

EXPLANATORY NOTES

Abortion Services (Safe Access Zones) (Scotland) Act 2024 (asp 10)

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ABORTION SERVICES (SAFE ACCESS ZONES) (SCOTLAND) ACT 2024

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by officials of the Scottish Government on behalf of Gillian Mackay MSP, the member in charge of the Bill for the Act, in order to assist the reader of the Abortion Services (Safe Access Zones) (Scotland) Act 2024. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE ACT

Overview

3. The Act creates the status of "protected premises" for buildings and places at which abortion services are provided and establishes a safe access zone for each of the protected premises. The Act makes it an offence to act in a certain way when within a safe access zone for protected premises. The Act also contains an offence in relation to acts done within, for example, a building situated inside the boundary of a safe access zone and the act is capable of being seen or heard by another person in the safe access zone. Provision is also made for exceptions to these offences.

4. The Act also creates a power to provide for other types of premises to become protected premises (by modifying the meaning of "protected premises").[1] It also makes provision for changing the size of a safe access zone by extending or reducing it (but only where the Scottish Ministers consider it appropriate to do so). A safe access zone will only cease to operate when the protected premises stops providing abortion services. A list of protected premises and each related safe access zone is to be published and maintained by the Scottish Ministers.

Crown application

5. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. As such, this Act applies to the Crown in the same way as it applies to everyone else.

[1] See paragraph 32.

Establishment of safe access zones for protected premises

Section 1: Meaning of "protected premises"

6. This section provides the meaning for "protected premises" for the purposes of this Act. A safe access zone will attach to protected premises under section 2. Protected premises are limited to a building that is, contains or forms part of a hospital and at which abortion services are provided, or place (not being a class of place)[2] approved under section 1(3) of the Abortion Act 1967 ("the 1967 Act"). "Abortion services" are defined in section 15(1) as any treatment for the termination of pregnancy authorised under the 1967 Act.

Section 2: Establishment of safe access zones

7. This section establishes a safe access zone for each protected premises. A safe access zone consists of the protected premises, the public area of the grounds (if any) of the protected premises and the public area of land that lies within a boundary that is 200 metres from the boundary of the protected site (which is defined in subsection (7)). Where the safe access zone has been extended or reduced, the distance of the boundary from the boundary of the protected site is the distance determined by the Scottish Ministers under section 7 or 8. That distance is also specified in the list maintained by the Scottish Ministers under subsection (3)(b) (see paragraph 9).

8. Not all areas are included within the safe access zone despite being within the boundary of that zone. The protected premises is the only building that is included within the safe access zone. The rest of the safe access zone consists of the public area of the grounds (if any) and the public area between the boundary of the protected site and the boundary of the safe access zone. "Public area" is defined in subsection (7) to mean an outdoor area of land that the public may access and includes any partially enclosed structure on the land (such as covered walkways, rain shelters and bus stops) that the public may access. "Grounds" is defined as land adjacent to and associated with the protected premises. Therefore, any other buildings (such as residential buildings, shops and enclosed garden sheds) on the grounds or within the boundary of the safe access zone do not form part of the safe access zone.

9. The Scottish Ministers are required to publish and maintain a list of protected premises and each related safe access zone, with the first version of the list to be published on the day that section 2 commences. The details that must be contained in the list are:

- the name and address of each protected premises,
- a map of the grounds (if any) of the protected premises that shows the boundary of the grounds,
- the distance between boundary of the protected site and the boundary of the safe access zone,
- a map showing the boundary of the safe access zone, and
- the day on which the safe access zone takes effect.

[2] See paragraph 32 for explanation of "class of place".

10. If a new safe access zone is established after section 2 commences (because a new protected premises is to start operating or has started operating) or if an existing safe access zone is extended or reduced, the list must specify the day on which the new or revised safe access zone takes effect. In all other cases, a safe access zone takes effect on the day that section 2 commences.[3]

Section 3: Notification of proposed protected premises etc.

11. This section applies where abortion services are intended to be provided at a building or place after the commencement of section 1, and subsection (1) gives the label of "proposed protected premises" as being such a building or place.

