

# LIBERTY

## **LIBERTY'S SUBMISSION TO THE INDEPENDENT REVIEW OF PUBLIC ORDER AND HATE CRIME LEGISLATION IN ENGLAND AND WALES**

**DECEMBER 2025**

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## INTRODUCTION

### LIBERTY AND SCOPE OF THIS SUBMISSION

1. Liberty is an independent membership organisation founded in 1934. Since then, it has worked to defend civil liberties and human rights in the United Kingdom, with a long track record of upholding the rights to protest and free expression. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.
2. This submission focuses on the protest and public order framework and how it has affected, and continues to affect, the rights to protest and to freedom of expression, as well as the communities with whom Liberty works. It draws on Liberty's recent work on protest and public order, including engagement with the Police, Crime, Sentencing and Courts Act (PCSCA) 2022, the Public Order Act (POA) 2023 and the Crime and Policing Bill, alongside our developing work on free speech and hate crime. In relation to hate crime, the submission responds only to those questions where we have expertise. Hate crime is therefore treated at the level of core concerns, trends and questions that the Review should address, rather than a set of detailed reform proposals. This reflects the fact that public order and hate crime legislation serve distinct legal purposes.

### GENERAL TRENDS IN PROTEST/PUBLIC ORDER AND HATE CRIME LEGISLATION

3. Over the past 5 years, and particularly since the PCSCA 2022, the legal landscape for protest in England and Wales has been reshaped by a series of legislative interventions.<sup>1</sup> Successive measures on protest and public order, including the PCSCA 2022, the POA 2023, Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 and now the Crime and Policing Bill, have expanded the range and reach of police and state powers while lowering thresholds for interference with protests and processions, and increasing criminal sanctions. These changes have been piecemeal, rather than as part of a single, coherent review of what is necessary in a democratic society to manage public order while respecting rights.

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<sup>1</sup> Article 11 Trust & Netpol. 2025. *This Is Repression: The State of Protest in 2024*. Available at: [https://netpol.org/wp-content/uploads/2025/03/WEB\\_ThisIsRepressionReport-Final.pdf](https://netpol.org/wp-content/uploads/2025/03/WEB_ThisIsRepressionReport-Final.pdf)

4. Over the same period, public debate about ‘hate crime’ and ‘hate speech’ has intensified, often in connection with protests. Certain protests, for example Palestine solidarity marches and some migration-related protests, have been publicly characterised by senior politicians and sections of the media as ‘hate marches’ or a form of ‘extremism’.<sup>2</sup> This blurs the line between protest policing and hate crime in public discourse, even where the legal frameworks are distinct. This conflation is harmful because it risks driving operational responses based on political heat or anticipated community tension rather than evidence of criminal conduct, and can shift the default policing posture from facilitation to restriction in relation to otherwise lawful protests. It also harmful for hate crime policy itself, because it can distract from the need to focus on serious targeted harm and on improving protection, reporting confidence and outcomes for affected communities.<sup>3</sup> The scale and seriousness of these trends reinforce why this Review must avoid importing the same rhetorical shortcuts into its analytical framework and instead assess public order and hate crime powers against their distinct legal purposes and thresholds.

## CORE CONCERNS FOR THE REVIEW

5. This submission is structured around the six questions set out in the Review’s call for evidence. For each question, we first address protest and public order, and then, where appropriate, address hate crime and hate-related expression. Across those questions, our core argument is that the public order framework has become so wide, complex and vague that it increasingly blurs the boundary between robust, disruptive democratic activity and genuinely harmful conduct. The cumulative expansion of powers enables pre-emptive and preventive restrictions that chill protest and falls heaviest on racialised and marginalised communities.
6. Liberty is concerned that this Review is being conducted at the same time as further primary legislation on protest is being taken through Parliament, rather than first taking stock of the existing framework and assessing whether it complies with the requirements of legality, necessity and proportionality in a democratic society. As highlighted above, we are concerned with the Review’s combined framing of protest/public order and hate crime, which we fear risks

<sup>2</sup> openDemocracy. 2024. *How the UK government is redefining protest as extremism*. Available at: <https://www.opendemocracy.net/en/uk-palestine-protesters-extremism-islamophobia-gove-makram-ali/>

<sup>3</sup> Home Affairs Committee. 2024. *Policing of Protests: Thirds Report of Session 2023-24*. Available at: <https://committees.parliament.uk/publications/43477/documents/218954/default/>

echoing wider public conflations of these issues. We are also concerned by aspects of the call for evidence process to date, including that some key protest organising and monitoring groups do not appear to have been proactively contacted, that we had not seen a full, comprehensive and publicly available set of terms of reference prior to being invited to submit evidence, and the very short timeframe provided to develop and submit responses.

7. In light of this, it will be important that the Review's work is grounded in a clear human rights framework, with broad and balanced terms of reference that cover all relevant public order and hate crime powers and test their compatibility with Articles 10 and 11 of the European Convention on Human Rights (ECHR) and with domestic equality duties. The Review must provide meaningful opportunities for those most affected, including protest organisers, grassroots groups, affected communities and wider civil society, to contribute to its evidence base. We would also encourage the Review to consider how the Law Commission's expertise might support this work, and to use the process to test rigorously whether existing powers are necessary, proportionate and properly constrained, rather than assuming that the current direction of travel is either inevitable or justified.

## 1. YOUR EXPERIENCE OF PROTESTS, PUBLIC EXPRESSION AND HATE-RELATED INCIDENTS

### 1.1. PROTEST – OVERALL PATTERNS

8. Since the passage of the PCSCA 2022, Liberty's work on protest has combined strategic litigation, intervention work, policy analysis and practical support for organisers. We have briefed parliamentarians across all recent protest legislation, including the PCSCA 2022, the POA 2023, the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 and the Crime and Policing Bill, emphasising the cumulative expansion of powers and the need to test new and existing measures against the requirements of Articles 10 and 11 ECHR, including the state's positive duty to facilitate assembly.<sup>4</sup> This includes our successful challenge to the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023, where the courts confirmed that 'serious' is

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<sup>4</sup> Liberty. 2023. *Protest rights: briefings and reports*. Available at: <https://www.libertyhumanrights.org.uk/issue/protest-briefings-and-reports/>; UK Parliament. 2025. *Crime and Policing Bill: Written evidence: Liberty*, 8 May 2025. Available at: <https://bills.parliament.uk/publications/60702/documents/6481>

a genuinely high threshold and cannot be diluted to capture conduct that is merely ‘more than minor’, reinforcing the importance of clarity, restraint and parliamentary scrutiny in the protest framework.<sup>5</sup> We have also engaged in civil injunction contexts where public and private bodies have sought broad, pre-emptive restrictions on protest activity, raising concerns about the chilling impact of wide ‘persons unknown’ style orders and the risks they pose to lawful protest.<sup>6</sup> Alongside this litigation and policy work, Liberty provides accessible protest rights resources and training, including bust cards and guidance designed to help organisers and participants understand fast-changing powers and their practical implications, with specific resources to support safer and more accessible participation for disabled protesters.<sup>7</sup> We have supported a range of organisers, including rural and farming groups, disability rights campaigners, environmental groups, women’s rights organisations, trade unions, students and broader community-based networks, to navigate this evolving framework and steward protests lawfully and confidently.

9. Protesting has become markedly more legally risky and harder to navigate in practice over the last three years. Organisers and participants are confronted with a complex web of powers, conditions and criminal offences that have been layered onto the Public Order Act 1986 rather than rationalised.<sup>8</sup> They often receive late notice of conditions, sometimes in terms that are highly technical or difficult to interpret on the ground and face the possibility of arrest and imprisonment for conduct that a few years ago would have attracted minor sanctions.

