

Abortion Services (Safe Access Zones) (Scotland) Bill

Policy Memorandum

Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Abortion Services (Safe Access Zones) Scotland Bill introduced in the Scottish Parliament on 5 October 2023.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 34-EN);
 - a Financial Memorandum (SP Bill 34-FM);
 - a Delegated Powers Memorandum (SP Bill 34-DPM);
 - statements on legislative competence by the Presiding Officer and the Member who introduced the Bill (SP Bill 34-LC).
3. This Policy Memorandum has been prepared by the Scottish Government on behalf of Gillian Mackay MSP to set out the policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Note on language

4. The Scottish Government recognises that abortion is an emotive issue and that the language surrounding it is itself a source of debate and a matter of considerable sensitivity. The Scottish Government has therefore taken this opportunity to highlight some particular choices adopted during this document, and to acknowledge that, in some instances, different groups would prefer to use other terms to refer to themselves. Nothing in this document is intended to overlook nuance or personal preferences; it is used instead for consistency and to, as far as possible, describe actions rather than motivations.
5. In particular, the terms service users and providers, as well as “those who access or provide services” are predominantly used instead of patients and staff. This reflects that not all those who seek abortion services consider themselves to be patients, though some do.

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6. Similarly, the term “anti-abortion activity” is used as a catch-all to encompass the range of activity that takes place outside premises providing abortion services, and, as far as possible, this document refers to groups or individuals which carry out anti-abortion activity. In choosing this phrasing, the Scottish Government recognises that some participants are motivated by a desire to offer support and highlight abortion alternatives rather than simply advocate against abortion, and that some groups prefer the term “pro-life”. The term anti-abortion is not intended to undermine or dismiss these motivations or the ways in which groups or individuals describe themselves. Rather, it recognises that the desired outcome of activities carried out directly outside places providing abortion services is often to prevent abortions taking place. “Anti-abortion activity”, in this context, is therefore an umbrella term and allows the full range of activity to be captured.

Background

7. Around 16,000¹ abortions take place in Scotland each year, the majority of which occur before 9 weeks’ gestation. These are regulated under the framework provided by the Abortion Act 1967², and those who choose to terminate their pregnancies under that framework are accessing a healthcare service to which they are legally entitled.

8. Whilst legalised abortion has always provoked strong and often polarised debate, in recent years, there has been an increase in activity occurring directly outside premises at which abortions services are provided. In the last five years, documented anti-abortion activity has occurred outside Queen Elizabeth University Hospital (QEUH), Aberdeen Maternity Hospital, Sandyford Clinic, Chalmers Clinic, Royal Infirmary of Edinburgh and Glasgow Royal Infirmary. This activity has included silent vigils, displays of images of fetuses, signs with language such as “murderer”, and displays of religious iconography. The scale and frequency of this activity varies from small groups to large vigils, and varies in intensity and frequency throughout the year.

9. Testimonies of those accessing and providing abortion services provide clear evidence that this activity can be distressing; for some, it compounds what is already a difficult and painful experience.

10. As an example, in response to the consultation on safe access zones, Rape Crisis Scotland stated that:

“Anti-abortion protests outside clinics have a clinical, emotional and psychological impact. The activities of anti-abortion protesters cause distress and have the potential to cause trauma to survivors accessing abortion services.

The tactics they have deployed involve targeting people attending the clinics, passing out distressing information in leaflets and pictures and displaying such messages on banners. The most concerning behaviour which we have seen

¹ <https://publichealthscotland.scot/publications/termination-of-pregnancy-statistics/termination-of-pregnancy-statistics-year-ending-december-2022/>

² [Abortion Act 1967 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1967/37)

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evidence of is these anti-abortion protestors targeting people in a bid to challenge them or deter them from having an abortion or receiving healthcare.

These actions may cause them to defer their treatment or purchase illegal abortion pills online from unregulated providers. This impact will be particularly acute for survivors of rape...

We strongly support the introduction of legislation which would further protect survivors of sexual violence and rape accessing essential abortion services without the fear of intimidation or harassment. We support the introduction of safe access zones around abortion clinics and healthcare settings which provide abortion services.”³

This view reflected that of many individuals and organisations who were concerned for the welfare of vulnerable individuals accessing healthcare services. The Royal College of Midwives note in their response to the consultation.

“Abortion services are an essential part of women's healthcare. Full and free access to those services should not be compromised by actions that intimidate and distress women and girls at what can be a difficult time. Similarly, healthcare professionals - including our members - deserve to undertake their work without being harassed and abused.”⁴

11. These responses are also supported by the findings of a report on the need for safe access zones by the Royal College of Obstetricians and Gynaecologists and the Faculty of Sexual and Reproductive Healthcare in 2023, which notes:

“Clinic protests often have an emotional or psychological impact disproportionate to the behaviour involved – largely because of the captive nature of the audience, the confidential nature of medical care, and the potentially heightened emotional state of many people accessing treatment.”⁵

12. As a result of anti-abortion activity in Scotland and its impact, in May 2022, Gillian Mackay MSP noted her intention to bring forward a Member’s Bill to establish safe access zones around healthcare settings providing abortion care. Following a summit on abortion care held by former First Minister, Nicola Sturgeon, in June 2022, the Scottish Government and Ms Mackay agreed to work together to develop and draft safe access zone legislation.

13. In reaching this agreement, the Scottish Government recognise that safe access zones by design impact on rights enshrined under the European Convention on Human Rights (ECHR), namely:

- Article 9 (freedom of thought, conscience and religion);
- Article 10 (freedom of expression); and
- Article 11 (freedom of assembly and association).

³ [Proposed Abortion Services Safe Access Zones \(Scotland\) Bill Consultation Summary, page 22](#)

⁴ [Organisation Responses - Google Drive](#)

⁵ [fsrh-rcog-safe-access-zones-around-abortion-clinics-report.pdf](#)

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14. Healthy debate and disagreement are the foundations of a healthy democracy, and safeguarding them must be one of the highest duties of any responsible government. The Bill does not seek to prohibit the exercise of certain rights, such as the right to express opposition to abortion, but instead limits the exercise of rights in certain places and in certain circumstances. The Bill targets behaviour that impacts individuals' choices to access abortion services (which are of course healthcare services), and only in the specific locations where those choices are acted upon. It is the position of the Scottish Government, and of Gillian Mackay MSP that, as with all other healthcare matters, it is for an individual to determine whether to access services, and that decision is not open for discussion or contradiction by anyone except medical professionals and those whom the individual gives permission to intervene. As the Scottish Human Rights Commission noted in their response to Ms Mackay's consultation on a proposed safe access zones bill:⁶

“...The demonstrations in questions (SIC) go beyond expressing opposition to (the existing framework regulating abortion) or calling for reform of either the common law or Abortion Act. Both the location and messages utilised in these particular demonstrations indicate the target of the message at individuals utilising and/or providing termination of pregnancy services without distinction as to reason.”

15. In this regard, it is also vital to note that those making the decision to access abortion services and those who provide such services have a right under Article 8 of the ECHR to respect for their private lives. The decision to access services is a deeply personal one, and reasons for doing so vary from person to person. Whilst abortion is a complex and emotive matter, it is a form of healthcare which is lawfully available in Scotland. Those accessing and providing it have the right to do so without fear of intimidation, judgement or harassment. As the Royal College of General Practitioners Scotland stated:

“While we respect the right of citizens to peacefully protest, we believe that these protests should not take place at health care settings. This is for the protection of patients and staff from fear and alarm, but crucially where there is significant risk of deterring patients from accessing necessary treatment.”⁷

16. These imperatives are set against a back drop of evolving abortion law – while there have been positive developments, such as the introduction in Scotland of early medical abortion at home⁸ – some have signalled a willingness to retreat from the progress on women's rights made over the past decades. In particular, the overturning of Roe v Wade⁹ in the United States has been significant in the context of the debate. It is considered that there is clear evidence that access to this healthcare must be safeguarded, and that, while continuing to acknowledge its emotional and legal complexities, there is further work needed to ensure access without stigma or shame, just as is the case for any other form of medical treatment.

⁶ [Organisation Responses - Google Drive](#)

⁷ [Proposed Abortion Services Safe Access Zones \(Scotland\) Bill Consultation Summary, Page 22](#)

⁸ [Early medical abortion at home - gov.scot \(www.gov.scot\)](#)

⁹ [19-1392 Dobbs v. Jackson Women's Health Organization \(06/24/2022\) \(supremecourt.gov\)](#)

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Safe access zones across the UK and internationally

17. Provision for safe access zones around premises providing abortion services has been made in England, Wales and Northern Ireland, while the Republic of Ireland is in the process of considering a Bill to establish them.

