



OFFICIAL REPORT
AITHISG OIFIGEIL

Health, Social Care and Sport Committee

Tuesday 19 March 2024

Session 6



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HEALTH, SOCIAL CARE AND SPORT COMMITTEE
9th Meeting 2024, Session 6

CONVENER

*Clare Haughey (Rutherglen) (SNP)

DEPUTY CONVENER

*Paul Sweeney (Glasgow) (Lab)

COMMITTEE MEMBERS

*Sandesh Gulhane (Glasgow) (Con)
*Emma Harper (South Scotland) (SNP)
Gillian Mackay (Central Scotland) (Green)
*Ruth Maguire (Cunninghame South) (SNP)
*Ivan McKee (Glasgow Provan) (SNP)
*Carol Mochan (South Scotland) (Lab)
*David Torrance (Kirkcaldy) (SNP)
*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Simon Cuthbert-Kerr (Scottish Government)
Ross Greer (West Scotland) (Green) (Committee Substitute)
Johanna Irvine (Scottish Government)
Gillian Mackay (Central Scotland) (Green)
Jenni Minto (Minister for Public Health and Women's Health)
Ruth Wilson (Scottish Government)

CLERK TO THE COMMITTEE

Alex Bruce

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Health, Social Care and Sport Committee

Tuesday 19 March 2024

[The Convener opened the meeting at 09:00]

Abortion Services (Safe Access Zones) (Scotland) Bill: Stage 1

The Convener (Clare Haughey): Good morning, and welcome to the ninth meeting in 2024 of the Health, Social Care and Sport Committee. I have received no apologies.

Today, the committee will take evidence from two panels on the Abortion Services (Safe Access Zones) (Scotland) Bill. The member in charge of the bill, Gillian Mackay, will not be participating in the committee's scrutiny of it, by virtue of rule 9.13A.2(b) of standing orders. Instead, Ross Greer is attending in the member's place as a committee substitute, by virtue of rule 12.2A.2. However, by virtue of rule 12.2.3(a), Gillian Mackay is attending today's meeting as the member in charge of the bill and will also give evidence on the bill in the second panel session.

As part of the committee's scrutiny of the bill, we held two informal engagement sessions to hear from individuals. We heard private testimony from women with negative experiences of being exposed to anti-abortion activity outside abortion services, and we also heard from women who have accessed abortion services and have subsequently taken part in pro-life vigils outside such services. I express our gratitude to those women for sharing their experiences with the committee, as well as those who gave formal evidence to the committee during our public sessions and those who responded to our call for views. Those testimonies have been fundamental to the committee's scrutiny of the bill.

Our first evidence-taking session this morning is with the Minister for Public Health and Women's Health. I therefore welcome to the meeting the minister Jenni Minto and, from the Scottish Government, Simon Cuthbert-Kerr, who is deputy director of public health capabilities; Johanna Irvine, who is a solicitor; and Ruth Wilson, who is a senior policy adviser.

I understand that the minister has a short opening statement.

The Minister for Public Health and Women's Health (Jenni Minto): Thank you, convener, and

thanks, too, to Gillian Mackay for introducing the bill.

I appreciate the committee's scrutiny. I know that members will have detailed questions, so I will offer only general comments on why the bill matters. In so doing, I hope to address some of the concerns that people have about it, even those who support its intent.

The fundamental—and, I hope, inarguable—starting point is that no one should experience harassment, intimidation or unwanted influence as they access essential healthcare. However, as committee members have heard over the past few weeks, that is exactly what is happening to some women when they seek an abortion—which is, first and foremost, healthcare.

For some of those women, such interference happens at a time when they are already particularly vulnerable or distressed, and for all of them it is happening at a time when privacy and respect should be assured. Instead, they can be met with vigils, graphic images, and sometimes shouting and name calling. I cannot articulate the impact of that experience more powerfully than the women who have appeared before you already have, and I will not try. I just ask you to remember it as you consider the bill, and to give it the enormous weight that it deserves. After all, the bill aims to prevent what happened to them and, in so doing, to ensure that access to healthcare can be provided without obstruction, as is protected under article 8 of the European convention on human rights.

It is, of course, still appropriate that the bill's potential impacts on the rights to freedom of expression, religion and assembly be considered. In that respect, there are broadly two concerns: that the bill itself weakens those rights and that it might erode those rights by setting a precedent for restrictions elsewhere.

Freedom of expression and assembly and freedom of thought, conscience and religion are, of course, fundamental rights. However, under the ECHR, they are not absolute; they may be interfered with, provided that any such interference goes no further than is necessary to achieve a legitimate aim. As I have established, protecting women's access to essential healthcare services is a legitimate aim, but I can assure members that significant work has been done to ensure that the restrictions are no more than is necessary.

Contrary to the charge that the bill limits all protest in safe access zones, I point out that it targets only activity that intentionally or recklessly has specified effects, such as influencing a decision to access or to provide abortion services, and that those restrictions attach to only 30

premises in Scotland and will extend for only 200m beyond their grounds.

Everywhere else in Scotland, anyone can express opposition to abortion however they please, provided that what they do is lawful. They can protest outside court buildings and on street corners. They may erect billboards and lobby any member of the Parliament. If the bill passes, all that it will prevent is the direct targeting of individuals as they take what might be the most deeply personal decision of their lives.

That also explains why the bill does not set a precedent. No other medical procedure attracts the kind of activity that abortion services attract, and no other form of protest targets such a personal choice. That is all that the bill recognises. It safeguards access to healthcare and, in doing so, protects the article 8 rights and the privacy and dignity of women when they most need it.

I will conclude by saying that I was shocked when I first encountered anti-abortion activity outside clinics in Oregon in the United States years ago. It is disheartening to see that such activity has spread. I hope that the bill, and other legislation like it, reassures women that their rights and their health matter, and that we will defend both as vigorously as we can.

The Convener: Thank you, minister. We now move to questions from members.

Carol Mochan (South Scotland) (Lab): Thank you, minister, for your opening statement, which links to the theme that I have been asked to cover, which is the impacts on people accessing services for healthcare, and on those who wish to keep their rights to their views on the matter. Do you believe that we can do both of those things with the bill? What will that impact look like if the bill is passed?

Jenni Minto: As I have said, women should be able to access abortion services without unwanted influence, harassment or public judgment. As we have been creating the bill, we have been looking carefully at the balancing of rights under the ECHR.

The bill is targeted. We have specifically said that the legislation covers zones of 200m from the boundaries of the protected premises. As I said in my opening statement, we have also been clear that those who protest or who hold vigils, as has been described in the evidence to the committee, can still do so, but not within the safe access zones.

Those points were brought out through the work that we have done on speaking to stakeholders on both sides of the argument and the amazing response to Ms Mackay's consultation. We feel that we have struck the right balance. We use the

same wording as was used in the Supreme Court ruling on the Northern Ireland legislation, in that we believe that the legislation is proportionate, which is key when balancing the various human rights.

Carol Mochan: You have probably heard the views of those who hold vigils about the kind of information literature that they provide to support women in their choice. Do you have a view on what is provided to support women in the clinics and on the view of those who hold the vigils that they require to give them additional information to help them with their choice?

Jenni Minto: Abortion is highly regulated in healthcare, which is incredibly important. The committee heard some important evidence from women who had accessed abortion services that they were slightly surprised at the level of questioning and advice that they got to ensure that they were making the right decisions for themselves. I thought that that evidence was very powerful.

You also heard what I felt was very powerful evidence from Professor Cameron about the level of support that members of staff give to women who are exploring or seeking abortion. When leaflets that have been handed out by protesters or people holding vigils were shared with members of the committee, it was clear that they did not contain the right medical information. I find that concerning. It was noted in evidence that, after some women had received those leaflets, the staff in the facilities had to provide more assurance—which is right, as all the questions should be asked. However, I go back to what I said earlier, which is that abortions are very regulated, and the healthcare that is provided is very regulated and supported. I believe that it is from healthcare professionals that people should be seeking that level of advice and support.

Carol Mochan: That is very helpful—thank you.

Sandesh Gulhane (Glasgow) (Con): Thank you for coming, minister. I declare an interest as a practising general practitioner in the national health service.

I have a few questions. My primary concern comes from evidence that I have heard about the right to protest for other reasons. When the police and a defence solicitor were here, I specifically asked about our right to go, for instance, to a hospital to protest against Eljamel to say that what he did was unacceptable. There was also some discussion about situations where an employer was trying to prevent some protest from happening because they did not like it.

The bill talks about intentionally or recklessly influencing someone's decision. We have seen people outside Parliament protesting against

Eljamel who have been wearing scrubs with blood on them, and I suppose that, from a distance, one could be concerned. That might be deemed to be “reckless” in relation to influencing people. What is your take on the fact that the police and the solicitor said that the bill would prevent other forms of protest?

Jenni Minto: I recognise that that point was raised in the course of the evidence sessions. The bill is very narrow, however, and deals specifically with abortion services and the safe access zone for abortion. From my perspective, and in all the work that we have done, we have been clear that there is no mission creep in the bill: it is specifically for those who protest about abortion services.

During one evidence session, a question was raised about whether there could be picketing or leafleting of staff members. We highlighted the picketing provisions in the Trade Union and Labour Relations (Consolidation) Act 1992, and we have said that they are not overridden by the bill. The work around picketing, such as allowing it to take place and informing people that there could be a picket, would all be okay.

The Eljamel demonstration outside Parliament was indeed shocking. I was not at it myself, but I heard about it. I cannot talk for the women who are accessing abortion services, but it has been clear from the evidence that women have given that the protests or vigils that they find most upsetting are those that specifically relate to abortion.

09:15

Sandesh Gulhane: I will read out a paragraph from a letter that Catriona McMillan wrote to the committee on behalf of the Law Society of Scotland. It states:

“If the committee remains concerned that the Bill may be used to, or set a precedent for, curbing other legitimate protests it may wish to consider the suggestion we have made in our written evidence that overarching principles be included on the face of the Bill to assist with the proper balancing exercises required for ECHR compliance—in this case, the rights to freedom of expression and freedom of assembly (articles 10 and 11 ECHR)”.

Do you agree with the Law Society’s suggestion, which is to put the overarching principles on the face of the bill?

Jenni Minto: I heard Dr Catriona McMillan giving her evidence. Clearly, the gaining of evidence is exactly what should be happening in this committee, and I am very happy to consider it all. I look forward to reading the committee’s stage 1 report on the bill.

