

## SERVICE UPDATE

<b><u>Name of Function:</u></b>	Commissioning
<b><u>Date:</u></b>	20 December 2022
<b><u>Title of Update:</u></b>	Buffer Zones: Outcome of Supreme Court Decision
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### **UPDATE:**

- 1.1 This Service update is to provide Members with information on the outcome of the Supreme Court's decision on a Reference by the Attorney General for Northern Ireland - Abortion Services (Safe Access Zones) (Northern Ireland) Bill and the bearing it has on the establishment of buffer zones in Scotland. The decision was referenced in two reports to Council on [24 August 2022](#) (COM/22/167) and [14 Dec 2022](#) (COM/22/270).
- 1.2 The [Supreme Court](#) is the highest court in the United Kingdom and concentrates on cases of the greatest public and constitutional importance.
- 1.3 In July 2022, the Supreme Court was asked to consider whether the Abortion Services (Safe Access Zones) (Northern Ireland) Bill disproportionately interferes with the rights protected by the European Convention on Human Rights. These include the rights to freedom of thought, conscience and religion, freedom of expression and freedom of assembly and association protected by Articles 9, 10 and 11 of the Convention.
- 1.4 The Bill is primarily designed to protect the right of women to access abortion and associated sexual and reproductive health services. It therefore prohibits anti-abortion protests and other specified behaviour within "safe access zones" around abortion clinics and related premises. Under clause 5(2)(a), it is an offence to do anything, intentionally or recklessly, in a safe access zone which has the effect of influencing a person attending an abortion clinic or other protected premises for protected purposes.
- 1.5 The Supreme Court issued its [judgement](#) on 7 December 2022.

- 1.6 The Supreme Court indicated that the Abortion (Safe Access Zones) (Northern Ireland) Bill is compatible with Human Rights Legislation and the restrictions placed on individual's rights to freedom of thought, conscience and religion (Art 9); freedom of expression (Art 10) and peaceful assembly (Art 11) are proportionate.
- 1.7 The Supreme Court confirmed that the legislation pursued a legitimate aim as it seeks to ensure that women have access to advice and treatment relating to the lawful termination of pregnancy under conditions which respect their privacy and dignity, thereby protecting public health. It is also designed to enable staff who work at abortion clinics and related premises to attend their place of work without being intimidated, harassed or abused.
- 1.8 The Supreme Court also confirmed that the restrictions the legislation placed on freedom of expression and assembly are proportionate. It noted that:
  - a. The context is a highly sensitive one in which the protection of the private lives and autonomy of women is of particular importance.
  - b. Women who wish to access lawful abortion services have a reasonable expectation of being able to do so without being confronted by protest activity designed to challenge and diminish their autonomy and undermine their resolve.
  - c. The Bill only prevents anti-abortion protestors from exercising their rights under articles 9, 10 and 11 of the Convention within designated safe access zones. They are free to protest anywhere else they please.
  - d. The women and staff protected are a captive audience who are compelled to witness anti-abortion activity that is unwelcome and intrusive when they visit premises where abortion services are provided.
  - e. The Bill is intended to implement the UK's obligations under the Convention on the Elimination of All Forms of Discrimination against Women.
  - f. The maximum penalty for an offence under clause 5 of the Bill is a fine of up to £500.
  - g. In a sensitive context like this one, States have a wide margin of appreciation in situations where it is necessary to strike a balance between competing Convention rights.
- 1.9 In conclusion, the Court was satisfied that the restrictions imposed by the Bill are justifiable. They are required to protect the rights of women seeking treatment or advice, and are also in the interests of the wider community, including other patients and staff of clinics and hospitals. A conviction under clause 5(2)(a) will not therefore interfere disproportionately with a protestor's rights under articles 9, 10 and 11 of the Convention. Accordingly, clause 5(2)(a) is within the Assembly's legislative competence.

1.10 The decision reduces the risk of the Scottish Government facing similar challenges to establishing similar legislation.