18. The Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023¹⁰ allows creation of a zone of at least 100m around premises offering abortion services (and in certain cases, premises providing counselling, information or advice relating to abortion). If required, an operator of premises can give notice that a zone of up to 250m is needed.

19. In England and Wales, the Public Order Act 2023¹¹ makes provision for safe access zones of 150m around abortion clinics or any premises in which they are housed.

20. In Ireland, the Health (Termination of Pregnancy Services) (Safe Access Zones) Bill¹² is currently making its way through the National Parliament (Oireachtas), and proposes that a safe access zone be established to cover any place within 100m of the entrance to a premises providing services for the termination of pregnancy.

21. Although each jurisdiction has its own provisions and terminology, there are commonalities. Each seeks broadly to capture similar behaviour – that is, behaviour intended to influence, impede access, or intimidate or alarm those availing themselves of abortion services.

22. A number of international jurisdictions also have measures in place to protect those accessing or providing abortion services. Six Australian jurisdictions¹³ have safe access zone legislation, with average zones of around 150m, while New Zealand permits zones of 150m around specified premises providing abortion services. Canada¹⁴ has also introduced a range of protections for those accessing and providing services, while in France, a wide-range of behaviour is prohibited if it is aimed at “preventing or attempting to prevent the practice or information on a voluntary termination of pregnancy.”¹⁵

¹⁰ [Abortion Services \(Safe Access Zones\) Act \(Northern Ireland\) 2023 \(legislation.gov.uk\)](https://legislation.gov.uk/uk/acts/2023/1/contents)

¹¹ [Public Order Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk/uk/acts/2023/1/contents)

¹² [Health \(Termination of Pregnancy Services\) \(Safe Access Zones\) Bill 2023 – No. 54 of 2023 – Houses of the Oireachtas](#)

¹³ [Public Health Amendment \(Safe Access Zones Act 2021; Public Health Act 2010 No 127 - NSW Legislation; Termination of Pregnancy Bill 2018 \(legislation.qld.gov.au\); Health Act 1993 | PDF; Public Health and Wellbeing Act 2008 \(legislation.vic.gov.au\); Legislation Database \(nt.gov.au\); View - Tasmanian Legislation Online](#)

¹⁴ [Access to Abortion Services Act \(gov.bc.ca\); SQ 2016, c 28 | An Act to extend the powers of the Régie de l'assurance maladie du Québec and to amend various legislative provisions | CanLII ; Law Document English View | Ontario.ca ; kings-printer.alberta.ca/documents/Acts/P26P83.pdf ; nslegislature.ca/sites/default/files/legc/PDFs/annual_statutes/2020_Spring/c005.pdf ; Government Bill \(House of Commons\) C-3 \(44-1\) - Royal Assent - An Act to amend the Criminal Code and the Canada Labour Code - Parliament of Canada ; SQ 2016, c 28 | An Act to extend the powers of the Régie de l'assurance maladie du Québec and to amend various legislative provisions | CanLII](#)

¹⁵ [Book II: Voluntary termination of pregnancy \(Articles L2211-1 to L2223-2\) - Légifrance \(legifrance.gouv.fr\)](#)

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23. It is of course important for each jurisdiction to consider its own circumstances and the actions in others can only be a useful reference, with the circumstances in Scotland determining what is appropriate for this country. However, it is clear that in the UK and beyond there is a consensus that the right to access or provide abortion services without undue influence, harassment or intimidation is one that should be protected. Evidence¹⁶ gathered from across the UK aligns with that collected through Ms Mackay's consultation, and suggests that the impacts of anti-abortion activity outside clinics or hospitals where abortions are carried out are equally distressing in Scotland as they are across the UK as a whole.

24. Just as importantly, there is evidence that safe access zones can be an effective means of offering protection. As Dr Tania Penovic of the Castan Centre for Human Rights Law at Monash University, Australia notes:

“ Prior to the introduction of safe access zones, the picketing of abortion clinics by anti-abortionists occurred throughout Australia. By positioning themselves outside clinics, anti-abortionists targeted a captive audience for their wide ranging efforts to prevent women and pregnant people from obtaining abortions and staff from performing them.....Safe access zone legislation now operates in each Australian state and territory. ... For staff, accessing their place of work was no longer a source of fear and anxiety. The distancing of picketers removed the threat of confrontation which has deterred patients from obtaining (and staff from providing) treatment...”¹⁷

Policy objectives of the Bill

25. The aims of the Bill are to:

- protect access to abortion services across Scotland;
- ensure that people can access abortion services without fear of, and free from, intimidation, harassment or public judgement;
- ensure that at the point of access users are protected from attempts to influence or persuade them in relation to their decision to access services;
- take a preventative approach so all abortion services are covered, including those that have not experienced protests;
- ensure that providers or facilitators of the service are protected from attempts to influence their decision to provide or facilitate abortion related services at their place of work or where those services are delivered;
- prevent providers or facilitators from being reluctant to provide or facilitate services for fear of such protests occurring.

26. Importantly, the aim is not to prevent the expression of opposition to the provision of abortion services or restrict the expression of religious views on abortion. It is only to

¹⁶ [fshr-rcog-safe-access-zones-around-abortion-clinics-report.pdf](#)

¹⁷ [Proposed Abortion Services Safe Access Zones \(Scotland\) Bill Consultation Summary, Page 86](#)

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prevent their expression in limited areas to the extent necessary to achieve the overarching aims.

27. The key mechanism by which these overarching aims will be achieved is the creation of an automatic safe access zone around all premises which provide abortion services in Scotland. It is important to note that, while the Bill's aims are narrow regarding the type and location of activity to be prohibited, a fundamental aim of the Bill is to prevent harm. For this reason, whilst anti-abortion activity has been documented at around a fifth of all sites offering abortion treatment in Scotland, the Bill's provisions will extend to all premises offering abortion treatment across the country. This means anti-abortion activity will not have to occur before a zone can be implemented, and that all those seeking to access abortion services can be assured that their rights to access services are protected, no matter where they seek treatment. A full discussion of policy options and the rationale for this approach is set out below; however, the chief driver is that consultation responses¹⁸ clearly show that anti-abortion activity outside abortion services can be distressing, and that harm should not have to be caused before action to stop it is taken.

28. More detail is provided on the Bill's provisions below, but in summary, the Bill will:

- create an automatic safe access zone comprising the premises which provide abortion services ("the protected premises"), the public area of the attaching grounds if there are any, and a zone (also being the public area) of 200m extending in all directions from the edge of the protected premises.
- allow health providers or Health Boards to respond to local circumstances by providing the ability for them to apply for an extension of a safe access zone if the current zone does not provide adequate protection;
- create offences within a safe access zone which prohibit behaviours in terms of their impacts, rather than providing an exhaustive list of prohibited behaviours and activities;
- safeguard the rights of those who wish to protest or otherwise demonstrate opposition to abortion by limiting the prohibition to only activities carried out (or which can be seen or heard) in public areas within the boundary of a zone.

29. It should be noted that it is intended that the following people will benefit from the Bill's protection:

- anyone attending for the purpose of accessing treatment, information about treatment, advice about treatment, follow-up appointments/ aftercare; and
- anyone who provides or facilitates the treatment, information, or advice around abortion in buildings providing abortion services.

30. Additionally, an effect of the Bill will be to protect those accompanying those accessing abortion services; those accessing other services; and those providing or

¹⁸ [buffer-zone-consultation-summary.pdf \(parliament.scot\)](https://www.parliament.scot/buffer-zone-consultation-summary.pdf)

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facilitating other services offered in the same building. The Bill will also have a positive impact on local residents who live close to the premises and who may have been inconvenienced by anti-abortion activity. These are considered positive subsidiary effects of the Bill, but they are not the Bill's aims, and policy has not been developed to specifically protect these individuals.

31. More detail on premises to be protected, operation of zones, offences, and exemptions is provided below.

Protected premises

32. The successful operation of zones is fundamental to meeting the Bill's objectives, and they must therefore be capable of two things. Firstly, they must materially reduce the harmful impacts of anti-abortion activity on service users and providers outside clinics, whilst restricting no more than is necessary the rights of individuals to exercise their Article 9, 10 and 11 rights. Secondly, they must be implemented in a way that provides certainty for all those affected by them, including service users and providers, enforcement agencies and those who are involved in anti-abortion activity. In this regard, it should be noted that:

- Bespoke zones will not be provided for in the Bill; instead, a single uniform approach to the size and design is set out.
- As noted above, the safe access zone will encompass the premises providing abortion services ("the protected premises"), the attaching grounds if there are any, and a zone of 200m (also the public area) extending in all directions from the edge of the protected premises.