Sandesh Gulhane: I want to separate out “protest”—which is people with placards and

pictures and shouting and screaming—and “silent prayer”. They are two very different things. Everyone we heard from said that protest, in the form that I described, is unacceptable. The silent prayer part is where people disagree. When I asked the police, they said that they would not ask why somebody was there, and that they certainly would not ask what they were thinking or whether they were praying. If the police are not going to enforce it in any way, which is what it sounded like, could you explain having that in the bill?

Jenni Minto: We have been very clear in the bill that it is not about specific actions, but the intent of those actions. The committee got very strong evidence from women who were concerned about walking past a group of people who were standing silently, because it could be deemed to be silent judgment.

However, we have to be cognisant that different people experience things in different ways. It is not for me to say how the police would look at any actions, although they would look at them in the wider context of what else was happening around about them.

I go back to the point that—as I said in my opening statement—the safe zone is 200m, so the behaviour can happen elsewhere. It need not necessarily happen right beside the hospital. I was struck by the theological debate that took place in an earlier evidence session about where it is appropriate to pray and whether it is appropriate to pray so close to a facility that is providing abortions, where you could impede people’s access and cause alarm or distress.

However, as I have said, it is for the police to determine what they would need in order to prosecute.

Sandesh Gulhane: The bill has the ability to be extended to other places, such as general practices or pharmacies. We certainly heard evidence from other people suggesting that those areas might be protected.

My concern is that, if we have 200m around every GP practice and pharmacy, most of Scotland might be covered by the bill. I am therefore asking about the proportionality of that extension. Hospitals and clinics are different, and that extension into other areas would be of concern.

Jenni Minto: When we were constructing the bill, we needed to look at future proofing it, and the way that women access abortions and the locations where abortions may be provided may change in the future. We currently have no plans to extend to other places. Just now, it is specifically about safe access zones, to the extent of 200m, around 30 locations that currently provide abortions.

We need to be able to modify the bill as required, to respond to changes in healthcare. That is important. I would be interested in seeing in your committee report the evidence that you have acquired on whether there should be a minimum and maximum area for safe zones. We are currently looking at 30 premises, but we must be able to future proof as healthcare abilities change.

Ruth Maguire (Cunninghame South) (SNP): Good morning, minister. For absolute clarity, is it the Scottish Government's intention that someone who is engaged in silent prayer—without placards, rosaries or any other visible thing that would enable them to be picked out—would be caught by the section 4 criminal offence?

Jenni Minto: I go back to the intention. If it were the intention to impede, alarm or distress women attending abortion services, silent prayer would be included. We have not specifically laid out what the actual acts are. However, we have laid out what the intention of the acts is.

Ruth Maguire: Obviously, in law, it is important to be crystal clear. People need to know whether they are committing a criminal offence, and I guess that the police need to know. How will we place the intention in someone's mind as they silently pray?

Jenni Minto: I think that, in evidence to you, the police made it clear that they would not be asking people whether they were praying, which I believe happened to one of the women who gave evidence to you. As I said earlier, there would have to be other things around the demonstrations, which the police would look for.

Ruth Maguire: You used the phrase "silently judging". How do I know whether someone is silently judging me?

Jenni Minto: That is a really good question, and it is one that I have been playing out in my mind. The bill is set out to protect women who are accessing abortion services, and you heard some very powerful evidence from women who have obtained abortions about how they felt and the impact that walking past demonstrators had on them.

Ruth Maguire: Yes—I would not diminish any of that; we absolutely heard that. As we are creating law, what I am trying to get to is whether it is possible, in law, to protect citizens from silent judgment.

Jenni Minto: What we are protecting individuals and society from is the intention to cause alarm and distress and impede access.

Ruth Maguire: To go back to the question about section 4, is it the Government's intention that silent prayer—without any placards or other

paraphernalia—will be caught under the legislation?

Jenni Minto: Silent prayer is a form of vigil protest that is impacting on women attending abortion clinics, so yes.

Ruth Maguire: How will that be enforced? How will we know what somebody is silently judging or praising, or whatever they are silently doing?

Jenni Minto: The police would make that judgment. The activity will be captured, depending on the facts and the circumstances around what is happening.

Ruth Maguire: Do you have an example of how that might work in practice? The police have said that they would not ask somebody what they were thinking about or whether they were praying.

Jenni Minto: I do not have such an example. If I can come back to the committee with an example, I am happy to do so.

Ivan McKee (Glasgow Provan) (SNP): I want to follow up on some of the points that Ruth Maguire has been making. I am sorry to dig into this, but I think that the question whether the bill can deliver what it is required to deliver is a fundamental one, although I am bearing in mind, too, some of the other issues that it raises. Do you think that silent prayer can influence people?

Jenni Minto: I believe so. We have heard evidence from Alina—I think that that was her name—about the impact that silent prayer had. There is a possibility that it can influence people, but I am also looking at this from the perspective of how it can intimidate people.

Ivan McKee: Going back to Ruth Maguire's point about this being something that is silent and there being no other visible signs, you said that context and what is going on round about will be important. However, if there is none of that—if all there is is someone simply standing and praying silently, with no other visible signs around them—is the Government's position that such activity will not fall foul of the restrictions and measures in the bill? After all, you keep coming back to the point about context and the police making a decision on that basis, but if there is no such context, just silent prayer, how do you make that illegal?

Jenni Minto: This is something that I have been talking about with my officials a lot. We have to remember that, with any activity that is captured by offences, it will all be dependent on the facts and the circumstances happening around that activity.

We have spoken to Police Scotland and the Crown Office about this, and we will continue to do so as the bill is developed, but I think that what we are looking at is the context and impact of an

activity. Indeed, the key element of the bill is women's ability to access abortion services safely.

Ivan McKee: I keep coming back to this point, though, because it is important. You, too, will understand the importance of potential criminalising of silent prayer; if there is no context, I am struggling to see how it can be criminalised. If I am hearing you right, you are saying that the police would make such decisions, so you are kind of passing the buck on to them. I might come back to that issue later.

I wanted to ask one other question. You have made the point—rightly—that one of the very important aspects of the issue is how women who are accessing the services feel about what is going on. We have taken evidence that, from a distance, any protest could be deemed to be creating a problematic environment that might make it difficult for women to access services. That could include other protests that we have heard about, such as those around the Eljamel issue, trade union activity or any bunch of noisy people with placards who are standing outside a place shouting and handing out leaflets. From a distance, such a protest could seem to be a protest about anything, and that could be just as impactful on women who are accessing the services. I just want to understand how you square those different views.

Jenni Minto: To go back to the silent prayer issue, I think that it is important to highlight that the Supreme Court also recognised silent prayer in its views on the Northern Ireland legislation, and acknowledged that it could cause distress.

As for other types of protest, as I have said previously, the legislation is narrow and specifically covers people who protest against abortion or who offer the pro-life message. Other demonstrations do not fall under the legislation.

09:30

Ivan McKee: I understand that, but that is not the question. The question is about what a woman who is approaching a service to access it perceives from a distance. We have heard evidence from women that they could not even remember what was being said or what the signs were; all they heard was the noise and the activity that was going on around them. How would you make the point that women would not be impacted by noisy demonstrations with placards if they are at a distance, regardless of what they are demonstrating against?

Jenni Minto: The 200m abortion safe zone was constructed after a lot of evidence was gathered around each of the facilities. The zones protect all access into the facilities, including bus stops that the women might use.

If there are other demonstrations within that area, which is what we have been talking about, it could be deemed to be clear that they are not about women who are accessing abortion services, because the legislation has designated that safe zone.

The Convener: I will go to Ruth Maguire next, then to David Torrance and Ross Greer, but I have a question to ask first.

I want to get this clear in my head, and from the questions that members have asked, it does not sound as though everyone else is clear about it. If, after the bill is made law, a woman who is accessing the services sees one, two or even three people standing in the 200m exclusion zone and she is concerned that they might be praying silently, will she be able to make a complaint to the police or the authorities that she feels intimidated by those individuals without knowing why they happen to be standing in that exclusion zone?

Jenni Minto: I will call Johanna Irvine in on that.

Johanna Irvine (Scottish Government): It is open to anybody to make a complaint to the police about behaviour that they think warrants reporting, but the bill is restricted to behaviour that is deliberately designed to impact directly on women and staff who are accessing services.

The Convener: I absolutely understand that, but I am trying to get a clear and practical example in my head. One, two or three people are standing in the zone for whatever reason. They are not carrying placards, vocally protesting or handing out leaflets; they are just standing there, but a woman who happens to be accessing services sees that group of people, or even just an individual, standing there and interprets that as them standing there silently praying, without any overt sign of that. That woman can then complain to the police that she felt intimidated by an individual being on the street.

Johanna Irvine: Anybody could make that complaint now, without the bill being in place. It is open to any member of the public to contact the police.

The Convener: Could they?

Johanna Irvine: Yes.

The Convener: There is no law saying that, if someone happens to be standing there, I could complain to the police that they are silently praying and trying to intimidate me or change my intent to access the service.

Johanna Irvine: It is open to individuals and members of the public to approach the police. Whether the behaviour is an offence under section 4 of the bill, or whether it meets the different tests for one of those behaviours, will be a matter for

the police to determine in the circumstances, based on them looking at the type and nature of the behaviour, and investigating it.

The Convener: Is that correct under current legislation or did I pick that up wrongly?

Johanna Irvine: There are two separate things. Any member of the public can make a complaint to the police. They are within their rights to do that. Whether three people are standing there is not the point in terms of whether there is an offence. The police would investigate whether the behaviour would amount to an offence under section 4 of the bill.

As the minister said, it depends on the facts and circumstances—the behaviour and what is going on—at the time. That is for the enforcement authorities to determine. As the bill makes clear, the test that the police would apply is whether the actions are about influencing, preventing access or causing harassment, alarm or fear.

David Torrance (Kirkcaldy) (SNP): I go back to silent prayer. One of the witnesses who gave evidence last week had been arrested twice by the police and questioned by them. They openly admitted that they were in silent prayer and there was no prosecution. If Police Scotland will not be asking people whether they are in silent prayer, will we get any convictions at all?