## 1.2. CUMULATIVE IMPACT OF PUBLIC ORDER POWERS ON PEOPLE WHO PROTEST

10. On the ground, the cumulative impact of expanded public order powers is experienced less as a series of discrete legislative changes and more as a general tightening of control. Home Office data show that, between 28 June 2022

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<sup>5</sup> Court of Appeal (England and Wales). 2025. *Liberty v Secretary of State for the Home Department (Serious Disruption Regulations)*. Available at: <https://www.judiciary.uk/wp-content/uploads/2025/05/Liberty-v-Secretary-of-State-for-the-Home-Department.pdf>

<sup>6</sup> Liberty. 2025. Cambridge University granted extreme protest injunction. 21 March 2025. Available at: <https://www.libertyhumanrights.org.uk/issue/cambridge-university-granted-extreme-protest-injunction/>

<sup>7</sup> Liberty. 2025. Advice and information: Protest. Available at: <https://www.libertyhumanrights.org.uk/advice-and-information/?scroll-to=topics&topic-filter=protest>

<sup>8</sup> House of Commons Library. 2025. *Police Powers: Protests (Research Briefing, 23 October 2025)*. Available at: <https://researchbriefings.files.parliament.uk/documents/SN05013/SN05013.pdf>; Home Affairs Committee. 2024. *Policing of Protests: Thirds Report of Session 2023-24*. Available at: <https://committees.parliament.uk/publications/43477/documents/218954/default/>

and 31 March 2024, sections 12 and 14 powers were used to impose conditions on 473 protests, with 277 arrests recorded for breach; the Metropolitan Police accounted for 95% of recorded uses where comparable force-level data was available.<sup>9</sup> In London, FOI analysis cited by Greenpeace found that over the last six years the Metropolitan Police made more than 600 arrests at protests for conspiracy to cause public nuisance over the last six years, yet only 18 (2.8%) resulted in charges.<sup>10</sup> While protest-specific ethnicity data remain limited, wider evidence on intrusive police powers shows entrenched racial disproportionality, reinforcing concerns that the costs of this enforcement climate will fall most sharply on Black and other racially minoritised communities.<sup>11</sup> At the same time, a number of climate protesters have received unusually long custodial sentences, in some cases up to five years.<sup>12</sup>

11. Conditions under sections 12 and 14 of the POA 1986 are routinely imposed on major marches and static protests, sometimes in very broad terms that cover wide geographical areas, long time periods or large categories of conduct. In practice, this can mean that people are told that the route, location or timing of a protest has already been fixed in advance by the police, with limited scope for negotiation, and that deviation may attract criminal liability even where no violence or serious disorder is anticipated. Evidence from Article 11 Trust & Netpol highlights that protest organisers are spending increasing amounts of time trying to understand and communicate these conditions, rather than focusing on stewarding or facilitating participation.<sup>13</sup> An example of this was the Berkshire Farmers' planned protest for Budget Day in November 2025, for which we provided informal advice. Following cooperation with the Metropolitan Police over the location and timing of an assembly, a s14 condition was imposed less than 24 hours before the protest was meant to take place. In addition to banning the use of vehicles at the protest, the condition significantly reduced the space in

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<sup>9</sup> Home Office. 2024. *Police protest powers, June 2022 to March 2024*. Available at: <https://www.gov.uk/government/statistics/police-protest-powers-june-2022-to-march-2024>

<sup>10</sup> Greenpeace UK. 2025. *Less than 3% of protest arrests result in charges as right to protest is attacked*. Available at: <https://www.greenpeace.org.uk/news/less-than-3-of-protest-arrests-result-in-charges-as-right-to-protest-campaign-launches/>

<sup>11</sup> Independent Office for Police Conduct. 2024. *Race discrimination: a landmark report*. Available at: <https://www.policeconduct.gov.uk/race-discrimination-report>; Netpol. 2024. *In Our Millions: A Netpol Report on the Policing of Protests in Britain Against Israeli Genocide in Palestine*. Available at: [https://netpol.org/wp-content/uploads/2024/05/InOurMillions\\_WEB.pdf](https://netpol.org/wp-content/uploads/2024/05/InOurMillions_WEB.pdf)

<sup>12</sup> The Guardian. 2025. *Sixteen jailed UK climate activists to appeal against sentences*. Available at: <https://www.theguardian.com/environment/2025/jan/29/sixteen-jailed-uk-climate-activists-to-appeal-against-sentences>; Court of Appeal (England and Wales). 2025. *R v Hallam and Others [Just Stop Oil Conspiracy to Cause Public Nuisance Appeal]*. Available at: <https://www.judiciary.uk/wp-content/uploads/2025/03/R-v-Hallam-and-Others-Judgment.pdf>

<sup>13</sup> Article 11 Trust & Netpol. 2025. *This Is Repression: The State of Protest in 2024*. Available at: [https://netpol.org/wp-content/uploads/2025/03/WEB\\_ThisIsRepressionReport-Final.pdf](https://netpol.org/wp-content/uploads/2025/03/WEB_ThisIsRepressionReport-Final.pdf)

which the protest was lawfully allowed to take place.<sup>14</sup> The very late imposition of the protest left organisers in real difficulty in terms of warning participants, many of who were already travelling to the protest, and did not allow for negotiation or challenge to the breadth of the conditions.

12. Alongside this, protest specific powers created or expanded by recent legislation have become a regular feature of protest policing. Nuisance and ‘serious disruption’ based conditions, Serious Disruption Prevention Orders (SDPOs), suspicionless stop and search and the ‘locking on’ style offences are now part of the backdrop to many marches and vigils. Even where such measures are not ultimately used, the possibility of their use is often factored into policing plans and communicated to organisers through engagement that includes an explicit or implicit threat of conditions if agreed parameters are not met.<sup>15</sup> Article 11 Trust, Netpol and StopWatch report that people are attending protests expecting to be stopped and searched whether or not there is any individualised suspicion and being warned that possession of everyday items could be treated as ‘equipment’ for locking on.<sup>16</sup> This dynamic was visible during the Coronation on 6 May 2023, when Republic protesters were arrested while unloading placards and police treated ordinary straps used to secure signs as potential ‘lock-on’ equipment.<sup>17</sup> On the same weekend, three women’s safety volunteers with Westminster’s Night Stars scheme were arrested while handing out rape alarms, after police claimed the alarms might be used to disrupt the procession; they were later released without charge and Westminster City Council publicly criticised the arrests.<sup>18</sup> These examples illustrates how the expansion of protest offences and pre-emptive policing can make it difficult for volunteer organisers to plan logistics and stewarding with confidence, even where they believe their conduct falls well within the law. The result is that public demonstrations directed at drawing attention to matters of public concern are increasingly experienced as sitting on the edge of criminal liability.

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<sup>14</sup> Farmers Weekly. 2025. *Met Police blocks farmers’ Budget day IHT protest in London*. Available at: <https://www.fwi.co.uk/news/farm-policy/met-police-block-farmers-budget-day-iht-protest-in-london>

<sup>15</sup> Home Office. 2024. *Police protest powers, June 2022 to March 2024*. Available at: <https://www.gov.uk/government/statistics/police-protest-powers-june-2022-to-march-2024>

<sup>16</sup> Article 11 Trust & Netpol. 2025. *This Is Repression: The State of Protest in 2024*. Available at: [https://netpol.org/wp-content/uploads/2025/03/WEB\\_ThisIsRepressionReport-Final.pdf](https://netpol.org/wp-content/uploads/2025/03/WEB_ThisIsRepressionReport-Final.pdf); StopWatch. 2023. *Protest and Stop & Search Fact Sheet*. Available at: <https://www.stop-watch.org/what-we-do/resources/protests-stop-and-search-factsheet/>

<sup>17</sup> ITV News. 2023. *Met Police ‘regret’ arresting anti-monarchy protesters who were never charged*. Available at: <https://www.itv.com/news/2023-05-08/met-police-regret-arresting-anti-monarchy-protesters-who-were-never-charged>

<sup>18</sup> BBC News. 2023. *Women’s safety volunteers arrested ahead of Coronation*. 7 May 2023. Available at: <https://www.bbc.co.uk/news/uk-england-london-65516825>

13. Concepts such as ‘disorder’ and ‘intimidation’ are being interpreted in an overbroad way in relation to contemporary protest movements. The Home Affairs Committee has heard that these terms used to justify quite intrusive policing of otherwise and orderly events.<sup>19</sup> This gap between political description and experienced reality risks feeding a sense that decisions about conditions, arrests and dispersal are being driven as much by perceptions and unevidenced assumptions about community safety and tension, rather than by assessment of genuine public order concerns.<sup>20</sup>

## 1.3. HATE-RELATED INCIDENTS AND EXPRESSIVE ACTIVITY

14. Communities have experienced hate-related intimidation in certain protests – most starkly at far-right mobilisations outside asylum accommodation, such as the Knowsley hotel protest where crowds threw missiles, set a police van on fire and shouted ‘get them out’, leaving residents and staff fearful<sup>21</sup> – as well as in online spaces connected to these debates, against a wider backdrop of rising antisemitism, Islamophobia and anti-migrant sentiment.<sup>22</sup> At the same time, public debate about ‘hate’ in protest settings can blur the boundary between conduct that is criminal, conduct that is lawful but offensive, and conduct that is simply politically unpopular, leaving targeted communities feeling under-protected when genuine hate-motivated conduct is not addressed robustly, while also encouraging over-policing of expression that is plainly within the scope of Article 10 ECHR.

