

# Abortion Services (Safe Access Zones) (Scotland) Bill

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## Financial Memorandum

### Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Abortion Services (Safe Access Zones) (Scotland) Bill, introduced in the Scottish Parliament on 05 October 2023.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 34-EN);
  - a Policy Memorandum (SP Bill 34-PM);
  - a Delegated Powers Memorandum (SP Bill 34-DPM);
  - statements on legislative competence made by the Presiding Officer and the Member who introduced the Bill (SP Bill 34-LC).
3. This Financial Memorandum has been prepared by the Scottish Government on behalf of Gillian Mackay MSP to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### The Bill

4. The Abortion Services (Safe Access Zones) (Scotland) Bill will put in place safe access zones around all premises providing abortion services in Scotland and create a number of related offences.
5. The aims of the Bill 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;

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- 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.

6. The provisions of the Bill will impact individuals accessing or providing abortion services, those wishing to gather outside premises providing abortion services, conduct a vigil or otherwise influence people's decisions regarding abortion (whether they are anti- or pro-abortion), those who commit an offence under the Bill, Police Scotland and the Scottish Administration.

## Consultation and source of figures

7. This Financial Memorandum uses the information, evidence, and data available from stakeholder discussions facilitated by the Scottish Government with a range of organisations, including but not limited to Police Scotland, the Crown Office and Procurator Fiscal Service (COPFS), NHS Health Boards and jurisdictions that have previously implemented safe access zone legislation.

8. Information and data have been provided by Police Scotland and the COPFS for determining costs associated to those organisations.

9. Estimates of the potential number of prosecutions have been sourced from data provided by Police Scotland on the number of reported incidents in Scotland in 2020, 2021 and 2022, along with exploration of the impacts of previously implemented safe access zones in other jurisdictions to determine likely rates of breaches of any safe access zone.

10. Account has also been taken of the responses to the public consultation<sup>1</sup> which Ms Mackay ran between 18 May – 11 August 2022 on the proposals for the Bill, although this did not seek to estimate specific costs. The consultation analysis showed varying views on whether or not the Bill would lead to increased costs, although overall a majority of respondents felt there would be at least some additional costs (either some increase in costs or a significant increase in costs).<sup>2</sup>

## Costs on the Scottish Administration

11. This section sets out the costs for the Scottish Administration and covers:

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<sup>1</sup> [abortion-services-safe-access-zones-consultation-document\\_final.pdf \(parliament.scot\)](https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/buffer-zone-consultation-summary.pdf)

<sup>2</sup> See pages 89-95 <https://www.parliament.scot/-/media/files/legislation/proposed-members-bills/buffer-zone-consultation-summary.pdf>

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- Establishing and defining the safe access zones
- COPFS, Scottish Courts and Tribunal Service (SCTS) and Scottish Legal Aid Board (SLAB) costs associated with new offences.

12. There are no custodial sentences attached to the proposed offence provisions, and the Scottish Government does not anticipate any costs to the Scottish Prison Service (SPS) as a result of offences created by the Bill. As the penalty attached to the Bill is a fine, section 219 of the Criminal Procedure (Scotland) Act 1995<sup>3</sup> does state that imprisonment may be imposed for failing to pay a fine. There may therefore be some costs for the SPS in this event, but the Scottish Government anticipates this to be in exceptional circumstances.

## Establishing and defining Safe Access Zones

13. As noted, the aim of the Bill is to create protected areas around premises which provide abortion services where certain behaviours will be prohibited and subject to criminal sanction to ensure consistent and preventative protection from harassment, intimidation and undue influence for those accessing abortion services. Significant consideration has therefore been given to the size of the zones, and the way in which they will be communicated to ensure sufficient awareness among those with an interest.

14. The Bill will tie protected zones to named and identifiable premises which are authorised to provide treatment for the termination of pregnancy under the Abortion Act 1967<sup>4</sup> (the 1967 Act). To this end, it is proposed that the Bill:

- creates an automatic protected ('safe access') zone of 200 metres for all premises which currently provide abortion services under the 1967 Act;
- requires premises which have a protected zone attaching to them to be identified in a list which is to be maintained and published online by the Scottish Government. The list must include maps of the premises, clearly identifying the area of the zone and will 'switch on' the zone where changes are made or new zones created;
- provides the operator of any premises subject to a protected zone with a power to apply to the Scottish Government for the zone to be increased;
- provides the Scottish Ministers with a power to decrease zone size;
- requires the Scottish Government to update and publicise the list and any changes where any zone is extended or otherwise altered, for example where services move premises;
- provides the Scottish Ministers with a regulation-making power to create further protected zones if appropriate.