Jenni Minto: I believe that the lady whom you are referring to was in England on those occasions. I reiterate that the bill offers protection in very limited circumstances within the 200m perimeter around a hospital. The bill does not prohibit specific behaviours. The offence is of influencing, impeding access or harassing, alarming or distressing someone. The police will look at the context in order to decide whether to proceed with a conviction.

The Convener: I call Ruth Maguire.

Ruth Maguire: I am okay, convener. I will come back in later.

Ross Greer (West Scotland) (Green) (Committee Substitute): Minister, you said that the bill does not specify that silent prayer would be an offence. An offence is about behaviour that either has the intent of, or that recklessly causes the effect of, distress and so on to women who are seeking abortion. I will play that out with some examples. Say an individual is a patient who is accessing a hospital for whatever reason or they are a visitor. If, on their way into the hospital and within the 200m zone, they stop and pray, would that be an offence under the bill?

Jenni Minto: Are you asking about the individual seeking abortion?

Ross Greer: It could be an individual seeking hospital services for themselves for whatever reason, or they could be visiting somebody. If, on their way into the hospital for a legitimate purpose, they were to stop and pray, would that be caught by the bill?

Jenni Minto: No, because that is something that they are doing themselves. They are not trying to impede, alarm or distress anyone else, which is what the bill captures.

Ross Greer: The question of law is about the balance of rights. In your opening statement—I associate myself with much of what you said in that—you mentioned that women's ECHR right to access healthcare is being compromised at present. That needs to be balanced with the ECHR right to freedom of religion. That right is an absolute, but the right to manifest one's religion is not.

Balancing rights is tricky, and it is usually cases on such issues that end up at the Supreme Court or at the European courts. Why are you confident that the bill gets the balance right, primarily between the two fundamental rights of freedom of religion and of access to healthcare?

Jenni Minto: When we were constructing the bill, we got evidence from and consulted many stakeholders. We have also taken a lot of evidence from Gillian Mackay's consultation. I think that we are being very specific about areas where we are creating abortion safe zones. As I said before, there will be 30 facilities with a 200m zone around them. That is proportionate.

The other element is section 8 of the ECHR, which deals with privacy; there is a need to ensure that women have privacy to access abortion services in the right manner.

Ross Greer: Those who engage in the anti-abortion protest vigils would generally characterise them as vigils rather than protests. The evidence that they gave last week expressed their feeling that the bill is an attempt to force anti-abortion perspectives out of public debate entirely and to make that an unacceptable point of view to hold in society.

This might sound like a daft question, but do anti-abortion protesters have the general right to express that point of view and to do so through forms of protest, prayer vigils or whatever? Is that a point of view that people would—even after the bill's being passed—still have the right to hold in Scottish society?

Jenni Minto: I think that I was clear in my opening statement that anti-abortion demonstrations will still be able to occur in Scotland. We have been very clear about that. The only places for which we are legislating that

they cannot happen—if the bill is passed—are within protected safe zones around establishments in Scotland that provide abortion services, of which there are currently 30.

Ross Greer: As others have already noted, effective operation of the provision within the zones will depend to a significant extent on the judgment of police officers who are either called to or are already at vigils or protests. They will be asked to exercise their judgment about whether the behaviour—whatever form it takes; silent prayer is the one that has been identified as being the most difficult to judge—constitutes a potential offence because it either seeks to influence, or recklessly has the effect of influencing, women who are seeking an abortion. How will police officers be supported to make that judgment? Will there be operational guidance from Police Scotland? Will there be guidance from the Lord Advocate for procurators fiscal? The bill does not provide enough information in that respect, because that is not what legislation is for, but I would like to know how we will support police officers to uphold the legislation, if the bill is passed, because they will be asked to make quite tricky decisions.

Jenni Minto: Police Scotland will provide training for its officers. As the discussion has highlighted, this is a tricky area and we have to make sure that we get it right. As I have said before, the important thing is that we ensure that women who are accessing the services can do so safely and without impediment, alarm or distress. I should also note that Police Scotland is independent of Government.

Ross Greer: I accept that the police are operationally independent. I am interested in whether there are other areas of law in which we ask police officers to make such decisions. Obviously, there would be a decision for the procurator fiscal and the courts if a case were to get that far, but are there other areas of law in which we ask police officers, in the first instance, to interpret the intent or effect of an individual's behaviour? The behaviour that we are discussing is not, in and of itself, automatically criminalised. We will not be criminalising silent prayer; the question is whether that act has the effect of influencing women who are seeking an abortion. Are there other areas of law in which we ask police officers to make such an initial judgment about effect?

Jenni Minto: That is a really important question. Rather than ask Johanna Irvine to reply at this point, I think that we will write to the committee with a response to it.

Emma Harper (South Scotland) (SNP): Good morning. I am interested in the decision to set the safe access zone at 200m, as is proposed in the

bill. How did you come to make that choice, given that legislation elsewhere sets out other sizes—for example, 50m or 150m? What evidence led to the proposal to establish 200m zones in Scotland?

Jenni Minto: That is a really important question. I cannot overemphasise the amount of work that officials have done in ensuring that we get the right size of zone. I know that Gillian Mackay's consultation proposed 150m. Since seeing the results of that consultation, we have looked at the areas that 150m zones would capture. For example, some stakeholders commented on the fact that some people will catch buses to health centres or hospitals, and feel that bus stops are places where there could be protests or vigils. Therefore, we mapped all 30 facilities to ensure that we would cover an appropriate size of area.

I note that, when it was looking at the Northern Ireland legislation, the Supreme Court said that zones could be extended to up to 250 metres.

It is also important to recognise that, in Scotland, abortion services are, in the main, carried out in hospitals where people are accessing other services, which is different from what happens in England, Wales and Northern Ireland, where there are specific centres.

09:45

Emma Harper: It has come up previously that there have been protests for eight years now at the Queen Elizabeth university hospital, and that that specific issue was one of the reasons why 150m was not considered to be adequate and 200m was agreed. At other hospitals, the zone might not need to be 200m, but will depend on the hospital's periphery.

Jenni Minto: That is a fair comment. In the work, we looked at whether the limit should be bespoke for each hospital or should be consistent. It was felt, on balance, that consistency is the best way forward, because that will mean that there is clarity for women who are accessing services, for Police Scotland and for people who want to protest or demonstrate. That is another reason for going with a consistent 200m zone.

Emma Harper: On extending or reducing zones—when we build new hospitals or stop current hospitals from providing the care that they deliver—the provisions in the bill on ministers' ability to extend or reduce zones rather than that decision going through further parliamentary scrutiny or statutory instruments raised concerns. Should there be further oversight, not just of ministers extending and reducing zones, but in terms of going through a further parliamentary process?

Jenni Minto: When we were constructing the bill, we acknowledged that there would be examples such as you have given—that is, that there could be new hospitals and that locations could change. We wanted to ensure the right speed of response so that the new buildings could be captured and so that a zone could be reduced, if necessary, if a location changed or stopped providing services. We felt that there was a need for a prompt response. However, I know that there has been a lot of discussion, concern and input into the consultation on that point. I would be interested to read the committee's stage 1 report regarding the views that you have gathered on increasing or decreasing the size of zones.

Emma Harper: What about signage for the zones? When I spoke to NHS Dumfries and Galloway, I was told that signage would shine a beacon of light on the services that are being provided, which would draw attention to them and make the healthcare that is being provided more "in your face". What are your thoughts on signage around zones?

Jenni Minto: Again, I say that I have heard both sides. It is important to show where zones start and finish but, as you have said, there is a point to be made about shining a beacon on where services are provided. We have spoken to the Convention of Scottish Local Authorities about that and we will, as the bill progresses, continue to discuss what we think is appropriate.

Hospitals will be required to have a map on their website showing exactly where the zones are. That is a really important way of publicising them that will ensure that everyone has consistent information.

We are still discussing signage. Again, I am interested to hear what proposals the committee makes in its report.

Ivan McKee: I will follow that up. You mentioned having consistency, which makes a lot of sense. The committee took evidence on that. However, there is also a provision for ministers to increase or decrease the size of the zone at specific locations, which obviously goes against consistency because, as soon as that provision is used, there will be inconsistency. Therefore, first, I want to understand how you would square that.

Secondly, is there value in giving comfort about prevention of misuse of ministerial power, potentially by setting out maximums and minimums, in the legislation? That would put guardrails around the size of zones going up or down.

Jenni Minto: Changing the size of zones and creating new zones would require consultation to ensure that it is right to do so. That would also be done in discussion with the health boards because

they make the decisions on where to locate their services. Earlier, I said that I would be interested to hear the committee's views on maximums and minimums, recognising that provisions on those have been brought in in other jurisdictions.

Ivan McKee: I have a final point that you might want to come back on. You mentioned, in your answer to Emma Harper, timing and prompt responses and the need to be able to react quickly if circumstances change. I am not sure that people would be queuing up and waiting for the new location then pouncing on it. However, assuming that that was the case and it was felt that those provisions needed to be in place, that would be a reason to have a ministerial directive rather than using a Scottish statutory instrument or whatever. However, you also talked about consultation. That would absolutely be the right thing to do, but consultation is a lengthy process.

It might be helpful if you were to comment on that now, although you might want to come back with indicative timelines and say why a process of due consultation would be prompt enough but a Scottish statutory instrument and due consultation would not.

Jenni Minto: Clearly, if we are talking about a new building, there would be a timeline for that, which would allow for consultation. However, I hear what you say about what would happen if we planned to quickly extend or reduce a zone. Therefore, I am very happy to come back to the committee on that. We also need to recognise that it is important to ensure, when changing a zone, that people who are holding vigils, as well as those who are seeking services, are made aware quickly.

Tess White (North East Scotland) (Con): I am interested to hear your view on balance and proportionality. On one hand, there is the right of women to access healthcare and not be intimidated and harassed. On the other hand, we heard last week from faith groups that are very passionate about their right to pray. We also heard from a woman who had basically changed her mind at the last minute because of that influence.

Therefore, given that there are chapels or places of worship at hospital sites, if faith groups need to pray—the point was made about praying at sites—would it be reasonable to say that they can go to the chapel or place of worship to pray, rather than their feeling the need to intimidate or harass someone, or do whatever is defined as "silent prayer", which many women see as harassment and intimidation? I am talking about balancing the needs of women to access healthcare without fear of intimidation and the rights of faith groups to pray at the site where they feel that they need to pray.

