



ADF INTERNATIONAL

*ECOSOC Special Consultative Status (2010)*

UNIVERSAL PERIODIC REVIEW

**Submission to the 41st Session of the Human Rights  
Council's Universal Periodic Review Working Group**

**March 2022**

**Geneva, Switzerland**

**UNITED KINGDOM**

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## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions.
2. This report draws attention to the United Kingdom's (UK) shortcomings in protecting freedom of expression and opinion in public spaces and in promoting the right of parents to educate their children in accordance with their religious and philosophical beliefs.

### (a) Freedom of Expression

#### *Background*

3. Local Authorities (LAs) in England and Wales have delegated powers from the government to create so called buffer zones in public spaces, restricting the public from engaging in ordinary, everyday activities and speech in certain designated areas.<sup>1</sup> While such powers were introduced to enable LAs to limit or prohibit local nuisance or anti-social behaviour in public spaces, in practice, some LAs have introduced orders which severely and disproportionately restrict the everyday exercise of freedom of expression.
4. In order to create a "Public Space Protection Order" (PSPO), LAs need to be satisfied, on reasonable grounds, that two conditions are met, namely:
  - the activities have, or are likely to have, a "detrimental effect" on the quality of life of those in the locality; and
  - the effect of the activities is, or is likely, to be of a continuing nature, unreasonable, and justifies the restrictions.<sup>2</sup>
5. Of concern, LAs have broad discretion to introduce PSPOs, and there is little opportunity for the public to scrutinize or hold them accountable for the decisions.<sup>3</sup> Nonetheless, PSPOs confer criminal offences to members of the public who breach them, and sentences can include a monetary fine to the individual.<sup>4</sup> This means that the orders rely upon a substantially lower standard of due process than would be normally applied by parliamentary scrutiny for similar offences.<sup>5</sup>
6. The statutory wording behind PSPOs fails to adhere to basic rule of law principles such as intelligibility, clarity and predictability.<sup>6</sup> As a result, it has been possible for LAs in England to impose de-facto censorship zones around abortion facilities which criminalise non-threatening and silent prayer of persons in public spaces. Following

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<sup>1</sup> Anti-social Behaviour, Crime and Policing Act 2014, sec. 59.

<sup>2</sup> Id.

<sup>3</sup> Subjectively determined tests of "*reasonable grounds*" also allows Councils to justify the criminal liability attached to PSPOs based on limited evidence, instead of upon an objective assessment of the overall sufficiency of that evidence.

<sup>4</sup> Anti-social Behaviour, Crime and Policing Act 2014, sec. 67.

<sup>5</sup> e.g. the checks and balances of parliamentary debate, the experience, expertise and democratic mandate of MPs, and the analytical experience of the civil service.

<sup>6</sup> In 2010, Lord Bingham outlined 8 principles behind the Rule of Law in the British Constitution.

on from pressure exerted from pro-abortion organisations, which claimed that women were being “harassed” when walking into abortion facilities, two LAs in London and one in Manchester created such censorship zones for a period of three years each. This meant that people were prohibited from standing and silently praying in the public vicinity of the abortion clinics. All three PSPOs were challenged in the courts on the basis that the LAs did not have evidence of harassing behaviour and that the orders breached human rights.<sup>7</sup> Instead, the evidence pointed to the peaceful prayer and handing out of leaflets with the aim of offering vulnerable women an alternative choice to a pregnancy termination.

7. There is no legislative justification for imposing such wide-ranging PSPOs which limit freedom of expression in public spaces. Authorities already have powers and avenues to adequately deal with harassing and threatening behaviour in public spaces, rendering the imposition of such PSPOs as disproportionate and unjustified.<sup>8</sup> These include imposing conditions on locations or people,<sup>9</sup> imposing injunctions,<sup>10</sup> and criminal behaviour orders.<sup>11</sup> Council officers can also issue community protection notices if a person’s conduct is having a detrimental effect on the quality of life of the public.<sup>12</sup> Such avenues strike a better balance between protecting the human rights of individuals in public to express their views and imposing appropriate restrictions when the behaviour crosses a criminal threshold.
8. On 24 March 2022, the devolved Northern Ireland Assembly voted in favour of the Abortion Services Bill, which permits the implementation of de-facto censorship zones around abortion facilities nation-wide.<sup>13</sup> The Bill empowers the Department of Health to establish “safe access zones” around abortion facilities and criminalise any act

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<sup>7</sup> In April 2018, following pressure from a pro-abortion group called “Sister Supporter”, Ealing Council approved a PSPO which was followed by Richmond in April 2019 and Manchester in October 2020.

