

Open consultation: Abortion clinic safe access zones: non-statutory guidance

Read the consultation details here: [Abortion clinic safe access zones: non-statutory guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/abortion-clinic-safe-access-zones-non-statutory-guidance)

Section 1: Purpose of guidance

There are no questions on this section.

Section 2: Prohibited Activities

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.

We answered: No.

Explain your answer

Clarity around the balancing of rights

The proposed guidance creates confusion for the police with a potentially misleading approach to balancing different rights when enforcing Safe Access Zones.

It is correct to note that the legislation requires a 'balancing' of different rights. Most significantly, this involves Articles 8, 9, 10, and 11. However, this 'balancing' has already been done, and the legislature and the judiciary have both given a clear view.

The High Court¹, the Court of Appeal², and the UK Supreme Court³ have all ruled on various occasions to the effect that the Article 8 right to access medical care confidentially, without fear of harassment, alarm, or distress can only be met by actively protecting abortion clinics from harassment. The rights conferred by Articles 9, 10, and 11, which protect the right to freely associate, freely express opinions, and the right to freedom of thought, religion and belief can all be met without allowing individuals or groups to have a presence directly outside an abortion clinic⁴.

¹ Judge Turner, *Dulgheriu v London Borough of Ealing*.

² [Court of Appeal Judgment Template \(judiciary.uk\)](https://www.judiciary.uk/court-of-appeal-judgment-template/)

³ "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. That right entails a positive obligation which requires states to enable pregnant women to exercise their right of access to lawful abortion services effectively, without being hindered or harmed by protesters in the ways described in the evidence before the Court."
[Reference by the Attorney General for Northern Ireland - Abortion Services \(Safe Access Zones\) \(Northern Ireland\) Bill - Press Summary \(supremecourt.uk\)](https://www.supremecourt.uk/news/supremecourt-5th-june-2022-press-summary/)

⁴ Under the Human Rights Act 1998, which embeds the European Convention of Human Rights into UK law, we all have the following rights: the right to respect for your private and family life (Article 8); the right to freedom of thought, belief, and religion (Article 9); the right to freedom of expression (Article 10); and the right to freedom of assembly and association (Article 11).

Although the Section 9 offence does restrict the rights conferred by Articles 9, 10, and 11 in a single, specific space, there is significant legal precedent for balancing the rights when they are apparently in conflict, and these particular restrictions have been found to be justified. The guidance obscures these rulings and does not make the balance of rights clear.

Article 8 is a right which comes with a “positive obligation”, whereas Articles 9, 10, and 11 are rights with a “negative obligation.” In other words, the government has an obligation to actively protect our right to privacy and family life, rather than just a duty not to intrude upon those rights, which is the case with Articles 9, 10, and 11, the government has an obligation not to actively intrude upon those rights. The State has a duty to ensure the Article 8 rights of women accessing abortion care, which it has not been able to do previously, and is one of the reasons this law was passed. The guidance does not make this difference clear. (To read more about the balancing of these rights, you can view MSI Reproductive Choices UK’s evidence submission to the Human Rights Joint Select Committee’s inquiry on Freedom of Expression [here](#).)

The rights conferred by Articles 9, 10, and 11 of the Convention include explicit and well-established qualifications 9(2), 10(2) and 11(2) which permit the restriction of rights in order to prevent disorder, protect health and protect the rights and freedoms of others. The Supreme Court ruling in relation to similar legislation in Northern Ireland⁵ makes it clear that Safe Access Zones are a proportionate means to achieve a legitimate aim (ensuring safe access to abortion care) and that the right to access medical care safely takes precedence.

As the Supreme Court ruling makes clear [113], the restriction of the exercise of Convention rights is prescribed by law. Safe zones pursue a legitimate aim (to ensure safe access to abortion care and to ensure that healthcare workers can attend their place of employment without harassment). These aims fall within the qualifications in articles 9(2), 10(2) and 11(2) of the Convention, which permit the restriction of rights in order to prevent disorder, protect health and protect the rights and freedoms of others. Furthermore, 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. That right entails a positive obligation to ensure that people can exercise their right of access to lawful abortion services effectively, without being hindered or harmed by protesters in the ways described in the evidence before the court [114]-[115].

Lack of clarity about the role and responsibility of the police

The guidance is misleading in that it purports to place the responsibility for balancing these rights with individual police officers. However, the balancing act has already been done by Parliament, with the decision being made that in order to adequately protect the Article 8 rights of service users, the Articles 9, 10 and 11 rights of other individuals have to be curtailed within 150m of abortion clinics. Police personnel are individually responsible for ensuring the use of their powers is lawful, proportionate, and necessary, not for revisiting the work of Parliament.