Jenni Minto: I am sorry—I am slightly confused. I am not clear where you mean chapels are. If a woman was accessing abortion services and was in the protected building and felt that she wanted to speak to the spiritual adviser or the chaplain in the hospital, that would absolutely not be captured by the legislation.

Tess White: Thank you, minister. I meant for people who, when the bill becomes law, want to pray. There will be the 200m buffer zone, but if they want to pray, they could be told to go into the chapel or place of worship and silently pray there.

Jenni Minto: If there is a chapel or church within the 200m buffer zone, their doing so inside that building will be absolutely fine. That is not captured by the bill.

Tess White: Thank you, minister.

The Convener: David Torrance has a question.

David Torrance: My question has been covered: it was exactly that question.

The Convener: Minister, you will be aware that the committee has taken evidence on the definition of protected premises. In both oral and written evidence, we have had very different views. Some stakeholder organisations were keen that the definition be expanded, while others were very much against that and were troubled by it. Could you outline the steps, planning and consultation that the Scottish Government will undertake to inform any decisions about extending the definition of protected premises?

Jenni Minto: The first conversation would have to be with the health boards that provide the services in order to understand any changes that they might be proposing or what new buildings they might be intending to build; the initial consultation would be of the boards. We would then consult bodies similar to those that we have spoken to with regard to the bill, to ensure that everything is captured as we intend.

The Convener: You alluded to changes to healthcare provision and the way in which it is delivered. If, in the future, there was a decision to expand the definition to include general practices, as Sandesh Gulhane touched on earlier, and places such as pharmacies, would there be a consultation on that?

Jenni Minto: I would be very surprised if there was not a consultation, because the legislation currently deals with places that provide abortions under the Abortion Act 1967. If there was a change there, we would need to consult on it.

The Convener: Given the caveat that there would be further consultation, how would the Scottish Government ensure that human rights were respected within any change, given that that

would extend the buffer zones into many more premises and cover a much wider area across the country, particularly in urban areas?

Jenni Minto: I accept that. That is why we have to ensure that the consultation is at the right level with the right people and that we always balance the different pieces of human rights legislation. The question would definitely be whether it was proportionate, and we would have to make sure that that was the case. That is the key thing that we would need to consult on.

Ivan McKee: I want to explore a wee bit the position on other premises within the zone and some other aspects related to that. Can you explain what the restrictions would be on what could or could not happen in places of worship within a zone? What could people say or do inside private premises within a zone? Where are the lines drawn regarding what is visible or audible from outside the premises?

10:00

Jenni Minto: As I said to Tess White, prayer within a church or chapel within a safe zone is not captured by the legislation; neither are conversations that happen within private dwellings. Anything that is public facing would be captured, including, for example, somebody standing in the garden of their house handing leaflets over the hedge. What occurs within buildings, such as conversations, is not captured, but anything that could have an impact in the safe zone is. I think it was Professor Cameron who gave the example of a projection on to the Chalmers sexual health centre from another building. If that were to happen again, it would be captured.

Ivan McKee: I want to unpick that a wee bit, as it is important for us to understand where the lines are. Let us take the example of a place of worship within the 200m zone, and let us say that there are some signs outside that talk about repenting for sins and so on. Another example might be a service with singing that is audible from outside, and the messages might or might not be deemed to be relevant to what is happening in the healthcare centre. Where would you see the line regarding such activities being?

Jenni Minto: Wherever they are, churches often have signs outside them. The example that you have just given of a sign about repenting of sins is quite a common, which I view as not being intimidating. However, the signs that we have seen at abortion demonstrations are more so. There is a judgment to be made about whether something is seen as intimidating and whether the intent is of harassing, causing alarm or distress.

Ivan McKee: In your view, would abortion services need to be mentioned in any signage, singing or whatever it was that was going on in order for it to fall foul of the legislation?

Jenni Minto: That would be my view. However, I will write to the committee to confirm that.

Ivan McKee: Thanks.

Helpfully, you have indicated that, as far as you are concerned, chaplains working in hospitals, the conversations that they have, any information that they might provide and any advice that they might give would be excluded. Is there an exemption for that and for what we have just discussed in relation to places of worship within the zone? Is that covered in the bill?

Jenni Minto: There is not a specific exemption for the chaplaincy or spiritual support provided within hospitals. It would be the choice of the person accessing the services whether to speak to those staff, so that is not an exemption.

Ivan McKee: I will raise another example, looking from the other side. At some hospital sites, in urban areas in particular, things might be visible from much further away than 200m. There might be stuff half a mile or a mile away on a block of flats that is perfectly visible. Draping banners from premises like that would be clearly outside the zone, so in theory that would not be covered. Is that correct?

Jenni Minto: Yes. We have said that the zone is 200m.

Ivan McKee: The fines that would be imposed as penalties are the same as those in Northern Ireland—although I think that our fines could go higher. What is the Government's perspective on the type of penalties that should be applied with regard to persuading people not to further offend or not to offend at all? Is there an impact on human rights legislation? Are you walking a line on that, and how are you considering both aspects?

Jenni Minto: The bill lays out the £10,000 fine and the unlimited fines with no custodial penalty. When I first started discussing the bill with officials, one of my questions was about how we would deal with repeat offenders. That is for the courts to decide, but we have taken an approach that is consistent with other legislation.

Ivan McKee: Finally, in reference to the Northern Ireland experience—I think that its legislation is now in place—are you aware of any infringements that have been charged under that legislation, or has it had the intended effect of effectively preventing protests?

Jenni Minto: I am not aware of any infringements, but I am happy to write to the committee on that. It is clear that each case has to

be considered on its merits and the appropriate sanctions decided.

The Convener: We will hear a brief supplementary question from Ross Greer.

Ross Greer: I have a follow-up question to Ivan McKee's question about church premises and signage. A church within 200m might have a sign outside with a message about all life being precious, and the church might intend that to be a message about peace in relation to the conflict in Gaza or something like that. If a person going by that church to enter the hospital for the purpose of seeking an abortion sees that it is a Catholic church and knows what the Catholic Church's position is on abortion, that could cause them fear and alarm. They could find that intimidating.

Am I understanding the provisions in the bill correctly? That would not be that church's intent, so that part of the provision would not come into effect, but the other part says that even if there is not intent, it could recklessly have that effect. Would that example be an offence under the bill? Under the reasonable person test, nobody would say that the church was behaving recklessly by having such a message on a sign.

Jenni Minto: I think that that is a similar example to the one that Mr McKee gave. As I indicated, churches often put out signs, and their intent is more welcoming. I agree with Ross Greer that intent does not exist in that example, and that it is not reckless, either.

Ruth Maguire: This is all very fascinating. The difficulty of the signage issue is intent and how things are received. Protesters or people who are taking part in vigils would think that they do not have malign intent. The same is true of church signage, on which messages can be stark. They are not always welcoming messages from scripture. How have you worked through those difficulties?

Jenni Minto: The work that we have done has looked at evidence from all sides. We have taken strong cognisance of the evidence that has been given by women who have been impacted by walking past such demonstrations or vigils. I go back to the point that I made at the start, which is that the aim of the bill is to protect women who are accessing healthcare that women have been legally able to receive since 1967. The indications that we have heard and the evidence that you have received underline how distressing it can be for women.

In my opening statement, I highlighted that the first time that I came across that was in the early 2000s in Oregon and I saw how it impacted friends of mine, so I come at it from that perspective.

10:15

Ruth Maguire: That is very important. In the questions that I am asking, I am in no way diminishing at all the impact on women, but it is important that we explore the issue thoroughly.

You spoke in general terms about balancing rights. Can you speak a bit more specifically about the process that the Scottish Government went through when looking at the balance of rights and the human rights implications of the bill?

Jenni Minto: My predecessor, Maree Todd, hosted a short-life working group that brought together the different groups to see how the situation could be approached. Could we use byelaws or would we have to go through legislation? Could we use mediation services?

The former First Minister also hosted three round-table meetings that brought stakeholders in to give their views. Gillian Mackay's consultation had almost 12,000 responses from both sides of the argument. We have also taken legal advice specifically about the balance between the different rights that we have.

The Scottish Government absolutely recognises that people have the right to religion and to protest. That is why we believe that the proposals are proportionate in ensuring that we balance those rights with the rights of women to access healthcare safely and in privacy.

Ruth Maguire: How would the Scottish Government respond to claims that anti-abortion views were excluded from the process? You have said that they were not.

Jenni Minto: I do not believe that they were. My officials engaged regularly with anti-abortion groups when shaping the legislation.

Ruth Maguire: There have been calls for post-legislative reviews to be embedded in the bill. How do you respond to that?

Jenni Minto: I think that legislation needs to be reviewed, so I am interested to hear how committee responds to that in its report.

Ruth Maguire: Section 11 of the bill enables the Scottish Government to issue guidance to operators of abortion services. What do you expect that guidance to cover?

Jenni Minto: We are working on that and having discussions with the health boards. I also met representatives from local authorities a couple of months ago to discuss the issue.

We have not scoped out the guidance yet, but we are working on it and that work will continue in parallel with the bill as it progresses.

Ruth Maguire: Finally, we spoke about the right of women to access healthcare without

obstruction. Is there an argument to be made that, in order to take account of women's privacy and so that they feel that they are secure and safe in accessing healthcare, particularly for something that is deeply personal to them, there should not be any protests outside those facilities?

Jenni Minto: That goes back to your previous question about balancing the different rights of people. We have done a lot of work to ensure that we have the right balance by indicating where a safe access zone begins and ends. If someone is accessing healthcare, they will want to do that ideally in the safest of environments, and because the bill is specific and is narrowly restricted to protests against abortion, we have balanced that correctly.

Ruth Maguire: Would you acknowledge that it might be more distressing to walk past a group of men holding placards, even if those placards were about fair pay or working conditions, than it might be to walk past a couple of individuals who are praying silently?

Jenni Minto: It is difficult to get inside the thoughts and views of a woman who is accessing abortion services. I want to ensure that they can do that as safely as possible, avoiding the demonstrations that are specifically directed at them at a time of, I am sure, great stress and emotion. That is what the bill sets out.

The Convener: I thank the minister and her officials for their evidence today. I now suspend the meeting for 30 minutes and the committee will then resume in order to take evidence from the member in charge of the bill.

10:16

Meeting suspended.

