-wide legislative action needs to be taken in order to protect those providing and accessing abortion care. Our experience across Great Britain is that without a national solution, approaches to stop this type of harassment of piecemeal and inadequate, and result in a postcode lottery of protection.

We fully support the aims of this bill and commend Clare Bailey MLA for introducing it in the Northern Ireland Assembly.

### Overview

BPAS has worked with the Westminster parliament to develop legislation on this topic in a way that extends to the minimum degree necessary to protect the rights of women seeking and staff providing abortion care without unduly impinging on the rights of others, and to address the variety and scope of behaviours we observe and document outside our clinics around England and Wales.

We believe there are aspects of this bill which may be better delivered on their ultimate aim with some amendment. We include opinions and suggested amendments in the response below.

Our primary concern throughout this legislation is that the Department of Health in Northern Ireland has failed to take appropriate action for more than a year to implement functioning abortion services within the Province – and we have no faith that they would be able or willing to take the actions required in the Bill as it stands. As such, we propose amendments throughout to enshrine safe access zones in primary legislation, without requiring positive action from the Health Minister.

### 1. Overview

If suggested amendments to subsequent clauses are accepted, the following amendment will be necessary:

#### *Amendment – BPAS 1*

Clause 1, Page 1, Line 2 leave out *‘the Department of Health to establish’* and insert *‘the establishment of’*

### 2. Premises where abortion treatments are carried out and 3. Premises where information, advice or counselling about abortion treatments are provided

We believe that it is unnecessary to enumerate in the Department of Health the power to determine which premises are entitled to safe access zones.

There is long-standing evidence within the Province that premises where counselling and information about abortion are provided are targeted by anti-abortion groups, with vulnerable women and girls harassed, alarmed, and distressed outside these buildings. There are also well-documented instances of police attendance and breach of the police between protesters and staff at these sites. As such, we believe there is adequate evidence to include these sites in primary legislation without approval by the Department of Health.

Premises where advice and guidance are provided are included in drafts of similar legislation in England, the Republic of Ireland, and we are advocating for their inclusion in upcoming private members' legislation in Scotland. Northern Ireland should seek to remain in line with these legislatures.

*Amendment – BPAS 2 (to be taken with BPAS 2 & BPAS 3)*

Clause 2, Page 1, Line 8 leave out from 'if' to end.

*Amendment – BPAS 3 (to be taken with BPAS 2 & BPAS 4)*

Clause 2, Page 1, Line 8, after 'if', insert '(a) they are premises where provision is made, or proposed to be made, for treatment for the termination of pregnancy to be lawfully carried out; or (b) they are premises where information, advice or counselling about abortion treatments are provided.'

*Amendment – BPAS 4 (to be taken with BPAS 2 & BPAS 3)*

Clause 3 to not stand part of the bill.

#### 4. Protected persons

We do not believe that this clause is necessary for the effective operation of a safe access zone. Our concern is that currently, the drawing of 'protected persons' is a second, problematic barrier for police to determine whether people present outside an abortion premises are committing an offence. It also provides an unjustifiable potential defence for these groups that they didn't 'know' the people they were approaching were 'protected persons' under the auspices of this bill.

The existing list particularly excludes three groups of people we know to be targeted:

- Patients for other medical services including miscarriage care, which is particularly an issue with provision from NHS sites like hospitals, where they may not be attending an abortion clinic or accessing abortion care but are harassed as if they are – and their personal circumstances make the experience particularly distressing.
- People working on the same site but not in abortion care, for instance with GPs and nurses who provide primary care being harassed in an effort to encourage them to cease leasing rooms for the provision of abortion care from their practice.
- Delivery drivers, who at one of our clinics have been repeatedly asked if they 'know what they do in there', interrogated about where clinical waste is being sent, and had 'holy water' sprinkled on their deliveries.

The purpose of approaching these people is the same as approaching those included in the existing Clause 4, but the bill as it stands would continue to allow this – and thus allow the groups to remain present outside clinics.

