

Abortion Services (Safe Access Zones) (Scotland) Bill

Business and Regulatory Impact Assessment

October 2023

Abortion Service Safe Access Zones (Scotland) Bill

Note on language

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. We have 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.

In particular, the terms service users and providers, as well as “those who access or provide services” are used instead of patients and staff. This reflects that not all those who seek abortion services consider themselves to be patients, though some do.

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, we refer to groups or individuals which carry out anti-abortion activity. In choosing this phrasing, we recognise 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 that focuses on the sought outcome, and allows the full range of activity to be captured.

Purpose and Intended Effect

Background

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.

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

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

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

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.

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

Objective

The aims of any intervention 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.

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

Rationale for intervention

As noted above, anti-abortion activity has been documented at a number of sites around Scotland, and the scale and frequency of this has increased in the last five years. The type of activity varies from small groups to large vigils, and varies in intensity and frequency throughout the year. A public consultation³, led by Gillian Mackay MSP, on a proposed Bill creating safe access zones provided clear evidence from respondents on the detrimental impact anti-abortion activity can have on those seeking to access abortion services, when such activity occurs within the vicinity of premises providing abortion services. Additional testimonies provided to Scottish Government from Back Off Scotland further supports this. A full discussion on the harms can be found in the Policy Memorandum, which has been published to accompany the Bill; however, notably, the conclusion that anti-abortion activity, in specific circumstances, can result in harm is

³ Safe Access (Abortion Services) Scotland Bill Consultation [Home | Safe Access \(Abortion Services\) Scotland Bill | bufferzones.scot](#)

supported by academic analysis. For example, the Royal College of Obstetricians and Gynaecologists and the Faculty of Sexual and Reproductive Healthcare in 2023 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.”⁴

Crucially, the Scottish Human Rights Commission noted in its response to the consultation on safe access zones⁵:

“...The demonstrations in question (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.”

This distinction is at the heart of why steps must be taken to protect those accessing or providing services. Abortion services, when provided within the lawful framework, are healthcare services. It is for an individual to determine whether to access those services, just as it is a personal decision to access any other type of healthcare. That decision is not open for discussion or contradiction by anyone except medical professionals and those whom the individual gives permission to intervene.

In light of the increase in both anti-abortion activity and growing calls for steps to be taken to protect service users and providers, in May 2022, Gillian Mackay MSP noted her intention to bring forward a Member’s Bill to establish safe access zones around premises providing abortion services. Following a summit on abortion care held by the former First Minister, Nicola Sturgeon, in June 2022, at which a number of medical professionals and third sector organisations supporting women discussed the impacts of anti-abortion activity, the Scottish Government and Ms Mackay agreed to work together to develop and draft safe access zone legislation.

Consultation

Within Government

The Bill has been discussed and developed with internal colleagues within the following areas:

- Justice

⁴ The Faculty of Sexual & Reproductive Healthcare Safe access zones around abortion clinics [fshr-rcog-safe-access-zones-around-abortion-clinics-report.pdf](#)

⁵ Scottish Commission Human Rights Commission organisational response [Organisation Responses - Google Drive](#)

- Human Rights
- Faith and Belief
- Women's Health Plan
- Health and Social Care Analysis
- Children's Rights

Public Consultation

Ms Gillian Mackay MSP ran a full 12-week public consultation between 18 May 2022 – 11 August 2022⁶ which invited responses from anyone who wished to express a view.

The consultation analysis was published on 15th June 2023.⁷ The consultation received 11,879 responses in total, of which 52 were from organisations, and 11,827 from individuals. Responses to the consultation were polarised - of the responses received from individuals, 56.1% were fully in favour of the proposal whilst 42.6% were fully opposed to the proposal. A further 1.3% of individuals were either partially in support of, or partially opposed to the proposal. 63% of organisations which responded were fully in favour, whilst 31% were fully opposed.

Responses in favour of the Bill cited the various harms associated with and personal experiences of anti-abortion activity as detailed above. They welcomed the proposed introduction of measures to protect service users and providers from anti-abortion activity from occurring outside premises providing abortion services.

Of those who were opposed to the Bill, many noted the infringement of rights, such as freedom of religion, freedom of expression and freedom of assembly⁸. Respondents opposed to the Bill were also keen to highlight their belief that silent prayer vigils do not distress or harm women, and that there is no evidence to support the assertion that anti-abortion activities outside premises providing abortion services have a negative impact on those accessing or using abortion services. They also noted that participation in anti-abortion activity was often motivated by a number of factors, including a desire to provide support to those considering abortion; to ensure that the availability of alternatives is clear; and to bear witness to the activities taking place in premises providing abortion services. The consultation made clear that carrying out these activities was of profound importance to those who participate.