15. International standards are particularly clear that the expressive elements of protests are protected and that restrictions should be content-neutral. The UN Human Rights Committee stresses that the use of flags, banners, signs and similar symbols is generally a legitimate form of expression and should not be restricted, even where such symbols are reminders of painful historical experiences, save for exceptional cases directly and predominantly associated with incitement to discrimination, hostility or violence.<sup>23</sup> The Committee also emphasises that the fact an assembly may provoke a hostile reaction does not, as a general rule, justify

<sup>19</sup> Home Affairs Committee. 2024. *Policing of Protests: Thirds Report of Session 2023-24*. Available at: <https://committees.parliament.uk/publications/43477/documents/218954/default/>

<sup>20</sup> ibid; Netpol. 2024. *In Our Millions: A Netpol Report on the Policing of Protests in Britain Against Israeli Genocide in Palestine*. Available at: [https://netpol.org/wp-content/uploads/2024/05/InOurMillions\\_WEB.pdf](https://netpol.org/wp-content/uploads/2024/05/InOurMillions_WEB.pdf)

<sup>21</sup> The Guardian. 2023. *Police van set on fire during violent protest outside Merseyside hotel used to house asylum seekers*. 11 February 2023. Available at: <https://www.theguardian.com/uk-news/2023/feb/11/merseyside-police-van-set-on-fire-during-protest-outside-hotel-used-to-house-asylum-seekers>

<sup>22</sup> The Guardian. 2024. *Huge rise in antisemitic abuse in UK since Hamas attack, says charity*. Available at: <https://www.theguardian.com/news/2024/feb/15/huge-rise-in-antisemitic-abuse-in-uk-since-hamas-attack-says-charity>

<sup>23</sup> UN Human Rights Committee. 2020. *General Comment No. 37 on Article 21 (Right of Peaceful Assembly)*.

CCPR/C/GC/37. Available at: <https://docs.un.org/CCPR/C/GC/37>

restriction; the state should protect participants rather than suppress the assembly.<sup>24</sup> This framework is a useful anchor for evaluating claims that controversial protests should be restricted because they are perceived as hateful or inflammatory.

16. Hamit Coskun's recent successful appeal provides a timely domestic illustration of the risk of conflating offensive political speech with criminal wrongdoing. In February 2025, Coskun set fire to a Qur'an outside the Turkish Consulate in London and made hostile statements about Islam and the Qur'an. He was convicted of a religiously aggravated public order offence under the POA 1986, but the conviction was overturned on appeal at Southwark Crown Court. Reporting indicates the judge concluded that the legal tests for disorderly conduct and for causing harassment, alarm or distress were not met on the facts presented, including the absence of evidence that passers-by were sufficiently alarmed or distressed and the lack of conduct directly aimed at identifiable individuals.<sup>25</sup> The case is instructive not because it minimises the real harms that anti-Muslim hostility can cause, but because it demonstrates the importance of applying high and precise thresholds where criminal law is used to regulate provocative expression.
17. The Coskun decision also illustrates why public rhetoric about 'hate marches' can be so distorting. When senior political figures characterise large-scale protests as inherently hateful, the public can be left with an inaccurate sense that participation in controversial protests is itself close to criminality. Suella Braverman's widely reported use of the phrase 'hate marches' in relation to Palestine solidarity protests in 2023 is an example of how political framing can confuse the legal line between lawful protest, hateful but lawful speech, and genuine incitement offences.<sup>26</sup> This kind of rhetoric can intensify distrust and make it harder for the public to understand the actual limits of criminal law.
18. A second instructive example is the case of Symon Hill. In September 2022, Hill was arrested after asking 'who elected him?' during a proclamation event for King Charles III. The case was later resolved with police accepting the arrest was unlawful and paying compensation.<sup>27</sup> This reinforces the core concern around

<sup>24</sup> *ibid*

<sup>25</sup> Southwark Crown Court. 2025. *R v Hamit Coskun (Appeal Judgment)*. Available at: <https://www.judiciary.uk/wp-content/uploads/2025/10/Rex-v-Hamit-Coskun.pdf>

<sup>26</sup> The Guardian. 2023. *Suella Braverman calls pro-Palestine demos "hate marches"*. Available at: <https://www.theguardian.com/politics/2023/oct/30/uk-ministers-cobra-meeting-terrorism-threat-israel-hamas-conflict-suella-braverman>

<sup>27</sup> The Guardian. 2025. *Police admit arrest of anti-monarchy heckler in Oxford was unlawful*. Available at: <https://www.theguardian.com/uk-news/2025/mar/11/police-admit-arrest-of-anti-monarchy-heckler-in-oxford-was-unlawful>

section 5 of the POA 1986. The offence of causing ‘harassment, alarm or distress’ can be applied in ways that overreach into plainly political speech. In practice, this creates uncertainty for the public about what they can lawfully say in the most symbolically sensitive civic contexts, and it risks normalising a low threshold for police intervention in expressive activity.

19. Coskun and Hill represent two sides of the same structural problem. Section 5, and its racially or religiously aggravated variants, are capable of reaching activity that is offensive or provocative but falls well short of the high threshold required for criminalising hatred as incitement. International standards underline that where protests or expression stray into Article 20 territory under the ICCPR, action should as far as possible be taken against individual perpetrators rather than against protests as a whole. The legality principle also requires that laws regulating protests be sufficiently precise and not confer sweeping discretion on those charged with enforcement.<sup>28</sup> These principles support a more predictable and rights-respecting approach than one driven by headline-level political contestation.
20. For the Review, the practical implication is that it should examine both the lived experience of hate-related intimidation and the risk of over-policing protected expression. That assessment should include protest contexts and online arenas, where reporting, investigation and enforcement decisions are increasingly shaped by public narratives about what constitutes hate. Clearer guidance and higher evidential discipline around section 5 and aggravated public order offences would help ensure that communities at risk of hate are protected against genuine incitement and targeted harassment, while also reducing the risk that lawful protest or controversial political expression is treated as presumptively criminal.

## 2. CLARITY, FAIRNESS AND ACCESSIBILITY OF THE LAW

21. The legal framework governing protest has become complex and difficult to navigate in practice. What was once a relatively self-contained set of provisions in the POA 1986 is now overlaid with successive waves of new legislation, including the PCSCA 2022, the POA 2023 and the current proposals in the Crime

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<sup>28</sup> European Court of Human Rights. 2012. *Steel and Others v. the United Kingdom*, Application No. 24838/94. Available at: [https://hudoc.echr.coe.int/rus#%22itemid%22:\[%22001-58240%22\]](https://hudoc.echr.coe.int/rus#%22itemid%22:[%22001-58240%22])

and Policing Bill. Each of these has introduced new powers, offences and thresholds or has amended existing concepts.