Lack of clarity about which behaviours or actions the Safe Access Zone prohibits and why

The guidance gives examples of behaviours which could be considered lawful within the Safe Access Zone. These examples cause greater confusion, often using subjective language and appearing to be at odds with the intention of Parliament.

For example, the guidance compares “routine religious activity” with “a large, obstructive gathering.” We do not believe the size of a gathering should be a factor in whether it is deemed lawful. The definition of “large” is not specified. A gathering or assembly which may not be considered “large” to the police in other contexts may be highly distressing, alarming, and obstructive to those entering an abortion clinic.

⁵ [Reference by the Attorney General for Northern Ireland - Abortion Services \(Safe Access Zones\) \(Northern Ireland\) Bill - Press Summary \(supremecourt.uk\)](#)

Regardless of size, such gatherings exist to influence those who access or provide abortion care and therefore the guidance should be explicit that they are deemed unlawful within the Safe Access Zone.

Conversely, the guidance does not mention any examples of commonly experienced behaviours such as filming, photographing, calling women “murderers,” calling out “mummy”, handing out false information or obstructing entrances. These behaviours could all be examples of behaviours which it would make to explicitly name as unlawful within the Safe Access Zone, while making it clear that these are examples only, not an exhaustive list.

The guidance could create a misleading impression that behaviours or activities defined by those engaging in them as “silent prayer” or “silent witness” could be exempt from the Safe Access Zone requirements, which is at odds with the intention of Parliament in passing this legislation.

Parliament was given the opportunity to consider whether so-called “silent prayer” and “silent witness” should be given a special exemption from the Safe Access Zone legislation, and this was rejected⁶. In spite of this, the Home Office’s guidance appears to contradict both the legislature and, arguably, the judiciary.

The impact that “silent prayer” or “silent witness”, within the vicinity of an abortion clinic, has on those attending abortion clinics can be an attempt to influence decisions and many service users have said that they felt harassed, intimidated, and distressed by it.

The assertion that prayer has special protection within UK law could be considered misleading and will cause confusion for the police and for those accessing care. We recommend that this be removed from the guidance.

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

We answered: No. The guidance provided under Section 2 does not adequately implement the clear will of Parliament and does not accurately reflect the Section 9 offence.

Explain your answer

Section 9 of the Public Order Act 2023 was designed to prevent harassment of those entering abortion clinics, whether to receive or provide care. The guidance as written will not do that. Section 2 of the guidance establishes multiple loopholes with subjective interpretations (as described above in answers to Questions 1 and 2).

The guidance states that “informing,” “discussing,” or “offering help” should not necessarily be regarded as attempts to influence. All of these activities, when targeted, unsolicited, towards women outside abortion clinics are by definition attempts to influence. Such actions can serve no other purpose. Any “help, information and discussion” which was meaningfully “consensual” and solicited would not need to take place within 150 metres of an abortion clinic or hospital.

The “help,” “information,” and “discussion” that such groups routinely disseminate is misleading, even false, and includes major medical inaccuracies. Information, advice, and signposting for anyone considering or seeking an abortion is available from a range of qualified organisations, including regulated healthcare professionals. Parliament considered this in passing Section 9 of the Public Order Act. The guidance as written undermines this fundamental purpose to the legislation and suggests a profound misunderstanding of the issues which the legislation is designed to solve.

⁶ [Public Order Bill - Hansard - UK Parliament](#), Volume 729: debated on Tuesday 7 March 2023, consideration of Lords amendments.

The guidance indicates that “silent prayer” has special protection in law and may be lawful within a Safe Access Zone. The definition of “prayer” is not specified. There are individuals and groups who engage in behaviours which they define as “silent prayer” and which clearly constitute harassment, obstruction, or an attempt to influence, and which can cause serious distress. For example, refusing to leave a clinic or hospital premises while silently praying or obstructing the front door while silently praying are clearly not behaviours that Parliament intended to allow within Safe Access Zones.

The guidance places a focus on the need to prove “intent” and to prove that individuals have been harassed, alarmed, distressed, obstructed, or influenced. This is impractical, particularly the latter, as influence can be coercive, complex, and in some cases is not fully understood as such until women feel able to process their experience at a later date. Some people attending the clinic may not be aware that the “information” they are being offered is medically false or provided by an organisation with an anti-abortion agenda, which means they may not feel they were being “influenced” but the materials may still influence them.