Taken as a whole, the responses confirmed the emotive nature of the issue, and that consensus on the need for measures will remain very challenging. However, the testimonies of those affected provided sufficient evidence to support measures to protect service users and providers. In particular, they highlighted that, while there is a gulf between the motivation of those participating in anti-abortion activity and its impact, the impacts reported are nonetheless significant and can have lasting effects.

⁶Safe Access (Abortion Services) Scotland Bill Consultation [abortion-services-safe-access-zones-consultation-document_final.pdf \(parliament.scot\)](#)

⁷ Consultation summary [buffer-zone-consultation-summary.pdf \(parliament.scot\)](#)

⁸ European Convention on Human Rights [European Convention on Human Rights \(coe.int\)](#)

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.

In November 2021, the former Minister for Public Health, Women's Health and Sport, Maree Todd MSP, convened a working group to explore short, medium and long term solutions to the harmful impacts of anti-abortion activity taking place in the vicinity of premises which provide abortion services. The group comprised members from Police Scotland, the Convention of Scottish Local Authorities (CoSLA), local authorities and representatives from affected Health Boards. The Group were instrumental in evaluating the need for new measures to tackle anti-abortion activity outside abortion services.

Three summits on abortion care, chaired by the former First Minister, Nicola Sturgeon, were also held, and Scottish Government officials and Ms Mackay conducted a programme of general stakeholder engagement, including roundtable events and individual meetings. Stakeholders included:

- Representatives from churches and faith groups
- Representatives from those who participate in anti-abortion activities
- Women's rights groups
- Abortion Service Leads
- Scottish Abortion Care Providers Network
- Police Scotland
- Crown Office and Procurator Fiscal Service (COPFS)
- Representatives from COSLA
- Representatives from Counsels in England which have implemented safe access zones around abortion clinics.

Collectively, the engagement supported policy considerations, and allowed a range of potential solutions to be explored. As with responses to the consultation, it indicated there was very little opportunity to find 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 maintain that anti-abortion activity is harmful, while service providers – and particularly those who had experienced anti-abortion activity – were of the view that additional protections were needed.

Business

There is only one private provider of abortion care approved by Scottish Ministers which provides a very small number of abortions per year, typically less than 20. Whilst this provider did not respond to Ms Mackay's consultation, the Scottish Government has met with them to seek their views on the development of the Bill and how it may impact them. The provider noted that they had no experience of protests, but were supportive of the Bill and its aims, noting that some staff members were also employed by the NHS and had been subject to the negative impacts of anti-abortion activity.

Despite the public consultation being open to all groups to respond, no businesses did so. It could be argued that businesses (which are not abortion service providers) operating within the safe access zone could be positively impacted as their business will no longer be at risk of any impacts stemming from public disruption that could be caused by protesters and counter protests; conversely, any business operating just outside the zone might be impacted if protests relocate outside their business and there are increased noise levels or a police presence. As no businesses responded to the consultation, this would suggest that they do not consider that the Bill will significantly impact them.

Options

The Scottish Government has considered a number of options to meet the aims set out above. Full discussion of these, including the advantages and disadvantages of each, can be found in the Policy Memorandum. Differences within the structure of this document, and the Policy Memorandum, mean that the option numbers do not always correspond. Where numbering is different, this has been highlighted below.

The options were as follows:

Option 1: use of local authority byelaws

This option would rely on the use of local authority byelaws to create zones around premises providing abortion services where anti-abortion activity is documented.

Option 2: rely on existing legislation

This option would involve using existing primary legislation to manage anti-abortion activities outside premises providing abortion services.

Option 3: use of mediation and enhanced guidance

This option would seek common ground between those advocating for additional protection and those participating in anti-abortion activity, and rely on guidance to deliver lasting change.

Option 4: Introducing legislation to enable introduction of safe access zones on a case-by-case basis

This option would involve the establishment of a process for Health Boards or local authorities to seek safe access zones.

This option contained two models:

- Option 4A (Model A in Policy Memorandum): 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.
- Option 4B (Model B in Policy Memorandum): this would enable establishment of a zone upon notification from operators of particular premises without any need for Ministerial decision.

Option 5 (Model C in Policy Memorandum): introducing legislation to create automatic safe access zones

This option would enable automatic establishment of zones around all premises in Scotland that offer abortion services without any need for operator notice or Ministerial decision.