22. Key concepts that determine when protest can be restricted have also been in almost constant flux. The meaning and threshold of 'serious disruption' has been expanded in primary legislation and then subject to an unlawful attempt to redefine it through secondary legislation.<sup>29</sup> In parallel, the creation of a statutory offence of public nuisance and its use against protestors has introduced further uncertainty about where the line between legitimate protest disruption and criminal 'serious harm' lies, particularly given the breadth of concepts such as 'serious distress', 'serious annoyance', 'serious inconvenience' or 'serious loss of amenity'. This has added another high-stakes, low-clarity route through which protest activity may be framed as crossing a criminal threshold. The result is that the legal tests which should act as clear boundaries are instead experienced as moving targets.

23. These concerns align with well-established international human rights standards. The 'prescribed by law' requirement under the ECHR demands that restrictions on expression and assembly are sufficiently clear, accessible and foreseeable to enable individuals to regulate their conduct.<sup>30</sup> The UN Human Rights Committee has similarly emphasised that any restriction on protests must be grounded in clear law and must not be so broadly framed that it invites arbitrary or discriminatory application.<sup>31</sup> The rapid expansion and repeated redefinition of protest thresholds in England and Wales, particularly when combined with open-textured harm concepts in public nuisance, risks falling short of these requirements. The most striking example is the recent attempt to redefine 'serious disruption' itself. Historically, 'serious disruption' in the protest context has been understood as involving significant and often prolonged interference with the life of the community.<sup>32</sup> The Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 instead sought to recast 'serious

<sup>29</sup> Court of Appeal (England and Wales). 2025. *Liberty v Secretary of State for the Home Department (Serious Disruption Regulations)*. Available at: <https://www.judiciary.uk/wp-content/uploads/2025/05/Liberty-v-Secretary-of-State-for-the-Home-Department.pdf>

<sup>30</sup> European Court of Human Rights. 2015. *Kudrevičius and Others v. Lithuania*, Application No. 37553/05. Available at: [https://hudoc.echr.coe.int/eng#/{%22itemid%22:\[%22001-158200%22\]}](https://hudoc.echr.coe.int/eng#/{%22itemid%22:[%22001-158200%22]})

<sup>31</sup> United Nations Human Rights Committee. 2024. *Concluding Observations on the Eighth Periodic Report of the United Kingdom (CCPR/C/GBR/CO/8)*. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GBR/CO/8&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GBR/CO/8&Lang=En)

<sup>32</sup> House of Lords Secondary Legislation Scrutiny Committee. 2023. *38th Report of Session 2022–23: Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 (HL Paper 189)*. Available at: <https://committees.parliament.uk/publications/40176/documents/195200/default/>

disruption' so that it would capture anything 'more than minor'. This attempt to move from 'significant' and 'prolonged' to 'more than minor' was found by the Court of Appeal to have divorced the phrase from its ordinary meaning, with far-reaching implications for the exercise of protest rights.<sup>33</sup> The House of Lords Secondary Legislation Scrutiny Committee noted that this was the first time a government had tried to bring back, through secondary legislation, measures that Parliament had already rejected in primary legislation, and raised constitutional concerns about using this route to lower protest thresholds.<sup>34</sup> These Regulations were introduced as part of a wider clampdown on protest rather than in response to any demonstrated gap in the existing criminal law.<sup>35</sup>

24. The POA 2023 created new offences tethered to a definition of 'serious disruption' that includes a 'more than minor' impact such as 'locking on' and a suite of tunnelling offences, alongside SDPOs expanded stop and search powers. These measures were introduced only months after the PCSCA 2022 had already expanded protest restrictions, with no coherent evidence that existing laws were inadequate and despite concerns from police and oversight bodies about human rights compatibility.<sup>36</sup>
25. In the context of 'locking on', for example, the offence is drafted so broadly that it can capture any activity involving people 'attaching' themselves to others, objects or land, even though 'attach' is not defined in statute. This breadth was illustrated by Greenpeace's plastic pollution protest outside Unilever's London headquarters in September 2024, where activists faced charges under the new 'locking on' offence for attaching themselves to large symbolic props, with the Crown Prosecution Service (CPS) later dropping the cases against 34 individuals

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<sup>33</sup> Court of Appeal (England and Wales). 2025. *Liberty v Secretary of State for the Home Department (Serious Disruption Regulations)*. Available at: <https://www.judiciary.uk/wp-content/uploads/2025/05/Liberty-v-Secretary-of-State-for-the-Home-Department.pdf>

<sup>33</sup> Court of Appeal (England and Wales). 2025. *Liberty v Secretary of State for the Home Department (Serious Disruption Regulations)*. Available at: <https://www.judiciary.uk/wp-content/uploads/2025/05/Liberty-v-Secretary-of-State-for-the-Home-Department.pdf>

<sup>34</sup> ibid; House of Lords Library. 2023. *Draft Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023: 'Fatal' and 'regret' motions*. In Focus, 12 June 2023. Available at: <https://lordslibrary.parliament.uk/draft-public-order-act-1986-serious-disruption-to-the-life-of-the-community-regulations-2023-fatal-and-regret-motions/>

<sup>35</sup> House of Lords Secondary Legislation Scrutiny Committee. 2023. *38th Report of Session 2022–23: Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023* (HL Paper 189). Available at: <https://committees.parliament.uk/publications/40176/documents/195200/default/>; Hansard (House of Lords). 2023. *Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023*. Lords Chamber debate, 13 June 2023, Vol. 830. Available at: [https://hansard.parliament.uk/lords/2023-06-13/debates/7C52CB74-6B52-4DB9-9363-28AAB6678B51/PublicOrderAct1986\(SeriousDisruptionToTheLifeOfTheCommunity\)Regulations2023](https://hansard.parliament.uk/lords/2023-06-13/debates/7C52CB74-6B52-4DB9-9363-28AAB6678B51/PublicOrderAct1986(SeriousDisruptionToTheLifeOfTheCommunity)Regulations2023)

<sup>36</sup> Joint Committee on Human Rights. 2022. *Legislative Scrutiny: Public Order Bill*. Available at: <https://committees.parliament.uk/publications/22681/documents/166680/default/>

for insufficient evidence.<sup>37</sup> This risks criminalising very ordinary protest behaviour such as linking arms, using props, or even carrying everyday objects like bike locks or tape that could be said to be used ‘in connection with’ protest, and has been criticised for widening the criminalising dragnet and creating a chilling effect on protest participation.<sup>38</sup>

26. The Government’s current Crime and Policing Bill would introduce a further concept of ‘relevant cumulative disruption’.<sup>39</sup> In outline, the new duty would require police to take into account disruption across an area over time when deciding whether to impose conditions on a particular protest. This new duty goes further than that of the previous ‘cumulative impact’ duty that was quashed under the ‘serious disruption’ regulations, requiring that police ‘must’ take into account when considering the cumulative impact of protests instead of ‘may’ take into account.<sup>40</sup> In practice, this invites officers to fold together past and anticipated events, and to treat repeated, protests as a reason to lower the threshold for intervention, even where each individual protest would fall well short of ‘serious disruption’ if assessed on its own facts. This risks turning persistence and frequency into a ground for restriction in itself and would give the police significant discretion to curtail protests that are politically contentious or simply regular features of civic life.
27. Terms such as ‘disorder’ and ‘intimidation’ are also being read in increasingly expansive ways in both legislation and practice. Recent debates around face-coverings at protests and restrictions on protests near places of worship show how ‘intimidation’ can be stretched from specific threatening conduct to broader assumptions about certain movements and sensitive locations, which risks a more precautionary and restrictive approach to otherwise lawful protest.<sup>41</sup> In parallel, the public order framework could allow for civil injunctions to be justified on the basis that activity is likely to cause serious disruption, nuisance or an adverse effect on public safety. While not currently in force, measures in the

<sup>37</sup> The Guardian. 2025. *Charges against 34 people dropped over plastic pollution protest at Unilever HQ*. Available at: <https://www.theguardian.com/environment/2025/jan/08/charges-dropped-plastic-pollution-protest-greenpeace-unilever-london> theguardian.com

<sup>38</sup> Liberty. 2022. *Liberty’s briefing for second reading of the Public Order Bill in the House of Lords, November 2022*. Available at: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2019/03/Liberty's-briefing-for-second-reading-of-the-Public-Order-Bill-in-the-House-of-Lords-November-2022-1.pdf>

<sup>39</sup> Liberty. 2025. *Government’s repeat protest restrictions worse than feared*. Available at: <https://www.libertyhumanrights.org.uk/issue/governments-repeat-protest-restrictions-worse-than-feared/>; UK Parliament. 2025. *Crime and Policing Bill: Amendment 372 (cumulative disruption considerations for sections 12 and 14 Public Order Act 1986)*. Available at: <https://bills.parliament.uk/bills/3938/stages/20237/amendments/10028639>

<sup>40</sup> ibid

<sup>41</sup> Joint Committee on Human Rights. 2025. *Legislative Scrutiny: Crime and Policing Bill*. Available at: <https://committees.parliament.uk/publications/48758/documents/255740/default/>

POA 2023 that expand tunnelling offences and empower the Secretary of State to seek anticipatory injunctions show how easily very broad descriptions of disruptive or adverse effects can be used to create, in effect, new public order ‘offences’ by court order, with powers of arrest and remand attached.<sup>42</sup> This layering of loosely defined concepts means that activities which many people would regard as ordinary protest.

