

# HOME OFFICE: ABORTION CLINIC SAFE ACCESS ZONES: NON-STATUTORY GUIDANCE

Response from Humanists UK, January 2024



## ABOUT HUMANISTS UK

At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by 120,000 members and supporters and over 115 members of the All-Party Parliamentary Humanist Group. Through our ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.

We campaign in favour of women's sexual and reproductive rights, in particular with respect to abortion. Our position on abortion is 'pro-choice'. We are a member of the steering group of Voice for Choice, the coalition of UK pro-choice groups, along with other pro-choice groups across the UK such as BPAS, MSI Choices, Abortion Rights, FPA, Brook, and the Abortion Support Network. We are a founding supporter of the Back Off campaign, coordinated by BPAS, which aims to change the law to make it possible to establish protest-free zones around abortion clinics.

## CONSULTATION RESPONSE

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

No. We do not believe the non-statutory guidance lives up to the letter or spirit of the law contained in Section 9 of the Public Order Act (POA) 2023 as passed by the UK Parliament. The guidance fails to protect women seeking abortion services and the staff who work in these premises who need to access their place of employment without being harassed so that healthcare services can be facilitated or performed.

The guidance offers numerous loopholes to the legislation that was passed by the UK Parliament and would enable protestors to continue to harass women seeking abortions. Around 100,000 women each year use abortion services that are targeted by anti-abortion groups. This hamstring the law and will tie up the police's ability to address the problem that the law was made to address: that women face harassment outside of abortion clinics.

We have pulled out key paragraphs of concern and explained why we do not think the guidance is clear and easy to understand in line with the law:

*'2.5 The term "influence" is not defined in the statute and therefore takes its ordinary dictionary meaning. The Government would expect 'influence' to require more than mere mention of abortion or the provision of information. **As such, informing, discussing or offering help does not necessarily amount to 'influence'** [emphasis added].*



We strongly object to the guidance seemingly permitting anti-abortion protestors to continue to harass women outside of abortion clinics by offering information, discussion, or offering help. It is wholly inappropriate for this to be conducted outside of an abortion clinic at which point the woman has likely made up her mind, or wishes to speak to clinicians inside to inform her opinion.

The decision to have an abortion is a deeply personal one and in many cases can be highly distressing. There have been examples of anti-choice protestors displaying distressing images of dismembered fetuses and leaflets with misleading and often outright incorrect information about abortion. The intent behind such images and literature is not to provide a legitimate service to women accessing these clinics, but to prevent an abortion from occurring through emotional manipulation. This is an illegitimate interference with women's right to access both medical services and accurate information about her health. Therefore, displaying such material should not be allowed to occur in the immediate vicinity of the clinic. These images will also be distressing for local residents who are not service users to the clinic but who find these images graphic and upsetting to see.

*'2.7 Prayer within a Safe Access Zone should not automatically be seen as unlawful. Prayer has long received legal protection in the United Kingdom and these protections have not changed as a result of section 9. Silent prayer, being the engagement of the mind and thought in prayer towards God, is protected as an absolute right under the Human Rights Act 1998 and should not, on its own, be considered to be an offence under any circumstances. However, where an individual is praying, but their conduct is also intrusive[footnote 1], this is likely to be an offence under section 9.'*

We are deeply alarmed by this draft guidance which seeks to permit prayer within a SAZ, despite Parliament itself explicitly rejecting an amendment which sought to permit this during the passing of the POA 2023<sup>1</sup>. We are a campaigning organisation that prides itself and our work on upholding the right to freedom of religion or belief.

The Human Rights Act enforces the European Convention on Human Rights and in Article 9<sup>2</sup> states:

*'Freedom of thought, conscience and religion*

*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*

*Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.'*

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<sup>1</sup> Public Order Bill Hansard. 7 March 2023.