10:45

On resuming—

The Convener: We continue our consideration of the Abortion Services (Safe Access Zones) (Scotland) Bill by taking evidence from the member in charge of the bill, Gillian Mackay.

I welcome to the meeting Gillian Mackay and, from the Scottish Government, Simon Cuthbert-Kerr, who is the deputy director for public health capabilities, and Ruth Wilson, who is a senior policy adviser.

I understand that Ms Mackay wishes to make a short opening statement.

Gillian Mackay (Central Scotland) (Green): Thank you, convener. It is unusual to be on this side of the committee's questioning, but I am delighted to be here because, by passing the bill,

the committee and Parliament can make a real difference to the lives of women and send an unequivocal message that access to healthcare is not up for debate.

I know that abortion is an emotive issue. In the Parliament, as in the rest of the country, there are people with diametrically opposed views, and I do not expect that to change. However, the bill is not, and never has been, about abortion. It is about the right and ability of women to access the healthcare that they need, free from fear that they will be met with judgment and shaming, with placards and signs, and with groups of people telling them that they are wrong.

Securing that freedom should matter to everyone, irrespective of their views on abortion. It should matter especially to the committee, which has rightly been fighting over the past three years to understand and dismantle the barriers that prevent people from getting the healthcare that they need, when and where they need it.

In making that argument, I accept that many of the people who participate in anti-abortion activity outside hospitals do not believe that their actions make it harder for women to access healthcare. In fact, they believe that they help women. Without being too blunt, I point out that those beliefs do not change the reality that some women find their activities to be distressing and alarming.

The minister noted the powerful testimony of the witnesses who appeared before the committee in February and, like her, I think that that needs no embellishment. However, unfortunately, those witnesses' experiences are not unique. In meetings with healthcare providers, in responses to my consultation and in conversations with women, the message is the same: anti-abortion activity can make accessing abortion treatment harder than it should be. At worst, as Professor Sharon Cameron noted, it can mean that women delay treatment, which can increase the risk of complications. Even in less extreme cases, it can increase anxiety at a time when many women are already anxious.

We have probably all gone for a medical procedure and lain awake the night before, wondering whether it will hurt or whether something will go wrong—worrying about what will happen inside the clinic. Imagine fearing what might happen outside the clinic, too. Imagine worrying whether there will be people trying to influence your decision or calling you names. No one should have to endure that.

The anxiety is not just about being judged. It can be about feeling exposed at a time when privacy matters most. Nobody goes for a gallbladder operation and expects strangers to question their choices in the car park. Those women who seek

abortion should have the same benefit, because, no matter why they go, they have made a very personal choice.

No matter how much progress has been made, there is still stigma around abortion and, for some women, a real sense of shame. Going at all can take courage, and that difficulty should not be compounded by fear of being identified or exposed. That fear might have an even greater impact in remote or rural areas, where anonymity is often harder to come by at the best of times.

Given all that, abortion should be the very last healthcare service whose recipients we allow to be subjected to unwanted influence or harassment—the very last one, as opposed to the only one.

I will make two further points. First, I have been told that the bill is not necessary. I wish with all my heart that it was not. However, the committee would not have heard the evidence that it has heard in the past few weeks if existing law was sufficient. There is no current solution that offers consistent protection and that does not require women to experience harm before action is taken.

Secondly, I am not at all cavalier about the rights to freedom of expression, religion and assembly. I would never vote for a bill that threatened them, never mind championing it through Parliament.

I am confident in the work that we have done to ensure that the right balance has been struck by the bill. I will happily say more on that—I am sure that you will ask me to.

In essence, I think that it is proportionate to ensure that, for 200m from the grounds of only 30 premises in the whole of Scotland, women cannot be targeted for accessing healthcare to which they are legally entitled.

Carol Mochan: I am interested to know a wee bit more about the consultation and, in particular, whether you feel that you were able to reach out to people who, as you acknowledged, have opposing views on the issue. How did you go about the consultation and make sure that you sought the views of both sides?

Gillian Mackay: The consultation was open between May and August 2022, and it received nearly 12,000 responses. Many respondents had very entrenched views, one way or the other. The consultation form asked a series of questions, and it included free-text boxes to enable people to give their opinions and further context around why their opinion was what it was on various measures in the bill. As a result, it took an awful long time to analyse all that data, but one theme that came out of the consultation was that people were very quick to make the whole issue about abortion

itself, which is why I have been very clear that, for me, the bill is about access to healthcare services.

There was a real desire on the part of those who were in favour of the bill for a consistent approach to be taken across the country and for action to be taken quickly on any escalation of behaviour in various places.

The consultation was advertised through Parliament and through all the normal ways in which members' bills are advertised, and the number of responses that we received gives some weight to the view that the consultation was wide.

Carol Mochan: Did people who said that they were fearful of having the zones offer alternatives? If so, did you consider the alternatives that were offered?

Gillian Mackay: Very few people offered any alternatives, and, often, the alternative that was suggested was simply not to have the zones at all. That probably chimes with some of the testimony that you have heard over the past few weeks, which suggests that, broadly, people's position is either that we should have the zones or that we should have no zones.

Carol Mochan: We heard a lot of views from people who were involved in vigils about the literature that was being given out to people who sought healthcare and why they felt that they had to provide it. Did the consultation touch on that issue? Did you form a view on the issue of literature?

Gillian Mackay: We heard from organisations and individuals about the literature that was given out, and the issue of the medical misinformation that it contained was cited in a variety of responses. Obviously, people have seen that literature at one point or another—some of the clinicians who appeared before the committee a couple of weeks ago spoke about it. The level of misinformation in some of the leaflets is quite scary, and some of the assertions in them presuppose that people do not get the appropriate information once they go into services. On that point, I note that, in the first evidence session on the bill, Alice Murray told the committee about the level of counselling that she had to go through as part of her abortion process.

We heard about the literature that is handed out, which is definitely one thing that causes alarm for those who access services.

Sandesh Gulhane: Thank you for coming to talk to us about the bill. I declare an interest as a practicing NHS GP.

My question is similar to the one that I asked the minister earlier. In your opening statement, you talked about how you would not support any curtailment of protests for other, very legitimate

reasons. How do you square that with what the police and the solicitor who came before us said when I asked whether I would be able to, for example, go and protest about Mr Eljamel, which is a legitimate protest to engage in? They said that they felt that the bill would not allow me to do that.

Gillian Mackay: I think that there is a misunderstanding there. The committee has had correspondence from the Law Society of Scotland, which believes that the bill is defined and written tightly enough not to curtail other protests.

The other thing to mention is that the Supreme Court judgment on the bill for Northern Ireland, which this bill is similar to, did not flag up any issues of infringement on other protests. So, given the evidence in front of you, and given how tightly the bill is drawn in focusing on abortion services, I do not have any concerns about it infringing on other protests.

Sandesh Gulhane: You have referred to the letter from the Law Society. I will paraphrase what it says. Towards the end, it says that you could include the overarching principles in the bill to make it clearer. Might you be willing to do that?

Gillian Mackay: As I am sure that you are aware, that letter came in quite late yesterday, so I have not yet had a chance to have a chat about any of the potential ramifications of putting those principles into the bill, but I am certainly happy to have conversations between stages 1 and 2 about whether that would be appropriate.

Sandesh Gulhane: In your opening statement, you talked about protests. I want to separate out traditional protests, involving placards and shouting, because we have heard clear evidence that no one is in favour of that.

I want to come to the issue of silent prayer, which I directly asked the police about. They said that they would not ask someone why they were there if they were standing silently, and that they would certainly not ask what they were praying or thinking about. The police do not want to get into that. Given that the bill includes silent prayer, but that it does not seem as though the police would do anything about that, I am a bit confused as to how that would work in practice.

Gillian Mackay: We should be clear that silent prayer, as a behaviour, is not written into the bill itself—there are no proscribed behaviours within the bill. In its written submission, Police Scotland said that it currently engages with protesters and polices protests through dialogue, which is slightly at odds with the evidence that the committee was given a couple of weeks ago.

I am sure that we are all aware from having taken part in protests as part of our work or our activism that the police regularly engage with

protesters to facilitate matters or to solve any issues, and I do not think that that desire for dialogue would change simply because of the setting for a protest. The committee might want to clarify with Police Scotland whether what it said in its written submission or what it said in its oral evidence to the committee is correct.

Sandesh Gulhane: The bill talks about intentionally or recklessly influencing another person. Would the bill cover staff who go to work for a completely different reason but who are, as we have heard in evidence, affected by abortion protests?

Gillian Mackay: Can you clarify that a little? Can you give me a scenario?

Sandesh Gulhane: Imagine that I am going to work in haematology and I find myself upset by an abortion protest outside the hospital. Would the bill cover my being upset by that, even if I was not influenced by it?

Gillian Mackay: The bill would not stop someone making a complaint. The police would attend and would take a view on the behaviour that was happening and the impact that it could have on those who were accessing abortion services. Although that individual clinician could make a complaint, such people are not the target of the bill. It would depend on what else was going on in that situation and whether what was going on was influencing those who were accessing abortion services.

To use your example of a haematology clinician, if there was someone outside with a banner similar to the ones that we see at the moment, the clinician could make a complaint, but the police could still come and say that the protest would have an effect on people who were accessing services and that they were within a safe access zone. Therefore, it could be captured, but much will depend on the scenario that is in front of the police when they attend.

11:00

Sandesh Gulhane: Finally, medicine moves on and things change. We now see women accessing abortion services in very different ways than they did only 10 years ago, for example. GPs and pharmacies provide services, along with other places. The bill allows scope for expansion into those areas, and we heard from the minister that that enables a flexible approach. However, if you were to expand the legislation to cover GP and pharmacy services at 200m, a lot of Scotland would be covered, which would be very different to your tightly drawn-up list of 30 sites. What reassurances do we have that such scenarios would not happen?

Gillian Mackay: We would first have to see activity at those premises similar to what we currently see outside hospitals, which we have not seen. That is why such premises are not currently covered, and why we are using the designated services aspect of the Abortion Act 1967. The minister indicated that there would have to be consultation, and we would have to consider how such behaviours were manifesting and to assess their impact, in the way that we have done here, to ensure proportionality and to extend the scope to any other sites.