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<sup>3</sup> [Criminal Procedure \(Scotland\) Act 1995 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1995/219)

<sup>4</sup> [Abortion Act 1967 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/1967/27)

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15. It is important that the law is known and understood by those who will be most directly affected by and/or might breach it (whether intentionally or unintentionally), and it is therefore necessary that the zones are defined and identified.

## Awareness raising about the Bill

16. The Scottish Government has held discussions with Police Scotland and COPFS, and they are currently of the view that the escalatory approach taken to enforcement by Police Scotland and the publication of information and maps should avoid risks that anyone could be arrested for an offence if they were not aware they were in a safe access zone. In particular, Police Scotland have indicated standard operating procedure would be to clarify to those carrying out anti-abortion activity that they were in a safe access zone and ask them to leave.

17. Additionally, the Scottish Government will be required to maintain a list of premises to which safe access zones apply, along with maps of the zones. A targeted communications plan will also be developed leading up to commencement of the Bill's provisions, including writing to organisations known to engage in anti-abortion or pro-abortion activity outside clinics to inform them about the legislation. There will be minor costs associated with publishing guidance for abortion providers and publishing the list and accompanying maps of safe access zones online. The maps will be designed and produced internally within the Scottish Government and published on the Scottish Government website in an accessible format. The Scottish Government has a contract in place for all publishing work with aps Group,<sup>5</sup> which it is estimated will cost between £1000-£3000.

18. Most of these publication costs will occur shortly before implementation of the legislation, but there would be small additional costs whenever the proposed list and accompanying maps need to be amended (either to add or remove protected premises, or when a provider requests that the size of a zone should be extended).

19. Costs to the Scottish Government are expected to be limited to awareness raising with those with an interest (particularly those who might wish to take part in any anti-abortion activity near a premise providing abortion services, but also affected service providers) prior to and following commencement of the legislation. This will help to explain and advise on the new measures that the Bill will introduce and will include the list of premises to which safe access zones apply. Work is currently ongoing to develop this communications plan, but there are not expected to be any significant costs beyond those set out above.

## Signage at some or all facilities defined as protected premises in the Legislation

20. There is no requirement in the Bill for signage to be displayed outside a protected premises, and there is no expectation at present for signage to be required. However,

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<sup>5</sup> [Home - APS \(theapsgroup.com\)](https://www.theapsgroup.com)

consultation on this matter will progress as the Bill makes its way through Parliament, and the following section sets out estimated costs in the event that it is determined that signage at all or some protected premises would be beneficial. If signage is installed, the recommended requirements will likely vary from site to site.

21. The Scottish Government would estimate that one to five signs per site (depending on the size of zone and number of entrances/exits) would be sufficient to ensure awareness, if it is determined signage is needed in particular locations. It should be noted that if any sites apply for an extension to their safe access zone and this is approved, there may be a requirement for additional signage. Furthermore, if signage is required in the Island Health Boards, additional transport costs would be incurred, but these are expected to be minimal.

22. The Scottish Government has estimated the cost of signage based on other recent legislation which has required signage; estimates are based on the manufacture and installation costs relating to that legislation (although costs may of course vary depending on numbers of signs purchased and inflation).

23. To note, costs have been estimated on the basis that there will be 29 signs required on commencement if the Bill is passed. While there are 30 protected premises, there are two buildings on Foresterhill Health Campus site in Aberdeen providing abortion services, and it is considered that one sign will be sufficient for the single site.