Sectors and Groups Affected

Extending protections around premises providing abortion services will affect the following groups:

- Those accessing abortion services. Any measure would be intended to directly increase protection from anti-abortion activity at the point where a service user is attempting to access services.
- Those providing or facilitating abortion services. As above, a direct impact of any measure would be to increase protection at the point where a service provider would be attempting to provide or facilitate services.
- Those accompanying individuals accessing or providing services. Although a measure to protect service users and providers from anti-abortion activity may not be intended to protect those accompanying them, by limiting anti-abortion activity at the point where services are used and accessed, accompanying individuals would also be protected from any harmful impacts of such activity.
- Those providing or accessing any other type of service provided at premises that offer abortion services. Although this would not be the intended purpose of any measure designed to protect those accessing abortion services, it would be an indirect effect that anyone attending a premises where abortion services were provided would also be protected from the effects of anti-abortion activity.
- Those participating in anti-abortion activity in the vicinity of abortion services. Any measure designed to protect service users and providers from anti-abortion activity at the point where services are accessed would unavoidably require to place some limits on such activity, and would thereby directly affect those who choose to participate in it at particular locations.
- Operators of all premises which provide abortion services within Scotland. All abortion services within Scotland are currently provided by territorial NHS Health Boards, with the exception of one private hospital which has been given approval by Scottish Ministers to provide abortion services. The Scottish Government has engaged with this private hospital throughout the development of the Bill as it will be directly affected, and it has expressed support for the proposal to date. As with all other providers, providers and users of services at these premises will be protected from the harmful impacts of anti-abortion activity taking place outside the premises, and this will in turn secure continued access to vital healthcare services.
- Enforcement agencies. Any measure that created new offences connected to anti-abortion activity carried on outside abortion services would impact the work of the justice system, including Police Scotland, and the Crown Office and Procurator Fiscal Service.

As noted above, there is also a possibility that the removal of anti-abortion activity from safe access zones and possible relocation to other areas could have an impact on businesses located near premises providing abortion services. However, as no businesses responded to the consultation, it is considered that any impact that did arise would be very small, and that the possibility is not a concern for businesses.

Benefits and costs

Option 1: use of local authority byelaws

Benefits

Under this option, local authorities could use byelaws to create zones around premises providing abortion services where anti-abortion activity takes place and is considered to be harmful. This would have the benefit of allowing local solutions, and only establishing protections around premises where harm actually occurs. Local authorities must consult on proposals and to publish the proposals before making byelaws. They can only become law once they are confirmed by the Scottish Ministers. The public may write to Ministers with any objections which will be considered. There is therefore a requirement for publication and the opportunity for the public to make known their views.

Costs

Byelaws would impose additional costs on local authorities. They involve a considerable degree of work to implement, and their use would therefore require multiple, potentially burdensome assessments every time a byelaw was enacted or reviewed, which must be done every ten years. In England, where Public Spaces Protection Orders operate in a similar way to byelaws, significant costs have also been incurred by local authorities defending legal challenges to the establishment of safe access zones. Officials from Ealing council have confirmed to the Scottish Government that these costs amounted to an estimated £144,000. The total costs of maintaining the order were put considerably higher.

Options 2: Rely on existing powers

Benefits

A number of existing powers were identified which might be capable of meeting the policy aim of protecting access to abortion services. These included the Antisocial Behaviour etc. (Scotland) Act 2004; the Criminal Justice and Licensing (Scotland) Act 2010; and the common law offence of Breach of the Peace.

The benefit of option 1 is that it would avoid creating any new interference with any of the rights under articles 9, 10 or 11 of the European Convention on Human Rights (ECHR)⁹. It would also remove the need to create any new offences or add to the burden of work on the justice system.

However, as set out in the Policy Memorandum, it is considered that relying on existing powers presents a number of significant drawbacks, and would not meet the policy aims as a result. These include:

- Each requires evidence of harm before it can be used; this is inconsistent with the need to prevent harm and not only react once it has happened.

⁹ European Convention on Human Rights [European Convention on Human Rights \(coe.int\)](https://www.coe.int/)

- 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 it is an ineffective deterrent.

Costs

Given that this option would not require the creation of any new legislation or offences, no additional costs would be incurred.

Option 3: mediation and guidance

Benefits

This 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 ECHR¹⁰. It would also remove the need to create any new offences, or add to the burden of work on the justice system. As Byelaws would not be required, Local Authorities would have no additional role to play.