12. The operator of the building or place must notify the Scottish Ministers of their intention to start providing abortion services at the building or place. The Scottish Ministers must then update the list maintained under section 2(3)(b) with the details of the proposed protected premises and the day on which the new safe access zone takes effect. That day must be at least 14 days after the list is updated and usually this would also be the day the building or place starts providing abortion services and is therefore protected premises.

13. Failure to give the notice required under subsection (2) does not affect the ability of the premises to become protected premises and have a safe access zone take effect. If the Scottish Ministers become aware that abortion services are being provided at protected premises, then they must update the list maintained under section 2(3)(b) with the details of the proposed protected premises and the day on which the new safe access zone takes effect. That day must be at least 14 days after the list is updated.

Offences relating to safe access zones

Section 4: Offence of influencing, preventing access or causing harassment etc. in safe access zone

14. This section makes it an offence for a person who is in a safe access zone to act in a certain way towards a person who is also in the safe access zone for the purpose of accessing, providing or facilitating the provision of abortion services at a protected premises:

- Subsection (1)(a) makes it an offence for a person within a safe access zone to do anything that intentionally or recklessly influences another person's decision to access abortion services at a protected premises (or provide or facilitate the provision of abortion services there).
- Subsection (1)(b) makes it an offence for a person within a safe access zone to do anything that intentionally or recklessly prevents or impedes another person from accessing abortion services at a protected premises (or providing or facilitating the provision of abortion services there).
- Subsection (1)(c) makes it an offence for a person within a safe access zone to do anything that intentionally or recklessly causes harassment, alarm or distress to another person in connection to their decision to access, provide or facilitate the provision of abortion services at a protected premises.

[3] For cessation of a safe access zone, see paragraph 29.

15. Examples of acts that may constitute an offence include holding up signs with anti-abortion messages, physically blocking the entrances to protected premises, and protesting. However, these actions would need to be carried out with an intention listed above (or carried out recklessly).

16. In certain circumstances, the accused and the affected person do not need to be in the safe access zone at the same time. Subsection (2) provides that where a person does an act that has a continuing effect, it does not matter if the other person affected was not in the safe access zone at the time the act was carried out. For example, a person who chains the doors of a protected premises shut in the middle of the night could commit an offence if it impedes another person's ability to access the protected premises the next morning.

17. A person who commits an offence is liable to (on summary conviction) a fine not exceeding the statutory maximum (being £10,000 on the date of introduction of the Bill for the Act), or (on conviction on indictment) to an unlimited fine.

Section 5: Offence of influencing, preventing access or causing harassment etc. in area visible or audible from safe access zone

18. This section applies to a person who is in an area (referred to in the Act as the "relevant area") that does not form part of the safe access zone for the protected premises but is situated between the protected premises and the boundary of the safe access zone. The relevant area may be an indoor area or a wholly enclosed structure within the safe access zone (for example, a residential building) or a private outdoor area (for example, a private garden). It does not form part of the safe access zone because it is not a public area (within the meaning of section 2(7)).

19. This section makes it an offence for a person in a relevant area to act in the same way as described in section 4(1) if that act is capable of being seen or heard by another person who is within the safe access zone (for example, the actions of a person inside their residential flat that are visible through the windows to another person who is standing in the safe access zone). By contrast, the offence in section 4(1) only applies to the actions of a person who is in the safe access zone for protected premises.

20. The accused and the affected person do not need to be in the safe access zone at the same time. Subsection (3) provides that where a person does an act that has a continuing effect, it does not matter if the other person affected was not in the safe access zone at the time the act was carried out. For example, if a person who lives in a building in the area within the boundary of the safe access zone displays an anti-abortion sign in the window of their building with the intention of influencing another person's decision to access abortion services at the nearby protected premises and leaves that sign on display, an offence could be committed if an affected person sees or could have seen the sign at any time. It is not necessary for the affected person to be present at the time the accused affixes the sign to the window.

21. A person who commits an offence is liable to (on summary conviction) a fine not exceeding the statutory maximum (being £10,000 on the date of introduction of the Bill for the Act), or (on conviction on indictment) to an unlimited fine.

