



The Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023

The Government has tabled regulations under sections 12 and 14 of the Public Order Act 1986, as amended by the Police Crime Sentencing and Courts Act 2022, purporting to further define the meaning of ‘serious disruption to the life of the community’.

Amnesty International has very serious concerns about both the content of these draft regulations and how they have arisen. The regulations lower the threshold for police interference with the right to protest to an extremely low level, to the point where in practice they empower police to pick and choose which protests are and aren’t allowed to continue. Moreover, they are the same proposals that were very recently considered and rejected by the House of Lords when they were tabled as government amendments to the Public Order Bill (now Act). While we understand and respect the general reluctance of the House of Lords to vote down secondary legislation, in these highly unusual circumstances **Amnesty International strongly urges Peers to support the fatal motion rejecting these regulations.**

The Regulations Breach Human Rights Standards

Sections 12 and 14 of the 1986 Act provide the police with powers to impose conditions on public processions and static assemblies and detail the circumstances in which these powers can be used. Conditions can vary from case to case but at the top end can effectively terminate a protest. Once imposed they are backed by criminal sanction, making protesters’ failure to comply with them a potentially imprisonable offence.

These powers are long-standing, but have been expanded over the last two years as part of the government’s legislative agenda of cracking down on peaceful but disruptive protest. Under the Police, Crime, Sentencing and Courts Act, the concept of ‘serious disruption to the life of the community’, one of the thresholds at which police can impose conditions, was expanded to include noise generated by protest, significant delays to time-sensitive products and prolonged disruption to access to essential goods and services.¹ These provisions were in themselves highly controversial from a human rights perspective, as they created very broad grounds for interference with peaceful protest rights.²

The new regulations add to the list of circumstances that constitute ‘serious disruption’ and cite protests that cause a “physical obstruction” which results in “hindrance”, “delay” or “disruption” that is “more than minor” to the carrying out of “day-to-day activities”, “delivery of time sensitive products” or “access to essential goods or services”. The regulations therefore introduce a new, and extraordinarily broad, threshold of causing ‘more than minor hindrance to day to day activities’ and also lower the pre-existing thresholds of causing ‘significant’ and ‘prolonged’ delays and disruption to delays and disruption that are merely ‘more than minor’.

The terms of these regulations are therefore so broad as to potentially catch the vast majority of protests. It is difficult, for example, to see how a public procession could be held on a public road in a city that wasn’t caught by the regulations’ reference to causing ‘more than minor hindrance’ to people making journeys. Likewise, a static protest of almost any size outside a building, on a public thoroughfare or even in a public park would be at risk of being regarded as causing more than minor hindrance to people wishing to access those places.

However, the regulations do not stop there. They also permit police to justify the imposition of conditions on a protest not just based on the protesters’ own conduct, but on the conduct of other

¹ PCSC Act 2022, ss.73 &74

² See eg <https://www.amnesty.org.uk/resources/briefing-police-crime-sentencing-and-courts-bill-part-3-report-stage>

protesters, at other protests in the same area, at other times.³ As such, under these regulations, no ‘serious disruption’ (even given the extremely broad definition of the concept provided by these regulations) needs to have occurred for the police to impose conditions on a protest.

This legislative attack on the exercise of peaceful protest rights contradicts the clear position expressed by both the European Court of Human Rights and the UN Human Rights Committee, that disruption is inherent in protest and that, provided the protest remains peaceful, the authorities must tolerate that disruption and must only impose restrictions in narrowly defined circumstances related to the protection of others’ human rights.⁴ As the UN Human Rights Committee has stated, ‘assemblies are a legitimate use of public and other spaces, and since they may entail by their very nature a certain level of disruption to ordinary life, such disruptions have to be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions.’⁵ The committee goes on to find that even those protests that cause a high level of disruption may only be dispersed if that disruption is *both* “serious and sustained”.⁶

The bar set for authorising police interference by these proposals bears no relation to these high threshold tests. While it may be hoped that, in practice, these powers will not be used against all the protests that fall within their terms (and thus effectively bring an end to most protest in this country), the protection of the right to protest in the UK should not depend merely on the forbearance of the police. The breadth of these powers will provide a lawful pretext for police to arbitrarily impose restraints on almost any protest they wish, as there will always be a law to draw on to justify police intervention. The inconsistent use of these powers will inevitably manifest itself in racially and politically discriminatory policing.⁷

The Regulations Abuse Parliamentary Process

Peers will remember that these exact same proposals were tabled as government amendments to the Public Order Bill between its Committee and Report stages in the House of Lords. Peers will also remember that these proposals were voted down at that time, because of a combination of their draconian nature and the lack of proper Parliamentary scrutiny of the proposals caused by their late appearance in the Bill. These facts were omitted from the Government’s explanatory memorandum on the regulations.

As the Secondary Legislation Scrutiny Committee has stated, ‘As well as not justifying the substance of the provisions, the Home Office has not provided any reasons for bringing the measures back in the form of secondary legislation, which is subject to less scrutiny, so soon after they were rejected in primary legislation. We are not aware of any examples of this approach being taken in the past.’⁸

We understand the constitutional reasons why the House of Lords does not normally vote down regulations made under the authority of primary legislation that has been passed by the House of Commons. However, exceptions to that approach are permitted; otherwise the affirmative resolution procedure would lose all meaning. Regulations are being pushed through, the substance of which the House of Lords has already recently rejected because of their severity and lack of Parliamentary scrutiny. The regulations retain the same severity and have been subject to even less Parliamentary scrutiny. The regulations breach the UK’s international human rights obligations and will lead to racially and politically discriminatory policing of public protest. It is the role of Parliament to ensure that the law protects the right to protest and guards against its arbitrary or capricious regulation. If ever specific circumstances justified a (rare) departure from the general rule, it would be these.

Amnesty International urges Peers to support the fatal motion.

³ Clause 2(3)(b&c), Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023

⁴ UN Human Rights Committee General Comment 37; *Kudrevičius v Lithuania* (App no 37553/05) GC Judgment, 15 Oct 2015

⁵ UN Human Rights Committee, General Comment 37, para 47

⁶ UN Human Rights Committee, General Comment 37, para 85

⁷ See eg <https://www.met.police.uk/police-forces/metropolitan-police/areas/about-us/about-the-met/bcr/baroness-casey-review/>

⁸ House of Lords, Secondary Legislation Scrutiny Committee, 38th Report of Session 2022–23