It is right for us to retain such flexibility, because, as you said, medicine moves on. However, the protesters' tactics have changed, too, over the years. To leave out such premises would be to tempt fate and would potentially displace protests to those other places. We need to ensure that there would be appropriate consultation if the scope were to cover those premises too, but I do not currently foresee that being needed.

Sandesh Gulhane: Perhaps it would not be about leaving out the ability to do that, but about making it so that it is not just at ministerial discretion and that Parliament might be involved in some way.

Gillian Mackay: There will need to be parliamentary oversight. I will be happy to speak to members between stage 1 and stage 2 on what that might look like. During the consultation for the bill it emerged that people who access such services want us to be able to move quickly in relation to potential incidents. There is a balance to be struck between having parliamentary oversight and dealing with potential situations outside settings.

Ross Greer: I will continue with examples, because the committee is really interested in how the bill would operate in practice. The principles behind it are well understood and, I think, well supported.

For example, if a priest goes to a hospital to visit a parishioner, that is totally normal and is an important part of their role. Let us say, though, that the priest stops outside the hospital to pray. I have prayed outside hospitals, on my way in, for a variety of reasons. If a woman who is accessing the hospital for the purposes of an abortion sees the priest and is familiar with the Catholic Church's position on abortion, she could be alarmed and feel intimidated by that. The offence of causing alarm or distress could be made out. Would the priest's behaviour constitute an offence? Even if he were not there for the purpose of influencing a woman who is seeking an abortion, alarm or distress could still be created. I presume that such behaviour would not be an offence, because, at

that point, we would be criminalising priests for dressing as priests in hospitals.

Gillian Mackay: To my mind, that would not be covered under the intent aspect of the provisions, and I do not think that it would come under the reckless aspect, either. Recklessly causing an offence is covered in quite a lot of law across the Scottish statute book. I do not believe that a priest simply attending to visit parishioners would be covered. Many of them also work in hospital chaplaincies, and I do not think that that would be covered, either.

Ross Greer: I think that a priest visiting a parishioner for the purposes of providing pastoral support would be the opposite of reckless.

I will drill down into this point, particularly regarding silent prayer. We can all understand the intent element of the provision, where the intent is very deliberately to influence people who are having an abortion. However, you mentioned that the second element is about recklessly having that effect. How exactly is “reckless” defined? You mentioned that that term is present in other areas of law. As I asked the minister earlier—which you might have caught—is that covered by the reasonable person test, or is recklessness defined separately?

Gillian Mackay: The answer is potentially a bit of both. I know that the minister has undertaken to write to the committee on that. I do not want to prejudge what the minister will come back with, but I think that the reasonable person test will be present throughout this piece of legislation.

Ross Greer: I will now go back to basics. I said a minute ago that the broad principles are well covered, but there is an important matter to mention, particularly because you brought up the evidence given by Police Scotland, and you made a reasonable point about the potential tension between the written and oral evidence that was given. Will you address the point that some people have put to us in evidence that the police have sufficient powers as things stand to deal with people who are behaving in an intimidating manner, regardless of their proximity to a hospital or other such premises?

Gillian Mackay: I will answer that question slightly back to front. One thing that came out strongly through the consultation was the point that, currently, women must be distressed and traumatised before we can take any action. The bill seeks to flip that around and to have a deterrent effect in the first place, which is very similar to the legislation in Northern Ireland and in England and Wales.

When I last spoke to officials in Northern Ireland, they had not had any arrests inside the zones as a result of the legislation. The bill would

prevent women from being traumatised in the first place rather than there having to be a reaction afterwards. Sorry—what was the first part of your question?

Ross Greer: It was essentially about that. I will paraphrase your position, but correct me if I am getting it wrong. As it stands, the police might well have the power to act in response to the distress that is happening and to the intimidation felt by women, but current provisions do not provide a deterrent effect. You are seeking deterrence but acknowledging that existing law would allow for action where behaviour crosses the line, whatever the line is.

Gillian Mackay: Existing law deals with criminal activity once it has happened, but—to come back to my earlier point—women have to be traumatised and distressed in the first place. We are seeking to ensure that the deterrent effect is in place so that women do not have to be traumatised as a result of getting healthcare that they are legally entitled to.

Ross Greer: Finally, I have a general principle question. What makes you confident that the bill would survive the probably inevitable legal challenge? It is about a balance of rights—the right to freedom of religion and expression of that, the right to freedom of protest and assembly, and the right to access healthcare. Your bill is broadly similar to the Northern Irish and English equivalents, but there are some specific differences. The Northern Irish legislation in particular has survived a Supreme Court challenge, but your bill is not like for like compared with it—it is broadly similar, but it is not like for like. What makes you confident that, given the differences in your bill, you are maintaining a balance that the courts would support and that is in keeping with the ECHR?

Gillian Mackay: Earlier, the minister went through all the stages and all the engagement that we have gone through when making the bill. One of the major differences is the 200m distance. Having had a look at the different ways in which services are delivered in Scotland versus in England and Wales and in Northern Ireland, where there are generally standalone clinics, we saw that the hospital sites that we are dealing with are much bigger and have a greater number of people accessing them. Therefore, potentially, a much greater number of people could experience the protests.

As the minister said, we also had a look at how people make their way to their appointments, such as through entrances from car parks or from bus stops, where influence could be exerted to undermine the bill even although people are away from the front door.

We have gone as far as we can in terms of the distance without crossing the line into excluding people more widely than is necessary. Given that our situation is different to that of Northern Ireland, England and Wales, we have got the balance right for the protected features that we have looked at—ensuring that, outside of that 200m distance around 30 premises in Scotland, people can still make known their views on abortion.

Ross Greer: The 200m distance is one notable difference in your bill. The other is the private property provision. I believe that colleagues will come in on that—I am happy to come back if that is not covered, convener, but I do not want to tread on anybody's toes.

The Convener: Thank you, Mr Greer.

Emma Harper: Good morning to my colleague on the other side of the table. You have clarified the issue of 200m zones being established in Scotland, when 150m was part of the original consultation. From my asking the minister about it, I think that the 200m decision was related to the Queen Elizabeth university hospital. Is that correct?

Gillian Mackay: Yes.

Emma Harper: In Scotland, 200m would be established as the safe zone—is that right?

Gillian Mackay: Yes.

Emma Harper: I am thinking about the ability to extend or reduce a zone or to add a new site. I used the example of a new hospital—a replacement service in another area. One concern was about the Scottish ministers making that decision to extend or reduce the area without going through further parliamentary scrutiny. Sandesh Gulhane spoke about further scrutiny through statutory instruments or making sure that wider consultation was under way. Might we need to consider that as we move forward—or would it potentially incur delays in establishing new, enhanced or reduced zones?

Gillian Mackay: During the previous evidence session, the minister outlined the need for consultation, and the timelines for that, when new services come online and when zones, potentially, need to be changed. In my consultation, we heard from people who support the bill that urgency is needed when those zones need to be changed, because, generally, they will change because something has happened—a behaviour has developed that has infringed the zone or has made it difficult for it to operate, and there is a need for an extension. I absolutely appreciate that some who support the bill also feel that there needs to be a level of parliamentary oversight to that. Again, I am more than happy to speak to members about that between stage 1 and stage 2,

but there needs to be a balance between having the flexibility and ease to move quickly enough and having the appropriate oversight.

Emma Harper: Also related to my previous question to the minister, I would like to ask you about signage in those areas. My understanding is that some people think that that would just draw more attention to a site that provides healthcare services. What are your thoughts on signage?

Gillian Mackay: There is a mixed view on signage across health boards. Some facilities have experienced no or very little activity and may not want to draw attention to themselves, particularly those in rural areas. Under the bill, ministers have a duty to maintain maps of the zones, so there will be an ability to communicate with the public about how the zones are set out and any changes to them.

We may have to continue to speak to health boards about whether they feel that signage is more or less useful at particular places, depending on individual circumstances and the frequency of any protests outside hospitals.

Emma Harper: So, the proposal would be to have a map, or the creation of an area, attached to an NHS facility's website, without necessarily putting up signage at 200m—or an extra distance—around a facility?

Gillian Mackay: There could also be the flexibility to leave it to individual health boards to make decisions about signage in particular, but there is a requirement for ministers to maintain a list and maps of the sites as they are designated and to update those if there are any changes under the bill.

11:15

The Convener: I want to probe something that you have said a wee bit more. You were talking about balancing the need to move quickly enough versus the parliamentary process. Fast law is not necessarily good law. Will you expand on what you meant, given the level of concern that people have expressed in oral and written evidence about how they feel buffer zones would impact on their rights to protest and express a view? Will you give us a bit more of an idea about where not moving quickly enough might cause issues?

Gillian Mackay: Particularly in relation to the extension power, what we heard when I consulted was that people who were in favour of the bill and who gave evidence as part of the consultation wanted us, if something such as a change in behaviour or a particular incident happened at a particular zone, to be able to amend zones in a sufficiently quick manner to prevent any further harm from—

The Convener: I am sorry to interrupt—

Gillian Mackay: No—you are fine.

The Convener: You are talking about extending.

Gillian Mackay: Yes.

The Convener: We are not talking about making buffer zones smaller. As a response to what was a criminal act, a buffer zone would be extended on a ministerial decision, rather than through Parliament making such a decision.

Gillian Mackay: There are arguments both ways as to whether that should be a parliamentary decision. In the evidence that we gathered through the consultation, there was a mix of views about whether the decision should be for ministers or for Parliament.

There has to be appropriate oversight and scrutiny of any changes that we make to zones, for exactly the reason that you gave about people potentially being criminalised as a result. People who could potentially be impacted by protest want us to respond in a timely manner to any changes in behaviour that might make implementation of a zone more difficult. There is a balance to be struck between sufficiently quick movement and appropriate oversight to ensure that we as parliamentarians are doing our job appropriately and ensuring appropriate consultation and scrutiny.

What I am endeavouring to get across is that there is a balance there and, as with the entirety of the bill, there are those representing competing interests on both sides who would say, “Go quicker,” or “Go slower.” There is a middle ground to be found, where we respond in an appropriate time but with appropriate consultation, too.

The Convener: When I was referring to potential criminal matters, that would be within the 200m that the bill, if passed, would cover.

Gillian Mackay: Yes—absolutely.

The Convener: Am I correct in saying that, if there was an incident within the 200m zone, you might then look to expand the zone further out?

