



Home Office

Non-Statutory Guidance on Abortion Clinic Safe Access Zones

Government consultation

This consultation begins on **11 December 2023**

This consultation ends on **22 January 2024**

About this consultation

- To:** This consultation is open to the public.
- Duration:** From 11/12/2023 to 22/01/2024
- Enquiries (including requests for the paper in an alternative format) to:** Email: sazconsultationinbox@homeoffice.gov.uk
- Or
- SAZ Consultation
Police Powers Unit
6th Floor, Fry Building,
2 Marsham Street, London,
SW1P 4DF
- How to respond:** Please respond by 22 January 2024 using the online survey at: [Non-statutory guidance on abortion clinic safe access zones \(homeofficesurveys.homeoffice.gov.uk\)](https://www.homeoffice.gov.uk/surveys/non-statutory-guidance-abortion-clinic-safe-access-zones)
- If you cannot access or use the online survey, you can send your response to:
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- If you are unable to access an electronic version of the document, please write to the above address and a paper copy will be provided.
- Response paper:** The publication date for the paper summarising the responses to this consultation will be published in due course. The response paper will be available online at www.gov.uk/government/consultations/abortion-clinic-safe-access-zones-non-statutory-guidance

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Ministerial Foreword

During the passage of the Public Order Act 2023, Parliament voted to introduce legislation to prohibit certain activities within 150 metres of an abortion clinic or a hospital that provides abortion services (“Safe Access Zones”).

The debates during the passage of the legislation showed that many people have firmly held - but opposing - views about the merits of curtailing the right to protest in order to enable women to freely access abortion services. There were concerns that the right to protest, freedom of expression and religious belief were being unjustifiably constrained. While others argued with equal passion that women accessing abortion services deserved greater protection from harassing or intimidatory protest.

The Government is committed to enacting the will of Parliament. However, I recognise that this is new legislation and that determining the appropriate balance between competing interests will not always be straightforward. I am therefore pleased to introduce this non-statutory guidance to support the introduction of Safe Access Zones.

This guidance is designed to ensure that abortion service providers and everyone within Safe Access Zones are clear as to what is expected under the new law and that law enforcement agencies have a clear and consistent understanding around the enforcement of Safe Access Zones.

It is underpinned by key principles:

- It is unacceptable for anyone to be harassed or distressed simply for exercising their legal right to access abortion services. The Government has always expected the police and local authorities to use their powers to deal with those who break the law.
- The rights to gather, to express views and to manifest religious beliefs are a cornerstone of democracy in Britain and people should be free to gather and express their views, however uncomfortable they are to others, providing they do so within the law.

To be clear, this legislation only affects certain activities within 150 metres of a clinic or hospital. Not all protests are banned and neither does this amount to criminalising those who hold pro-life views who are in a Safe Access Zone. It does not affect people’s rights to gather or to express their views about abortion or to manifest their religious beliefs about abortion anywhere else.

It is vitally important that law enforcement agencies recognise the rights of both of those accessing or providing abortion services and protestors and, in enforcement, seek to balance their respective rights.

As Home Secretary, I am committed to ensuring that women in England and Wales feel safe and protected whilst exercising their legal right to access abortion services and I am optimistic that this guidance will support the effective introduction of Safe Access Zones.

Rt Hon James Cleverly MP

1. Purpose of the Guidance

The purpose of the guidance is to ensure that section 9 of the Public Order Act 2023 (“section 9”) is clear and can be understood by the general public as well as law enforcement and criminal justice agencies, particularly in terms of where and in what context the offence is likely to apply.

This guidance is intended to be used by members of the public, abortion clinics and hospitals that provide abortion services, local authorities, the police, and law enforcement agencies.

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2. Prohibited Activities

What is prohibited?