Section 6: Exceptions to offences

22. This section creates exceptions to the offences in sections 4(1) and 5(1). The exceptions relate to anything done by a person who is:

- accompanying another person who is accessing (or attempting to access) abortion services at protected premises, but only where the person is accompanying the other person with the other person's permission and only to the extent that the person's act affects the other person (if the person acts in a way that affects another person whom they are not accompanying, then that may be an offence),
- anything done in the course of providing, or facilitating the provision of, abortion services (meaning treatment for the termination of pregnancy that is authorised under the 1967 Act) or other health care at protected premises (for example, the provision of counselling services),
- engaging in peaceful picketing (relating to workplace industrial action) that is lawful under the Trade Union and Labour Relations (Consolidation) Act 1992. Section 220 of that Act makes it clear that peaceful picketing is lawful only in contemplation or furtherance of a trade dispute and if done for the purpose only of peacefully obtaining or communicating information, or peacefully persuading any person to work or abstain from working.

Changes to safe access zones

Section 7: Extension of safe access zones

23. A safe access zone can be extended by increasing the distance between the boundary of the safe access zone and the boundary of the protected site. There are three ways a safe access zone can be extended:

- Firstly, an operator may apply to the Scottish Ministers for an extension of the zone and the Scottish Ministers may approve the application if they are satisfied that it is appropriate to do so (see subsection (2)). The operator can only make an application to extend the safe access zone if they consider that the current size of the safe access zone does not adequately protect against any act of the type mentioned in section 4(1) or 5(1).[4]
- Secondly, the Scottish Ministers may, of their own accord, decide to extend a zone but are required to consider that the current size of the safe access zone does not adequately protect against any act of the type mentioned in section 4(1) or 5(1) (see subsection (3)).[5]
- Thirdly, if the Scottish Ministers extend a safe access zone under subsection (2) or (3), then the power in subsection (5) allows the Scottish Ministers to also extend a safe access zone for one or more other protected premises if they consider it appropriate to do so. This extension can be done en bloc to more than one protected premises. Subsection (6) makes it clear that the extension under subsection (5) may be by a different extent for different premises.

[4] In the Bill, this is referred to as "the condition mentioned in subsection (4)".
[5] In the Bill, this is referred to as "the condition mentioned in subsection (4)".

24. Before extending a safe access zone the Scottish Ministers must conduct a consultation. Where the operator has applied for the extension, the Scottish Ministers must consult any persons they consider appropriate to consult. In all other extensions, the Scottish Ministers must consult either the operator of the protected premises or persons representative of the interests of operators, as well as any other persons the Scottish Ministers consider appropriate to consult.

25. If a safe access zone is extended, the Scottish Minsters must update the list maintained under section 2(3)(b) with the details of the extended safe access zone and the day on which the extension takes effect (and that day must be at least 14 days after the list is updated).

Section 8: Reduction of safe access zones

26. A safe access zone can be reduced by decreasing the distance between the boundary of the safe access zone and the boundary of the protected site. The Scottish Ministers may choose to reduce the safe access zone of one or more protected premises if they consider it appropriate to do so.

27. Before reducing a safe access zone, the Scottish Ministers must consult either the operator of the protected premises or persons representative of the interests of operators, as well as any other persons the Scottish Ministers consider appropriate to consult.

28. If a safe access zone is reduced, the Scottish Minsters must update the list maintained under section 2(3)(b) with the details of the reduced safe access zone and the day on which the reduction takes effect (that day must be no earlier than the day the list is updated and can be the same day the list is updated).

Section 9: Cessation of safe access zones

29. A safe access zone can only cease to operate if the protected premises stops providing abortion services and therefore the building or place is no longer a protected premises. The operator of a protected premises that intends to stop providing abortion services must notify the Scottish Ministers of the day on which abortion services will stop being provided. The Scottish Ministers must, as soon as practicable after abortion services stop being provided at the premises, update the list maintained under section 2(3)(b) to remove the reference to the affected premises and its related former safe access zone.

