

Home Office Consultation – Safe Access Zones

Guide to responding to the Home Office’s consultation about non-statutory guidance on abortion clinic safe access zones

During the passage of the Public Order Act 2023, Parliament voted to introduce legislation to enact safe access zones within 150 metres of all abortion clinics and hospitals that provide abortion services in order to protect patients and staff from intimidation and harassment.

Despite this, and against the will of Parliament, the Home Office have drafted non-statutory guidance for the police which fundamentally undermines the law that was passed by Westminster.

As a result, BPAS have created a guide for organisations and individuals to respond the consultation and would encourage everyone to complete it. **The deadline for responding to the consultation is Monday 22 January 2024.**

You can find the consultation here – homeofficesurveys.homeoffice.gov.uk/s/ZJEUVI

Questions 1 and 2

The first two questions in the survey relate to the contents of Section 2 and the activities which are prohibited within the safe access zones.

Question 1: In your view, are the contents of Section 2 (prohibited activities) sufficiently clear and easy to understand?	
Question 2: Are you content that that guidance provided under Section 2 (prohibited activities) accurately reflects the Section 9 offence?	
Yes	
No	X
If no, please explain your answer:	
<ul style="list-style-type: none"> • This non-statutory guidance is not sufficiently clear or easy to understand, and there are a number of contradictory statements as well as a clear misinterpretation of the law. • Whether or not the Home Office agree with the law, it was voted through by Parliament on three separate occasions, with amendments and reviews opposed overwhelmingly. It is not the role of non-statutory guidance to seek to undo the democratic will of Parliament. • Section 2.7 contradicts a recorded decision of the House of Commons to not exclude ‘silent prayer and consensual communication’ from the legislation (Division 185 on 7th March 2023, Public Order Bill: Amendment (a) to Lords Amendment 5). The amendment was defeated 299 votes to 116, with Home Office ministers voting in favour – which raises a serious question as to why they voted in favour if the Home Office believed that the legislation did not actually cover silent prayer and consensual communication. 	

- In addition to above point, we believe that and Section 2.5 links to s88 of the 2022 UK Supreme Court ruling which references academic research by Dr Pam Lowe who is quoted as saying “*many [clinic users] perceived the essential elements of a religious vigil... to be both intrusive and highly stressful... praying is explicitly seen as being offensive and intrusive, to constitute a form of confrontation and harassment.*” As a result, the drafted guidance seeks to tell women that regardless of how they are made to feel as a result of ‘silent prayer’, it is not legally to be viewed as intrusive or harassing for the purpose of enforcing the law. Any attempt by the UK Government to state that silent prayer has not been found to be inherently intrusive by the UK Supreme Court is a fundamental misreading of the law.

Questions 3 and 4

The next two questions in the survey relate to the contents of Section 3 and the location of the safe access zones.

<p>Question 3. In your view, are the contents of Section 3 (location) sufficiently clear and easy to understand?</p>	
<p>Question 4: Are you content that that guidance provided under Section 3 (location) accurately reflects the Section 9 offence?</p>	
Yes	X
No	

Questions 5 and 6

The next two questions in the survey relate to the contents of Section 4 and the purpose of presence within the safe access zones.

<p>Question 5: In your view, are the contents of Section 4 (purpose of presence in the zone) sufficiently clear and easy to understand?</p>	
<p>Question 6: Are you content that that guidance provided under Section 4 (purpose of presence in the zone) accurately reflects the Section 9 offence?</p>	
Yes	
No	X
<p>If no, please explain your answer:</p> <ul style="list-style-type: none"> • Section 4.1 states that no criminal offence would be committed should a pro-life vigil occur in a safe access zone when a clinic is closed and no staff or patients are in the area. This creates an issue as it is not always clear when clinics are open or when staff or patients are in the area, and that both of these things can, and do, happen out with the formal opening and closing times listed. • Staff may also be based at clinics which are closed to provide post-treatment checks for women. It is therefore impossible to know whether people are in the clinic, or in the surrounding areas who may reasonably be affected by the activity. 	

Questions 7 and 8

The next two questions in the survey relate to the contents of Section 5 and the use of police powers within the safe access zones.