The complexity of these challenges is part of the rationale for introducing the legislation in the first place, yet the guidance as written undermines this core objective. For example, by forcing women to prove they were influenced, obstructed, harassed, alarmed, or distressed, the burden falls to women themselves to explain why the behaviour they experienced is inappropriate. The guidance should reframe this balance to make sure the police are empowered to fully enforce protection for women regardless of whether they feel able to make a formal complaint or articulate the impact the behaviour had on them in the moment.

Section 3: Location

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.

We answered: No.

Explain your answer

Taken in conjunction with Section 7 of the guidance (signage), the details around location are not sufficiently clear.

The guidance should state explicitly that the advice in Section 7 around creating signage is not a requirement and that when considering whether an action constitutes an offence under Section 9 of the Public Order Act, the existence, maintenance, and visibility of signage should not be a factor.

The protections set out in Section 3 regarding location should explicitly take precedence over the suggestion in Section 7 that providers and local authorities display signage. Unless this is made explicit, the guidance will remain unclear. (See Section 7 of the consultation for more on signage.)

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.

We answered: No.

Explain your answer

Taken in conjunction with Section 7 of the guidance (signage), the guidance appears to be insufficient in reflecting the Section 9 offence.

Without clarity that signage is not a requirement for the Safe Access Zone to be enforced, the guidance could leave the impression that the location itself is not the defining feature of where a legally enforceable zone begins. This does not reflect the clear intention of Parliament in specifying that the zones should cover all attempts to influence or obstruct abortion access within 150 metres of a clinic or hospital.

4. Purpose of presence within the zone

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

We answered: No.

Explain your answer

The examples given in the guidance do not speak to realistic and common scenarios and nor do these examples adequately convey the defining characteristics which make a behaviour or activity unlawful under Section 9 of the Public Order Act.

For example, the guidance references a hypothetical hospital chaplain working within a hospital giving a view on abortion, or a group holding a so-called “vigil” on clinical premises while the premises are closed. Neither of these examples consider whether the activity is unsolicited or whether it be experienced as harassment, obstruction, or an attempt to influence.

Meanwhile, the guidance does not give any examples in this section that relate to the common behaviours which do routinely occur outside clinics across England and Wales (see answer to Question 1). This could lead to concern that the guidance was developed without insight into the nature of the problem it is trying to solve.

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

We answered: No.

Explain your answer

The police are not well-placed to make judgements about whether a particular action or activity is “capable of influencing, obstructing or causing alarm, harassment or distress.” Making such an assessment requires a full understanding of how abortion stigma functions in our society, without which it would be impossible to interpret how particular actions are experienced by women and anyone else entering the clinic.

The legislation as signed into law was partly intended so as to relieve them of the obligation to make these judgements. The guidance as written undermines this goal.

Any anti-abortion activity taking place within the Safe Access Zone by definition is “capable of influencing, obstructing or causing alarm, harassment or distress.” It is both disproportionate and legally inappropriate to imply that there is an additional burden of proof required to demonstrate that it has in fact caused harm, harassment, or distress.

The examples in this section of the guidance are hypothetical and rather obscure, and the guidance given does not reflect the legislation as voted by Parliament. For instance, the example given of hospital chaplain does not mention that anti-abortion activity from a chaplain would not, under Section 9 of the Public Order Act, be considered automatically lawful on account of profession. In the event that a hypothetical chaplain should be offering unsolicited views on abortion within the Safe Access Zone, this should indeed be considered unlawful. The guidance does not make this distinction clear.

Similarly, the example given of an anti-abortion event held on clinical premises while the premises are closed does not allow for an interpretation of the law whereby such activity is indeed an attempt to obstruct, harass, or influence. For example, if materials or other paraphernalia are left behind on site, this could constitute a breach of the Safe Access Zone as such items would be likely to be experienced as harassing, distressing, and obstructive. Indeed, the very act of choosing abortion provision sites for such

a demonstration could suggest an intention to influence or distress those accessing care. The guidance should be clearer that such activity would not automatically be lawful within the Safe Access Zone.

5. Use of police powers

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.

We answered: No.

Explain your answer

While the guidance does make it explicit 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,” it also states: “and vice versa.” As explained in the answers to Questions 1 and 2, the balance between these rights must take into account that a) Article 8 is a right which carries positive obligations and b) Article 8 is a right which courts have concluded cannot be fulfilled without actively protecting abortion clinics from activity outside. Unless these points are clarified, the guidance will lead to confusion for the police, as it gives a misleading impression regarding how to balance these rights.

