

## Abortion Clinic Safe Access Zones Consultation

The government [passed an amendment to the Public Order](#) Bill last year which imposes so-called 'safe access zones' around abortion clinics.

The government is now consulting on its proposed guidance for these safe access zones.

The deadline for responding is **22 January 2024**.

Consultation documents: <https://www.gov.uk/government/consultations/abortion-clinic-safe-access-zones-non-statutory-guidance>

Online response portal: <https://www.homeofficesurveys.homeoffice.gov.uk/s/ZJEUVI/>

Public Order Act 2023 Section 9: <https://www.legislation.gov.uk/ukpga/2023/15/section/9/enacted>

### **Question 1. In your view, are the contents of Section 2 (prohibited activities) sufficiently clear and easy to understand?**

**NO**

It is not clear how the police are meant to be able to assess “the intention and motive of anyone suspected of committing an offence.” The guidance is quite right to insist that “there must be an objective factual basis that supports the suspicion that the activities” have been committed before an arrest is made. However, no examples of what this means are provided.

It is not clear how the police are meant to be able to assess “influence” in the meaning of the Act. The guidance helpfully proposes that “informing, discussing or offering help does not necessarily amount to ‘influence’.” It would be good to provide examples of what would count as ‘influence’.

It is good that the guidance clarifies that “Prayer within a Safe Access Zone should not automatically be seen as unlawful.”, and that silent prayer “is protected as an absolute right under the Human Rights Act 1988 and should not, on its own, be considered to be an offence under any circumstances.”

Freedom to oppose abortion and/or support women who would like an alternative to abortion, has also been under attack. In 2018, while the Home Office rejected efforts to create buffer zones around abortion facilities as evidence suggested that the vast majority of protests have been peaceful, local councils such as Ealing have nonetheless been enacting Public Space Protection Orders (PSPOs) which have the same legal effect as creating buffer zones. In August 2019, Christian Hacking became the first person ever to be arrested for publicly praying in front of an abortion clinic in violation of a PSPO. The PSPO prohibited certain types of protest, including prayer, within 100 meters of an abortion clinic.

The European Court of Human Rights has noted that there can be “*no doubt as to the acute sensitivity of the moral and ethical issues raised by the question of abortion or as to the importance of the public interest at stake*”. ECHR, *Case of Annen v Germany*, application no. 3690/10, judgment of 26 November 2015, §62. The Court also noted that pro-life activity contributes to a highly controversial debate of public interest. *Id.* While not all pro-life activity

is Christian, much of it is. This has led detractors to try and minimize the importance of the pro-life voice by marginalising it as merely religious. This anti-Christian bias has led in cases like Christian Hacking's to full-fledged discrimination.

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

**NO**

The Act states that: "Nothing in this section applies to c) any person or persons accompanying, with consent, a person or persons accessing, providing or facilitating the provision of, or attempting to access, provide or facilitate the provision of, abortion services." The guidance in this section does not reflect this important exemption.

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

**NO**

The guidance states clearly what constitutes an 'abortion clinic' and that discussions of abortion inside buildings or dwellings within 150 metres will not be unlawful. It also states that a sermon inside a church within a Safe Access Zone would not be unlawful. Another exemption should be made for sermons or conversations within a chapel inside a hospital which constitutes an 'abortion clinic'. Indeed, any conversations within the clinics themselves ought to be protected from any risk of being unlawful. For example, a patient in an abortion clinic who complains about her treatment or what has happened to her should be at no risk of prosecution.

Given the importance of the twin issues at stake, those being the preservation of free speech and the ability of those to defend life, the onus should be on protecting speech. Abortion is neither fully legal or illegal. It is a procedure which has legal limits and penalties associated with breaching those limits. It should not be treated as an absolute right which outweighs the democratic rights of pro-life individuals acting with the best of intentions.

**Question 4. Are you content that the guidance provided under Section 3 (location) accurately reflects the Section 9 offence?**

**NO**

The Act contains exemptions for "anything done in the course of providing, or facilitating the provision of, abortion services in an abortion clinic" or "anything done in the course of providing medical care within a regulated healthcare facility,". These exemptions are not reflected in this guidance.

