

Safe Access Zones Around Abortion Clinics in Scotland

Guide to responding to Gillian Mackay MSP's Member's Bill consultation

In May 2022 Scottish Green MSP, Gillian Mackay, launched a consultation on her proposal for a Bill to introduce safe access zones around abortion clinics and healthcare settings that provide abortion services.

These safe access zones will create areas around abortion clinics and hospitals where certain kinds of protest or 'vigil' activity is not allowed. They are aimed to ensure that those accessing and providing abortion care do not feel harassed, alarmed, or distressed by action immediately outside.

BPAS and Back Off Scotland will be supporting the Bill through the Scottish Parliament and have created a guide for organisations and individuals to respond to the consultation. It is important that anybody who has experience of, or opinions on, protests and 'vigils' taking place outside clinics and hospitals that provide abortion services submit their response to the consultation. This document provides a guide to responses and suggested content for specific questions.

You can find the consultation here – www.bufferzones.scot

The deadline for responses is 11.59pm on Wednesday 10 August 2022.

'About you' questions

The preliminary "About You" questions 1 through 5 help to build up a picture of who has responded. Please answer these questions accurately. Information entered in this section may be published with your response (unless it is "not for publication"), except where indicated in bold.

"Your views on the proposal" questions

The "Your views on the proposal" section of this consultation is broken up into seven parts; aim and approach; detail of bill; financial implications; equalities; sustainability; and general (additional comments and suggestions).

Aim and approach:

Question 8: Which of the following best expresses your view of the proposed Bill?*	
(This is a compulsory question)	
Fully supportive	X
Partially supportive	
Neutral (neither support nor oppose)	
Partially opposed	
Fully opposed	
Do not wish to express a view	

Please elaborate on your response:

- I believe that everyone accessing abortion services should be able to do so without fear of harassment and intimidation.
- BPAS and Back Off Scotland estimate that 70% of reproductive age women live in a Scottish health board area that has been targeted by anti-choice groups in the past five years.
- This problem is widespread, organised, and persistent, with individuals and groups seeking to dissuade or deter access to, or the provision of, abortion care.
- The widespread harm that these protests have is evident across society. Those affected include people accessing abortion care including women ending a pregnancy as a result of a serious or fatal foetal anomaly diagnosis, staff providing abortion care, patients attending a clinic or hospital who have previously had an abortion, patients attending a clinic or hospital – in some cases particularly maternity hospitals or sites where they may be experiencing a miscarriage or stillbirth, hospital staff, those living locally to the affected clinics and hospitals, and the general public.
- Buffer zones would stop activity taking place directly outside clinics and hospitals, but not have any impact on protests or activity anywhere else. They would apply equally to pro- and anti-choice groups, ensuring that abortion clients are not pressured as they access healthcare.
- Although questions about abortion law and provision may be political, the decision to access abortion care is not. It is an intensely personal healthcare decision made at an individual level – it is not a statement or political stance, and opposition to it shouldn't be treated as such.
- These groups themselves do not refer to this activity as a protest – it is not political speech, but organised street harassment of women doing something which she is legally entitled to.
- The Bill does not seek to stop anti-abortion protests or activity. We understand that people may oppose abortion but believe that the place to protest this should be done in a more appropriate location such as outside of the Scottish Parliament, and not a healthcare facility.

Question 9: What is your view of the proposal for safe access zones being introduced at all healthcare settings that provide abortion services throughout Scotland?

Support	X
Oppose	
Unsure	

Please elaborate on your response:

- Women across Scotland and the UK report that anti-choice harassment outside clinics and hospitals leaves them feeling harassed, alarmed, and distressed, with some feeling scared to access the treatment they are there for.
- Existing law in Scotland does not adequately cover clinic-based harassment, or the negative impact that it has on women. It is a combination of content and context which is unlike any other form of targeted street harassment. The targets of this harassment – women accessing abortion care – have an Article 8 right to access legal, confidential healthcare services.



- New legislation is needed to move these groups away from the clinic gate and to preserve the rights of women to access legal, essential healthcare.
- It is important that all hospitals, clinics, and sites that provide abortion care are treated equally and have a safe access zone in place – otherwise women in Scotland will be subject to patchwork protections where pro-active health boards such as Glasgow or Lothian may protect women, but women in health boards like Grampian where the Chief Executive has claimed there is no impact on patient would continue to have to deal with this harassment

Question 10: What is your view of the proposal for the ‘precautionary’ approach to be used, in which a safe access zone is implemented outside every site which provides abortion services?