The guidance indicates that police should not “take action in cases where engagement between protestors and those accessing, providing or facilitating the provision of abortion services is consensual.” This will cause confusion for the police as it implies that police need to make a judgement about whether each anti-abortion action within the Safe Access Zone is “consensual”. In fact, such actions are by definition not “consensual” as there are multiple avenues for seeking out the opinions of anti-abortion groups, should those seeking abortion care wish to do so; the proximity to clinical premises is a tactic chosen precisely because they are attempting to influence women who have not done so.

You may wish to reference some of the points set out in the answers to Questions 1 and 2.

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

We answered: No, the guidance provided under Section 5 does not accurately reflect the Section 9 offence as set out in the Public Order Act.

Explain your answer

The guidance appears to make the police responsible for interpreting the Human Rights Act 1998 and the European Convention on Human Rights in terms of balancing rights when enforcing this legislation. It is not reasonable to expect the police to have the knowledge or training to do this accurately, especially when the government has produced guidance which in itself contradicts relevant case law. This not only fails to adequately reflect the Section 9 offence of the Public Order Act; it undermines the clear intention of Parliament in voting for this legislation and severely limits the potential for the legislation to be effective.

Most concerningly of all, the guidance states that 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.” This is a fundamental misunderstanding of the activities outside our clinic, the nature of the power dynamics involved, and the modus operandi of the anti-choice groups.

It would be unacceptable to ask women who may already be vulnerable or undergoing a difficult experience at a deeply personal moment to take a position on whether or not they consent to such activity from anti-choice groups is unacceptable. There are many reasons why women may reluctantly agree to receive a lecture, information, advice, particularly if they do not know that the information that they are given is medically false, which is often the case. These reasons include fear, guilt, shame, intimidation,

notions of politeness, the desire to avoid conflict and wanting the interaction to end as quickly and safely as possible.

There are many opportunities for people to seek out information about abortion care, including from anti-abortion groups should they choose to do so. They can do so online, in person, in writing, through religious community groups, and indeed by proactively approaching any anti-choice groups that continue a public presence outside the Safe Access Zone. A presence inside the zone necessarily requires anti-choice groups to be imposing their ideological views on those who have not sought them out and therefore should never be presumed “consensual.”

It should be acknowledged that “motionless conduct” is not necessarily unintrusive, as has been made clear in reports from many thousands of women who have experienced those holding so-called “vigils” outside abortion clinics.

The guidance says that the police should not approach individuals “simply for wearing a religious item, such as a crucifix necklace or a hijab or carrying rosary beads,” which is correct in itself. Indeed, as a leading provider, MSI Reproductive Choices UK has on various occasions employed team members who would wear these items and we strongly support the right to do so. However, there are frequent activities by anti-abortion groups outside clinics to weaponise important religious and cultural symbols as part of their own agenda. These symbols and images can, in some contexts, be used to obstruct, influence, harass, and cause alarm or distress to those who are seeking abortion. Without highlighting this, the guidance does not accurately reflect the Section 9 offence in the Public Order Act.

6. Police training

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

We answered: No.

Explain your answer

It is not appropriate for the police to be responsible for deciding how to balance rights. Police should be trained in understanding human rights as a general principle but regardless of this training, on assessing whether particular incidents or activities are unlawful within Safe Access Zones, police should defer to the view given by Parliament in passing this legislation.

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

We answered: No.

Explain your answer

In order to effectively make the judgements required of them in line with this guidance, the police would not only need to understand the Human Rights Act and the European Convention on Human Rights, but they would also need to understand how these rights function specifically in relation to abortion - and how anti-abortion activity outside clinics is experienced by those accessing care.

It is right as a general principle that police be fully trained in human rights. However, Section 9 of the Public Order Act is not the only section of the Act which may require an understanding of Articles 9, 10, and 11 (which protect the right to freely associate, freely express opinions, and the right to freedom of thought, religion and belief). It is unclear why there is such a high emphasis placed upon protecting these rights in relation to Section 9, which protects abortion clinics from harassment, but not other sections of the Act which relate to other forms of protest and civil disobedience.

7. Signage

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

We answered: No.

Explain your answer

This section sets an expectation that providers and local authorities work together on establishing signage without any detail regarding how this would be enforced, resourced, coordinated, or maintained.

Section 7 should make it explicitly clear that the Safe Access Zone is legally enforceable even in the event that signage is not put in place, maintained, has been defaced or removed, cannot be seen, or if it is claimed that it cannot be seen.

This guidance may lead to legal challenges on the basis that people breaking the law “did not see the signs”. Ignorance of the law is not a defence in any other criminal context, and it should not be made so in this one. The guidance should make this clear to ensure that the will of Parliament is fully carried out and to reduce risk of complicated legal challenges which waste public resources and force women to give evidence about their deeply personal experience of having an abortion.