However, mediation work was undertaken to explore non-formal measures to help address the issues of anti-abortion activity. After a three-month scoping exercise, civic mediation experts were unable to gain any traction with anti-abortion campaigners, pro-choice campaigners or those providing abortion services as noted in their statement:

“Our findings indicate that the issues and relationships are complex and there are diverse perspectives across multiple stakeholders...No mediation has been undertaken and we are not proposing mediation is an appropriate way forward in the current circumstances.”¹¹

Additionally, 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 Life have noted that they would continue to protest even if legislation were in place, thereby strongly suggesting guidance would also not be a deterrent. There have also been cases where safe access zones in England have been intentionally breached.

¹⁰ European Convention on Human Rights [European Convention on Human Rights \(coe.int\)](https://www.coe.int/)

¹¹ Centre for Good Relations Scoping Statement [CfGR statement on scoping exercise - HOME HOME \(centreforgoodrelations.com\)](https://www.centreforgoodrelations.com/)

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, it would be inappropriate to proceed with this option, knowing its impact may be minimal and would be insufficient to meet the policy aims.

Costs

As this would involve no new legislation or offences, any costs are expected to be minimal. Some costs are likely to fall to the Scottish Government to create guidance, though these would likely be absorbed within existing resource. If mediation work were to be explored fully, further costs would be incurred by the Scottish Government. Although it is not possible to definitively say how much mediation would cost due to the complex nature of the subject matter and those involved, it is estimated this work could cost between £20,000 - £50,000.

Option 4: use of legislation to create safe access zones on a case-by-case basis

Benefits

Option 4A would require operators of protected premises to apply to Scottish Ministers to establish a zone, evidencing the reasons that one is needed. 4B would enable the operators of protected premises to establish a zone by giving notice to Scottish Ministers without evidence of need and without Ministers having any decision-making function.

The benefit of option 4A is that prohibitive measures would only be implemented where there is clear evidence of anti-abortion activity. This could limit the extent to which ECHR¹² rights are interfered with, and where interference did occur, there would be a direct link to evidence of harm.

Moreover, it would ensure local decision-making that takes account of specific circumstances, and allow some flexibility for providers or Health Boards on whether to have a safe access zone or not. However, it is considered it does not meet the policy intent for the following reasons:

- As noted above, the evidence-based application used for Public Space Protection Orders¹³ have proven 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 and represent duplicated costs to the public purse.

¹² Centre for Good Relations Scoping Statement [CfGR statement on scoping exercise - HOME HOME \(centreforgoodrelations.com\)](https://www.cgr.scot.nhs.uk/cgr-statement-on-scoping-exercise-home-home-centreforgoodrelations.com)

¹³ <https://www.legislation.gov.uk/ukpga/2014/12/part/4/chapter/2/crossheading/public-spaces-protection-orders/enacted>

- 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.

Like option 4A, option 4B would have the advantage of allowing for local decision making and flexibility for local providers and Health Boards.

In comparison to option 4A, option 4B comprises a less burdensome process for those seeking to create a zone around premises, which may encourage providers to notify. However, the similar concerns remain that protection might not be consistent across Scotland, and that organisations would only give notice that a safe access zone was needed once harm had occurred.

Costs

The estimated costs for option 4A and 4B are based on a series of assumptions as they both rely on operators applying or giving notice to Scottish Government before safe access zones can be established. It is acknowledged that costs for completing the application process may be incurred; however, as this would depend on variable factors from operator to operator, such as availability of evidence and time taken to gather it, these costs have not been included. It is not anticipated that there would be any meaningful costs required for the process of giving notice, as it would by design be light touch.

Costs therefore cover only those needed to operate zones. For the purposes of estimating these, we have assumed that the operators of all six sites which have been subject to anti-abortion activities in the last five years would request safe access zones. However, it is recognised that in reality, this number could be greater or fewer, depending on circumstances when the policy is implemented.

It is anticipated that associated costs will cover enforcement (Police Scotland, COPFS & Scottish Tribunal Services (SCTS)) and public awareness raising. The estimated annual costs are set out in the below table. The table sets out low, medium, and high costs which are extrapolated from the number of incidents reported to Police Scotland in 2022. No costs are anticipated for other bodies and organisations for implementation.