33. Section 1 sets out the meaning of protected premises. Protected premises are a building that is a hospital (or part of a hospital) at which abortion services are provided, or a place approved under section 1(3) of the 1967 Abortion Act. (It should be noted that a class of place approved under section 1(3A) is explicitly excluded from this definition. Section 1(3A) of the 1967 Act allows classes of place to be approved (under section 1(3)) in relation to treatment consisting primarily in the use of medicines (for example, General Practitioners' offices could be approved were practitioners to provide services and treatment in respect of the taking of Mifepristone and Misoprostol).

34. In practice, this means that zones will be created around NHS hospitals providing abortion services and approved private clinics. (There is only one private healthcare premises providing abortion services at present.) This equates to 30 protected premises, as abortion services are offered in two buildings on Foresterhill Health Campus site in Aberdeen.

35. The status of "protected premises" does not apply to any other healthcare premises. Those premises that do not offer treatment for the termination of pregnancy but which do offer treatment that may be related to such treatment such as services relating to counselling, contraception or more general sexual health are therefore not automatically protected. To include these services would potentially significantly and, at

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present, unnecessarily increase the number of premises to which safe access zones attach. This assists in ensuring that the locations where anti-abortion activities are prohibited are narrowly drawn.

36. It should be noted, however, and as is described further at paragraphs 51 - 55 below and more fully in the Delegated Powers Memorandum, that the Bill does provide the Scottish Ministers with a power to make regulations in order to extend protected premises status to other types of healthcare settings. This is to ensure that the Bill has a degree of future-proofing, and is able to achieve its aim even if abortion treatments, or the way services are provided, change and evolve. It also provides flexibility in the premises to be protected should the behaviour of groups who oppose abortion, and the venues they target, change.

Operation of zones

37. Section 2 establishes zones for protected premises, and sets out that the zone will encompass:

- the protected premises themselves;
- the public area of the grounds (if any) of the protected premises; and
- each public area that lies within a boundary that is 200 metres from the edge of the protected premises (that area also being the public area).

38. Section 2(7) provides that a public area refers to any outdoor area that the public may access and any partially enclosed structure in the safe access zone that the public may access. This means that places such as car parks, bus stops and rain shelters would all be captured. Conversely, any fully enclosed structure will not be captured; therefore all buildings other than the one providing abortion services situated within grounds or within the 200m boundary will not be included in the zone. This ensures that, as examples, hospital buildings on the grounds that do not offer abortion services, private dwellings and places of worship will not be caught.

39. Whilst the Bill clearly establishes the design and extent of zones, it is vital that this can practically be communicated for all premises. Service users and providers must be aware of the level of protection they can expect, and those who wish to conduct anti-abortion activity near where abortion services are provided must have sufficient information to allow them to understand the location and extent of zones.

40. Section 2(3) therefore stipulates that the Scottish Ministers must publish and maintain a list identifying all protected premises and the safe access zones attached to protected premises. Section 2(4) sets out that the list must identify the premises by name and address; specify the distance of the boundary of the zone from the edge of the protected premises; and set out the date on which the zone takes effect. To further aid understanding, maps showing the perimeter of any grounds and the boundary of the zone must also be included.

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41. It is anticipated that the list and maps will be available online. Notwithstanding this, the Scottish Government will conduct extensive stakeholder engagement as the Bill proceeds through the Scottish Parliament to assess and develop the most effective means of communicating zones to those affected. This may include targeted communication campaigns, direct contact with campaign groups, and the exploration of public notices around premises to which zones attach.

42. In practice, while the distance between the perimeter of grounds or a building and the zone boundary is the same, the footprints of zones in their entirety will vary from site to site. This is because some services are provided in small, stand-alone buildings with very little land attaching, while others are provided as part of large hospitals with considerable grounds.

43. This variation is essential to ensure adequate protection wherever services are accessed or provided, and has been supported by extensive mapping work to understand the locations of current anti-abortion activity, and points where service users and providers could reasonably be said to be accessing services – for example, alighting from buses at stops on grounds; entering hospital grounds or the premises where abortions are offered; or walking to and from car parks on hospital grounds or between hospital buildings. These considerations explain why all hospital grounds have been captured. Extending the zone beyond the grounds was necessary to ensure that areas of recorded anti-abortion activity, and the closest bus stops in all directions to the hospital grounds are also captured. (To note, no train stations were identified in the immediate vicinity of any of the protected premises).

44. It should be noted that, in all circumstances, the zone must be large enough to ensure that anti-abortion groups cannot simply move their activity to a place directly outside the zone which would also be likely to cause harm to those providing or accessing abortion services. For example, a zone cannot simply extend to a bus stop, but must provide an area of protection beyond it, to ensure that anti-abortion activists cannot shout at, call to, or display written or visual images to those trying to access or provide services.

45. Finally, a single, default distance has been chosen to extend from the protected premises and the attaching grounds if there are any, even though mapping also showed there was some variation between sites in the distance needed. Bespoke distances for each premises were considered, but were ruled out. Further discussion of the alternative options is set out below, but analysis of consultation responses, stakeholder engagement, and consideration of the most common approaches to safe access zones taken in other jurisdictions suggested significant variation was undesirable for service users and providers, enforcement agencies, and those who may wish to conduct anti-abortion activity outside premises providing abortion services. In support of this, it should be noted that the Bill¹⁹ for the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023 initially allowed for bespoke sizes as the default, but was amended during passage to include a minimum distance, as feedback during evidence sessions was consistent that it would be difficult to work in practice.

¹⁹ [Abortion Services \(Safe Access Zones\) Bill \(niassembly.gov.uk\)](https://niassembly.gov.uk)

Future proofing

46. It is acknowledged that a degree of future proofing is required to ensure zones can continue to operate effectively even if circumstances change. The Bill therefore provides, in section 7 that operators of protected premises may apply to the Scottish Ministers for an extension of a safe access zone if they consider that the existing zone does not adequately protect those accessing, providing or facilitating abortion services from conduct prohibited by the Bill. The extension which is sought may be any distance the operator considers appropriate. This will allow local circumstances to be considered. However, importantly, section 7(2) provides that the Scottish Ministers will grant the request only if satisfied it is appropriate. To note, section 11 places a requirement on operators of protected premises to have regard to any guidance published by the Scottish Ministers on extension and reduction of zones.

47. Ministers may themselves extend a zone under section 7(3), if they consider that the existing zone does not adequately protect those accessing, providing or facilitating provision of abortion services from behaviour prohibited under the Bill. Section 7(4) also provides that, where the Scottish Ministers grant an extension for one zone, they may also extend the size of one or more additional zones if satisfied it is appropriate to do so.

48. Where the Scottish Ministers choose to extend more than one zone, the Bill does not require that all zones must be extended by the same distance. However, when making an extension, the Scottish Ministers may review other existing zones and the desirability of a uniform approach. If the Scottish Ministers consider that it is appropriate, the Bill allows other zones to be extended. This approach ensures that the standardised approach to zones may be kept under review and retained if considered appropriate.

49. Under section 8, the Scottish Ministers may also reduce a zone if they consider it appropriate to do so. This again allows zone sizes to be reviewed and considered going forward in order to respond appropriately to changing circumstances where needed.

50. Under both section 7 and 8, the list of zones must be updated to reflect any extensions or reductions; the list will specify the date on which the changes take effect. Extensions cannot come into effect any earlier than 14 days from the date the updated list is published. In contrast, reductions in zone sizes take effect as soon as the updated list is published to allow them to apply as quickly as possible.

51. A number of additional provisions within the Bill offer future proofing:
- In sections 3 and 9 respectively, zones may be added or removed, if premises begin or cease to offer abortion services.
 - Section 10 specifies that the Scottish Ministers may by regulations modify the definition of “protected premises” to add premises which may in future be approved as a class of place providing treatment for the termination of pregnancy under the Abortion Act 1967 – this, for example, could allow

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pharmacies to be added if they were approved under the 1967 Act. (To note, this example is illustrative only, and there are no plans to do this).

- Under section 10(1)(b), the Scottish Ministers may also by regulations modify the definition of “protected premises” to include a building or place at which treatment or services related to abortion services are provided. This, for example, could allow a building where counselling services are provided to have a safe access zone. (To note, this example is illustrative only, and there are no plans to do this).