28. From the perspective of those trying to use or apply it, the current protest and public order framework is no longer clear or accessible. Each piece of legislation mentioned above has introduced new offences, new conditions and new threshold tests, often reusing similar language in slightly different ways. Protesters and organisers consistently tell us that they cannot reliably predict when conduct will be treated as crossing into ‘serious disruption’ or ‘intimidation’, or when conditions will be imposed, because the tests are fragmented across multiple statutes and guidance documents and have been changed several times in quick succession.<sup>43</sup>
29. Article 11 Trust & Netpol have reported that organisers are being told that amplification of noise, chanting or simply remaining outside a particular building may be treated as causing ‘serious disruption’ to organisational activities, without any clear or consistent explanation of what level of inconvenience is enough to trigger criminal liability.<sup>44</sup> Organisers have also reported that the piecemeal, evolving public order framework makes it harder to plan lawful protests with confidence and increases the burden on volunteer campaigners who are already stretched.<sup>45</sup>
30. During passage of the Public Order Act 2023, parliamentarians from different parties warned that neither protesters nor police would be able to tell where the line was being drawn between lawful disruption and criminal ‘serious disruption’. In the Commons, Labour’s then Shadow Policing Minister Sarah Jones MP noted that ‘the police have asked us for greater clarity on the definition of ‘serious

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<sup>42</sup> Liberty. 2022. *Liberty’s briefing for second reading of the Public Order Bill in the House of Lords*, November 2022. Available at: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2019/03/Libertys-briefing-for-second-reading-of-the-Public-Order-Bill-in-the-House-of-Lords-November-2022-1.pdf>

<sup>43</sup> HM Inspectorate of Constabulary and Fire & Rescue Service. 2021. *Getting the balance right? An inspection of how effectively the police deal with protests*. Available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests/>

<sup>44</sup> Article 11 Trust & Netpol. 2025. *This Is Repression: The State of Protest in 2024*. Available at: [https://netpol.org/wp-content/uploads/2025/03/WEB\\_ThisIsRepressionReport-Final.pdf](https://netpol.org/wp-content/uploads/2025/03/WEB_ThisIsRepressionReport-Final.pdf)

<sup>45</sup> London Assembly Police and Crime Committee. 2025. *Public order policing – the Met’s approach*. Available at: <https://www.london.gov.uk/sites/default/files/2025-04/London%20Assembly%20Police%20and%20Crime%20Committee%20-%20Public%20order%20policing%20-%20the%20Me.pdf>

disruption' because the Government have drafted such poor legislation',<sup>46</sup> underlining that uncertainty would be pushed onto officers on the ground. Their concern was not that every use of 'serious disruption' must share an identical definition across all statutes, but that in each legal context the threshold should be clearly articulated, genuinely high and foreseeable, so that officers and participants can understand when criminal liability might arise. Senior police witnesses giving evidence to the Home Affairs Committee have likewise described having to navigate an increasingly cluttered and overlapping set of public order powers rather than a single, easily understood framework, a concern that the Bingham Centre has also characterised as a complex and difficult to navigate web of protest powers<sup>47</sup>

31. A similar pattern appears in the newer POA 2023 powers. SDPOs involve complex eligibility criteria built around prior involvement in protests causing, or simply 'likely' to cause, 'serious disruption', and can impose sweeping restrictions on an individual's future participation in protest. Article 11 Trust and Netpol have reported that even lawyers and specialist NGOs have found it difficult to state with confidence who might fall within scope and on what evidential basis.<sup>48</sup>
32. Overall, the cumulative picture is that the framework is no longer readily comprehensible to those it binds, and uncertainty has become a structural feature of protest law. This uncertainty itself functions as a deterrent to the exercise of the rights to protest and freedom of expression.

## 3. EXPERIENCES OF POLICING, PROSECUTION AND THE JUSTICE SYSTEM

### 3.1. OVER-USE AND UNEVEN USE OF PROTEST POWERS

<sup>46</sup> UK House of Commons. 2023. *Public Order Bill, Hansard debate, 7 March 2023*. Available at: <https://hansard.parliament.uk/commons/2023-03-07/debates/5C6A93D0-6D8A-4C9F-9B1B-6D20F3C1C7A7/Publications/hansard.parliament.uk>; UK House of Lords. 2022. *Public Order Bill (Committee), Hansard debate, 16 November 2022*. Available at: <https://hansard.parliament.uk/lords/2022-11-16/debates/1CAFF961-B426-450F-A573-F6B4BCDC601C/PublicOrderBill>

<sup>47</sup> House of Commons Home Affairs Committee. 2023. *Oral evidence: Policing of Protests (17 May 2023)*. Available at: <https://committees.parliament.uk/oralevidence/13238/pdf/UK Parliament Committees>; Bingham Centre for the Rule of Law. 2022. *The Public Order Bill: Rule of Law Issues (Briefing Paper No. 4)*. Available at: [https://binghamcentre.bjicl.org/documents/131\\_0003.pdf](https://binghamcentre.bjicl.org/documents/131_0003.pdf)

<sup>48</sup> Article 11 Trust & Netpol. 2025. *This Is Repression: The State of Protest in 2024*. Available at: [https://netpol.org/wp-content/uploads/2025/03/WEB\\_ThisIsRepressionReport-Final.pdf](https://netpol.org/wp-content/uploads/2025/03/WEB_ThisIsRepressionReport-Final.pdf)

33. Over the past three years, particularly since the PCSA 2022 and the POA 2023, the use of public order powers in England and Wales has shifted from a relatively limited set of tools focused on violence and serious disorder to a much denser regime that relies on broad conditions, protest-specific offences and preventive orders. In practice, this is a move away from a presumption in favour of facilitating protest towards a model in which disruptive or persistent protest is treated as a problem to be pre-empted and deterred. This is central to the Review, because both domestic courts and international human rights standards require that restrictions on protest be clearly prescribed by law and justified as necessary and proportionate in a democratic society.<sup>49</sup>

## Routine and expansive use of sections 12 and 14 POA 1986

34. Conditions under sections 12 and 14 of the POA 1986 are now a routine feature of major marches and protests, rather than exceptional tools for managing genuine risks of serious disorder. Home Office data analysed by Netpol indicates that the Metropolitan Police issued 95 per cent of all protest restrictions across England and Wales, underscoring how heavily these powers are concentrated in a single force.<sup>50</sup> The PCSA 2022 lowered thresholds and expanded the grounds for imposing conditions, including by introducing ‘noise’ based conditions and widening the concept of ‘serious disruption’ to the life of the community’. Organisers of large demonstrations report being presented with fixed routes, start and end times and restrictions on sound systems and visual material as essentially non-negotiable, even where there is no specific intelligence of planned violence.<sup>51</sup>

## Protest-specific stop and search powers, including suspicionless powers

35. The POA 2023 added a further layer by creating new stop and search powers linked specifically to protest, including powers that can be exercised without reasonable suspicion in designated areas and timeframes. These mirror the structure of section 60 of the Criminal Justice and Public Order Act 1994, which has long been criticised domestically and internationally for weak safeguards and disproportionate impacts on marginalised groups, and which the European Court