Table 1: Estimated Costs of Signage Manufacture (based on only one sign per site)

Item	Units	Estimate price per unit	Cost Estimate
Cost per design 1100cm x1100cm	29	£98	£2,842
Galvanised steel post	29	£44	£1,276
Post cap	29	£1	£29
Base plate	29	£3	£87
Anti-rotational clip	29	£1	£29
Delivery charge	29	£185	£5,365
<b>Total</b>		<b>£332</b>	<b>£9,628</b>

Table 2: Estimated Cost of Signage Installation (as above based on one sign per site)

Item	Units	Estimate price per unit	Cost Estimate
Installation – Post fixing	29	£105	£3,045

Table 3: Estimated Cost of Signage Per Number of Signs Required (manufacture and installation costs based on 29 total sites)

Number of signs at each site (29 total sites)	Total estimated cost
1	£12,673
2	£25,346
3	£38,019
4	£50,692
5	£63,365

24. If five signs per site were to be installed, it is estimated that the cost of signage, manufacturing and installation would be a maximum of £63,365. However, it is likely that very few sites would need five signs, with some sites requiring no or only one sign at the appropriate entrance. As signage is not required as part of the Bill, the costs relating to the installation of signage (if it is determined to be necessary) will be finalised during the implementation phase of the Bill, subject to its passage in the Scottish Parliament. The Scottish Government has therefore estimated the aforementioned maximum cost, although it is likely that the final cost would be significantly lower. The entire cost of signage would be funded from existing Scottish Government budgets. This is to ensure that no additional costs are passed on to NHS Health Boards, especially as the Bill will create an automatic safe access zone at all premises that provide abortion services (rather than only where a Health Board requests it).

25. Costs for any required signage are expected largely to be incurred during 2024-25 in time for commencement of the provisions. As the Bill allows for additional premises to become protected premises, there would be additional costs in future if and when any new hospitals or clinics become protected premises. There may also be some costs for removal of signage where a hospital ceases to provide abortion services, although it is not anticipated that those costs would be significant (based on the proposed maximum of five signs per site, the Scottish Government anticipates the maximum cost to be around £2200 for any new site that is required to have a safe access zone).

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26. It should also be noted that if a decision to install signage is taken, the costs associated with this would be in addition to other costs funded by the Scottish Government for the awareness raising about the Bill's provisions, which are set out above.

## Costs to COPFS, SCTS and SLAB

27. The Bill provides that certain behaviours will be prohibited and subject to criminal offences. Following a Police investigation, the COPFS will decide in each case whether or not to prosecute a person/people who are alleged to have conducted behaviour not permitted in a safe access zone, taking into account the evidence available and the seriousness of any alleged breach of the legislation.

28. It is not possible to provide an accurate estimate of the projected number of prosecutions given the offence being created by the Bill is new. However, the Scottish Government has received data from Police Scotland which provides the number of incidents reported to Police Scotland between January 2022, up to and including October 2022. This data has been used in tables 6, 7, 8, 9 and 10 to provide baseline for the estimate of the number of offences that could be committed, although, as the Bill should be preventative as most of those involved would seek to comply with legislative requirements, it is anticipated that there should be a reduction in the total number of incidents reported and that the number of annual incidents likely to lead to prosecution is on average likely to be lower than recent numbers of incidents. It should be noted that this incident data is not able to provide a full picture of the number of incidents that may be reported and investigated and relies on incidents reported to Police Scotland based on current legislation in place (many current protests and vigils are not reported to the Police). Multiple incident reports in the same day have not been counted separately.

29. A fine can be imposed by the court on conviction for an offence at both summary and solemn level. There are limits as to the level of fine which can be imposed on conviction at summary level proceedings (per section 5(2) of the Criminal Procedure (Scotland) Act 1995). The current maximum fine which can be imposed by a sheriff in summary proceedings is £10,000, whilst the maximum fine in solemn proceedings can be unlimited. The Bill allows for an individual to be convicted at either summary or solemn level.

30. Solemn prosecutions cost COPFS an average of £4,363 to prosecute, as opposed to the average cost of a summary procedure of £444.

31. The average court costs for solemn procedures for the Scottish Courts and Tribunals Service ("SCTS") is £2,190, as opposed to the average cost of a summary procedure of £430. These figures are the average cost of procedure and are a weighted average using the volume of procedures. The figures include depreciation.

32. The average costs of legal aid provided by the Scottish Legal Aid Board ("SLAB") have been calculated as £1,622 for solemn and £604 for summary proceedings. These figures are average cost per legal aid certificate (per individual), but clearly would

depend on whether or not an individual being prosecuted was eligible for legal aid. These figures are calculated by dividing total legal aid costs for cases which finish at each procedure by the corresponding number of legal aid certificates. Where a case progresses through several procedures, all legal assistance costs are included in the costs of the final procedure. The costs set out in paragraphs 29-31 are set out in table 5 below.

