

Dear Sir/Madam,

HEAR has been following the debate surrounding the Abortion Reform Bill 2018. We have been hugely disappointed with the one-sided lack of consideration of key issues in the abortion debate, especially the right to life of the unborn child, and the dangers of permissive abortion. Consequently, we plan on providing briefings over the next few meetings of the House of Keys that we hope will help in providing better balance to the proceedings.

To that end, we would like to raise a series of important points with regards to the issue of the proposed imposition of censorship zones around facilities in which abortions will take place. We would kindly ask that you take these into account, and introduce them into the debate tomorrow on the amendments proposed by Mr. Ralph Peake.

### 1) Censorship Zones are Unnecessary:

Abortion has been legal (even though restricted) on the Isle of Man for over 20 years. In that time, no group has ever been set up by Manx residents, or come across from the adjacent Island, to harass or intimidate women procuring abortion.

There tend to be two kinds of demonstrations / vigils held in the UK, where abortion has been more extensive:

- [40 Days for Life](#): These involve Catholics praying silently or aloud across the street from an abortion facility, handing out leaflets, and offering help to women going for abortions. Other groups like this include Good Counsel Network.
- [Abort67](#): Examples of these have occurred on Island in the last few months, and have been criticised by many on-Island, [including by HEAR](#). These involve demonstrators showing graphic pictures of aborted babies, so as to educate the public as to what abortion involves. They often wear cameras on their bodies so as to document verbal or physical attacks on themselves.

These are, of course, a very different order. 40 Days for Life are simply offering information and help whilst praying (which they believe to an efficacious act for the good of those going into the facility), whereas Abort67 are engaging in direct public advocacy. Whether anyone agrees with these actions or not, what is quite clear is that neither is an attempt to directly harass women, and no organised harassment has yet taken place.

Despite some protestors being accused of recording women or obstructing their way, no prosecution has yet taken place. It is noteworthy that only one person has been attemptedly prosecuted from Abort67, Andrew Stephenson, [and he was acquitted](#).

If no proven harassment has yet taken place in the UK then, it is reasonable to assume that it will be unlikely to happen on the Island. If it were, there appears no reason to

think that the current laws against harassment cannot be used by the Isle of Man Constabulary and Chambers of the Attorney General to control such behaviour.

To create anticipatory legislation limiting freedoms of protest and speech before any need for such extraordinary limitations prove necessary would be illiberal and unjustifiable. Until current laws against harassment are shown to be insufficient to deal with any abuses, as they have not yet been either here or in the UK, the wiser course would be to leave the situation as it is and act judiciously if and when future issues arise.

## **2) Censorship Zones Would Add No Constructive Protections to Current Law:**

The concept of censorship zones (also known variously as ‘buffer zones’, ‘access zones’, and ‘exclusion zones’) is that an area around a facility in which abortions are performed excludes all forms of demonstration or vigil, so as to stop obstruction or harassment of women going for abortions at that facility. No such zones have yet been set up in the British Isles. This is probably because laws already exist to prevent harassment, and where some pro-life campaigners have set up demonstrations or vigils outside abortion facilities, few arrests have taken place, and none have led to any convictions.

Similarly, Manx law already prohibits harassment under the [Public Order Act 1998](#), and the [Protection from Harassment Act 2000](#). If someone were to harass a woman going for an abortion outside a facility in which abortions take place, then the Isle of Man Constabulary would be perfectly able to arrest the perpetrators of such harassment and along with the Prosecutions Division see to their being held criminally accountable.

## **3) Censorship Zones Would Chill Freedom of Association, Including for Charitable Actions, and Thus Deny Real ‘Choice’:**

Over the last few months, the UK debate over censorship zones has heated up, and a new campaign, [Be Here For Me](#), has been set up. Be Here For Me is a campaign of women who, having received help from abortion vigils outside abortion facilities to have their babies when no other viable option was made manifest or available to them, and who do not want to see censorship zones chill the freedom of association of groups that would help women like them in similar situations (see as an example, [this powerful story relayed](#) in a recent Westminster Hall debate on the issue by the House of Commons).

By stopping anyone from attempting to convince a woman not to have an abortion, or propose alternatives, or do anything that could be construed as a protest against abortion, outside facilities in which abortions might take place, such vigils would be prevented, and the hope and help they offer suppressed. This would in no way serve women. Rather than facilitate ‘choice’, it would deny it, and hurt women who may be in circumstances that mean they would prefer not to have an abortion.

#### 4) Censorship Zones Would Chill Freedom of Expression (Speech), and Contravene the European Convention on Human Rights:

The House of Keys should take seriously the very real danger that the wording of the proposed censorship zone amendments would violate Article 10 (the right to freedom of expression) of the European Convention on Human Rights.

The most relevant case that established precedent on this point is [\*Annen v. Germany\*](#), decided by the European Court of Human Rights on the 26th November 2015. The case is important both for its statements of general principle and its statements as to how those principles apply in the particular context of ‘anti-abortion’ activity (including Abort67-style protests).

As to general principle, the Court said the following (emphases added):

*50. The Court considers, and it was not disputed by the Government, that the civil injunction issued by the national courts amounted to an “interference” with the applicant’s right to freedom of expression as guaranteed by Article 10 of the Convention. Such interference will infringe the Convention if it does not satisfy the requirements of paragraph 2 of Article 10...*

*52. The fundamental principles concerning the question of whether an interference with freedom of expression is “necessary in a democratic society” are well established in the Court’s case-law and have recently been summarised as follows (see *Delfi AS v. Estonia [GC]*, no. 64569/09, § 131, 16 June 2015 with further references):*

*“(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...*

*(ii) The adjective ‘necessary’, within the meaning of Article 10 § 2, implies the existence of a ‘pressing social need’.*

*53. Another principle that has consistently emphasised in the Court’s case-law is that there is little scope under Article 10 of the Convention for restrictions on political expressions or on debate on questions of public interest.*

As to the particular context of ‘anti-abortion’ activism, it said:

*62. ...The Court also points out that the applicant’s campaign contributed to a highly controversial debate of public interest. There can be no doubt as to the acute*

*sensitivity of the moral and ethical issues raised by the question of abortion or as to the importance of the public interest at stake...*

*64. Having regard to the foregoing considerations and, in particular, the fact that the applicant's statement, which was at least not in contradiction with the legal situation with regard to abortion in Germany, contributed to a highly controversial debate of public interest, the Court, in view of the special degree of protection afforded to expressions of opinion which were made in the course of a debate on matters of public interest...*

It is difficult to see how the proposed amendments by Mr. Peake, which have the effect of making criminal any protests, or seeking to “dissuade” a person from having an abortion, can be considered compliant with the European Convention on Human Rights. There is a very real risk that is passed, it could result in a judgment from the European Court that finds the legislation to be in violation of Article 10 of the European Convention. This would lead to the humiliation of Tynwald, and the entire Isle of Man.

For all these reasons, the amendments to be considered tomorrow are therefore legally ill-thought, and should be rejected by MHKs.

We hope that these points will be considered in the debate concerning the amendments, and that the House of Keys will especially bear in mind women who are helped by abortion vigils, and the importance of freedoms of association and speech (including, and most especially in protection of, people whose association and speech they may dislike). If they do, they will reject the intolerance and authoritarianism of the abortion lobby on this issue.

Yours sincerely,

**Sue Richardson**