<sup>49</sup> European Court of Human Rights. 2017. *Lashmankin and Others v. Russia*, Applications Nos. 57818/09 et al. Available at: [https://hudoc.echr.coe.int/fre#f%22itemid%22:\[%22001-170857%22\]](https://hudoc.echr.coe.int/fre#f%22itemid%22:[%22001-170857%22])

<sup>50</sup> Netpol. 2024. Metropolitan Police use 95% of protest restrictions. 19 December 2024. Available at: <https://netpol.org/2024/12/19/metropolitan-police-use-95-of-protest-restrictions>

<sup>51</sup> Home Affairs Committee. 2024. *Policing of Protests: Thirds Report of Session 2023-24*. Available at: <https://committees.parliament.uk/publications/43477/documents/218954/default/>

of Human Rights (ECtHR) has found problematic in respect of comparable suspicionless stop and search architectures.<sup>52</sup>

36. The London Assembly Police and Crime Committee has heard from organisers that there is frequent use of protest-linked stop and search at large-scale demonstrations, including searches of individuals carrying items such as glue, bike locks, banners or other materials that officers say could be used for 'locking on'.<sup>53</sup> Big Brother Watch's analysis of police data, reported by The Guardian, found that stop and searches in central London increased by 20.5 per cent on weekends when protests took place compared with weekends without protests, suggesting that these powers are being used to target demonstrators rather than serious criminality.<sup>54</sup> Even where no further action is taken, being stopped, searched and questioned in a protest context is experienced as stigmatising and intimidating, particularly by people who already feel over-policed in their daily lives, including black people who are disproportionately subjected to stop and search.<sup>55</sup> This is precisely the kind of deterrent impact that Strasbourg case law warns can arise where broad discretionary powers are used in settings involving the exercise of fundamental expressive and protest rights.<sup>56</sup>

## Public nuisance and conspiracy: severe penalties and planning-stage intervention

37. The PCSCA 2022 created a new statutory offence of public nuisance, with a maximum sentence of ten years' imprisonment. This offence, combined with conspiracy law, has become a central tool in prosecutions of environmental protesters. This enforcement approach pushes intervention further upstream to planning and organising. A recent high-profile example is the Metropolitan Police raid on a Quaker meeting house in Westminster in March 2025, where officers arrested individuals on suspicion of conspiracy to cause a public nuisance in connection with alleged plans for protest actions.<sup>57</sup> The public response to that

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<sup>52</sup> European Court of Human Rights. 2010. *Gillan and Quinton v. the United Kingdom*, Application No. 4158/05. Available at: [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-96585%22\]](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-96585%22])

<sup>53</sup> London Assembly Police and Crime Committee. 2025. *Public Order Policing – The Met's Approach*. Available at: <https://www.london.gov.uk/sites/default/files/2025-04/PCC%20POPS%20report%20final%2020250417%20FINAL.pdf>

<sup>54</sup> The Guardian. 2022. *Police abuse stop and search powers to target protesters, suggests data*. Available at: <https://www.theguardian.com/law/2022/aug/18/police-abuse-stop-and-search-powers-to-target-protesters-suggests-data>

<sup>55</sup> Independent Office for Police Conduct. 2023. *National stop and search survey report*. Available at: <https://www.policeconduct.gov.uk/sites/default/files/documents/national-stop-and-search-survey-report-oct-2023.pdf>

Black Thrive Global. 2023. *Stop and search and young Black people's mental health: How a new data tool can facilitate research*. Available at: <https://www.blackthrive.org/how-a-new-data-tool-can-facilitate-research/>

<sup>56</sup> European Court of Human Rights. 2018. *Navalny v. Russia*, Applications Nos. 29580/12 and others. Available at: [https://hudoc.echr.coe.int/fre#%22fulltext%22:\[%22Russia%22\],%22documentcollectionid2%22:\[%22GRANDCHAMBER%22\],%22itemid%22:\[%22001-187605%22\]](https://hudoc.echr.coe.int/fre#%22fulltext%22:[%22Russia%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22],%22itemid%22:[%22001-187605%22])

<sup>57</sup> BBC News. 2025. *Quakers condemn arrests of activists at meeting house*. Available at: <https://www.quaker.org.uk/news-and-events/news/quakers-condemn-police-raid-on-westminster-meeting-house>

raid, including from the Quakers, underscored the seriousness of the implications for freedom of association and for the ability of communities to host and facilitate civic organising.<sup>58</sup>

38. These patterns sit uneasily with the ECtHR's consistent position that sanctions for protest must not be so severe as to deter participation or organising, even where protests are disruptive or unpopular.<sup>59</sup>

## New protest-specific offences and preventive orders

39. Alongside offences such as 'locking on', being 'equipped for locking on', and various tunnelling offences, all linked to the concept of 'serious disruption', SDPOs also introduce a preventive architecture that can restrict future protest participation and association on a low threshold, backed by criminal penalties for breach. Even where these orders are not yet frequently imposed, their availability, and the public signalling around their potential use, contribute to an increasingly risk-based climate for known organisers and repeat participants.<sup>60</sup> Liberty opposed the introduction of SDPOs and protest linked suspicionless stop and search, and considers that powers of this kind should not form part of a rights compliant protest framework. This view is echoed by the Joint Committee on Human Rights, which concluded that SDPOs were neither necessary nor proportionate and recommended their removal from the POA 2023.<sup>61</sup>

40. Preventive and pre-emptive measures, such as SDPOs, suspicionless stop and search and broad banning-like effects, require especially strong justification and safeguards. International standards on protests emphasise that measures which restrict future participation, or that expose individuals to serious criminal penalties for breach of wide conditions, are at the outer edge of what can be compatible with Article 10 of the ECHR and must therefore be tightly constrained and demonstrably necessary.<sup>62</sup>

41. Taken together, these developments show that over-use and uneven use of protest powers is no longer a theoretical risk but a lived reality for many of the individuals

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<sup>58</sup> The Quakers in Britain. 2025. *Quakers Condemn Police Raid on Westminster Meeting House*, 28 March 2025. Available at: <https://www.quaker.org.uk/news-and-events/news/quakers-condemn-police-raid-on-westminster-meeting-house>

<sup>59</sup> European Court of Human Rights. 2025. *Guide on Case-Law of the Convention – Mass Protests* (last update 31 August 2025). Available at: [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_mass\\_protests\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_mass_protests_eng)

<sup>60</sup> House of Commons Library. 2025. *Police Powers: Protests* (Research Briefing, 23 October 2025). Available at: <https://researchbriefings.files.parliament.uk/documents/SN05013/SN05013.pdf>

<sup>61</sup> Joint Committee on Human Rights. 2022. *Legislative Scrutiny: Public Order Bill*. Available at: <https://committees.parliament.uk/publications/22681/documents/166680/default/>

<sup>62</sup> European Court of Human Rights. 2015. *Kudrevičius and Others v. Lithuania*, Application No. 37553/05. Available at: [https://hudoc.echr.coe.int/eng#\[%22itemid%22:\[%22001-158200%22\]\]](https://hudoc.echr.coe.int/eng#[%22itemid%22:[%22001-158200%22]])

and communities who seek to exercise their rights to freedom of expression and assembly. The pattern outlined above is precisely the kind of cumulative practice that this Review should scrutinise carefully, in light of the United Kingdom's obligations under the ECHR and under international human rights law more broadly.

## 3.2. BAIL CONDITIONS, PREVENTIVE ORDERS AND DE FACTO BANS ON PROTEST

42. Over the past three years, Liberty has seen protest-related bail conditions move from targeted measures to something much closer to de facto short-term protest bans. Individuals arrested at demonstrations are frequently released on bail with conditions that bar them from attending any further protests, entering large geographic areas, or having contact with other named activists for weeks or months at a time. A recent report from the Special Rapporteur on Environmental Defenders noted that civil society groups in the UK have documented being subjected to strict curfews, electronic monitoring and exclusion zones that prevent them from entering city centres or areas around key transport routes while on bail for direct action.<sup>63</sup> These conditions have applied even where the alleged conduct involved obstruction designed to draw attention to climate policy, with no suggestion of violence or hate-related offences.<sup>64</sup> Participants in large-scale demonstrations report that, after one arrest, they can be effectively removed from protest life for the duration of extended bail, regardless of whether they are ultimately charged or convicted.