30. Failure to notify the Scottish Ministers does not prohibit the Scottish Ministers from updating the list maintained under section 2(3)(b). The status of protected premises would automatically fall away and as a result the safe access zone would cease to attach to the building or place. The duty in section 2(3)(b) to maintain the list would enable the Scottish Ministers to update the list to reflect this.

Section 10: Report on changes to safe access zone

31. If the Scottish Ministers update the list of protected premises and safe access zones as a result of extending or reducing one or more safe access zones, then the Scottish Ministers must lay a report before the Scottish Parliament giving the reasons for the change to the safe access zone or zones. The report must be laid no later than 7 days after the day the list is updated.

Section 11: Power to modify meaning of "protected premises"

32. The Scottish Ministers may modify the definition of "protected premises" in section 1 through regulations, but only to include a class of place (or a place forming part of a class of place) approved under section 1(3) of the 1967 Act or a building or place at which treatments or services relating to abortion services (but not abortion services themselves) are provided. Section 1(3A) of the 1967 Act allows classes of place to be approved (under section 1(3)) in relation to treatment consisting primarily in the use of medicines (for example, General Practitioners' offices could be approved were practitioners to provide services and treatment in respect of the taking of Mifepristone and Misoprostol). An example of a treatment or service that is related to abortion services is a counselling service which is related to abortion.

33. For buildings and places at which treatments or services relating to abortion services are provided, it may be necessary for the related safe access zones to operate in a different way than what is provided for in the Act. Subsection (6) provides that regulations under subsection (1)(b) can modify the Act where such modification is consequential to the change to the definition of "protected premises". For example, this may provide that the safe access zone for a specified pharmacy is measured and shaped a different way to what is described in section 2(2). Sections 4 and 5 may also need to be amended to ensure that the offences apply in order to protect persons who are accessing, providing or facilitating treatment or services related to abortion services at that building or place.

34. However, the power to make those regulations relating to such buildings or places under subsection (1)(b) may only be exercised if the Scottish Ministers consider that it is necessary to establish a safe access zone for that building or place (see subsection (2)). That is, that it is necessary to protect persons against an act of a type mentioned in section 4(1) or 5(1)—but see subsection (3) which modifies those sections to apply to places and treatments mentioned in subsection (1)(b).

35. Before regulations may be made under subsection (1)(b), the Scottish Ministers are required to carry out a consultation (see subsection (4)). They must consult the provider of the treatments or services at the building or place, or the operator of the building or place. If the Scottish Ministers consider it appropriate to do so, they must consult the Health Board, local authority and any other person they consider has an interest in the matter.

36. The regulations under subsection (1) are subject to the affirmative procedure[6] and may include the ancillary provision listed, and to make different provision for different purposes.

Ministerial guidance

Section 12: Ministerial guidance

37. The Scottish Ministers may choose to publish guidance relating to protected premises and the establishment, extension, reduction or cessation of safe access zones. If they do, they must publish the guidance, and operators of protected premises must have regard to the guidance.

[6] The affirmative procedure is defined by section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Review of Act

Section 13: Review of Act

38. The Scottish Ministers must, for each review period, review the operation and effectiveness of the Act and prepare a report of the review—these functions can be delegated to a person that the Scottish Ministers consider appropriate.

39. When undertaking the review, the Scottish Ministers (or the person to whom the review function is delegated) must consult Police Scotland, the Crown Office and Procurator Fiscal Service, operators of protected premises or their representatives and any other person they consider appropriate. In addition to this, the Scottish Ministers must also publish the report and lay it before the Scottish Parliament.

40. The first review period is 2 years beginning on the day on which section 2 comes into force. After that, the review period is each subsequent 3 year period.

General provisions

Section 14: Ancillary power

41. This section allows the Scottish Ministers, by regulations, to make standalone ancillary provision in relation to the Act, once enacted, or any provision made under it. Any regulations making ancillary provision which textually amends primary legislation will be subject to the affirmative procedure;[7] otherwise, any regulations making ancillary provision under this power will be subject to the negative procedure[8] (see subsections (2) and (3)).