**Question 5. In your view, are the contents of Section 4 (purpose of presence in the zone) sufficiently clear and easy to understand?**

**NO**

The guidance helpfully explains that “A hospital chaplain giving a religious view on abortion to a patient who is not at the hospital for abortion services would not be captured by the offence.” A hospital chaplain should not be obligated to first assess whether a patient is in the hospital for abortion services before expressing his religious views. A hospital chaplain should be able to express his religious views to anyone at the hospital, especially when asked. This should apply to everyone in the hospital regardless of whether or not they are employed by the hospital. A patient who complains to another patient about what happened when she had an abortion should not be at risk of committing an offence.

**Question 6. Are you content that the guidance provided under Section 4 (purpose of presence in the zone) accurately reflects the Section 9 offence?**

**NO**

The Act states that “Nothing in this section applies to c) any person or persons accompanying, with consent, a person or persons accessing, providing or facilitating the provision of, or attempting to access, provide or facilitate the provision of, abortion services.” The guidance in this section does not reflect this important exemption.

**Question 7. In your view, are the contents of Section 5 (use of police powers) sufficiently clear and easy to understand?**

**NO**

The guidance states that “We would never expect the police to approach someone simply for wearing a religious item such as a crucifix necklace or a hijab or carrying rosary beads.” This section should also exclude carrying a Bible or wearing clothing which displays quotes from the Bible.

The guidance should explain that right to manifest beliefs under Article 9 of the European Convention on Human Rights includes the right to display verses from the Bible, or indeed to manifest the belief that abortion is immoral.

Restrictions on Article 9 freedoms must be balanced and proportionate. Nor should catering to public feelings necessarily trump the right to manifest a protected manifestation of religious expression:

*In the Court’s view, a legal system which applies restrictions on human rights in order to satisfy the dictates of public feeling – real or imaginary – cannot be regarded as meeting the pressing social needs recognised in a democratic society, since that society must remain reasonable in its judgement. To hold otherwise would mean that freedom of speech and opinion is subjected to the heckler’s veto. ECHR, Vajnai v Hungary, application no. 33629/06, judgment of 08 July 2008, para. 57.*

Therefore, the police should be advised explicitly that peaceful, pro-life groups, whose actions cannot reasonably be construed as harassment, are protected by Article 9 and should not be interfered with.

**Question 8. Are you content that the guidance provided under Section 5 (use of police powers) accurately reflects the Section 9 offence?**

**YES**

The guidance reflects that consensual engagement is not an offence and that the police must consider their obligations under the Human Rights Act 1998.

**Question 9. In your view, are the contents of Section 6 (use of police training) sufficiently clear and easy to understand?**

**NO**

This section emphasises that police officers should be trained in the rights protected under the “European Convention in Human Rights” It should say “European Convention on Human Rights.”

**Question 10. Are you content that the guidance provided under Section 6 (use of police training) accurately reflects the Section 9 offence?**

**YES**

**Question 11. In your view, are the contents of Section 7 (signage) sufficiently clear and easy to understand?**

**NO**

It would be more helpful if the guidance provided examples of what signage around a Safe Access Zone should say.

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

**YES**

People deserves to be warned that they are entering a Safe Access Zone which has greater restrictions on freedom of speech than elsewhere in the country.

This will also serve to make the public more aware of the new restrictions that have been passed by the government which give the police more powers to arrest people in certain areas of the country.

**Question 13. Do you have any further comments on this non-statutory guidance?**

## **YES**

The guidance is right to emphasise the importance of police officer training on the rights protected under the European Convention on Human Rights. There is a real risk of police over-stepping the mark in arresting people in Safe Access Zones for merely manifesting religious belief. We have already seen this in local PSPOs where people have even been arrested for silent prayer – a clear infringement of their human rights.

The guidance needs to be more robust by providing clear examples of what would constitute an offence under the Act.