52. Sections 3 and 9 reflect the reality that the places in which abortion services are offered can be subject to change. To note, section 3(3) makes provision that the list of zones must be updated. As with extensions, new zones cannot come into effect for new protected premises until at least 14 days after the list is updated and published. If a zone is to be removed because an operator intends to cease providing abortion services, the removal takes effect as soon as the services cease to be provided.

53. Detailed discussion of the regulation-making power in section 10 is set out in the Delegated Powers Memorandum. However, in brief, the ability to add a premises which are approved as a class of place under the 1967 Act under section 10 recognises that if abortion services are offered widely at such places, then those who access or provide those services may require the same protection as those who access services at the premises currently set out in the Bill.

54. Similarly, the ability to provide protected premises status and attach zones to premises which offer services related to abortion services is designed to protect against a scenario where a service, such as counselling (which is not treatment for the termination of pregnancy but is directly linked to abortion treatment) becomes the target of anti-abortion activity. All regulations made under section 10 are subject to the affirmative procedure. A requirement to consult with the operator of the premises, as well as the relevant Health Board and local authority or any other person with an interest in establishment of a zone is also included for regulations made under section 10(1)(b).

55. Whilst section 10(1)(b) allows expansion of both the number and kind of premises to which zones can attach, it serves as an important safeguard to prevent targeting of service users and providers, and can only be used if the Scottish Ministers are satisfied that is necessary to protect them from the kinds of behaviours prohibited under the Bill.

Offences

56. In order to provide adequate protection for service users and providers from anti-abortion activities the Bill creates offences to prevent individuals from engaging in harmful behaviours inside a safe access zone. Careful consideration has been given to these, and this has also been informed by a range of stakeholder engagement and learning from other jurisdictions.

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57. The Bill does not prescribe an exhaustive list of prohibited activity. Instead, the Bill takes an approach that offers both clarity to service users and providers and anti-abortion groups, while also providing operational flexibility to enforcement agencies. Such flexibility reflects the reality that it is not practicable to define all potential kinds of anti-abortion activity that could be carried out within a zone, and also allows enforcement agencies to account for the nuances of particular situations.

58. Section 4(1) sets out that a person who is in a safe access zone for protected premises commits an offence if the person does an act with the intention of (or is reckless as to whether the act has the effect of):

- influencing the decision of another person to access, provide or facilitate the provision of abortion services at the protected premises;
- preventing or impeding another person from accessing, providing or facilitating the provision of abortion services at the protected premises, or
- causing harassment, alarm or distress to another person in connection with the other person's decision to access, provide or facilitate the provision of abortion services at the protected premises.

59. In all cases, the offence will only be committed where the other person is in the safe access zone for the purpose of accessing, providing or facilitating the provision of abortion services. However, it is important to note that there does not need to be a demonstrable effect on a specific person; the offence is intended to capture all activity that has the intention of achieving any of the effects above, or is reckless as to whether it has such effects. This is an essential part of the provisions to counter some of the drawbacks to existing law, which require those accessing services to make police reports, or recount deeply personal experiences, before action can be taken.

60. Importantly, where an act that would constitute an offence under section 4(1) is on-going, it does not matter whether the other person is in the zone at the same time that the act was committed. For example, if anti-abortion images were displayed on the doors to abortion premises in the middle of the night and were witnessed by service users or providers the following day, an offence would still have been committed even if no one was in the zone when the images were first displayed.

61. As noted above, a safe access zone is limited to an outdoor area which the public can access, and any partially enclosed structures, meaning that, in general, private outdoor areas and all buildings (barring the premises where abortion services are offered) are not considered part of a zone. However, section 5 sets out the circumstances in which an offence is committed in a place that is not part of a zone but which falls within the boundary of a zone. These circumstances are that the behaviour is capable of being seen or heard by a person in a safe access zone who is accessing or attempting to access services, and that the behaviour is done with the intention of having any of the effects provided for in section 5(1)(b) (or is reckless as to whether it has those effects).

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62. Again, this is considered to strike an appropriate balance between exempting conduct done in private places, and ensuring that private places cannot be used as a means to circumvent the protection the Bill seeks to provide.

63. Whilst the Bill does not provide a list of prohibited activity, it is anticipated that the provisions will be capable of capturing the following activities where they are carried out with the intention set out above (or reckless as to whether they have those effects):

- direct approaches aimed at persuading someone not to access abortion services or to consider an alternative
- advocacy aimed at persuading someone not to access abortion services or to consider an alternative
- shouting loudly in a way that is designed to influence decisions
- handing out leaflets or other literature
- holding up banners, posters or placards
- use of explicit images on leaflets/banners/posters/placards or other literature or signage
- the taking of photographs of those accessing services without consent (or the threat of taking such pictures)
- surrounding individuals as they try to enter/exit premises
- religious preaching
- praying audibly
- silent vigils.

64. This list is not exhaustive, and whilst it is anticipated that the offences as drafted are capable of capturing the above activity, it will be for enforcement agencies to reach their own decisions on the behaviours that do and do not give rise to offences. The drafting is intended to ensure only that certain behaviours can be caught; the facts and circumstances of individual cases will be critical in reaching these decisions, and nothing in this document is intended to pre-empt those judgments.

65. In drafting the offences to capture this wide range of behaviour, the Scottish Government is mindful that many individuals who participate in activity outside abortion services have made clear that they do not see some or all of the activity highlighted as harmful, and that they seek only to bear witness, or to make those accessing services aware of alternatives to abortion. The Scottish Government also notes that, for many, these behaviours do not obviously appear to cause a level of harm that should result in a criminal offence. However, set against the consultation responses and testimonies received, as well as available research into the impacts of anti-abortion activity carried out in the vicinity of abortion services, the Scottish Government has concluded that the

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Bill strikes the right balance in the activity it captures. In support of this decision, the commentary offered by Dr Lowe and Dr Hayes²⁰ is significant:

“When accessing abortion, women’s ability to exercise any control over who is watching, or to avoid encounters, is removed; they can do little but walk through or past activists, who (through positioning and address) are able to control the space of the encounter...The relationship between surveillance, privacy and fear explains why women experience encounters with anti-abortion activists as harassment, even when they are not being approached aggressively.”

66. In the same vein, in its judgment on the Reference by the Attorney General for Northern Ireland in relation to the then Bill for the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023, the Supreme Court²¹ noted:

“...women wishing to access reproductive health facilities, and the staff who work there, are a captive audience for protesters who wait outside the premises, so that the women and staff are compelled to listen to speech or witness silent prayer which is unwanted, unwelcome and intrusive.”

67. For these reasons, and outwith some particular exemptions set out below, the policy intention is to enable the capture of anti-abortion activity within the protected zone which is intended to influence those accessing, providing or facilitating services, or which is reckless as to whether it has that effect. The intention is to ensure that an individual accessing services will not encounter any type of anti-abortion activity in a protected zone, whether that be pop-up activity that occurs rarely, or frequent activity carried out as part of an on-going and regularly repeated campaign. Most individuals will access abortion services very rarely. The impact on them as individuals is therefore the determining factor when considering the level of prevention required.

68. Finally, pro-abortion activity is also capable of being captured by the offences set out in the Bill, on the grounds that any activity related to abortion services has the potential to influence the decision of another person to access or provide services and who are therefore a captive audience. Ensuring such activity is capable of being captured is therefore considered to further the aim of protecting the Article 8 ECHR²² rights of service users and providers, by protecting their privacy.

69. Conviction of any of the offences set out in the Bill will result in a fine only and will not attract a custodial sentence. However, maximum flexibility has been provided; the fine imposed may be the statutory maximum (currently £10,000) on summary conviction, and there is no limit if convicted on indictment. Whilst it is acknowledged that conviction potentially carries very significant penalties, the maximum penalties are not requirements. They exist to provide flexibility, so that higher fines can be imposed if

²⁰ “Anti-Abortion Clinic Activism, Civil Inattention and the Problem of Gendered Harassment” (2019) 53 Sociology 330

²¹ [REFERENCE by the Attorney General for Northern Ireland - Abortion Services \(Safe Access Zones\) \(Northern Ireland\) Bill \(supremecourt.uk\)](https://www.supremecourt.uk/judgments/2023-01-19.html)

²² [Guide on Article 8 - Right to respect for private and family life, home and correspondence \(coe.int\)](https://www.coe.int/en/web/charter-of-fundamental-rights/article-8)

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necessary. Each case will be considered on its own merits, and the level of fines will be determined accordingly.