Table 5: Estimates of the unit cost of criminal procedures, 2016-17<sup>6</sup>

Level of Jurisdiction	Procedure	Average prosecution costs per procedure (COPFS)	Average court costs per procedure (SCTS)	Average legal assistance costs per procedure (SLAB)	Total average costs
Sheriff Court solemn	Section 76 pleas		£154	£1,294	
	Guilty plea at first diet		£203	£1,294	
	Guilty plea at trial diet		£258	£2,035	
	Trials – Evidence led		£9,351	£3,397	
	Average cost of procedure	<b>£4,363</b>	<b>£2,190</b>	<b>£1,622</b>	<b>£8,175</b>
Sheriff Court summary (includes stipendiary cases)	Guilty plea at pleading diet		£105	£565	
	Continued without plea then guilty plea tendered		£154	£565	
	Guilty plea at intermediate diet	<b>£444</b> (this figure represents the average cost of procedure for the Sheriff Court Summary and the Justice of the Peace court (excluding stipendiary cases))	£203	£584	
	Guilty plea at trial diet		£308	£584	
	Trials – Evidence led		£1,679	£764	
	Average cost of procedure		<b>£430</b>	<b>£604</b>	<b>£1,478</b>

<sup>6</sup> This is the latest available data from COPFS, accessed here: [Costs of the criminal justice system in Scotland dataset: 2016-17 \(published December 2019\) - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/costs-of-the-criminal-justice-system-in-scotland-dataset-2016-17/published-december-2019/)



33. Estimations on the number of prosecutions and subsequent annual costs to COPFS have been identified from projecting increases and decreases in incidents reported from 2022. It is unlikely that, even if incidents remain at the same rate following the introduction of the Bill, that the same number of incidents would lead to prosecution, or even require COPFS involvement, but the following table shows an estimation of what maximum costs may be. While there is some potential that certain groups or individuals may seek to test the legislation in first few years after its implementation, the Scottish Government would certainly hope to see very few cases needing to lead to prosecution in the longer term. The following table sets out the cost scenarios should all cases be either summary or solemn proceedings. In practice, there is likely to be a mixture of court proceedings at both summary and solemn level, so the following table shows a minimum and maximum cost estimation where the minimum cost is where all prosecutions were via summary procedure and the maximum where all prosecutions by solemn procedure.

Table 6: Potential number of court procedures annually and costs to COPFS, SLAB and SCTS

	Procedure	Number of people who could potentially be prosecuted	Cost of scenario
2022 incident numbers	Summary	16	£23,648
	Solemn		£130,800
25% increase in incidents	Summary	20	£29,560
	Solemn		£163,500
50% increase in incidents	Summary	24	£35,472
	Solemn		£196,200
25% decrease in incidents	Summary	12	£17,736
	Solemn		£98,100
50% decrease in incidents	Summary	8	£11,824
	Solemn		£65,400

34. As previously noted, there are no custodial sentences attached to the Bill. Rather the Bill makes all offences triable either on summary conviction, to a fine not exceeding the statutory maximum (currently £10,000), or on conviction on indictment to an unlimited fine.

## Costs to Police Scotland

35. The investigation of offences relating to the Abortion Services (Safe Access Zones) (Scotland) Bill will fall to Police Scotland. Police Scotland were involved in informing the Financial Memorandum.

36. Police Scotland does not routinely record the general costs involved for any specific operation as the nature of policing necessitates that officers are deployed to wherever their services are most required. The division to which individual officers or staff belong meet the cost of their core time and so there is no requirement to maintain a record of the cost of any particular duty carried out. Consequently, in this Financial Memorandum general enforcement along with any requirements for the production of guidance and the development of officer training in relation to the new offences are expected to be incorporated into normal duties and not incur additional costs.