<sup>8</sup> Assault is covered by Criminal Justice Act 1988, sec. 39. Harassment is covered under Public Order Act 1986, sec. 4A, 5. Moreover, the Protection from Harassment Act 1997 gives the police wide powers to prevent any behaviour that is threatening, abusive and insulting and which causes (s4A) or is likely to cause (s5) harassment, alarm and distress.

<sup>9</sup> Public Order Act, sec. 14, as well as Anti-social Behaviour, Crime and Policing Act 2014, sec. 34,35, allow police to place conditions on the location, duration or numbers attending a public assembly, or to remove or reduce the likelihood of members of the public being harassed, alarmed or distressed, or to prevent local crime or disorder.

<sup>10</sup> Injunctions can be made under Local Government Act, sec. 222, where “it is expedient for the promotion of the interests of the inhabitants of the local area” or Anti-social Behaviour, Crime and Policing Act 2014, sec. 1, where the behaviour of individuals has been identified as causing, or likely to cause, harassment, alarm, or distress.

<sup>11</sup> Anti-Social Behaviour, Crime and Policing Act 2014, sec. 22. This order can be made on conviction for any criminal offence and is intended to help prevent the offender from engaging in further behaviour which causes, or is likely to cause, harassment, alarm, or distress to any person. The courts may impose a broad range of requirements on the offender which, if breached, is an offence carrying a maximum sentence of 5 years and/ or an unlimited fine.

<sup>12</sup> Anti-Social Behaviour, Crime and Policing Act 2014, sec.43 enables Police and Council Officers to issue a community protection notice if satisfied on reasonable grounds that the individual or body’s conduct is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and the conduct is unreasonable. Failure to comply with a notice is a criminal offence.

<sup>13</sup> Right to Life News ‘Northern Ireland makes it illegal to offer help to women outside abortion clinics’ (25 March 2022) <https://righttolife.org.uk/news/northern-ireland-makes-it-illegal-to-offer-help-to-women-outside-abortion-clinics>.

undertaken “with the intent of, or reckless as to whether it has the effect of, (a) influencing a protected person, whether directly or indirectly, (b) preventing or impeding access by a protected person, or (c) causing harassment, alarm or distress to a protected person”.<sup>14</sup>

9. In this context, imposing penalties for the generic conduct of “influencing” constitutes an unprecedentedly low threshold under criminal law, whose vagueness may well lead to the targeting of any forms and kinds of expression outside such zones, irrespective of any resulting harm.

#### *Freedom of Expression in International Law*

10. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which the UK ratified in 1976, provides that everyone’s right to freedom of expression includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Article 19(3) allows restrictions on expression only where they are necessary “for the respect of the rights and reputations of others” or “for the protection of national security, public order or public health or morals”.<sup>15</sup>
11. Furthermore, Article 21 guarantees the right to peaceful assembly and similarly limits the scope of permissible restrictions to its exercise, while also stipulating that such measures must be “necessary in a democratic society”.<sup>16</sup>
12. As clarified inter alia by the Human Rights Committee in its General Comment No. 34, restrictions on free expression must be provided by law, must be imposed on one of the permissible grounds provided, and must conform to the strict tests of necessity and proportionality.<sup>17</sup> The Human Rights Committee defines the principle of proportionality as requiring inter alia, “the least intrusive instrument amongst those which might achieve their protective function”.<sup>18</sup> It also observes that the state must establish “a direct and immediate connection between the expression and the threat”.<sup>19</sup>
13. Therefore, the wide authority that LAs have to create PSPOs in certain localities is flagrantly at odds with the permissible grounds for restricting freedom of expression and assembly under international law. The same is true for the establishment of “safe access zones” in Northern Ireland, whose restrictions on fundamental freedoms are patently disproportionate in relation to the pursued objective. Claims that these measures are necessary to preserve the rights or reputation of women are unwarranted, as the presence of demonstrators does neither prevent access to abortion facilities, nor result *per se* in a threat to the safety of its visitors.

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<sup>14</sup> Abortion Services (Safe Access Zones) Bill, NIA Bill 35/17-22 <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/non-executive-bills/session-2017-2022/abortion-services-safe-access-zones-bill/abortion-services-bill---as-introduced---full-print-version.pdf>, art. 6(2).

<sup>15</sup> International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 19.

<sup>16</sup> *Id.*, art. 21.