Exceptions to offences

70. In creating the offences under sections 4 and 5, it is important to ensure that exceptions are included. In particular, private conversations between a person accessing services and another person who is accompanying them are not intended to be captured. In addition, discussions in the course of the provision of any medical advice are excepted.

71. Accordingly, section 6 provides that the offences under sections 4(1) and 5(1) do not attach to the behaviour of someone in a zone who is accompanying, with permission, a person who is accessing or attempting to access abortion services. Likewise, offences do not attach to anything done in the course of facilitating or providing abortion services, or to anything else done in the course of providing healthcare. These exceptions are considered necessary because it is recognised that it is both likely and appropriate that views on treatment options will be exchanged between those accessing and providing services, and between those accessing services and anyone accompanying them.

72. It should be noted that the Bill has made permission a condition of the exception attaching to accompanying persons. The exception should not apply, for example, where a person unknown to the individual accessing or attempting to access services simply strikes up a conversation whilst walking beside them. In such an instance, if the conversation is designed (or is reckless as to its effects) to achieve any of the effects set out in sections 4 or 5, an offence may be committed.

73. The Bill does not seek to prohibit protest on any other topic, whether or not related to the provision of healthcare. This is reflected in sections 4 and 5, which makes the connection to abortion services explicit. However, the Bill also contains an explicit provision in section 6(d) to clarify that peaceful picketing (that is lawful under section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992) may take place within safe access zones; this is in recognition that protest activity related to workers' rights may unintentionally influence decisions to access abortion services or impede access to them, but that their purpose is distinct from pro and anti-abortion activity. It is considered that the different intentions and motivations behind workers' rights activities mean that those providing and using services will not experience the harmful effects which safe access zones are designed to prevent, even if the activity takes place within a zone.

Alternative Approaches

74. Throughout the policy development process, a number of key decision points have emerged. These are set out below, along with the options considered and cover:

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- whether non-legislative solutions would achieve the same outcomes as legislation;
- how safe access zones should be established; and
- how zones should be applied in practice.

Alternatives to legislation

75. The decision to create legislation to limit anti-abortion activity within safe access zones is a significant one. It was not taken without considering a range of alternatives.

76. In November 2021, the former Minister for Public Health, Women’s Health and Sport, Maree Todd MSP, convened a working group²³ to explore short, medium and long term solutions to the harmful impacts of anti-abortion activity taking place in the vicinity of healthcare facilities providing abortion care. The group comprised members from Police Scotland, Convention of Scottish Local Authorities (CoSLA), local authorities and representatives from affected Health Boards. In addition, the former First Minister, Nicola Sturgeon, convened three Abortion Summits, at which potential solutions were also a key focus.

77. These deliberations identified a number of non-legislative options which might be capable of meeting the policy aim of protecting access to abortion services:

- Option 1: rely on local authority byelaws
- Option 2: rely on existing police powers
- Option 3: rely on mediation and enhanced guidance

78. None of these options would create additional interference with any of the rights under articles 9, 10 or 11 of ECHR,²⁴ at least until they were used. It would also remove the need to create any new offences, or add to the burden of work on the justice system.

79. Despite these advantages, for the reasons set out below, it was concluded that, even in combination, these laws cannot ensure preventative, consistent protection for individuals accessing abortion services. In their response to Ms Mackay’s consultation, the Law Society of Scotland stated that:

“...We recognise that the current legislative landscape in Scotland does not appear to have been effective in addressing protests outside healthcare sites which provide abortion services.”²⁵

²³ [Abortion Safe Access Zones: Ministerial Working Group - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/abortion-safe-access-zones-ministerial-working-group/pages/1-to-3.aspx)

²⁴ [European Convention on Human Rights \(coe.int\)](https://www.coe.int/en/web/european-convention-on-human-rights)

²⁵ [Proposed Abortion Services Safe Access Zones \(Scotland\) Bill Consultation Summary, Page 39](#)

Option 1 – Reliance on local authority byelaws

80. Sections 201 to 204 of the Local Government (Scotland) Act 1973²⁶ enable local authorities to make byelaws for the good rule and government of the whole or any part of their area, and for the prevention and suppression of nuisances therein. Local authorities have generally maintained that they do not consider byelaws to be a sufficient solution, and Scottish Government has accepted that national legislation has several benefits compared to byelaws.

81. Concerns include potential inconsistent protection for service users and providers across Scotland. Byelaws rely entirely on the willingness of local authorities, and involve a considerable degree of work to implement. Their use would therefore require multiple, potentially burdensome assessments every time a byelaw was enacted or reviewed, which must be done every ten years.

82. The local approach would also likely result in a patchwork of different protections across Scotland, and sometimes no protection at all. This would lack clarity, both for those who wish to use and provide services, and also for those who might wish to carry out anti-abortion activity outside clinics or hospitals.

83. These limitations are supported by the experiences of the councils in England which have enacted Public Spaces Protection Orders.

84. Therefore, byelaws cannot provide consistent and uniform protection and so would not achieve the preventative aim of the Bill.

Option 2 – reliance on existing police powers

85. The Ministerial-led working group²⁷ also explored the use of existing police powers as a means of mitigating the impact of anti-abortion activity in the vicinity of abortion services. The following potential powers were identified:

- The Antisocial Behaviour etc. (Scotland) Act 2004 – allows police to issue a dispersal order requiring a group of two or more people to disperse. They can be issued where the public has been alarmed or distressed and where behaviour has become significant, persistent, and serious. Dispersal orders can only be issued if other approaches have proved unsuccessful. They expire after three months, at which point, the same test must be met again.
- Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 – provides that a person commits an offence if they behave in a threatening or abusive manner likely to cause a reasonable person fear or alarm, and they intend their behaviour to cause the person fear or alarm or they are reckless as to whether their behaviour causes fear or alarm to another person. This offence includes behaviour of any kind, including things said or otherwise

²⁶ [Local Government \(Scotland\) Act 1973 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

²⁷ [Abortion Safe Access Zones: Ministerial Working Group - gov.scot \(www.gov.scot\)](https://www.gov.scot)

communicated and things done, and the offence can be committed by a single act or a course of conduct.

- The Protection from Harassment Act 1997 – provides that a person must not pursue a course of conduct which amounts to harassment of another, and which he knows, or ought to know, amounts to harassment of the other.
- Section 20 of the Police and Fire Reform (Scotland) Act 2012 – provides that it is the general duty of a constable to maintain order. Whether this provision could be used to address anti-abortion activity would be fact specific depending on the activity in any particular case.
- The Public Order Act 1986 – provides that a person commits an offence if they use threatening words or behaviour, or display any visible representation which is threatening within the hearing or sight of a person likely to be caused harassment, alarm or distress.
- The common law offence of Breach of the Peace – provides for individuals to be arrested if they engage in ‘conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community’.

86. There are specific limitations to some of these powers, which in the Scottish Government’s view would make them insufficient solutions. For example, a dispersal order requires to be renewed every three months, meaning continuous protection would require on-going evidencing of harm, which is an inefficient use of public resources, as well as a source of uncertainty for service users and providers. A harassment order would require proof that each person involved in the course of conduct had been there on two or more occasions. Given that service users tend to access abortion services rarely, it is considered that this test may be very difficult to meet or demonstrate in practice.

87. However, there are broader commonalities to all these alternatives that make them unsuitable:

- They do not provide for a consistent, national approach that is vital in ensuring the same level of protection is delivered throughout Scotland.
- Each requires evidence of harm before they can be used; this is inconsistent with the need to prevent harm and not only react once it has happened.
- Each requires the making of a police report; as noted in evidence gathered for the Bill many patients are unwilling to speak about their experiences. Requiring this therefore has potential both to be ineffective, and to subject women to undergo further distress by recounting deeply personal and sometimes traumatising experiences.
- Certain anti-abortion activities such as handing out leaflets do not breach existing law despite evidence, as set out above, that they can have harmful impacts and represent an invasion of patient privacy.
- The existence of these powers has not prevented groups from engaging in behaviour aimed at abortion service users, thus strongly indicating they are an ineffective deterrent.

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88. The following commentary provided by the Royal College of Obstetricians and Gynaecologists (RCOG) in their submission²⁸ to the Home Office review of protests outside abortion clinics supports this analysis:

“Current processes to act on harassment and intimidation place a burden on patients who are often already emotionally distressed reporting an issue. Moreover, these processes are not preventative but react to harassment and intimidation once it has taken place and distress has already been imposed on patients and staff.”