37. Police Scotland have responded to incidents relating to abortion protests and vigils previously, which have been used for estimations on projected prevalence. These incidents have been considered under existing Police powers, and it should be noted that Police Scotland has indicated they have not previously been able to act where anti-abortion activity does not breach existing criminal law. This Bill will therefore provide legislation specific to anti-abortion activity that Police Scotland can enforce if needed. It is likely that where activity is present, there may be an increase in reports to Police Scotland and additional need for investigation and enforcement than at present. However, as Police Scotland do currently attend reports of anti-abortion activity and, as noted above, it is expected that most individuals or groups currently involved in protests or vigils related to abortion would seek to comply with the legislation, the Scottish Government does not expect additional costs of enforcing the new offence provisions to significantly increase from current costs.

## Costs on Local Authorities

38. As noted, the investigation of offences relating to the Abortion Services (Safe Access Zones) (Scotland) Bill will fall to Police Scotland. Local authorities will therefore not be expected to take any enforcement action. The Bill provisions do not introduce any new responsibilities for local authorities and as such will not result in any new costs for local authorities.

## Costs on other bodies, individuals and businesses

39. It is estimated that the introductory costs to the Scottish Government for the implementation of this legislation will be a maximum of £5,000, including costs associated with the publication of maps and minor costs associated with awareness raising about the Bill. This is to ensure that no costs are passed on to other bodies and organisations for the implementation of the Bill and the Scottish Government therefore anticipates that no costs will be accumulated on other bodies, individuals and businesses.

Summary of costings

40. A summary of potential annual costs of the provisions of the Bill are set out in Tables 7 -10. These costs could be incurred from 2024-25 onwards and the costs set out below represent the estimated annual cost based on a 50% reduction on incidents reported in 2022 (8 prosecutions), incidents remaining the same as 2022 (16) and 50% increase on incidents reported in 2022(24). It should be noted that the Scottish Government anticipates there to be fewer prosecutions, but the tables below provide a guideline. As above, the costs shown in the following tables assume that all prosecutions will be either solemn or summary proceedings, but there will likely be a mixture. The costs therefore provide an estimated maximum where all prosecutions are solemn proceedings, and a minimum where all prosecutions are summary.

41. 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.

42. Police Scotland are unable to provide estimated costings, but as mentioned previously we do not anticipate any significant increase to the current costs to Police Scotland for responding to anti-abortion vigils or protests at present.

Table 7: Summary of potential annual costs (based on a 50% reduction in cases reported in 2022)

SCTS (If summary proceedings)	£3,440
SCTS (If solemn proceedings)	£17,520
COPFS (If summary proceedings)	£3,552
COPFS (If solemn proceedings)	£34,904
SLAB (If summary proceedings)	£4,832
SLAB (If solemn proceedings)	£12,976

Table 8: Summary of potential annual costs (based on the same rate of cases reported in 2022)

SCTS (If summary proceedings)	£6880
SCTS (If solemn proceedings)	£35,040
COPFS (If summary proceedings)	£7104
COPFS (If solemn proceedings)	£69,808
SLAB (If summary proceedings)	£9664
SLAB (If solemn proceedings)	£25,952

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Table 9: Summary of potential annual costs (based on 50% increase in cases reported in 2022)

SCTS (If summary proceedings)	10,320
SCTS (If solemn proceedings)	£52,560
COPFS (If summary proceedings)	£10,566
COPFS (If solemn proceedings)	£104,712
SLAB (If summary proceedings)	£14,496
SLAB (If solemn proceedings)	£38,928
Local Authorities	£0
General Public	£0

Table 10: Summary of total annual costs\* (based on above tables)

	<b>2024-2025**</b>	<b>2025-2026</b>	<b>2026-2027</b>	<b>2027-2028</b>	<b>2028-2029</b>
Upper Estimate	£264,565	£196,200	£196,200	£196,200	£196,200
Lower Estimate	£16,824	£11,824	£11,824	£11,824	£11,824
Central Estimate	£111,512	£106,512	£106,512	£106,512	£106,512

\*The cost estimations are provided on the basis that the Bill will be implemented in time for possible prosecutions to occur in the 2024-25 financial year. In the event that the offence is not implemented until after the end of the 24-25 financial year, the only costs estimated to occur in 24-25 are the implementation costs which are a maximum of £68,365. The £196,200 will start incurring in 2025-26.

\*\* The upper estimate for year 1 costs include £63,365 which is the maximum estimate for signage costs. It should be noted that is still not decided whether signage will be required, and signage is not required as part of the bill provisions.

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