<https://hansard.parliament.uk/commons/2023-03-07/debates/786439D4-42C7-43CA-92A3-B3F9859F3BE1/PublicOrderBill>

<sup>2</sup> Human Rights Act 1998. <https://www.legislation.gov.uk/ukpga/1998/42/schedule/1>



However, as stated in the second part of this right, the right to manifest one's religion or belief has limitations as prescribed by law and are necessary in a democratic society in the interests of public safety, public order, health or morals, or for the rights and freedoms of others. In this instance, it is balancing FoRB with the right to public order, health, and with the reproductive freedoms of others.

With this in mind, we do not believe that silence prayer, carried out within a safe access zone, and not in a private dwelling or a building or site used as a place of worship, should be permitted – and the UK Parliament agreed during the passing of the Act.

The Supreme Court in stated in its ruling on the Safe Access Zones legislation in Northern Ireland in paragraph 128 that 'women wishing to access reproductive health facilities, and the staff who work there, are a captive audience for protesters who wait outside the premises, so that the women and staff are compelled to listen to speech or witness silent prayer which is unwanted, unwelcome and intrusive.'<sup>3</sup> It based this off evidence from the Royal College of Obstetrics and Gynaecologists which was summarised in paragraph 88 of the judgment:

*'88. The Royal College submission referred to research carried out by Dr Pam Lowe. The court has been provided with a report by Dr Lowe and Dr Graeme Hayes, "A Hard Enough Decision to Make': Anti-Abortion Activism outside Clinics in the Eyes of Clinic Users – A Report on the comments made by BPAS services users" (2015), based on research in England and Wales. It supports the remarks made about silent protests in the Royal College submission. It reports, for example, that "many [clinic users] **perceived the essential elements of a religious vigil ... to be both intrusive and highly stressful**" (p 17), and that "praying is explicitly seen as being **offensive and intrusive, and to constitute a form of confrontation and harassment**" (p 19). It was found to be "**clear that the presence of activists outside clinics does cause significant alarm and distress to many clinic service users**" (ibid).'*

Further, a recent High Court ruling found banning silent prayer at a Public Spaces Protection Order around a BPAS abortion clinic in Bournemouth was legitimate and balanced the rights contained in Articles 9, 10, and 11 of ECHR with the rights of women seeking abortions and staff working to provide them. In considering evidence on silent prayer and in the distribution of materials judges explicitly stated:

*'It is, in our judgment, naïve and simplistic to suggest that activities of this kind in this context cannot be considered "detrimental" to a person's quality of life and "unreasonable" just because they are silent, or the literature distributed is informative rather than shocking and confrontational'*<sup>4</sup>

Given this evidence, we do not believe that this guidance is in line with the Supreme Court ruling, nor with the substance of the legislation in the POA itself. We uphold the right for freedom of religion or belief but do not see a reason as to why silent prayer must take place outside of an abortion clinic

<sup>3</sup> <https://www.supremecourt.uk/cases/docs/uksc-2022-0077-judgment.pdf>

<sup>4</sup> <https://www.bailii.org/ew/cases/EWHC/Admin/2023/3229.html>



within a SAZ and not anywhere else. Women seeking to use, and staff working in abortion clinics, have a right to have their healthcare needs met/go to work without facing harassment and intimidation.

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

No. For the reasons listed above we view that the guidance creates loopholes to enable women to continue to be harassed outside of abortion clinics, which runs counter to the Section 9 Offence under the Public Order Act.

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

Yes

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

Yes

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

No. We do not believe protest activity should be able to take place at any time within a SAZ. Some abortion clinics may open later than listed and therefore their staff or service users may therefore be exposed to protest.

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

No for the reason set out above.

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

No.

It is not clear what guidance paragraph 5.3 refers to and how this would operate in practice in a way that would protect service users and employees working in abortion clinics. We have provided further details on paragraphs of key concern below:

*'5.4 A service user has a right under Article 8 of the European Convention on Human Rights to a private life, which is underpinned by the notion of personal autonomy. **The police and prosecutors should be careful not to assume that a service user does not wish to exercise her personal***



**autonomy to engage with bystanders with alternative viewpoints or to receive charitable support [emphasis added].** This assumption is likely to interfere with the service user's and the suspect's Article 8 rights to the extent that they have both voluntarily entered a conversation in a public space. Hence some cases may require a proportionality assessment.'