Option 3 – reliance on mediation and guidance

89. The Scottish Government also considered whether mediation and enhanced guidance could be introduced as a potential solution. Such an approach would have the advantage that it would not create any additional interference with any of the rights under articles 9, 10 or 11 of the ECHR.²⁹ It would also remove the need to create any new offences, or add to the burden of work on the justice system. However, for the reasons set out here, relying on these, even in combination, cannot ensure preventative, consistent protection for individuals accessing abortion services.

90. Mediation work was undertaken to explore non-formal measures to help address the issues of anti-abortion activity. However, after a three-month scoping exercise,³⁰ civic mediation experts were unable to gain any traction with anti-abortion campaigners, pro-choice campaigners or those providing abortion services. This reflects the polarised views around this issue, and the strength of feeling that makes meaningful compromise very challenging.

91. Stakeholder engagement, as well as public statements made by those conducting anti-abortion activity, clearly indicates that this is an issue involving strongly held convictions. Those taking part in anti-abortion activity have expressed that they believe their presence can support women, and that it is an important method of making them aware of abortion alternatives. Organisations such as 40 Days for Life³¹ have noted that they would continue to protest even if legislation were in place. There have also been cases where safe access zones in England have been intentionally breached.³²

92. This, combined with the unsuccessful attempts at mediation documented above, underlines the difficulty of using guidance to bring lasting change. As the activity in question has already been demonstrated to cause harm to service users, the Scottish Government concluded that it would be inappropriate to proceed with this option, knowing its impact may be minimal and would be insufficient to meet the policy aims.

²⁸ [FSRH and RCOG submission to the Home Office review of protests outside abortion clinics - Faculty of Sexual and Reproductive Healthcare](#)

²⁹ [European Convention on Human Rights \(coe.int\)](#)

³⁰ [CfGR statement on scoping exercise - HOME HOME \(centreforgoodrelations.com\)](#)

³¹ [40 Days for Life](#)

³² [Woman enters buffer zone to pray outside Bournemouth abortion clinic | Bournemouth Echo](#)

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93. Having conducted this analysis of non-legislative options, it was concluded that only legislation introducing safe access zones could deliver adequate protection for both service users and providers.

Options for the establishment of zones

94. Once the need for legislation was established, consideration of the potential legislative solutions followed, particularly around how zones should be established and their size.

95. Again, this was informed by consultation responses, working group discussion and stakeholder engagement. Three potential models for how zones could come into operation were identified:

- Model A: this would enable establishment of a zone upon application of an operator of particular premises and a decision from Ministers that a zone is necessary.
- Model B: this would enable establishment of a zone upon notification from operators of particular premises without any need for Ministerial decision.
- Model C: this would enable automatic establishment of zones around certain designated premises without any need for operator notice or Ministerial decision.

96. The advantages and disadvantages of all models are set out below.

Model A – use of an application process

97. This model would enable the operators of specified premises to apply to the Scottish Ministers to create a zone. Operators would require to demonstrate that a zone is needed arising from protests having occurred near the premises, and the Scottish Ministers would need to be satisfied that such a zone was justified.

98. Under this approach, prohibitive measures would only be implemented where there is clear evidence of anti-abortion activity. This could limit the extent to which ECHR³³ rights are interfered with.

99. Moreover, it would ensure local decision-making that takes account of specific circumstances, and allow some flexibility for providers or Health Boards. For example, some providers have expressed concern that safe access zones will be imposed on their organisations despite a lack of current anti-abortion activity, and that this in turn may draw attention to services that had previously gone unnoticed.

100. For a number of reasons, taking into account stakeholder evidence, it was concluded this approach would not effectively meet the policy aim of ensuring

³³ [European Convention on Human Rights \(coe.int\)](https://www.coe.int/)

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nationwide access to abortion services without impediment. The following factors have been considered in reaching this decision:

- An evidence-based application has been demonstrated in England (where Public Space Protection Orders³⁴ have been implemented by some local authorities around abortion clinics) to be burdensome on the applying organisation, which must gather and assess a weight of evidence ahead of applying, and on individuals affected by anti-abortion activity, who must be willing and able to recount often distressing experiences.
- The decision to grant an application would be subject to challenge, thus providing avenues for anti-abortion groups to seek to prevent a safe access zone in every location in which an application is granted. This may act as a deterrent for applying organisations - for example, in Ealing, £144,000 was spent defending the imposition of their Public Space Protection Order.
- Protection might not be consistent - particularly given the drawbacks above, it is possible that organisations would be deterred from applying, particularly where protests are sporadic. This could lead to zones around some premises but not others, failing to effectively achieve the policy aim of protecting access to (and provision of) abortion services across the country.
- It has only limited preventative impact - as evidence of anti-abortion activity would be required, it by default requires at least some level of harm to occur before such an application could be made and upheld.
- Furthermore, should protest groups change location in response to a limited number of zones being imposed, then the policy will have failed to achieve its aim of protecting access to abortion (and provision of) services across Scotland, regardless of location.

101. In reaching this decision, it is recognised that because there are currently no safe access zones in Scotland, it is not possible to conclusively demonstrate that anti-abortion activists will move from one location to another. However, evidence does demonstrate that anti-abortion activity occurs across Scotland, and can consist of "pop up activity". Additionally, some anti-abortion groups are very well funded and would have capacity to move activity to new locations if required. There is therefore a real and reasonable apprehension that protestors will move around the country to target other premises where abortion services are provided.

102. In considering the above, the possibility of allowing another body, such as the Scottish Ministers, to introduce a safe access zone where such action was not taken locally was also explored. However, such a measure would likely only be taken where harm could be evidenced. As set out above, this is considered to be a fundamental flaw, and so this approach was therefore also discounted.

³⁴ [Public spaces protection orders: guidance for councils \(local.gov.uk\)](https://www.local.gov.uk/public-spaces-protection-orders)

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Model B – notification process

103. Model B would enable the operators of specified premises to be able to give notice to the Scottish Ministers to establish a zone without evidence of need and without Ministers having any decision-making function following receipt of that notice.

104. This would mirror the approach taken in the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023.³⁵ In contrast to Model A, it would be a light touch process, requiring only that a provider of abortion services or a Health Board gives notice to the Scottish Ministers that a safe access zone is to exist around a premises providing abortion services. A list would be maintained of premises with such zones, and a relevant organisation could give notice that a safe access zone was no longer to apply if it chose to.

105. Like Model A, Model B would have the advantage of allowing for local decision-making and flexibility for local providers and Health Boards.

106. In comparison to Model A, Model B comprises a less burdensome process for those seeking to create a zone around premises, which may encourage providers to notify.

107. However, this approach also has similar disadvantages to Model A. Some providers/Health Boards may still be reluctant to notify, particularly where anti-abortion activity is sporadic. This could lead to inconsistent rules across Scotland, and therefore inconsistent protection of access to abortion services, with the attendant risk that anti-abortion activity could simply be displaced. It is also highly likely that at least some providers/Health Boards would only give notice once evidence of harm has been demonstrated, therefore not effectively providing a fully preventative solution.

108. For these reasons, it is considered that, whilst this option was assessed as being a better option than Model A, it does not effectively achieve the policy objective of protecting access to (and provision of) abortion services across Scotland.

Model C –Automatic zones

109. This option establishes an automatic zone around all premises where abortion services are provided. The policy proposal seeks to pre-emptively protect the Article 8 ECHR rights of service users and providers to personal autonomy and privacy in light of the body of evidence showing that anti-abortion activities have taken place across Scotland, albeit that they have not taken place at all sites.

110. In doing so, this option seeks to protect the Article 8 rights³⁶ of users by providing assurance to service users that they will not when accessing healthcare services be subjected to the range of behaviours set out in the Bill which amount to an interference

³⁵ [Abortion Services \(Safe Access Zones\) Act \(Northern Ireland\) 2023 \(legislation.gov.uk\)](https://legislation.gov.uk)

³⁶ echr.coe.int/documents/d/echr/Guide_Art_8_ENG

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of these rights. It is important in providing that assurance that no further evidence gathering is required by individual providers or Health Boards.

111. The Scottish Government recognises this represents the most significant interference with ECHR rights³⁷ under Articles 9, 10 and 11. Moreover, it entails policy drawbacks – most notably, by covering all services across Scotland, it may shine a spotlight on providers whose activities had previously gone unnoticed, potentially making them a target for anti-abortion activity.

112. However, whilst these drawbacks were given full consideration, it was ultimately concluded that this option allows a consistent national approach that has the greatest preventative scope. By removing any need for applications or giving notice on a case-by-case basis, it removes the risk that some will be deterred from taking action. It will also remove any requirement for anti-abortion activity to occur before an access zone is implemented.