Gillian Mackay: No—I apologise if I was not clear on that. This is about the functions of the zones. The committee has explored the example of images being projected on to the Chalmers sexual health centre. I cannot here and now think of an example of a particular behaviour whose impact would mean that we might have to extend a zone for a particular reason, but there are potential behaviours to consider. We have seen behaviours in other places around the world that, if they were imported here, might make the function of the zones within 200m difficult—that would depend on how the behaviours were manifested.

That is why flexibility is so important. Oversight and our ability to respond in a timely manner are important, too.

The Convener: On the flipside of that, if it was found that a 200m exclusion zone was not required for a particular premises—I will use the Queen Elizabeth university hospital as an example, as I am familiar with that site—would you expect, anticipate or hope that the Government would move quickly to reduce the size of the buffer zone?

Gillian Mackay: The bill provides for the power to reduce the size of a zone. I very much hope that the legislation would have the desired effect and that we would not see any more activity around hospitals. I cannot say in advance how far we might reduce the zones if the behaviours that we are currently seeing ceased or moved to more appropriate places, as we have been calling for throughout the passage of the bill, but it is right that we have that power.

I know that the committee has heard a variety of views on a minimum reduction distance as well as on the potential for a maximum extension distance. I am more than happy to engage with committee members and others on their thoughts and views on that between stage 1 and stage 2.

The Convener: I will reflect your language back to you. You spoke about the need to move quickly enough and in a timely manner in terms of expansion. Would you expect the Government to have a similar attitude to reducing a 200m zone?

Gillian Mackay: This is all about proportionality. If it was proportionate to reduce the zones, the Government would have to look at them in the same manner.

Ruth Maguire: On ministerial powers and the extension of zones, we have focused quite a lot on big city centre locations rather than on big premises, but the picture is quite diverse across the country. Extending zones could take in quite large bits or further bits of the community. If a zone was not just within healthcare premises, would there be a need to consult again, given that this is about balancing rights?

Gillian Mackay: Whatever we do, there should be a level of consultation, because this is about extending zones into public land. There must be a level of consultation, particularly where private dwellings could be captured by any extension. I think that the minister gave an indication earlier that a level of engagement and consultation would take place for any extension.

Ruth Maguire: When we make laws, we do so on points of principle, and the same Government will not always be in charge. On a point of

principle, are you comfortable with that level of ministerial power to curb protest?

Gillian Mackay: That comes back to my point to the convener. The desire was expressed to have the ability to move efficiently. As we all know, parliamentary procedures can—rightly—take some time for the level of evidence taking and so on. I absolutely accept the point that has been made by campaigners, and by you, that a Government that was less sympathetic to treating abortion as healthcare could move in a different direction.

I am more than happy to speak to members between stage 1 and stage 2 about whether we have the balance right or whether we need to do other things to give people comfort that we have the relevant oversight for the bill.

The Convener: We will move on. I questioned the minister earlier about protected premises. As you were in the room, I will not give you the preamble about the evidence that we have taken, which I am sure that you are aware of. I am interested in knowing whether the definition of protected premises in the bill is sufficient to allow the inclusion of other premises, such as GP surgeries and pharmacies, should that be required.

Gillian Mackay: I think that the bill has sufficient flexibility on that. Currently, we see protests only at specific types of settings, so it is right that the bill is limited to the 30 premises that are captured by the 1967 act. There would be a difference if GP surgeries or pharmacies started to be designated under that act, but they would still be captured with the relatively small number of premises that are included now. As drafted, the bill provides enough flexibility to ensure that, should we see behaviours at services where we do not see them at the moment, we could move to protect those services as appropriate.

The Convener: I am keen to hear your views on whether the meaning of protected premises should be broadened. You spoke a bit about that in response to Sandesh Gulhane's question about coverage, particularly in urban areas, where large parts of towns and cities might be covered by a buffer zone. Have you given some thought to what impact capturing more protected premises under the bill might have on the rights of anti-abortion protesters or vigil holders?

Gillian Mackay: The flexibility in the bill allows us to take targeted approaches, which would depend on where we saw activity in premises that are not currently among the 30 protected premises. We need to ensure that people have the ability to make their views known in other places.

I do not take for granted the potential coverage that could be created if all GP services and

pharmacies were included. As I said, we are not seeing protests in such places at the moment. There is sufficient flexibility in the bill to take reasonable and targeted approaches, even for premises that are not currently among the 30 that the bill covers at the moment.

Ivan McKee: I want to talk through the areas that I covered in the previous session—you will be familiar with them. They are the implications for churches that are located in safe access zones; the implications for private property in the zones; what is and is not allowed; and whether you foresee any issues around the restrictions in both directions—that is about whether things might be too tightly controlled, where the line is and what the scope is for, for example, images to be projected from buildings that are further away than the 200m limit.

Gillian Mackay: On what happens inside private dwellings or churches, private conversations are not covered under the bill, as the minister said. Things would have to happen from those premises that could be heard or seen within the zones, as I am aware that the committee has heard in evidence.

In the previous session, there was a good airing of what signs would or would not be captured under the bill. I hope that the committee feels that it has had a full exploration of that.

It is essential that such premises are covered by the legislation, for exactly the reasons that Colin Poolman gave early in the series of evidence sessions. The bill could be undermined by an anti-abortion organisation buying a property within the zone, using it as its headquarters, projecting images from it on to services, putting up large signs in the garden or handing information over the wall, as happens in some of the states in the US that do not exempt private dwellings.

We have the balance right, but we will need to ensure that we communicate well with people who live in a zone and with religious organisations that have places of worship in a zone to ensure that they fully understand what we are doing with the bill.

Ivan McKee: I will touch on something that has come up about the trade union exemption. When you described the impact on women who are accessing services, you rightly referred to the issue of anonymity in certain areas. The fact that there is a lot of activity can be problematic and so on. The bill is designed to address the behaviour of those who seek to influence, prevent access to, or persuade people not to access, services.

11:30

If we take a step back to look at that, there are hard-won trade union rights that are important for many reasons that we all agree on. However, an objective view is that the whole purpose of a peaceful picket is to stop people accessing, or persuade people not to access, services.

The bill balances competing rights. For the record, will you explain again how you see the difference between preventing people from accessing services, seeking to influence or persuading people not to access services on one hand and, on the other hand, the right to carry out activity that you could argue could be done elsewhere, as we have outlined with regard to anti-abortion protests? How do you characterise those competing rights and will you explain how they fit together?

Gillian Mackay: I would challenge the assertion that trade union activity would ever influence people not to access services. Often, trade union activity outside hospitals is about pay. It is not about saying, “Don’t go and have your ear, nose and throat appointment;” it is about saying, “We want better pay to provide your ear, nose and throat treatment.”

Many of the people who are outside hospitals are clinicians. They know very well the impact that protests and so on have on people’s ability to access services. I believe that clinicians would be the last people outside hospitals wanting to influence anyone other than their own colleagues with regard to whether they should join their ask for better pay, better conditions or whatever else.

I do not suppose for a minute that people coming from far away—particularly given the airing that this legislation has had and the level of public awareness of it—would contact the police because they could not see what was going on. Because of the exemption in the bill for trade union activity, the police would take no action. There is a piece of work to do to ensure that the public are aware of what is and is not allowed under the bill.

Ivan McKee: Thankfully, there has not been a strike here as there has been in other parts of the United Kingdom but, if there were such a strike, that would be an effort to seek to persuade people not to access or provide services.

Gillian Mackay: I do not know that any clinician who was striking would say, “Don’t go to your appointment.” I do not think that I have ever heard that from a trade union. Pickets are about working terms and conditions. Clinicians would never want their patients not to have access to the services that they are entitled to, because that would probably be against their job in the first place.

Ivan McKee: Thanks for putting that on the record.

On the penalties that the bill sets out, the fines are higher than those in Northern Ireland, but the penalties stop short of custodial sentences. What is your perspective on what is appropriate?

Gillian Mackay: A lot of that is about proportionality. One of the things that was cited in the Supreme Court judgment for the Northern Ireland bill was that the punishment involved only fines. That was considered with regard to proportionality. Given that that set a precedent, it would have potentially been unwise to depart from something that was so heavily referenced in the Supreme Court judgment for that bill.

The Scottish Government also has a presumption against short sentences, and offences under this bill would likely fall in that category, so it would be counter-productive to even put that in the bill. As the minister said in the previous session, there is flexibility in the fines system to deal with repeat offenders and people who commit particularly flagrant breaches of the zone.

Ross Greer: I would like to go back to Ivan McKee’s line of questioning with regard to private property. Article 1, protocol 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms concerns property rights. It is not an absolute right but, for a conditional right, it is really quite strong, because it was written from an anti-Soviet perspective and represents a really important liberal defence of property rights.

I accept that we do not have the right to do anything that we want in our private property, regardless of whether that property is within 200m of a hospital. That said, this is an area in which the balance of rights is really important, so I will pose another example, the context of which is similar to that of the previous example.

You have already explained that, if somebody purchases a private property facing a hospital for the purpose of putting up a big sign that says “Abortion is murder”, it is simple to see the intent. However, I have Catholic friends who are very passionate about their faith; they have a flagpole in their garden and literally fly the flag of the Holy See, because, for them, that is an important expression of faith. I presume that that sort of thing would not be covered by the bill, but I am just asking the question to give you the chance to put that on the record.

Gillian Mackay: No, it would not be. In the first instance, I doubt that many people know what that flag is, but it would not be covered under the bill.

Ross Greer: Given your point that people might not know what that flag is, I will pick a more

recognisable Christian symbol, such as the cross or the fish. Such symbols are associated with a faith whose church teachings are very clear on abortion. I am not referring to all Christians or all Catholics, but the Catholic Church has every right to be clear about its position on abortion. If a symbol that is clearly associated with a particular organisation—in this case, a church that takes an anti-abortion position—were to be displayed in the window of a home or from a flagpole in the garden, would that, in and of itself, be a breach of the bill's provisions, or would it have to be something more than that?

Gillian Mackay: I think that that, in and of itself, would potentially not be a breach of the bill's provisions. In all of the scenarios that have been played out over this evidence session and in the session with the minister, the context of what is happening at the moment in question will be key. I believe that something additional would have to be involved for that to be a breach. As the minister has said, that will be for the police to deal with when they arrive at the scene of a complaint.