Support	X
Do not support – I believe they should be introduced on request by each provider	
Do not support the introduction of safe access zones by any means	
Unsure	
Other – please detail below	

Please elaborate if you’d like to:

- In order to make sure that all of those accessing and providing abortion services are protected from harassment and intimidation, safe access zones must be implemented outside every site which provides abortion services. Not only does this prevent a postcode lottery, it also means that sites where protests have not occurred will not face any new threats of protest if anti-choice groups are moved away from the current targeted sites.
- Local council byelaws, by comparison, would not fulfil the Bill’s aim of protecting access for all those accessing abortion services for a number of reasons including; it would only apply to individual clinics and hospitals; it would create a patchwork of protection; it would place the onus on local authorities to take action and pay to defend their actions in court; have to be approved individually by ministers; and have to be renewed every 10 years.
- Similar measures are possible in England, but of the 42 clinics affected, only three have a local order in place – 4 years after the first one was introduced. As Newsnight has recently shown, in some areas more than 500 women have reported harassment, alarm, and distress to their local council and no action has been taken because the council claims this doesn’t meet the ‘evidentiary threshold’ for a buffer zone.
- This is a proportionate response to the issue. A legal challenge in response to a buffer zone in the London Borough of Ealing, brought by a member of the local ‘vigil’, was dismissed first by the High Court and then by the Court of Appeal. The Supreme Court declined to hear the case. The court was clear that women had a right to access confidential abortion care and that the behaviour of the protesters was not exempt from restriction.

Question 11: What is your view of the proposed standard size of a safe access zone being 150m around entrances to buildings which provide or house abortion services?

Yes – Support this part of the proposal	X
No – Believe they should be a different standard size	
No – Believe the size should be decided based on each site	
No – Do not support the introduction of safe access zones in any form	
Unsure	
Other – please detail below	

Please elaborate if you'd like to:

- 150 metre buffer zones beginning at the perimeter of the sites in question were chosen by BPAS and Back Off Scotland because this distance means that all patients and staff at clinics or hospitals providing abortion services would be able to arrive by car or public transport and not have to walk past the protestors.
- 150 metre buffer zones provide sufficient space so that those being treated or working within the sites will not be able to hear or see the protestors from inside. This has been an issue that we have seen at the Queen Elizabeth University Hospital in Glasgow, for example, where a significant portion of the maternity unit have windows facing the area in which protestors congregate, and prayers and singing from the group could often be heard from these wards which caused great upset to both patients and staff.
- 150 metres is also a size of standard buffer zones that have been introduced in law elsewhere, such as in Victoria territory in Australia where their buffer zone law has been upheld by the High Court of Australia and where the relevant court judgment found *“What the evidence does reveal is that the proscription of prohibited behaviour within the 150 m radius significantly compromises the ability of [protesters] to accost and harangue women and other persons as they attempt to access premises at which abortions are provided, and thereby to deter them from aborting their pregnancies or deter persons who support and treat them from aiding them to do so.”*

Question 12: What is your view of the proposal to ban all protests including protests in support of and those in opposition to: a person's decision to access abortion services (ie a woman having an abortion)?

Fully supportive	X
Partially supportive	
Neutral (neither support nor oppose)	
Partially opposed	
Fully opposed	
Unsure	



Please explain the reasons for your response:

- Abortion is a legal right that women in Scotland can exercise. They should be able to do this without fear of intimidation and harassment.
- The choice to have an abortion is personal, and we already know that all options are discussed between the patient and abortion provider during the consultation.
- If any organisation wants to provide women with counselling, they should do so in a professional and regulated manner, not by the roadside outside the hospital.

Question 13: What is your view of the proposal to ban all protests including protests in support of and those in opposition to: a person's decision to provide abortion services (ie a doctor, nurse, or midwife)?

Fully supportive	X
Partially supportive	
Neutral (neither support nor oppose)	
Partially opposed	
Fully opposed	
Unsure	

Please explain the reasons for your response:

- Clinicians should be able to attend their place of work without having to face protestors. It is unacceptable to expect clinicians to face political commentary on abortion – a legal, essential medical procedure – outside their places of work.
- Clinicians in Scotland and elsewhere in the UK report that they are also harassed by people outside – as well as having to care for women who are upset by the activity. Dr Audrey Brown, the abortion lead at Greater Glasgow and Clyde Health Board, tweeted on 18th May 2022 “I was called a murderer at a distance of 10 metres last week. Didn't really think he needed to use voice amplification when so close. Felt pretty harassing to me, nevermind to the people accessing care”

Question 14: What is your view of the proposal to ban all protests including protests in support of and those in opposition to: a person's decision to facilitate provision of abortion services (ie administrative or support staff)

Fully supportive	X
Partially supportive	
Neutral (neither support nor oppose)	
Partially opposed	
Fully opposed	
Unsure	



Please explain the reasons for your response:

- All staff at clinical centres should be protected from this activity – whether or not they directly provide abortion care or not.
- Exempting these staff from these protections will likely lead to continued presence of protesters who claim they are seeking to influence people who are not covered by the law