Application of zones

113. The size and shape of zones is, at least in part, impacted by how zones are implemented (i.e. whether a standardised zone size is introduced from the outset, or whether several bespoke zones are established). Additionally, the aims of the Bill can only be achieved if the zones are well enough understood to both be enforced and act as a deterrent.

114. In light of this, three potential options for applying zones were identified:

- Option 1 - use the Bill to establish that all specified premises are subject to a safe access zone, but allow operators to give notice of the size of zone required for individual premises.
- Option 2 - create bespoke zone sizes and designs for each premises and set these out on the face of the Bill
- Option 3 - set a single zone design and size for all premises, with the option for operators to request extensions as local geography or circumstance required.

115. Consultation responses,³⁸ stakeholder engagement and analysis of the most common approaches to safe access zones taken in other jurisdictions helped establish the advantages and disadvantages of each approach.

116. Option 1 has the advantage of offering maximum flexibility, and would allow all zone sizes to be driven by operators who have expert local knowledge of their sites'

³⁷ [European Convention on Human Rights \(coe.int\)](https://www.coe.int/)

³⁸ [CONSULTATION RESULTS | Safe Access \(Abortion Services\) Scotland Bill \(bufferzones.scot\)](#)

geography, likeliest spots for anti-abortion groups to stand, and detailed knowledge of any previous anti-abortion activity and its impacts.

117. There are, however, a number of disadvantages. As with the notification process for zones, it could result in significant variations between zones across the country, meaning protection would depend on the assessment of operators, rather than relying on a clear, uniform approach. It could also lead to a delay in protection, for example if operators weren't able to immediately undertake the assessment required to notify Ministers on the size of zone needed for their premise(s), or where a challenge was brought in relation to the size of zone an operator had assessed as being required.

118. Similar findings emerged from consultation responses³⁹ and stakeholder engagement: multiple zones of different size and design would present significant challenges in communications, understanding and potentially enforcement. For example, those who wish to stand outside clinics would have multiple zones to understand and navigate; and enforcement agencies could have greater difficulty proving that an offence was committed with appropriate knowledge.

119. In considering this, it should be noted that communicating zones is a complex issue – overt steps drawing attention to the existence of abortion services are opposed by some service providers as it may make them more of a target for anti-abortion activity. Separate work is on-going to explore options for bringing public attention to zones, but it was concluded that the greater the variation in zones, the greater the effort needed to ensure their full extent is understood. Physical demarcation in such cases may be required so that the extent of zones is clearly visible to everyone. This could both draw attention to clinics providing abortion services, resulting in more protests; increase the stigma felt about using services by clearly identifying where they are going; and also provide protesters with a clear line to which they will simply relocate.

120. For these reasons, option 1 was ruled out as a way forward.

121. Option 2 would present the same advantages as option 1, but with the benefit that it would not depend on actions or assessments of premises operators. However, it does require a degree of expert local knowledge.

122. It also presents the same challenges around communications and clarity for service users and providers, enforcement agencies and groups wishing to participate in anti-abortion activity.

123. For these reasons, option 2 was ruled out as a way forward.

124. Option 3 has the advantage of clarity for all relevant groups, and would particularly provide certainty to service users and providers that there is a minimum

³⁹ [buffer-zone-consultation-summary.pdf \(parliament.scot\)](#)

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level of protection that applies across the country. In so doing, it would resolve many of the disadvantages set out in options 1 and 2.

125. For similar reasons, a single default zone also provides a degree of future clarity; whilst the Bill allows for zones to be extended or reduced, as long as that single approach is taken, operators will know what minimum degree of protection will apply to any new premises that might require a zone.

126. The disadvantages are that it could result in some premises receiving a larger zone than is necessary depending on their local geographies and circumstances, and that the zones would be imposed without a high degree of local expertise. However, on balance, it was concluded that the clarity and simplicity were weightier factors, and that steps could be taken to mitigate the disadvantages, such as the options to extend or reduce noted above.

127. For these reasons, option 3 was adopted in the Bill, providing for creation of a single zone with option to extend or reduce as required.

128. The size of the single zone was arrived at by identifying a number of essential elements, which it is considered a zone must capture if it is to achieve the policy aims. As with all other policy considerations these elements were informed by stakeholder discussion and consultation analysis, particularly around the impact of existing anti-abortion activity.

129. To date, all such activity has occurred outside hospital grounds, and generally near hospital entrances – though not always the entrance nearest to the premises where abortion services are housed. How close those protests are to the entrance depends on the footprint of the particular building; for example, the entrance to Sandyford Clinic entrance is directly on the street and protests occur near the front door, whereas at Edinburgh Royal Infirmary, where services are provided as part of a much larger estate, activity occurs approximately 204m from the front door of the building where abortion services are offered.

130. The form and scale of protests also varies from site to site. For example, the activity outside QEUH is sometimes conducted by large groups singing and chanting. At Sandyford, it has taken the form of people using voice amplification devices to spread anti-abortion messages and judgments on those providing and using services; and at Glasgow Royal Infirmary, it has taken the form of silent vigils which are demonstrably concerned with anti-abortion messaging.

131. Based on all this, offering meaningful protection requires that the activities of anti-abortion groups are limited at the point where a person has made a decision to access services, and can reasonably be said to be attempting to access those services. In short, they must capture those areas where a service user or provider is “a captive audience”.

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132. In practice, this means:

- Entrances and exits to the site hosting any building providing abortion services must be unobstructed, and those wishing to access or provide those services must be able to pass through them unhindered
- Entrances and exits to the building in which abortion services are provided must be unobstructed, and those wishing to access or provide those services must be able to pass through them unhindered
- All footpaths, walkways and roads within hospital grounds by which service users or providers may go between buildings, or to or from a site access point must be unobstructed, and those wishing to access or provide services must be able to pass through them unhindered
- Anti-abortion groups must not be able to address, call to, display written material or images to (or otherwise attempt to influence, intimidate or harass) service users and providers at site access points, entrances to buildings providing abortion services, or at any point whilst going between buildings, or to or from site access points.
- Anti-abortion groups must not be able to address, call to, display written material or images to (or otherwise attempt to influence, intimidate or harass) service users and providers at a point when they can reasonably be said to be accessing services - for example, from the point at which a person leaves their car, taxi or bicycle, or alights from public transport at the closest stop in all directions to the premises or site.

133. Taking these factors into account, the essential elements that must be captured were identified as follows.

- The building in which abortion services are housed, including all entrances and exits. In some cases, where two buildings are joined with access points between them, this may mean capturing a large structure.
- All hospital grounds. This will cover those who may require to go between buildings, who may disembark from taxis, park bicycles or cars not directly outside abortion services, or otherwise approach the building by routes not easily mapped or predicted. It is considered that if some areas of hospital grounds are outwith the zone, this may have the unintended consequence of leading to protests on hospital grounds, increasing the risk they will be encountered by service users and providers and increasing the burden on hospital staff who will have to intervene to prevent the harmful activity.
- The bus stops in each direction closest to the hospital site, in addition to those on the grounds.
- Any areas in the vicinity of hospital sites where existing protest activity has been documented, through consultation feedback, stakeholder engagement and testimonies, to be harmful to service users and providers.
- An area of reasonable size around the site so that anti-abortion groups cannot call to, shout at, display images or written material to service users

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and providers, or otherwise seek to influence, intimidate or harass them at a point where they are reasonably attempting to access services.

134. As noted throughout this document, these essential elements formed the basis of extensive mapping, which has resulted in the zones and the distance of 200m extending from the edge of the protected premises.

Consultation

135. Ms Gillian Mackay MSP ran a public consultation on an Abortion Services Safe Access Zones Member's Bill between 19 May – 11 August 2022⁴⁰. The consultation sought views on the introduction of safe access zones of 150m around healthcare facilities providing abortion care within Scotland.

136. The consultation received 11,879 responses. Of these, 52 were from organisations which included the public sector, third sector and trade unions. 11,827 came from individuals, including politicians, academics, medical professionals, and those writing in a personal capacity. This last group made up the majority of responses (10,491).

137. Responses were highly polarised and reflect the general discourse around abortion. Of the responses received 6658 (56.1%) of individuals were fully in favour of the proposal with a further 38 responses partially in support of the proposal. 33 organisations (63%) were fully in favour. Reasons for support included protecting women's rights to access healthcare, freedom of choice, individuals' rights to privacy and compassion and concerns both for people accessing abortion services, and other people affected by protest and vigil activities, including people accessing other services and those working in clinics and hospitals.