We find this deeply concerning. We cannot see that a woman can consent to be targeted outside of an abortion clinic. Even if a woman did want to hear from those with anti-abortion views, this could reasonably take place at any point prior to her entering the SAZ both online or in-person at which point she could seek objective and impartial advice from medically regulated personnel inside. By viewing consultation responses, for instance, to the PSPO in Bournemouth, the High Court stated in its judgment in paragraph 67 that 'the vast majority of visits to the Clinic were made by women who had no desire at that time to be provided with any information about alternatives to abortion unless it be by doctors and other specialist trained staff employed at the Clinic. To have unwanted information thrust upon one at such a time is a substantial intrusion into privacy.'<sup>5</sup>

The legislation is clear that the exemptions that apply to SAZ is detailed in S.9(5) of the POA which does not permit for hearing alternative viewpoints or charitable support.

*'5.5 Whilst the right to manifest beliefs is qualified under Article 9 of the European Convention on Human Rights, the right to hold any belief or thought is absolute. There can be no legitimate justification on the part of the public authority to limit, interfere or otherwise penalise persons for their exercise of this aspect of the Article 9 right. **Therefore, the police should never ask anyone what they are thinking and should not base an arrest solely on any silent thoughts an individual may admit to having.***

It is not clear how the police would be able to assess/move on/arrest protestors who are silently praying outside of abortion clinics. This has the risk of enabling silent prayer vigils which would defeat the purpose of the legislation and permit the ongoing harassment and intimidation of women seeking abortions.

*'5.7 Safe Access Zones are public spaces and individuals will be passing through or even stopping within the area for various reasons. The police should not target those they believe to have pro-life views. That may amount to unlawful discrimination on the basis of religion. **Motionless, unintrusive conduct should not, on its own, be treated as an offence. The mere presence of someone in a Safe Access Zone with no indication they are going to engage with anyone accessing, providing or facilitating abortion services should never attract police action [emphasis added].** Section 9 does not criminalise presence within a Safe Access Zone. Whilst presence is a necessary element of the offence, it does not by itself constitute the offence. Section 9 prohibits conduct engaged in with the required state of mind, not presence. The police should only engage individuals where there are reports of observable acts that give rise to reasonable grounds to suspect that an individual is influencing, obstructing or causing alarm, harassment or distress contrary to section 9. Simply being present should never be considered an observable act.'*

<sup>5</sup> <https://www.bailii.org/ew/cases/EWHC/Admin/2023/3229.html>



It is not clear what would be permitted under this guidance. By allowing motionless protestors in its guidance, the Government is undermining the legislation which seeks to protect women's rights to access abortion. The evidence is clear that service users can be intimidated by those standing outside of abortion clinics – either because they perceive there could be a risk of violence or because they feel they are being judged.

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

No.

As described above, we do not believe that Section 5 of the guidance reflects the Section 9 offence.

It creates loopholes which would enable protestors to continue harassing women and would hamstring the police's ability to take action to enforce the law as introduced by the UK Parliament.

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

No.

This makes the police responsible for deciding how to balance competing rights when it is clear as indicated above by reference to the Supreme Court as well as a recent High Court ruling that the matter is settled.

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

No. For the reasons described above.

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

No. We do not believe signage should be made a requirement of enforcing the Act, nor should the maintenance and visibility of signs be considered a factor when enforcing the SAZ. Not only was this not specified within the legislation and therefore is an additional hurdle to protecting women seeking to access their healthcare rights, it would create a barrier for enforcement as signs may be vandalised as is commonly seen, for example, with ULEZ signs being vandalised.<sup>6</sup>

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<sup>6</sup> The Independent. 'Enforcement camera vandalised with 'no Ulez' sign in Greater London'.  
<https://www.independent.co.uk/news/uk/metropolitan-police-greater-london-ulez-government-facebook-b2401532.html>



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

No. For the reasons as described above.

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

No.

**For more details, information, and evidence, contact Humanists UK:**

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