<sup>17</sup> UN Human Rights Committee, General Comment No. 34 (2011), CCPR/C/GC/34, 22.

<sup>18</sup> *Id.*, 34.

<sup>19</sup> *Id.*, 35.

## (b) Parental Rights in Education

### *Background*

14. British education law has regard to the general principle that pupils are to be educated in accordance with the wishes of their parents.<sup>20</sup> This principle extends to the legal requirement upon governing bodies to have regard to the wishes of parents in relation to pupils in maintained schools.<sup>21</sup>
15. In England, pursuant to the Relationships and Sex Education (RSE) statutory guidance issued by the Department for Education for implementation in September 2020, all schools – state-funded and independent – are required to teach a comprehensive sexuality and relationships education curriculum.<sup>22</sup> According to the guidance, while taught content should align with the age and religious background of the child, the final decision about age-appropriateness rests with the school decision-making authority. The fact that schools are entitled to choose which resources to use has raised concerns among parents about the types of materials used in some schools, deemed age-inappropriate and overtly “sexualizing”.
16. The UK has historically permitted parents to wholly or partially excuse their children from receiving sexuality education in school, except for in National Curriculum lessons relating to biology and reproduction.<sup>23</sup> This right to “opt-out” was formerly unqualified in primary or secondary schools, meaning parents did not need to provide the reasons for their decision. With the introduction of RSE, however, this right has now been significantly weakened in practice.
17. In order to opt a child out of sexuality education classes in secondary schools, parents in England are now required to submit a request for the head teacher’s approval. Each school is responsible for setting out the steps required to this end in their relevant policy, which parents must adhere to.<sup>24</sup>
18. In Wales, where education law and policy is delegated, sexuality education will become compulsory for all pupils from 2022.<sup>25</sup> The Welsh government has overridden the prior statutory right of parents to withdraw their child from sex education lessons by distancing its law from the previous legal obligations created by the British Parliament.<sup>26</sup> While the Welsh Government ran a public consultation prior to the finalization of the legislation, it omitted a question on whether an opt-out ought to be

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<sup>20</sup> Education Act 1996, sec. 9.

<sup>21</sup> Education and Inspections Act 2006, sec. 38(1)(5).

<sup>22</sup> The Relationships Education, Relationships and Sex Education and Health Education (England) Regulations 2019.

<sup>23</sup> Education Act 1996, sec. 405 provides, “[i]f the parent of any pupil in attendance at a maintained school requests that he may be wholly or partly excused from receiving sex education at the school, the pupil shall, except so far as such education is comprised in the National Curriculum, be so excused”.

<sup>24</sup> Education Act 1996, sec. 405(2).

<sup>25</sup> Curriculum and Assessment (Wales) Act 2021.

<sup>26</sup> Curriculum and Assessment (Wales) Act 2021, sched. 2, sec. 20, which reads “In section 405 (exemption from sex education)— (a) in the heading, after “sex education” insert “in England”; (b) in subsection (1), after “maintained school” insert “in England”.

permitted in the new law, with the effect that the public were not properly consulted about the changes.

#### *Parental Rights in International Law*

19. Article 18(4) of the ICCPR recognizes that States Parties must “have respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with their own convictions”.<sup>27</sup>
20. Moreover, Article 13(3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that,

“The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.”
21. Article 5 of the Convention on the Rights of the Child require States Parties to respect the responsibilities, rights and duties of parents [...] or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of his or her (Convention) rights. Article 18(1) further acknowledges that “parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child.”<sup>28</sup>
22. The full or partial restriction of a parent’s right to opt a child out of normative sex education classes is therefore in clear violation of the UK’s obligations under international law.

#### **(c) Recommendations**

23. In view of the above, ADF International recommends the following:
  - a. Ensure full respect for the rights to freedom of expression and assembly in all public spaces, including by repealing or reviewing laws permitting the establishment of “buffer zones” around abortion facilities;
  - b. Amend Chapter 2 of the Anti-social Behaviour, Crime and Policing Act 2014 to ensure full respect for freedom of expression and assembly in the establishment and maintenance of public spaces protection orders;
  - c. Guarantee full respect for the right of parents to raise and educate their children in accordance with their moral and religious convictions;

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<sup>27</sup> International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 18.

<sup>28</sup> International Covenant on Economic, Social, and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 999 UNTS 171 (ICESCR), art. 13.

- d. Ensure that parents are able to opt their children out of education programs which violate their religious or moral convictions, including school-based sex education, in accordance with international human rights norms and standards.



**VIENNA**

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