Question 15: Which types of activity – when done for the purposes of influencing a person’s decision on whether to access abortion services – do you believe should be banned in a safe access zone? (tick as many from the list as you consider should be covered by the Bill)

Persistently, continuously, or repeatedly occupying the zone	
Impeding or blocking somebody’s path or an entrance to abortion services	
Intimidating or harassing a person	
Seeking to influence or persuade a person concerning their access to or employment in connection with abortion services	
Demonstrating using items such as leaflets, posters, and pictures specifically related to abortion	
Photographing, filming, or recording a person in the zone	
All of the above	X
None of these	
Other (include details below)	

Please elaborate if you’d like to:

- I believe that any activity – when done for the purposes of influencing a person’s decision on accessing or providing abortion services – should be banned in the buffer zone. Not least because it can be distressing to patients and staff, but also to uphold our article eight right to medical privacy.
- I understand that all of this activity has been observed, documented, and reported in relation to the groups who protest outside hospitals in Scotland. We need to make sure that the legislation leaves no potential for anti-choice groups to capitalise on.

Question 16: What is your view on the potential punishments set out in the proposal for breach of a safe access zone (see pages 15 to 16 of the consultation document)?

Fully support	X
Partially support	



Neutral	
Partially oppose	
Fully oppose	
Unsure	
<p>Please give reasons for your response, including commenting on whether this should be a criminal offence:</p> <ul style="list-style-type: none"> We know that this type of activity causes great distress. Persons who breach a safe access zone should be punished with a fine (including by way of a fixed penalty notice where the police or procurator fiscal has reason to believe that a person has breached a safe access zone) or in serious cases with a prison sentence. I believe it is correct that the punishments associated with this activity should be similar to those available to people who breach Non-Harassment Orders as this is a similar crime and deserve a comparable sentence 	

Question 17: Do you think there are other ways in which the Bill's aims could be achieved more effectively?	
Yes	
No	X
Unsure	
<p>Please elaborate if you'd like to:</p> <ul style="list-style-type: none"> The legislation must be national, and unequivocal in making sure that all of those accessing abortion services can do so without running the risk of encountering intimidation or harassment. Primary legislation is needed to ensure progress on the issue while also preventing a postcode lottery developing, whereby some local authorities implement buffer zones, but others do not. Legal advice made public by the Convention of Scottish Local Authorities (COSLA) on 12 November 2021 found that local council byelaws could not be used to implement buffer zones at NHS reproductive health facilities. This is directly in opposition to the Scottish Government opinion which states that local councils should be able to address this issue. In England, this activity has been persistent and groups like BPAS have worked for many years to address the issues. Although local buffer zones have worked in the areas they are in place, they have no impact elsewhere and the number of protests has increased since the first buffer zone was introduced. BPAS has also made clear in the press that other forms of action like dispersal orders aren't adequate for dealing with this particular type of action. We should learn from other places and introduce national buffer zones. 	



Financial implications

Question 18: Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal would have if it became law?	
A significant increase in costs	
Some increase in costs	
No overall change in costs	X
Some reduction in costs	
A significant reduction in costs	
Don't know	
<p>Please explain the reasons for your answer, including who you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively:</p> <ul style="list-style-type: none"> We believe any potential costs will be offset by savings to the health service and police force in having to address the presence and impact of the protesters. In Ealing where a buffer zone is in place, police have gone from having to attend every week to attending three times in three years. 	

Equalities

Question 19: Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation. What impact could this have on particular people if it became law?	
Positive	X
Slightly positive	
Neutral (neither positive nor negative)	
Slightly negative	
Negative	
Unsure	
<p>Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people:</p> <ul style="list-style-type: none"> The proposed Bill will affect three of the identified characteristics protected by the Equality Act 2020. There will be positive effects on sex, pregnancy and maternity. Whilst it may be argued that there will be a negative impact on religion and belief we believe that this will only exist for those who hold an anti-choice belief and wish to protest against abortion services. We believe that this will be balanced and a positive impact on religion and belief will occur for those who hold an anti-choice 	



belief but think that women should be able to access these services free from harassment and intimidation.

- It is also important to note that people involved in this activity are from a number of different denominations, and that the numbers involved are comparatively small compared to the number of believers. This is not a fundamental aspect of any denomination, nor one that is particular to one religion. These individuals will still be able to pray or undertake other religious activities at their churches and elsewhere in the community.

Sustainability

Question 20: Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations. Do you think the proposal could impact in any of these areas?	
Yes	X
No	
Unsure	
Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?	
<ul style="list-style-type: none"> • We believe that the proposed Bill would have no impact on sustainability principles but will fulfil the government’s responsibility to provide legal healthcare unimpeded by intimidation or harassment. 	

“General” question 22: Please detail any other additional comments or suggestions on the proposed Bill which have not already been covered in any of your responses to earlier questions.