If BPAS 5 is accepted, subsequent amendments to the bill will be required to remove reference to 'protected persons'.

*Amendment – BPAS 5*

Clause 4 to not stand part of the bill.

## 5. Safe access zone

As per our introductory remarks, we do not believe that leaving decisions regarding the establishment of individual safe access zones in the hands of the Department is likely to be productive.

It is notable that similar safe access zones in Canada, Australia, and parts of the US invariably include specific distances in primary legislation. The same is true of Bills before Westminster Parliament and the Irish Seanad. We therefore believe the aims of the bill would be better achieved by including a specific distance within the text of the bill that is far enough to guarantee privacy and confidential access to care.

### *Amendment – BPAS 6*

Clause 5, Page 2, Line 23 delete from '(b)' to 'designated' and insert '*an area the boundary of which is 150 metres from (i) any part of the protected premises; or (ii) any access point to a building that contains a protected premises.*'

### *Amendment – BPAS 7*

Clause 5, Page 2, Line 24 delete from 'premises.' to end of clause

## 6. Offences in respect of a safe access zone

We believe the list at (2) may be unduly narrow so as not to reflect the full range of activities undertaken on a regular basis by anti-abortion groups around the country. At the same time, we believe that the framing of this clause may inadvertently extend beyond a strict restriction on seeking to influence someone with regards to their decision to access or provide abortion services.

For instance, a picket line of nurses outside an NHS site where abortions are provided may seek to stop a nurse who works in the abortion service from passing them and encourage them to join the labour dispute. For the purposes of clause 4, the nurse attempting to go to work is 'a protected person', they are attending the protected premises in connection with that, and they are being 'influenced' by people within a safe access zone. This is clearly not intended within the scope of the bill.

We are also concerned that the comparatively low punishment of a Level 2 fine does not distinguish between a first-time offender and an individual who repeatedly breaks the law.

### *Amendment – BPAS 8*

Clause 6, Page 2, Line 31 delete from 'of' to end and insert '*influencing any person's decision to access, provide, or facilitate the provision of, abortion services.*'

### *Amendment – BPAS 9*

Clause 6, Page 2, Line 37 delete from '(3)' to end and insert '*For the purposes of subsection (2), methods of "influencing" include (a) persistently, continuously or repeatedly occupying; or (b) interfering with, impeding or threatening; or (c) intimidating or harassing; or (d) causing harassment, alarm or distress; or (e) informing or attempting to inform about abortions services by any means including, without limitation, graphic, physical, verbal or written means; or (f) recording, broadcasting, or transmitting the likeness or personal data of any person without their express consent.*'

### *Amendment – BPAS 10*

Clause 6, Page 3, Line 7 at end insert '*, and on subsequent convictions, by a fine not exceeding level 5 on the standard scale.*'

## 7. Enforcement of safe access zone by a constable

We believe that this clause is unnecessary for the purposes required. Clause 6 creates a specific offence for influencing a protected persons within a safe access zone. As amended in BPAS 9 above, this should in our opinion include persistent, continuous or repeated occupation of the area – preserving the integrity of the safe access zone from those who seek the gather but may not undertake any other forms of activity.

Meanwhile, Clause 7 relies on police on the ground to make decisions about the intentions and impact of these groups' behaviour which we know have fallen short in managing this problem thus far. It also seeks to specifically apply existing police powers to this instance – where they already exist and can be used by police if they consider them appropriate (eg breach of the peace under s19 of The Public Order (Northern Ireland) Order 1987).

In sum, we do not believe this Clause is necessary for the implementation of safe access zones – but we do not believe it to be deleterious to their implementation.

### *Amendment – BPAS 11*

Clause 7 to not stand part of the bill.

## 8. Procedure for designating a safe access zone

As in our introductory remarks, we believe that the ultimate impact of placing in the hands of the Department the role of enacting safe access zones is likely to result in a lack of implementation and as such we believe this clause should be rewritten.