Section 15: Interpretation

42. This section defines words and expressions that are used in the Act.

Section 16: Crown application

43. The Act will apply to the Crown by virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010. In line with usual practice for Acts of the Scottish Parliament, this section (of this Act) has the effect that the Crown cannot be found criminally liable in terms of the offences created by the Act. However, through the mechanism in subsection (2), any unlawful conduct on the part of Crown bodies can be declared unlawful by the Court of Session. Subsection (3) has the effect that this section does not exempt civil servants etc. from criminal prosecution.

Section 17: Commencement

44. This section provides for the substantive provisions of the Act to come into force in accordance with regulations made by the Scottish Ministers. The regulations may make transitional, transitory or saving provision and may make different provision for different purposes.

Section 18: Short title

45. This section gives the Act its short title (being the name by which it may be formally cited). The short title of the Act is Abortion Services (Safe Access Zones) (Scotland) Act 2024.

[7] The affirmative procedure is defined by section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010.
[8] The negative procedure is defined by section 28 of the Interpretation and Legislation Reform (Scotland) Act 2010.

PARLIAMENTARY HISTORY

46. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	***Reference***
Introduction	
Bill	SP Bill 34 Session 6 (2023)
Explanatory Notes	SP Bill 34-EN Session 6 (2023)
Policy Memorandum	SP Bill 34-PM Session 6 (2023)
Financial Memorandum	SP Bill 34-FM Session 6 (2023)
Delegated Powers Memorandum	SP Bill 34-DPM Session 6 (2023)
Statements on Legislative Competence	SP Bill 34-LC Session 6 (2023)
Stage One	
Health, Social Care and Sport Committee (Lead Committee)	
Consideration in private (24 October 2023)	Minutes of proceedings (HSCS/S6/23/30)
Consideration in private (07 November 2023)	Minutes of proceedings (HSCS/S6/23/33)
Consideration in private (28 November 2024)	Minutes of proceedings (HSCS/S6/23/36)
Consideration in private (16 January 2024)	Minutes of proceedings
Consideration in private (20 February 2024)	Minutes of proceedings
Evidence session (27 February 2024)	Official Report (cols 2-34)
Evidence session (05 March 2024)	Official Report (cols 1-36)
Evidence session (12 March 2024)	Official Report (cols 1-59)
Consideration in private (18 April 2024)	Minutes of proceedings
Stage One Report (22 April 2024)	SP Paper 567, 6th Report, 2024 (Session 6)
Delegated Powers and Law Reform Committee	
Consideration in private (12 December 2023)	Minutes of proceedings (DPLR/S6/23/34)

Proceedings and reports	***Reference***
Report on delegated powers provisions in the Abortion Services (Safe Access Zones)(Scotland) Bill at Stage 1 (20 December 2023)	SP Paper 501, 77th Report, 2023 (Session 6)
Whole Parliament	
Stage 1 debate (30 April 2024)	Official Report (cols 18-59)
Stage Two	
Marshalled list of amendments for Stage 2	SP Bill 34-ML (Session 6 (2024))
Groupings of amendments for Stage 2	SP Bill 34-G (Session 6 (2024))
Meeting on amendments (28 May 2024)	Official Report (cols 1-54)
Bill as amended at Stage 2	SP Bill 34A (Session 6 (2024))
Revised Explanatory Notes	SP Bill 34A-EN (Session 6 (2024))
Supplementary Delegated Powers Memorandum	SP Bill 34A-DPM (Session 6 (2024))
Consideration in private (11 June 2024)	Minutes of proceedings
Report on delegated powers provisions in the Abortion Services (Safe Access Zones)(Scotland) Bill after Stage 2 (11 June 2024)	SP Paper 619, 42nd Report, 2024 (Session 6)
Stage Three	
Marshalled list of amendments for Stage 3	SP Bill 34A-ML (Session 6 (2024))
Timed groupings of amendments for Stage 3	SP Bill 34A-G (Session 6 (2024))
Consideration of amendments and debate (12 June 2024)	Official Report (cols 22-68, 79-81)
Bill as passed (12 June 2024)	SP Bill 34B (Session 6 (2024))
Royal Assent	
Royal Assent (22 July 2024)	Abortion Services (Safe Access Zones) (Scotland) Act 2024 (asp 10)

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