Here in committee, we cannot play out every scenario that might arise. As I have said previously, the provisions might not stop someone complaining about such a symbol being displayed, but, in the absence of any further context, I doubt that that is something that the police would take action on.

Ross Greer: I will finish with a general question that is similar to the one that I posed before. What, specifically, makes you confident that the bill would survive a legal challenge on the basis of article 1, protocol 1 property rights? Rather than a balance between the right to access healthcare and the right to freedom of religion, we are talking about a balance between the right to access healthcare and the right to private property.

Gillian Mackay: I think that the issue is the impact on people who access services and how one uses their property to attempt to influence someone else's decision. Private property rights are covered in one of the pieces of legislation elsewhere—you will have to forgive me, though, as it has gone out of my head where that is the case. Is it the England and Wales legislation that includes private property rights?

Ruth Wilson (Scottish Government): Yes.

Gillian Mackay: Private property is included in the zones in England and Wales. I think that we have struck the right balance in this bill. The issue is not one that we have come across so far in testimony, but there could be an undermining effect if private property was not covered, as you have heard from other witnesses. As I have said, I believe that we have struck the right balance in protecting a person's right to private conversations

and their right to a private life in their own home, while not allowing them to use their property to attempt to influence someone else's decision or to undermine the effect that we are trying to have with the bill.

Ruth Maguire: Following on from Ross Greer's question about display of visual symbols on private property, you said that whether that would be caught by the bill would depend on the context and whether the displaying of those symbols would influence someone's decision. Is the issue to do with a person's intention to influence or whether an individual is influenced? It is a terribly complex issue, is it not? It is not straightforward.

Gillian Mackay: It is complex. The police will have to deal with the balance as to whether someone is intentionally trying to influence people or is acting recklessly. Again, there is a context element to that.

Ruth Maguire: I am sorry, but that just triggered something in my mind. The police officer who gave evidence to the committee talked about controversial marches—I assume that he was talking about the marches that take place in the west of Scotland—and he said that if someone were to display an opposing flag in their house, the police would ask them to take it down, because it could be seen as incitement. Could it be the case that, if a person's property were in an exclusion zone, an overt depiction of their Christianity could be seen in that way? Who would decide that?

Gillian Mackay: The police use different legislation in relation to the marches in the west of Scotland. Other laws apply in safe access zones, so there is nothing to say that the police could not use other laws to effect the same outcome.

It goes back to what Police Scotland said in its written submission about the dialogue that it has with individuals. Where interactions take place, I do not doubt that the police will try to have conversations with people about why what they are doing might not be appropriate, which very much lends itself to the example that Ruth Maguire gave. A potential danger is that we try to bottom out every single behaviour and scenario that might occur without taking into account the multiple bits of context that might add up to the police having to take action instead of having a conversation with a person to ask them to take down a flag, or whatever item it is.

Ruth Maguire: When we are talking about the balance of rights, it is important for us to try to bottom everything out. There are top-level things that every reasonable person would agree with, but we want to avoid unintended consequences.

My other question is about proportionality, which you have covered in your answers to colleagues.

Is there anything else that you want to say about the evidence that you gathered from those accessing services and those who want to partake in protest or vigil?

Gillian Mackay: Proportionality is at the heart of the bill. We have to be aware that this is about a balance of rights; people have the right to access healthcare and they also have the right to have their views known. We strike that balance in the legislation well, because people will still be able to do what they do right now anywhere other than for 200m around 30 premises in Scotland. Even if we add that all up, it is not a particularly large area that we are talking about, given the land mass of Scotland, and the impact, therefore, is relatively proportionate, given the very disproportionate impact that protest has on people accessing services. The committee heard as much in evidence, and I am sure that members will have heard the same from people privately, too. It also causes people concern about having to come to services.

The other aspect of proportionality, which I covered earlier, is about the different ways in which services are delivered in Scotland compared to other places that have legislation of this type already. Other services at certain sites are impacted by the protests; indeed, there has been a lot of coverage about that in the news. Some clinicians who work in neonatal intensive care at the Queen Elizabeth university hospital have said that there are times when the protests can be heard in neonatal intensive care. That is horrendous for the parents who are going through some of the worst times of their lives. The audible protests at Sandyford can be heard in services; a variety of very sensitive services is delivered there, and there has been an impact on staff and patients in those settings.

Given all of that, I think that the balance in the bill is correct. We should be able to provide services in the way that we want to, and we should be able to create a very specified exclusion area while allowing people to make their views known everywhere else. I would very much like for people to come and protest outside Holyrood, say, rather than outside hospitals.

Ruth Maguire: Okay. In relation to reviewing the legislation, what would be an appropriate mechanism in the bill to ensure that there is continued proportionality, that rights are balanced and that women are protected?

11:45

Gillian Mackay: Committees already undertake post-legislative scrutiny, and there might be a mechanism in some of the legislation that has already been passed in this building that we could

be influenced by. I am very willing to have a conversation between stages 2 and 3 to make sure that whatever mechanism we come to is appropriate and that we use it to keep an eye on the bill and ensure that it is having the effect that we want it to have.

Ruth Maguire: Do you agree that, in relation to proportionality when we are talking about rights, post-legislative scrutiny—there is that phrase again—is an important tool to give everyone that comfort?

Gillian Mackay: The post-legislative scrutiny—we will stop using that phrase in a minute—of various acts that we have passed in this committee has proved very useful. To me, that route is the appropriate mechanism for ensuring that we can appropriately scrutinise the legislation's effect and make sure that it is having the effect that we want it to have.

The Convener: Emma Harper has a supplementary question.

Emma Harper: It is a wee quick question on the back of Ruth Maguire's questions about the west of Scotland and other existing laws, such as the Public Order Act 2023. You said earlier that the bill is about preventing any act of intimidation, harassment or influence from happening in the first place, instead of having to go after a person after an act has taken place.

I know that other countries have created similar legislation. For 30 years, I would go into the operating theatre in the morning; I would sometimes see protests next to my place of work, and I was a young woman when I worked in California. This is about intimidating people who are accessing their workplace as well as those accessing health services, and I am interested to know how we learn from other countries and the legislation that they have implemented. How can we do that, and how can we then use post-legislative scrutiny to see whether further information needs to be added or things need to be revised?

Gillian Mackay: In developing the bill, we have been influenced by Northern Ireland and how the bill there was constructed. It is always useful to look at how other legislatures have implemented similar legislation. As I laid out earlier, there are functional differences between those other legislatures and us, but your point about staff is really important. As the committee has heard, staff have had to counter misinformation and console patients as well as doing their job of ensuring that healthcare services are delivered. They have gone above and beyond to make sure that the care provided to people who are in distress gives them all the options that they need, but also allays some of the fears that they have had, and those staff

absolutely deserve to be protected from intimidation and harassment when they go to their workplace.

The bill's provisions rightly extend to supporting staff who might not be clinical in nature but who might help with the facilitation of abortions. We have seen incidents, particularly in Glasgow, in which members of staff have been filmed. That is not something that we should tolerate for NHS staff.

Paul Sweeney (Glasgow) (Lab): I want to bring up an issue that was raised when we questioned the witnesses last week. A member of the Free Church of Scotland raised some concerns about the impact of the offences in the bill on the work of hospital chaplains and chaplaincy services. There might well be some scenarios in which they are within the 200m zone; in that respect, I am thinking of the Royal hospital for children and the Queen Elizabeth university hospital in Glasgow. They have sanctuaries that are non-religious spaces but which are places where people might want to speak to a spiritual leader or a chaplain. Similarly, there is a chaplaincy chapel on the fourth floor of the Princess Royal maternity building in Glasgow royal infirmary. Would it be prudent to consider an amendment that would provide comfort to or an exemption for people seeking chaplaincy services or chaplains who are registered with a health board?

Gillian Mackay: My answer to your question—if I have understood it correctly—would be that people who seek guidance from a hospital chaplain, of whatever denomination, are not covered by the bill, because that is a consensual conversation that the patient is seeking out. They are seeking out guidance, which is not covered by the bill. The issue could be included in guidance for health boards, but it does not need a specific exemption in the bill, because consensual conversations are not covered.

Paul Sweeney: You do not think that there might be a scenario in which a clergyman or someone else dressed in the garb might inadvertently cause undue fear and alarm to someone accessing services, which could then create an unfortunate situation, or would that sort of enforcement of the bill just be unreasonable? I am trying to work through scenarios in which the bill might be unfortunate.

Gillian Mackay: That is similar to the question that Ross Greer asked about a minister going to a hospital to visit a parishioner and someone phoning the police just because he is there. That would not be enforced under the bill. Using the example that you gave, I would say that hospital chaplains have every right to be there. They are staff on the site, just as many others are.

That does not necessarily mean that people will not call the police in that situation, although I hope that they will not. Again, we might need to do a piece of awareness raising on that as part of the work on the bill. Even if we wrote such an exemption into the bill, that would not prevent someone from potentially misunderstanding and calling the police in the first place. That might open up a loophole that is not there currently, because those matters are not covered by the bill.

As we are coming to the end of this session, I will just say that I am more than happy to have a further in-depth conversation with Mr Sweeney if that would help allay any concerns. We can have those conversations between stage 1 and stage 2, if there is any further context that Mr Sweeney wishes to go over.

Paul Sweeney: That was helpful—thank you.

The Convener: I thank Gillian Mackay for her evidence. I also thank the officials, who have sat through two evidence sessions with us.

Subordinate Legislation

National Health Service (Common Staffing Method) (Scotland) Regulations 2024 (SSI 2024/43)

11:52

The Convener: The next item on our agenda is the committee's second consideration of a negative instrument. The purpose of the instrument is to specify the minimum frequency at which the common staffing method is to be used in relation to specific types of healthcare, and the staffing level and professional judgment tools that must be used as part of the common staffing method for specified kinds of healthcare provision.

The committee first considered the instrument at its meeting on 5 March and agreed to write to the Scottish Government to request further information on the instrument, further to the correspondence that it had previously received from the Royal College of Nursing. The committee received a response from the Scottish Government on 8 March.

No motion to annul has been lodged in relation to the instrument. As I am not getting any indication that members have comments, I propose that the committee make no recommendation in relation to the negative instrument. Are we agreed?

Members *indicated agreement.*

The Convener: At our next meeting, which will be on 26 March, we will consider subordinate legislation on minimum unit pricing of alcohol.

11:54

Meeting continued in private until 12:28.

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