	2024-2025*	2025-2026	2026-2027	2027-2028	2028-2029
Upper Estimate	£196,200	£196,200	£196,200	£196,200	£196,200
Lower Estimate	£65,400	£65,400	£65,400	£65,400	£65,400
Central Estimate	£130,760	£130,760	£130,760	£130,760	£130,760

***Note, work is on-going to establish whether signage will be required. The figures in this table do not therefore account for signage costs. However, should it be required, the majority of costs will only be incurred in the first year with the possibility of small additional costs for signage as and when new premises providing abortion services come online. The current estimate for year 1 is £13,100. To avoid increasing barriers to Boards implementing safe access zones, it is assumed these costs would be borne by Scottish Government, who would also have an outlay of around £5,000 for awareness raising in the first year of implementation.**

Option 5

Benefits

This option would use legislation to automatically create safe access zones around premises in Scotland which provide abortion services, without any requirement for Boards to apply or give notice that one is needed. It would therefore address many of the deficiencies identified in previous options.

In particular, it would create a consistent national approach that would secure preventative protection. Service users and providers can be certain that they will be protected from anti-abortion activity that could be captured by the offences created in the Bill no matter where they are in the country. This will accordingly provide the highest level of protection for providers and users from the harmful impacts of anti-abortion activity. This will secure access to essential healthcare and ensure that personal decisions about medical care are not subject to unwanted interference at the point where services are accessed. No further action would be required by Health Boards or local authorities to receive a minimum level of protection, thus ensuring creation of zones does not create additional burdens.

As a result, it best meets the policy aims.

Costs

It is estimated that the introductory costs to the Scottish Government for the implementation of this legislation will be a maximum of £5,000. This includes costs associated with the publication of maps and minor costs associated with awareness raising about the Bill.

As for option 4, it is anticipated that associated costs will cover enforcement (Police Scotland, COPFS & Scottish Tribunal Services (SCTS)) and public awareness raising. More detailed breakdowns of potential annual costs of the provisions of the Bill are set in

the financial memorandum – a table has been provided below with a range of estimates of annual costs incurred from 2024-2025 onwards. As above, the table sets out low, medium, and high costs which are extrapolated from the number of incidents reported to Police Scotland in 2022.

No costs are anticipated for other bodies and organisations for the implementation of the Bill. In particular, in contrast to option 4A, no costs will fall on operators, who will not need to apply for safe access zones.

It is not possible to estimate annual costs to the Scottish Government from 2024 onwards, as the only anticipated costs are those associated with additional protected premises or amended zones requiring updating of the published list and maps in the event that a zone is added, removed, increased or decreased (expected to cost around £500 per change). Whilst the number of annual occurrences of this are not possible to determine, these costs are not expected to be significant.

	2024-2025*	2025-2026	2026-2027	2027-2028	2028-2029
Upper Estimate	£196,200	£196,200	£196,200	£196,200	£196,200
Lower Estimate	£65,400	£65,400	£65,400	£65,400	£65,400
Central Estimate	£130,760	£130,760	£130,760	£130,760	£130,760

*** Note, work is on-going to establish whether signage will be required. The figures in this table do not therefore account for signage costs. However, should it be required, the majority of costs will only be incurred in the first year with the possibility of small additional costs for signage as and when new premises providing abortion services come online. The current maximum estimate for year 1 is £63,365**

Regulatory and EU Alignment Impacts

Intra-UK and International Trade

The measures will not impact on intra-UK trade *or international trade*.

EU Alignment

This measure will have no impact on the Scottish Government's policy to maintain alignment with the EU.

Scottish Firms Impact Test

The private hospital affected by the Bill confirmed through discussion that they were in general supportive of the Bill's aims and the approach of applying zones automatically. They noted that some of their staff also work at hospitals within the NHS and have first-hand experiences of anti-abortion activity. When asked whether they were concerned about any negative impacts of safe access zones, they noted that publicity around the existence of zones could potentially make their services a target as it is not currently widely known that they provide abortion services. The most appropriate way to communicate safe access zones will be considered as the Bill progresses through Parliament, and will seek to strike the right balance between raising awareness of zones and maintaining the anonymity of those accessing and providing services.

Competition Assessment

The proposal will have no impact on competition.

Consumer Assessment

None of the measures proposed will:

- affect the quality, availability or price of any goods or services in a market, including essential services, such as energy or water.
- involve storage or increased use of consumer data.
- increase in opportunities for unscrupulous suppliers to target consumers.
- impact on the information available to consumers on either goods or services, or their rights in relation to these.
- impact on the routes for consumers to seek advice or raise complaints on consumer issues.

Test Run of Business Forms

The Bill will not introduce forms.