- 2.1 The offence applies to any activity that is done with the intent of, or reckless as to whether it has the effect of:
 - (a) influencing a person's decision to access, provide or facilitate the provision of abortion services;
 - (b) obstructing or impeding someone's access to, or provision or facilitation of services at, an abortion clinic; or
 - (c) causing harassment, alarm or distress to anyone in connection with a decision to access, provide or facilitate the provision of services at the abortion clinic.
- 2.2 The offence requires someone to intend or be reckless to causing at least one of the effects above, so those holding pro-life views are not committing an offence by merely being within the Safe Access Zone. In addition to assessing the relevant activity, due regard must be given to the intention and motive of anyone suspected of committing an offence.
- 2.3 Police officers must not arrest suspects unless there are reasonable grounds to suspect that they have committed an offence. This means that there must be an objective factual basis that supports the suspicion that the activities in paragraph 2.1 above have been intentionally or recklessly committed, before the police should effect an arrest.
- 2.4 Whether a particular act meets the threshold for the criminal offence, it will always be dependent on the circumstances of the individual case. The police and prosecutors should consider the ordinary meanings of the terms 'harassment', 'alarm' and 'distress', along with case law, especially that relating to section 5 of the Public Order Act 1986. However, the police should consider the specific groups of people who may be affected when assessing whether the threshold of harassment, alarm or distress is met in individual circumstances.
- 2.5 The term "influence" is not defined in the statute and therefore takes its ordinary dictionary meaning. The Government would expect 'influence' to require more than mere mention of abortion or the provision of information. As such, informing, discussing or offering help does not necessarily amount to 'influence'.
- 2.6 The Government would not expect the police to take action against any incidental activities, which could not reasonably be believed to be targeted towards those accessing, providing or facilitating the provision of abortion services. For example, if a person happened to be parked in or passing through a Safe Access Zone with a pro-life sticker on their car, which they were not drawing attention to, the Government would not expect the police to take action. Similarly, if someone is walking along the pavement with a baby in a pram and happens to pass through a Safe Access Zone, the Government would not expect the police to consider that person to be reckless as to the effect that seeing a baby may have on a person accessing abortion services.

- 2.7 Prayer within a Safe Access Zone should not automatically be seen as unlawful. Prayer has long received legal protection in the United Kingdom and these protections have not changed as a result of section 9. Silent prayer, being the engagement of the mind and thought in prayer towards God, is protected as an absolute right under the Human Rights Act 1998 and should not, on its own, be considered to be an offence under any circumstances. However, where an individual is praying, but their conduct is also intrusive¹, this is likely to be an offence under section 9.
- 2.8 It would not normally be in the public interest for police to take action unless they reasonably believe that the acts/behaviour in question would have a direct link to any person's decision to access abortion services, or would obstruct or impede such access. Nor would it generally be in the public interest for officers to pursue criminal proceedings where there is no evidence that anyone was in fact influenced, obstructed, harassed, alarmed or distressed.

The mental element

- 2.9 In addition to being capable of having the effect described in 2.1, for the offence to be committed the person must have acted with intent or recklessness. This means they must have either intended or foreseen a risk and unreasonably engaged in conduct that will have one of the prohibited effects. If this is not the case, then the person has not committed the offence.
- 2.10 Recklessness is assessed taking into account subjective and objective considerations. If it is established that a suspect was aware of, or foresaw a particular risk that their conduct would have one of the above effects, the next question is whether or not the specific activity in question was objectively unreasonable in view of what the suspect was (subjectively) aware of. Awareness of the risk alone is not sufficient to satisfy recklessness. There must be an objective assessment of the reasonableness of the conduct taking into account the circumstances the suspect was aware of.
- 2.11 Practising routine religious activities - such as praying silently whilst in transit, reading a Bible at a bus stop or carol singing in a church courtyard would be unlikely to be reckless for the purposes of the offence. However, a large and obtrusive religious gathering directly outside a clinic to promote the pro-life cause could be an offence.
- 2.12 Having a private conversation about abortion that the person did not foresee being overheard could not be considered reckless for the purposes of the offence.

¹ Whilst the UK Supreme Court judgment on the Northern Ireland Safe Access Zone law did refer to silent prayer, the conduct described was 'intrusive'. REFERENCE by the Attorney General for Northern Ireland - Abortion Services (Safe Access Zones) (Northern Ireland) Bill (supremecourt.uk), p.46

Q1. In your view, are the contents of Section 2 (prohibited activities) sufficiently clear and easy to understand?

Yes/No

If no, please explain your answer.

Q2. Are you content that the guidance provided under Section 2 (prohibited activities) accurately reflects the Section 9 offence?

Yes/No

If no, please explain your answer.

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3. Location

- 3.1 The only premises that have Safe Access Zones around them are:
- i. Clinics and private hospitals that are approved under the Abortion Act 1967. The Department for Health and Social Care publishes a list here - [Independent clinics and hospitals approved to carry out abortions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/1118397/abortion-statistics-clinic-tables-2021.ods)
 - ii. An NHS hospital that has given notification in the current or previous calendar year that it has carried out abortions. The Department for Health and Social Care publishes a list here - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1118397/abortion-statistics-clinic-tables-2021.ods
- 3.2 To commit the offence, a person must be within 150 metres from any part of the clinic or access point to a hospital site that provides abortion services and on or adjacent to a public road, footpath, right of way, in a public open space, or the clinic or building's curtilage, or anywhere visible from those locations (except for the curtilage of a building other than an abortion clinic) that is also within 150 metres of the clinic or access point. 'Curtilage' usually means the area of land immediately surrounding and belonging to a building, so anywhere within the grounds of a hospital or clinic is likely to be within its curtilage.
- 3.3 This means activities that take place inside buildings that are within 150 metres of a clinic would not ordinarily be captured under the offence. For instance, a discussion about abortion in a shop or restaurant located within 150 metres of a clinic, but which is not within the clinic or its building's curtilage, adjacent to a public highway or right of way, or visible from a relevant public space or the clinic's curtilage, would not be unlawful.
- 3.4 No offence can be committed by a person inside a dwelling², where the person affected is inside that or another dwelling. No offence can be committed by a person inside a building or site used as a place of worship, where the person affected is also in that building or site.
- 3.5 This means that a sermon about abortion inside a church within a Safe Access Zone, which does not affect persons outside who are accessing, providing, or facilitating services, would not be unlawful. Similarly, discussion about abortion within a house or flat not impacting on relevant persons outside would not be unlawful. However, if people lean out of their windows or stand on their driveways and call out comments to passers-by about abortion, they could commit an offence.
- 3.6 Someone more than 150 metres from the clinic or access point to a building containing a clinic could never commit this offence. We would not expect the police