Section 7 should set out how this will be resourced, particularly for providers who are under tremendous financial and workforce pressures at present, like many sections of the healthcare system. Abortion clinics are not public authorities and should not be made responsible for the implementation or enforcement of national laws.

Local authorities differ in terms of local priorities, logistics, resources, and views on abortion. The guidance gives no clarity on how the postcode lottery of safe abortion access would be avoided if local authorities play a role in determining the appropriate model for signage. Some local authorities will not have the resources or the desire to effectively manage Safe Access Zone signage. The guidance gives no explicit indication that local authorities must do so, no indication of how such activity should be resourced, and as the guidance is non-statutory as well as unclear, it is likely that local authorities will not adopt a consistent approach across England and Wales.

Access to safe abortion care should be consistent across the country, not dependent upon the local authority. If the absence of signs or challenges around the visibility of signs is used as a rallying point or an opportunity for legal challenge, it would reinforce the current regional inconsistency and waste valuable local authority resources on court. Women would continue to be forced to explain the harassing or distressing nature of the behaviours they experience outside clinics. The legislation was explicit in its intention to prevent all of the above. If Parliament had wished to include a requirement for signage, it would have done so.

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

We answered: No.

Explain your answer

The intention of Parliament in voting for Section 9 of the Public Order Act was to ensure abortion access is confidential, safe, and with fear of harassment, alarm, or distress, and that this access is protected consistently across England and Wales. The recommendation to erect signage is in conflict with the intention of Parliament.

Healthcare providers and local authorities will both struggle to set up and maintain signage, especially given the financial and workforce pressures faced by both. A lack of signage due to impracticalities for providers and local authorities should not invalidate the legislation Parliament voted for.

The requirement to display signage is a major risk to the confidentiality of those accessing abortion care. The right to privacy in abortion access formed a significant part of the judgement upholding the legality of the local Safe Access Zone in Ealing. Judge Turner said that: "The fact of being pregnant is often, in itself, one that a mother reasonably wishes to be kept private... in the early stages. The fact that one is considering, or has undergone, an abortion is, if anything, likely to be an even more intensely private affair for many women and their partners. To be the focus of open public attention, often at the very moment when sensitivities are at their highest, is an invasion of privacy even when it occurs in a public place."⁷

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

We said:

MSI Reproductive Choices UK welcomes this long-awaited first step towards action from the government on the implementation of Safe Access Zones, which were voted into law over six months ago and are still not in place. However, the proposed non-statutory guidance drafted by the Home Office is disappointing and, in places, deeply concerning. It undermines the intention of Parliament and at times it appears to be in conflict with court rulings.

Section 9 of the Public Order Act was passed by Parliament with cross-party support. The intention of Parliament was clear: that women and others entering abortion clinics (for example, frontline healthcare workers) should be protected from fear of harassment, alarm, and distress, and protected from attempts to influence them or obstruct their access to healthcare. Alternative solutions to the problem of abortion clinic harassment have been explored and found unworkable, disproportionate, or both. The legislation is aligned with a similar law in Northern Ireland which has been found legally compliant with the European Convention on Human Rights by the UK Supreme Court⁸.

As it stands, the guidance does not adequately reflect Section 9 of the Public Order Act. It leaves confusion in relation to crucial areas while giving guidance on hypothetical scenarios which are largely irrelevant.

It is unhelpful that this guidance was drafted before any engagement with abortion providers was conducted. While we appreciate the government moving forward with this essential legislation, the current draft of the guidance includes many fundamental misunderstandings about the nature of anti-abortion harassment, the purpose of the legislation, and the reasons for its necessity. We encourage parliamentarians, including the MPs and Peers who fought for this legislation and the Home Affairs Select Committee, to hold the government to account over its implementation process, its intentions, and its respect for both the UK legislature and the judiciary.

We encourage the Home Office to consider the evidence submissions from the sector with great care and to re-evaluate its approach. It is a vital part of upholding the rule of law to keep women and girls safe while accessing essential healthcare.

⁷ "There is no doubt that it falls within the notion of private life within the meaning of Article 8", Court of Appeal ruling, 21.08.2019, Case No: C1/2018/1699. Court of Appeal Judgment Template (judiciary.uk)

⁸ [Reference by the Attorney General for Northern Ireland - Abortion Services \(Safe Access Zones\) \(Northern Ireland\) Bill - Press Summary \(supremecourt.uk\)](#)