43. SDPOs amplify this trend. Under the POA 2023, SDPOs allow courts to impose wide-ranging, protest-specific restrictions on individuals for up to two years, with the possibility of renewal, backed by criminal penalties for breach. Parliamentary scrutiny during the passage of the Public Order Bill, including by the JCHR, repeatedly warned that SDPOs risk functioning as 'protest banning orders' in practice, because they target known organisers and prominent participants and regulate large parts of their political and personal lives without the safeguards that normally apply to criminal penalties.<sup>65</sup> Even before orders are imposed, the

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<sup>63</sup> UN Special Rapporteur on Environmental Defenders under the Aarhus Convention. 2024. *Visit to London, United Kingdom of Great Britain and Northern Ireland, 10–12 January 2024: End of Mission Statement*. Available at: [https://unece.org/sites/default/files/2024-01/Aarhus\\_SR\\_Env\\_Defenders\\_statement\\_following\\_visit\\_to\\_UK\\_10-12\\_Jan\\_2024.pdf](https://unece.org/sites/default/files/2024-01/Aarhus_SR_Env_Defenders_statement_following_visit_to_UK_10-12_Jan_2024.pdf)

<sup>64</sup> *ibid*

<sup>65</sup> Joint Committee on Human Rights. 2022. *Legislative Scrutiny: Public Order Bill*. Available at: <https://committees.parliament.uk/publications/22681/documents/166680/default/committees.parliament.uk>

prospect of being made subject to an SDPO is now routinely raised with protesters in interviews and public messaging, which heightens its deterrent effect.<sup>66</sup>

44. Taken together, repeated arrest followed by onerous bail conditions and the availability of long-lasting preventive orders mean that people can be kept away from protests for extended periods without any finding of guilt. From a human rights perspective, there is a clear risk that this pattern is incompatible with Articles 10 and 11 ECHR. The ECtHR has long recognised that sanctions which follow participation in protests can themselves violate Article 11 because of their chilling effect: in *Ezelin v France*, for example, the Court held that even a disciplinary reprimand imposed on a lawyer for taking part in a demonstration constituted an unjustified interference, in part because it would deter others from exercising their right to protest.<sup>67</sup> Where the state uses bail conditions and preventive orders to pre-emptively exclude individuals from future protests on the basis of conduct, the chilling effect is significantly more acute. In Liberty's view, this raises serious questions about whether current practice respects the requirement that any restriction on protest must be strictly necessary and proportionate in a democratic society.

### **3.3. OBSTACLES TO REPORTING INCIDENTS, PURSUING CASES AND OBTAINING SUPPORT**

45. The lowering of the knowledge requirement for attracting criminal sanction for breach of conditions to 'ought to have known' has increased the scope for criminalising protestors who inadvertently breach conditions. The risk is exacerbated by overly broad conditions which limit a disproportionate range of behaviour, and the very limited opportunity for organisers of protests to challenge conditions ahead of a march or demonstration. For example, on 13 October 2023, one day ahead of a Palestine Solidarity Campaign march the Metropolitan Police imposed conditions under s12 that stated '...those taking part ...must observe the route. Any person participating in or associated with the Palestine Solidarity Campaign must not deviate from this route, or they could be subject to

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<sup>66</sup> Article 11 Trust & Netpol. 2025. *This Is Repression: The State of Protest in 2024*. Available at: [https://netpol.org/wp-content/uploads/2025/03/WEB\\_ThisIsRepressionReport-Final.pdf](https://netpol.org/wp-content/uploads/2025/03/WEB_ThisIsRepressionReport-Final.pdf)

<sup>67</sup> European Court of Human Rights. 1991. *Ezelin v. France*, Application No. 11800/85. Available at: [https://hudoc.echr.coe.int/eng#/{%22itemid%22:\[%22001-57675%22\]}](https://hudoc.echr.coe.int/eng#/{%22itemid%22:[%22001-57675%22]})

arrest'.<sup>68</sup> A condition this wide in scope contravenes Articles 10 and 11 ECHR and created a risk of criminalising a wide range of protestors, whether or not they were aware of the condition, simply for leaving the route for any reason.<sup>69</sup> Imposing such a broad condition one day in advance of a protest does not give organisers adequate time to respond or challenge conditions, and creates uncertainty and risk for participants.

46. Across both protest and hate crime, similar structural issues limit people's ability to report incidents, pursue cases or seek remedies. The data landscape remains opaque. There is no consistently accessible, disaggregated public record that allows civil society or affected communities to understand how frequently protest conditions, protest stop and search powers, SDPOs, hate crime provisions or hate incident recording practices are used, against whom, and with what outcomes. As a result, there are significant limits on the quantitative and comparative evidence we can provide about patterns of use, disproportionality and outcomes in these areas, even though this is precisely the kind of empirical picture the Review is likely to need. Where the legal framework is complex and fast-changing, this absence of transparency makes it harder to establish patterns of disproportionate use and therefore harder to build confidence that challenges will be taken seriously. The Strasbourg judgment in Gillan and Quinton illustrates the risks posed by broad police powers lacking adequate safeguards, and the consequent threat to the practical enjoyment of Convention rights.<sup>70</sup>
47. These obstacles are likely sharpened by constraints in legal aid and by the broader costs of seeking representation,<sup>71</sup> which can make early advice or urgent challenges unrealistic for many people. This is particularly significant where the risk of arrest or restrictive conditions arises at short notice and where organisers are working with limited resources. The ECtHR and the UN Human Rights Committee's General Comment No. 37 have both emphasised that the right to protest must be practically accessible, and that States should avoid imposing

<sup>68</sup> Metropolitan Police. 2023. *Information on the Palestine Protest march held on 14/10/2023 (FOI reference 01.FOI.23.033311)*. Available at: <https://www.met.police.uk/foi-ai/metropolitan-police/disclosure-2023/november-2023/information-palestine-protest-march-14102023/>

<sup>69</sup> European Court of Human Rights. 1991. *Ezelin v. France*, Application No. 11800/85. Available at: [https://hudoc.echr.coe.int/eng#/{%22itemid%22:\[%22001-57675%22\]}](https://hudoc.echr.coe.int/eng#/{%22itemid%22:[%22001-57675%22]}); OSCE/ODIHR & Venice Commission. 2020. *Guidelines on Freedom of Peaceful Assembly (3rd Edition)*. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)

<sup>70</sup> European Court of Human Rights. 2010. *Gillan and Quinton v. the United Kingdom*, Application No. 4158/05. Available at: [https://hudoc.echr.coe.int/eng#/{%22itemid%22:\[%22001-96585%22\]}](https://hudoc.echr.coe.int/eng#/{%22itemid%22:[%22001-96585%22]})

<sup>71</sup> Legal Aid Agency. 2025. *Legal Aid Statistics Quarterly: January–March 2025*. Available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-january-to-march-2025>

undue burdens on organisers or participants seeking to exercise or vindicate that right.<sup>72</sup>

48. For communities at risk of hate crime and hate-related incidents, barriers to reporting can be shaped by additional concerns about how reports will be recorded, how data may be shared or retained, and whether engagement with the system will lead to meaningful protection. Liberty recommends that the Review engage directly with organisations representing groups most exposed to hate crime and hate-related intimidation, to understand where reporting routes, victim support and enforcement practices are failing in practice, and how these barriers intersect with the parallel concerns raised about protest policing.