138. 5,065 (42.6%) of individuals who responded were fully opposed to the Bill, with a further 51 partially opposed. 16 organisations (31%) were fully opposed. Reasons given for opposing the Bill included fundamental opposition to abortion, that the Bill would restrict individuals' rights to free speech and expression of religious views, and that there is no proof that anti-abortion activity causes harm. As noted above, these views mirror the general dialogue around abortion.

139. In addition to Ms Mackay's consultation the Scottish Government has engaged widely with stakeholders to understand opposition to and support for safe access zones and their potential impacts. As noted above, this included a specific working group, as well as three summits on abortion care which were chaired by the former First Minister, Nicola Sturgeon. Scottish Government officials also met with stakeholders through roundtable events and individual meetings. These stakeholders included:

- Representatives from churches and faith groups
- Representatives from those who participate in anti-abortion activities

⁴⁰ [buffer-zone-consultation-summary.pdf \(parliament.scot\)](https://www.parliament.scot/Document/Buffer-Zone-Consultation-Summary)

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- Women's rights groups
- Abortion Service Leads
- Scottish Abortion Care Providers Network
- Police Scotland
- Crown Office and Procurator Fiscal Service (COPFS)
- Representatives from COSLA

140. As with responses to the consultation, there was very little opportunity to find a common ground. Religious organisations and anti-abortion campaigners fundamentally oppose the principle of abortion and disagree on the nature of anti-abortion activities. In contrast pro-choice groups and organisations such as Back Off Scotland and Rape Crisis Scotland believe in the rights of bodily autonomy and maintain that anti-abortion activity is harmful.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

141. Both an Equality Impact Assessment (EQIA) and Fairer Scotland Duty Impact Assessment have been carried out and will be published on the Scottish Government website.

142. The EQIA provides full details of the analysis undertaken on the equality impacts of the Bill. It was informed from evidence review, stakeholder engagement, consultation analysis and engagement with Scottish Government analysts.

143. Overall, the EQIA concluded that introduction of the Abortion Services (Safe Access Zones) (Scotland) Bill would have a net positive impact on equalities for groups who are accessing abortion services. However, some of the evidence gathered points to the legislation having a negative impact on people who choose to take part in protests and vigils, as many who participate in these activities are motivated by reasons linked to religious belief, and anti-abortion activity can take the form of religious displays. This Bill will restrict such activity in the very specific circumstance of safe access zones outside premises providing abortion services.

144. On balance, protecting those using and providing abortion services from harmful anti-abortion activities outside premises providing those services has an overall greater

positive impact on equalities than negative. This is supported by the consultation response of the Scottish Human Rights Commission,⁴¹ which noted:

“The Commission considers that a restriction on protest at termination of pregnancy services is likely to have positive impacts for individuals seeking abortion or other sexual and reproductive healthcare provided in the same settings will have positive impacts for young people, disabled people, trans people, women, pregnant people and new mothers, women of colour and lesbian and bisexual women and men who attend these services, each of whom will benefit from increased privacy and the removal of a possibly coercive force as they attempt to access care. If the measure is content neutral, the pool of beneficiaries may be wider, for example, a general ban on protest outside a hospital may have positive impacts for individuals with protected characteristics accessing other forms of care.”

Human rights

145. The Scottish Government has considered the effect of the provisions of the Bill on human rights: in particular, the following Articles of the European Convention on Human Rights

- Article 8 (the right to respect for family and private life);
- Article 9 (freedom of thought, conscience and religion);
- Article 10 (freedom of expression) ; and
- Article 11 (freedom of assembly and association).

146. The Bill engages competing ECHR rights; protecting the Article 8 rights of service users and providers will require some interference with the Article 9, 10 and 11 rights of those who wish to express their opposition to abortion outside clinics. However, Articles 9, 10 and 11 are not absolute, and some interference is permissible where the measure is prescribed by law and necessary in a democratic society and is justified.

Article 8

147. The Bill is designed to protect the rights to privacy of those accessing or providing services. It was recognised in the Supreme Court’s judgment on the reference on the Northern Ireland Bill that protecting the private lives of women accessing abortion services is of particular importance. They further noted:

“The right to access health care in conditions of privacy and dignity, and the right to pursue employment, are protected by article 8 of the Convention. Indeed, it has been established that states are under a positive obligation, under article 8 , to create a procedural framework enabling a pregnant woman to exercise effectively her right of access to a lawful abortion: P and S v Poland (2012) 129

⁴¹ [safe-access-abortion-services-scotland-bill-consultation-final-web-version.pdf](https://www.scottishhumanrights.com/safe-access-abortion-services-scotland-bill-consultation-final-web-version.pdf)
([scottishhumanrights.com](https://www.scottishhumanrights.com))

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BMLR 120, para 99 . The same principle would appear to entail that there is also a positive obligation on states, under article 8 , to enable a pregnant woman physically to access the premises where abortion services are lawfully provided, without being hindered or harmed in the various ways described in the evidence before the court."⁴²

Article 9

148. In a safe access zone, some interference of Article 9⁴³ may occur by preventing elements of religious expression. An interference with Article 9 rights is permissible where the action is in pursuit of a legitimate aim and the degree of interference is proportionate to the effect on the achievement of that aim. As stated previously the aim of the policy is the protection of the rights and freedoms of others and the protection of health and it is the Scottish Government's view that the measures in the Bill can be justified as proportionate to those aims.

Article 10

149. As a key part of meeting the stated aim of the Bill is to prevent individuals accessing abortion services from encountering activity designed to influence them, it is inevitable that there will be some interference on the freedom to hold opinions and to receive and impart information and ideas in a safe access zone. This is supported by engagement with groups opposed to abortion, who have noted that their activity is often intended to support those accessing abortion services or to make them aware of alternatives to abortion, and that the ability to do so outside clinics is vital to them.

150. As set out above, those who oppose abortion will be free to express that opposition, within the limits of existing law, elsewhere in Scotland. As with interferences with the rights protected by Article 9, an interference with the rights protected by Article 10 is permitted where it is proportionate in the achievement of a legitimate aim. It is the Scottish Government's view that protecting the rights and freedoms of others and protecting health represents such an aim, and that the measures taken to achieve it are proportionate.

Article 11

151. As above, limiting the anti-abortion activity that can occur outside clinics providing abortion services will impact the freedom of assembly and association with others in those locations. As above, the Scottish Government is satisfied that any interference is justified and proportionate.

⁴² 2022 UKSC 32 para 115

⁴³ [echr.coe.int/documents/d/echr/guide_art_9_eng](https://www.echr.coe.int/documents/d/echr/guide_art_9_eng)

Child rights

152. The Scottish Government has assessed compatibility for the Bill against the requirements of the UN Convention on the Rights of the Child (UNCRC).⁴⁴ A Child Rights and Wellbeing Impact Assessment (CRWIA) has been carried out and will be published on the Scottish Government website.

153. For similar reasons set out above around ECHR Articles 9, 10 and 11, the Bill will have a negative impact on the Article 13 (freedom of expression), 14 (freedom of thought, belief and religion) and 15 (freedom of association) rights for any young people who may wish to participate in abortion-related activity in a safe access zone. These negative impacts will be mitigated however by utilising a proportionate approach. The Bill will have a positive effect on Article 16 of the UNCRC (right to privacy).

154. The CRWIA concluded that the Bill will have a positive effect on children and young people by reducing potential distress for children and young people who access abortion care, attend appointments with parents or carers, or generally access healthcare settings where anti-abortion activity might take place.

Island communities

155. The Scottish Government is satisfied that the Bill has no differential effect upon island or rural communities. The provisions in the Bill are intended to benefit all communities across Scotland, regardless of location. It should be noted that abortion services are only provided up to certain gestations within some Islands and that women do have to travel to mainland services to access services past these gestations. The Bill therefore would have a positive impact for women having to travel to mainland services which have previously experienced anti-abortion activity. A screening assessment for Island communities which explores this in more detail was drafted for the Bill and will be published on the Scottish Government website.

Local government

156. The Bill will not have a direct impact on local government. As safe access zones will be applied at a national level, it is not expected that local authorities will have any specific input in the establishment of safe access zones. However, they will continue to be consulted as appropriate during the Bill's passage.

Sustainable development

157. The Bill will not have an impact on sustainable development. It is not expected that any additional jobs will be created.

⁴⁴ [UN Convention on the Rights of the Child - UNICEF UK](#)

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Crown consent

158. It is the Scottish Government's view that the Bill as introduced does not require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill does none of those things.

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Abortion Services (Safe Access Zones) (Scotland) Bill

Policy Memorandum

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