Digital Impact Test

The Bill will only apply to anti-abortion activities which take place within a safe access zone and will not impact online activities. The Bill stipulates that maps will be available which will outline the perimeter of each safe access zone. These maps will be provided online and updated as and when required; they will also be fully accessible in line with Scottish Government accessibility standards.

As the Bill does not make any other provision relating to or requiring use of technology, no concerns arise regarding changes to IT systems or digital infrastructure in the future.

Legal Aid Impact Test

It is not expected that the Bill will have any impact on the ability for individuals to receive legal aid. As noted above, and detailed within the Financial Memorandum, we do not expect a large volume of prosecutions, and whilst it cannot be definitively stated that no individual charged with an offence would seek legal aid, we anticipate that this would represent a small proportion of the total number of prosecutions. This assessment is, in part, based on experiences of safe access zones in England; individuals charged with offences relating to these have used crowd funding to raise large sums of money to cover legal costs.

In making this assessment, we recognise that it does by necessity rely on a number of assumptions. Nonetheless, on the available evidence, we do not anticipate any significant increased demand on the legal aid fund or attendant increase in fund expenditure. Accordingly, we also do not foresee that the measures will impact individuals' rights to justice.

Enforcement, Sanctions and Monitoring

Safe access zones will automatically apply to all premises providing abortion services within Scotland.

A person who is in a safe access zone 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.

The offence will 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.

A person who commits an offence is liable to (on summary conviction) a fine up to the statutory maximum (being £10,000 on the date of introduction of the Bill), or (on conviction on indictment) to an unlimited fine.

Scottish Government officials will work with Police Scotland to monitor the effectiveness of safe access zones.

Implementation and Delivery Plan

The Bill is subject to Parliamentary passage which is made up of five distinct stages, details of which can be found [here](#). Implementation will be subject to the final content of the Bill which is agreed by Parliament.

The Scottish Government will continue to work with stakeholders throughout the Parliamentary passage of the Bill to ensure that it can be implemented as quickly as possible. In particular, work will proceed with Health Boards around the development of guidance, and dialogue will continue with Police Scotland and COPFS to ensure that the operation of safe access zones and related offences remain practicable.

Additionally, an important work strand will be to create targeted communications to alert service users and providers, anti-abortion groups and anyone else likely to be affected around the existence and impact of safe access zones.

Post-implementation Review

The Scottish Government will keep the legislation under review, with a formal review being undertaken within 10 years of the legislation coming into force. The formal review will consider the effectiveness of zones in meeting the aims set out in this document, and their impacts on those seeking to carry out anti-abortion activity.

Summary and Recommendation

Having conducted analysis of the options outlined above, and more fully set out in the Policy Memorandum, it was concluded that only legislation introducing safe access zones could deliver adequate protection for both service users and providers.

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 level of protection that applies across the country. In so doing, it would resolve the disadvantages inherent in the alternative options.

Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1 – Use of local authority byelaws	<ul style="list-style-type: none"> • Allow local solutions • Only establishing protection around premises where anti-abortion activities occur 	Use of byelaws would require considerable resources from local authorities. Costs for establishment and maintenance of orders is difficult to estimate; though as noted above, stakeholder engagement with Counsels in England have indicated costs have been significant. Costs of defending legal challenge alone for Ealing Counsel were approximately £144,000
2 – Rely on existing legislation	<ul style="list-style-type: none"> • Would not create additional interference with ECHR articles 9,10 and 11 • Would not create any new offences • Would not add to the burden of work on justice system 	No cost
3- use of mediation and enhanced guidance	<ul style="list-style-type: none"> • Would not create additional interference with ECHR articles 9,10 and 11 • Would not create any new offences • Would not add to the burden of work on justice system 	£20,000 - £50,000 for mediation services
4A & 4B – Application model	<ul style="list-style-type: none"> • Local decision making • Flexibility for local providers and Health Boards 	£5000 one off cost for implementation With additional costs for prosecution expected to be between £65,400 - £196,200 per annum
5 – Create automatic safe access zones	<ul style="list-style-type: none"> • Parity of protection for service users and providers across Scotland • Clarity for anti-abortion groups 	£5000 one off cost for implementation With additional costs for prosecution expected to be between £65,400 - £196,200 per annum

Declaration and Publication

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non-departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

- **Sign-off for Partial BRIAs:**

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

- **Sign-off for Final BRIAs:**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: 03 October 2023

Minister's name: Jenni Minto

Minister's title: Minister for Public Health & Women's Health

Scottish Government Contact point: Elizabeth Sadler, Public Health Capabilities



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Any enquiries regarding this publication should be sent to us at

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