It is notable that the bill accepts that the Department should not have the power to refuse a safe access zone ((8) (2)), only to vary its size. As a result, we believe that the cleaner legislative solution to the establishment of safe access zones would be for their introduction via primary legislation (as per BPAS 2-4), and for this clause to focus on the ability only of the Department to increase the size of the these zones beyond the statutory minimum where appropriate, and their statutory duty to publish the extent of zones across the Province.

There are, around the UK, sites where larger or smaller safe access zones are necessary to preserve the confidentiality and non-harassment of attendees to premises – and we believe retaining the power to vary the size of individual zones balances the need for a statutory minimum with the need to protect attendees.

We also believe it to be a dangerous precedent to set to allow the Department to determine for itself when 'the operator no longer wishes there to be a safe access zone' as per (5).

### *Amendment – BPAS 12*

Clause 8, Page 3, Line 24 leave out from 'wishes' to 'premises.' and insert '*the extent of the safe access zone in respect of the protected premises be varied beyond the statutory minimum of 150 metres.*'

### *Amendment – BPAS 13*

Clause 8, Page 3, Line 26 leave out subsection (2)

### *Amendment – BPAS 14*

Clause 8, Page 3, Line 38 leave out from '(5)' to '(6)' and insert '*The operator of a protected premises which has an established safe access zone as varied under the provisions of this section may contact the Department at any time to revoke the variation.*'

### *Amendment – BPAS 15*

Clause 8, Page 3, Line 40 leave out from 'of' to '(including' and insert '*all safe access zones*'

## 9. Exercise of functions

Although we do not believe this clause to be necessary for the operation of the Act, as a result of the statutory obligations already on governmental bodies to take into account ECHR rights in their decision-making, we do not oppose its inclusion.

We do, however, think a slight correction is required for accuracy to recognise that freedom from harassment, alarm and distress is not contained within the wording of Article 8, and that legal precedent including these aspects of rights with regards to access to abortion care is included only in Northern Ireland as a persuasive precedent from English Courts (in a case which the Supreme Court declined to hear).

We also believe that the line 10 addition ‘in particular the right to protest’ misconstrues and misinterprets the intentions and actions of groups outside abortion clinics. They are repeatedly clear that they are not protesting and are instead seeking to change the minds of individual women. Article 11 is already mentioned and must be considered, and it has no greater or lesser right or power than Articles 8, 9, or 10 – so we believe it to be an unnecessary addition.

### *Amendment – BPAS 16 (to be taken with BPAS 17)*

Clause 9, Page 4, Line 6 leave out from ‘Convention,’ to ‘(c)’

### *Amendment – BPAS 17 (to be taken with BPAS 16)*

Clause 9, Page 4, Line 6 after ‘Convention,’ insert ‘*the right of protected persons to be free from harassment, alarm and distress when attending protected premises*’

### *Amendment – BPAS 18*

Clause 9, Page 4, Line 9 leave out from ‘Convention’ to ‘.’

## 10. Monitoring of effectiveness of safe access zones

Echoing our concerns about the willingness of the Department to engage in the implementation of safe access zones, we believe that as per the precedent in Clause 8 of the Bill, there should be a requirement for the Department to consult with a set list of people in the production of their reports – and not simply rely on their opinion.

### *Amendment – BPAS 19*

Clause 10, Page 4, Line 14 at end insert—

‘(2) *In determining the effectiveness of safe access zones, the Department must consult—*

- (a) operators,*
- (b) owners and occupiers of land in the immediate vicinity of protected premises,*
- (c) the district commander for the police district in which the premises are situated, and*
- (d) such other persons as it considers appropriate.’*

## Conclusion

BPAS is in full support of the aims of the Bill, and has used our experience as a provider and primary drafter of a number of similar items of legislation to attempt to provide amendments that both account for the full range of activity that occurs outside clinics, and to prevent unintended consequences of existing drafting. We hope that these proposed amendments are helpful to the committee.

If the committee wishes to contact us with any further questions, please get in touch with:

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