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Dear Clare,

ABORTION SERVICES (SAFE ACCESS ZONES) (SCOTLAND) BILL: STAGE 1 REPORT

I am writing in response to the Health, Social Care and Sport Committee's Stage 1 Report on the Abortion Services (Safe Access Zones) (Scotland) Bill, being taken forward by Gillian Mackay, MSP with full Government support.

I thank the Committee for their consideration and am pleased that Committee agree to the general principles of the Bill. I note that Ms Mackay has provided a detailed response to the recommendations contained in the Stage 1 Report, and I fully support that response.

However, there are three recommendations that I wish to specifically respond to, and I have set those out below.

This Bill requires a careful balancing of fundamental human rights, and I am pleased that the Committee has concluded that the Bill appropriately achieves that balance. I note that recommendation 15 of the report "*recommends that Scottish Ministers undertake a human rights proportionality assessment before making decisions about reducing or increasing the size of safe access zones and that such a requirement should be included on the face of the Bill.*"

It is my position that such a provision is not required on the face of the Bill, nor would such a provision have any impact on how decisions are made about reducing or increasing the size of zones. The Scottish Ministers are already duty-bound to act proportionately and to assess

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whether any decision is compatible with the European Convention on Human Rights (ECHR). It is already enshrined in law that Ministers must act compatibly with ECHR. That is an overarching legal requirement.

Therefore, the Scottish Ministers must assess all the available evidence before making a decision and evaluate whether the extension or reduction is compatible with ECHR rights and is proportionate based on the applicable circumstances. We must be careful not to set a precedent by including a provision which would have no practical impact; a law that has no effect is not good law. Similarly, for the reasons set out above, we should avoid any suggestion that such a provision is needed in order for human rights to be considered and balanced appropriately by the Scottish Ministers.

I also note the recommendation for *“further consultation with Police Scotland on proposals to deliver specialist training regarding the enforcement of the offences created by this Bill, and to commit to put in place the necessary funds to develop and deliver that training. The Committee further requests that the financial memorandum (FM) be updated to reflect that commitment.”*

Police Scotland have been consulted throughout the development of the Bill. That consultation will continue throughout the Bill’s Parliamentary progress, including in relation to any training requirements that the implementation of the Bill will necessitate. Should the position be that funding is required, the financial information in relation to the Bill will be updated ahead of Stage 2.

Finally, I note the calls for a post-legislative review provision to be inserted on the face of the Bill. As the Committee will know, it is standard practice for the Scottish Government to review all legislation to ensure it remains fit for purpose as part of our day to day policy development, and so a provision on post-legislative review is, technically, unnecessary. I recognise the particular circumstances of this Bill, the concerns it raises, and the complex balancing of human rights it requires and therefore accept that it is appropriate to include an explicit review provision in this specific instance.

I hope you find my response on these points helpful. The Scottish Government will continue to work closely with Ms Mackay to consider and take forward as appropriate the rest of the Stage 1 recommendations.

I thank the Committee again for their consideration of the Bill.

Yours sincerely,



Jenni Minto MSP

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