² In this section "dwelling" means—

- (a) a building or structure which is used as a dwelling, or
- (b) a part of a building or structure, if the part is used as a dwelling, and includes any yard, garden, grounds, garage or outhouse belonging to and used with a dwelling.

to approach anyone more than 150 metres from a clinic regarding section 9 offences.

- 3.7 For the offence to be committed, the activity must be capable of influencing, obstructing or causing alarm, harassment or distress to someone who is also within any part of a clinic/hospital or its curtilage or any public open space within 150 metres of an abortion clinic/hospital. An activity that could only influence or cause alarm, harassment or distress to someone outside the Safe Access Zone would not be an offence under section 9.

Q3. In your view, are the contents of Section 3 (location) sufficiently clear and easy to understand?

Yes/No

If no, please explain your answer.

Q4. Are you content that the guidance provided under Section 3 (location) accurately reflects the Section 9 offence?

Yes/No

If no, please explain your answer.

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4. Purpose of presence within the zone

- 4.1 For the offence to be committed, the act has to be capable of influencing, obstructing or causing alarm, harassment or distress to someone who is within the Safe Access Zone for the purposes of accessing, providing or facilitating the provision of abortion services at that clinic/hospital. A hospital chaplain giving a religious view on abortion to a patient who is not at the hospital for abortion services would not be captured by the offence. Similarly, holding a pro-life vigil in the area when the clinic is closed and no staff or patients are in the area would not be a criminal offence.

Q5. In your view, are the contents of Section 4 (purpose of presence in the zone) sufficiently clear and easy to understand?

Yes/No

If no, please explain your answer.

Q6. Are you content that the guidance provided under Section 4 (purpose of presence in the zone) accurately reflects the Section 9 offence?

Yes/No

If no, please explain your answer.

5. Use of police powers

- 5.1 The Government expects the police to follow the [College of Policing's wider guidance on managing protests](#) when policing activities outside abortion clinics and hospitals. We would only expect the police to arrest someone for interference with abortion services if all efforts (including a direction to leave the area or to curtail their activity) had failed.
- 5.2 In making decisions, the police, prosecutors and the courts must consider their obligations under the Human Rights Act 1998, recognising that the right to manifest religious beliefs, the right to freedom of expression and the right to freedom of assembly and association can sometimes be infringed upon to uphold the rights of others to receive respect for private and family life and vice versa.
- 5.3 The police should not take action in cases where engagement between protestors and those accessing, providing or facilitating the provision of abortion services is consensual.
- 5.4 A service user has a right under Article 8 of the European Convention on Human Rights to a private life, which is underpinned by the notion of personal autonomy. The police and prosecutors should be careful not to assume that a service user does not wish to exercise her personal autonomy to engage with bystanders with alternative viewpoints or to receive charitable support. This assumption is likely to interfere with the service user's and the suspect's Article 8 rights to the extent that they have both voluntarily entered a conversation in a public space. Hence some cases may require a proportionality assessment.
- 5.5 Whilst the right to manifest beliefs is qualified under Article 9 of the European Convention on Human Rights, the right to hold any belief or thought is absolute. There can be no legitimate justification on the part of the public authority to limit, interfere or otherwise penalise persons for their exercise of this aspect of the Article 9 right. Therefore, the police should never ask anyone what they are thinking and should not base an arrest solely on any silent thoughts an individual may admit to having.
- 5.6 We would never expect the police to approach someone simply for wearing a religious item, such as a crucifix necklace or a hijab or carrying rosary beads.
- 5.7 Safe Access Zones are public spaces and individuals will be passing through or even stopping within the area for various reasons. The police should not target those they believe to have pro-life views. That may amount to unlawful discrimination on the basis of religion. Motionless, unintrusive conduct should not, on its own, be treated as an offence. The mere presence of someone in a Safe Access Zone with no indication they are going to engage with anyone accessing, providing or facilitating abortion services should never attract police action. Section 9 does not criminalise presence within a Safe Access Zone. Whilst presence is a necessary element of the offence, it does not by itself constitute the offence. Section 9 prohibits conduct engaged in with the required state of mind, not presence. The police should only engage individuals where there are reports of

observable acts that give rise to reasonable grounds to suspect that an individual is influencing, obstructing or causing alarm, harassment or distress contrary to section 9. Simply being present should never be considered an observable act.