<p>Question 7: In your view, are the contents of Section 5 (use of police powers) sufficiently clear and easy to understand?</p>	
<p>Question 8: Are you content that that guidance provided under Section 5 (use of police powers) accurately reflects the Section 9 offence?</p>	
Yes	
No	X
<p>If no, please explain your answer:</p> <ul style="list-style-type: none"> • The police should not be undertaking balancing of rights and proportionality assessments. This has already been determined at length by Parliament. The Northern Ireland UK Supreme Court judgement in 2022 that such assessment is not required in the equivalent Northern Ireland circumstances. • Section 5.3 contradicts the balance of rights that was decided upon by Parliament, and also contradicts Section 2. • Regarding consensual communication, it is unaddressed within the guidance as to how a protester is to determine that communication is consensual. If they are seeking to speak to every person passing them, they are communicating by its nature with people who do not assent to being spoken to. If they present signs or literature to communicate with people, they are again impinging upon the free and unimpeded access of those who do not wish to be communicated with. Of course, this point is largely irrelevant because as Parliament made clear, so-called ‘consensual communication’ is clearly a part of the offence as written. 	

Questions 9 and 10

The next two questions in the survey relate to the contents of Section 6 and the use of police training within the safe access zones.

<p>Question 9: In your view, are the contents of Section 6 (use of police training) sufficiently clear and easy to understand?</p>	
<p>Question 10: Are you content that that guidance provided under Section 6 (use of police training) accurately reflects the Section 9 offence?</p>	
Yes	
No	X
<p>If no, please explain your answer:</p> <ul style="list-style-type: none"> • As previously mentioned, it is not the role of the police to be undertaking proportionality tests for arrests made under this law. • All serving police already have appropriate training in the balancing of rights, and the apparent proposal that they undergo further training creates another barrier to 	

the enforcement of this law, in a way which would seemingly preclude the usual frontline officers (community teams, PCSOs) from taking action to stop activity which breaches the law.

Questions 11 and 12

The next two questions in the survey relate to the contents of Section 7 and the role of signage within the safe access zones.

Question 11: In your view, are the contents of Section 7 (signage) sufficiently clear and easy to understand?	
Question 12: Are you content that that guidance provided under Section 7 (signage) accurately reflects the Section 9 offence?	
Yes	
No	X
If no, please explain your answer:	
<ul style="list-style-type: none"> • The concept of the need for signage is based on the belief that this law will somehow result in the capture of people who are innocently undertaking anti-abortion activity unaware of their proximity to a clinic. This is not the activity which is undertaken across the country. Abortion clinics and hospitals are sought out, located, and specific activity is undertaken immediately outside. The location of the clinic is the purpose of the activity, not an accidental by-product. • The law that was passed by Parliament had no mention of the presence of signage, and we believe that its introduction is another unjustified and additional hoop to be jumped through that has unintended consequences on the rights of women to access healthcare privately, and wrongly places responsibility of enforcement onto abortion care providers. As such, we do not believe there is anything to be gained by the provision of signage. 	

Questions 13

The final question in the survey asks for any further comments on the non-statutory guidance.

Question 13: Do you have any further comments on this non-statutory guidance?	
Yes	X
No	
If yes, please explain your answer:	
<ul style="list-style-type: none"> • This guidance misunderstands and misrepresents the scope of the offence. This is evidenced through the exclusion of so-called silent prayer and ‘consensual 	

communication' in the guidance, both of which do not adequately reflect the wording of the offence or relevant rulings by the UK Supreme Court, Court of Appeal, and High Court. This guidance attempts to place additional requirements on behaviours that have not been agreed upon in the courts, and do not form any part of existing law.

- The guidance is also flawed regarding signage. It is wrong for the UK Government to try and shift the onus of enforcing this law onto abortion care providers who are not public bodies and have no legal responsibility to act to protect their patients and staff from anti-abortion harassment. Women have an Article 8 right to medical privacy and confidentiality and to erect signage about the close proximity of an abortion clinic is a flagrant breach of this right.
- The guidance falsely attributes a requirement to undertake balancing exercises to the police in contravention of the findings of the Supreme Court in Reference by Attorney General of Northern Ireland. In the process of this law being passed, Parliament scrutinised the balance of rights and found that the law they passed adequately struck the right balance – there is no legal requirement for the police to undertake a balancing exercise in relation to every defendant, as the Home Office well knows because it relies on this finding in all other areas of protest law.
- This unnecessary guidance has been written in a way that does not prioritise the safety and rights of the women being harmed by this harassment. This is a wilful misunderstanding of the framing of the law and it will lead to the continued, targeted harassment of women outside abortion clinics.