Q7. In your view, are the contents of Section 5 (use of police powers) sufficiently clear and easy to understand?

Yes/No

If no, please explain your answer.

Q8. Are you content that the guidance provided under Section 5 (use of police powers) accurately reflects the Section 9 offence?

Yes/No

If no, please explain your answer.

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6. Police training

- 6.1 Given there will sometimes be a need to conduct a proportionality assessment, it is important that police officers dealing with suspected incidents of breaching section 9 have the appropriate knowledge of human rights. Officers involved in suspected breaches of section 9 should have had appropriate training in balancing the rights protected under the European Convention in Human Rights.

Q9. In your view, are the contents of Section 6 (use of police training) sufficiently clear and easy to understand?

Yes/No

If no, please explain your answer.

Q10. Are you content that the guidance provided under Section 6 (use of police training) accurately reflects the Section 9 offence?

Yes/No

If no, please explain your answer.

7. Signage

- 7.1 The Government believes that people should be made aware of when they are within a Safe Access Zone and what restrictions apply.
- 7.2 We therefore advise local authorities and abortion service providers to work together to take reasonable steps to ensure that the public are made aware of when they are within a Safe Access Zone and what behaviours are prohibited. This would be best achieved by erecting and maintaining signage in the area.
- 7.3 Signs should clearly display a summary of the prohibitions, as given in the statute.
- 7.4 Decisions about how many signs and exactly where they should be erected will be matters for local authorities and abortion service providers, based on the local circumstances.

Q11. In your view, are the contents of Section 7 (signage) sufficiently clear and easy to understand?

Yes/No

If no, please explain your answer.

Q.12. Do you think that abortion clinics/hospitals and local authorities should erect signage to clearly mark SAZs within their jurisdiction?

Yes / No

Please explain your answer.

8. Sentencing

- 8.1 A person guilty of an offence under section 9 would be tried in the Magistrates' Court and could receive an unlimited fine.

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Q13. Do you have any further comments on this non-statutory guidance?

Yes/No

If yes, please explain your answer.

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Questionnaire

[Instructions: for the web version, include an online questionnaire, which can be completed and returned online]

We would welcome responses to the following questions set out in this consultation paper.

Q1. In your view, are the contents of Section 2 (prohibited activities) sufficiently clear and easy to understand?

Yes/No

If no, please explain your answer.

Q2. Are you content that the guidance provided under Section 2 (prohibited activities) accurately reflects the Section 9 offence?

Yes/No

If no, please explain your answer.

Q3. In your view, are the contents of Section 3 (location) sufficiently clear and easy to understand?

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Q8. Are you content that the guidance provided under Section 5 (use of police powers) accurately reflects the Section 9 offence?

Yes/No

If no, please explain your answer.

Q9. In your view, are the contents of Section 6 (use of police training) sufficiently clear and easy to understand?

Yes/No

If no, please explain your answer.

Q10. Are you content that the guidance provided under Section 6 (use of police training) accurately reflects the Section 9 offence?

Yes/No

If no, please explain your answer.

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Yes/No

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Q.12. Do you think that abortion clinics/hospitals and local authorities should erect signage to clearly mark SAZs within their jurisdiction?

Yes / No

Please explain your answer.

Q13. Do you have any further comments on this non-statutory guidance?

Yes/No

If yes, please explain your answer.

Thank you for participating in this consultation.

About you

Please use this section to tell us about yourself.

Full name	
Job title	
Company name/organisation (if applicable)	
Capacity in which you are responding to this consultation exercise (for example, member of the public)	Abortion provider/health professional Service user/former service user Pro-life activist/supporter/organisation Pro-choice activist/supporter/organisation English and Welsh Local Authority Police Force and Police and Crime Commissioner Local resident of an abortion clinic/hospital/passers-by Member of the public
Address	
Postcode	
Date	

Contact details and how to respond

Please respond by 22 January 2024 using the online survey at: [Non-statutory guidance on abortion clinic safe access zones \(homeofficesurveys.homeoffice.gov.uk\)](https://non-statutory-guidance-on-abortion-clinic-safe-access-zones.homeofficesurveys.homeoffice.gov.uk)

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Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Home Office at the above address.

Publication of response

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Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In

view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Home Office.

The Home Office will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>



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Any enquiries regarding this publication should be sent to us at sazconsultationinbox@homeoffice.gov.uk

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