## **4. IMPACTS ON INDIVIDUALS, COMMUNITIES AND TRUST**

### **4.1. CHILLING EFFECTS ON PROTEST ORGANISERS AND PARTICIPANTS**

49. The risk environment for protest organisers and participants has intensified significantly over the last three years, especially following the PCSCA 2022 and the POA 2023. Lower statutory thresholds, wider police discretion and increased criminal penalties mean that many people now assess protest participation through the lens of potential arrest, intrusive policing, or downstream restrictions such as bail conditions and preventative orders.<sup>73</sup>

50. This matters because international standards are clear that formal or informal state measures which deter participation in protest can amount to a disproportionate interference with the rights to freedom of expression and assembly. The UN Human Rights Committee has stressed that restrictions must not be aimed at discouraging participation or causing a chilling effect, including through threats of criminal sanctions.<sup>74</sup> The ECtHR has likewise recognised that overly restrictive or punitive approaches to protests can unlawfully deter participation and undermine the essence of Articles 10 and 11 ECHR.<sup>75</sup>

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<sup>72</sup> European Court of Human Rights. 2003. *Djavit An v. Turkey*, Application No. 20652/92, Judgment of 20 February 2003. Available at: [https://hudoc.echr.coe.int/eng#/{%22itemid%22:\[%22001-60953%22\]}](https://hudoc.echr.coe.int/eng#/{%22itemid%22:[%22001-60953%22]}); UN Human Rights Committee. 2020. *General Comment No. 37 on Article 21 (Right of Peaceful Assembly)*. CCPR/C/GC/37. Available at: <https://docs.un.org/CCPR/C/GC/37>

<sup>73</sup> Netpol. 2014. *Netpol calls for abolition of police bail conditions for protest cases*. Available at: <https://netpol.org/2014/07/22/abolish-police-bail/>

<sup>74</sup> *ibid*

<sup>75</sup> European Court of Human Rights. 1991. *Ezelin v. France*, Application No. 11800/85. Available at: [https://hudoc.echr.coe.int/eng#/{%22itemid%22:\[%22001-57675%22\]}](https://hudoc.echr.coe.int/eng#/{%22itemid%22:[%22001-57675%22]}); European Court of Human Rights. 1988. *Plattform*

51. One driver of this chilling effect is the increasing normalisation of highly intrusive tools deployed at or around protests. This includes protest-specific stop and search powers as well as the routine use of conditions, surveillance, and pre-emptive interventions against organisers and known activists.<sup>76</sup> The predictable consequence of such broad and discretionary policing is that protest is experienced as inherently suspect, particularly by those with prior interactions with police or who are already more exposed to disproportionate enforcement.<sup>77</sup>
52. A further driver is the prospect of severe downstream consequences for repeat or prominent organisers. Preventative frameworks, including SDPOs, were widely criticised as a shift toward pre-emptive controls on protest participation, backed by criminal penalties for breach. Even where used rarely, their existence can function as a standing threat in the background of organising decisions, reinforcing a perception that visible participation carries unique personal risk. This is consistent with the Strasbourg Court's caution about measures that create a deterrent effect on lawful protest.<sup>78</sup>
53. The chilling dynamic is also heightened by the wider legal climate of harsh sentencing for protest-related offences. Individuals involved in the Just Stop Oil M25 action received sentences of four to five years, while those involved in the Southport riots received sentences averaging approximately two years.<sup>79</sup> While these contexts are legally and factually distinct, such comparisons shape public perceptions of whose protest attracts the most punitive responses and can deter future participation across movements. Public attitudes also suggest a gap between the public's baseline expectations and the current legal risk environment,

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<sup>76</sup> *Ärzte für das Leben* v. Austria, Application No. 10126/82. Available at: [https://hudoc.echr.coe.int/eng#/{%22itemid%22:\[%22001-60953%22\]}](https://hudoc.echr.coe.int/eng#/{%22itemid%22:[%22001-60953%22]})

<sup>77</sup> The Guardian. 2022. *Police abuse stop and search powers to target protesters, suggests data*. Available at: <https://www.theguardian.com/law/2022/aug/18/police-abuse-stop-and-search-powers-to-target-protesters-suggests-data>

<sup>78</sup> HM Inspectorate of Constabulary, Fire & Rescue Services. 2021. *Disproportionate Use of Police Powers: A Spotlight on Stop and Search and the Use of Force*. Available at: <https://assets-hmicsfrs.justiceinspectorates.gov.uk/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>

<sup>79</sup> European Court of Human Rights. 2018. *Navalny v. Russia, Applications Nos. 29580/12 and others*. Available at: [https://hudoc.echr.coe.int/fre#/{%22fulltext%22:\[%22Russia%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22\],%22itemid%22:\[%22001-187605%22\]}](https://hudoc.echr.coe.int/fre#/{%22fulltext%22:[%22Russia%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22],%22itemid%22:[%22001-187605%22]})

<sup>79</sup> Southwark Crown Court. 2024. *R v Hallam and Others [Sentencing Remarks]*. Available at: <https://www.judiciary.uk/wp-content/uploads/2025/03/R-v-Hallam-and-Others-Judgment.pdf>; The Guardian. 2024. *What We've Learned About the UK Riots and Their Impact on the Criminal Justice System*. Available at: <https://www.theguardian.com/world/article/2024/aug/22/thursday-briefing-first-edition-uk-criminal-justice-system-2024-riots>

with polling indicating that a large majority believe people should be able to speak up without facing arrest.<sup>80</sup>

54. Finally, the chilling effect is intensified in moments where protest-adjacent expression appears to be pulled closer to the most serious criminalisation frameworks. A recent example is the proscription of Palestine Action in July 2025 and the subsequent policing of demonstrations concerning that decision. Public reporting indicates that 900 people were arrested at a Parliament Square protest linked to Defend Our Juries, with police alleging that individuals were displaying placards supportive of a proscribed organisation.<sup>81</sup> Whatever views are taken on the underlying policy debate, the practical effect of large-scale arrests in this context is to heighten uncertainty about what kinds of protest messaging may trigger terrorism-related enforcement. Additionally, there has been no guidance from the CPS on enforcement of these offences.
55. In light of these dynamics, the Review should treat chilling effects as an evidential and rights-based issue in its own right. It should seek direct input from protest organisers, legal observers and communities who have experienced repeated, intrusive or preventative forms of protest policing, and assess whether the cumulative framework now in force enables restrictions broader than is genuinely necessary in a democratic society.

## 4.2. OVER-POLICED AND UNDER-PROTECTED COMMUNITIES

56. Liberty's experience is that the expanding protest framework has intensified the policing footprint on some communities and movements in ways that feel intrusive, unpredictable and difficult to reconcile with a rights-first approach. This is most visible where broad conditions, preventive tools and heightened operational messaging are layered onto protest contexts already subject to intense political and media scrutiny. The practical effect for many organisers and participants is an expectation that significant restrictions will be imposed as a default starting point, rather than as a targeted response to specific risks.
57. Stop and search and other police protest powers are part of this picture, but not the whole of it. The concern is not only the intrusion of searches in public protest settings, but the layering of multiple discretionary powers across conditions,

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<sup>80</sup> Demos. 2024. *Public Deliberation on Protest Rights (The People's Town Square)*. Available at: [https://demos.co.uk/wp-content/uploads/2024/09/Liberty-Report\\_Sept\\_2024.pdf](https://demos.co.uk/wp-content/uploads/2024/09/Liberty-Report_Sept_2024.pdf)

<sup>81</sup> Reuters. 2025. Almost 900 people were arrested at London Palestine Action protest, police say. Available at: <https://www.reuters.com/world/uk/almost-900-people-were-arrested-london-palestine-action-protest-police-say-2025-09-07/>

surveillance, bail, preventive orders and arrest thresholds. Where these tools operate together, uncertainty becomes a form of deterrence. This is particularly significant given the well-established evidence base on racial disproportionality in wider stop and search practice and the risk that protest-linked deployment will reproduce or intensify those patterns.<sup>82</sup>

58. Alongside over-policing concerns, racialised communities and marginalised groups describe a parallel anxiety about being insufficiently protected from hostility and intimidation when they mobilise publicly. This is most often expressed as a gap between the scale of restrictions imposed on demonstrations and the perceived inconsistency of responses to threats or abuse directed at participants.<sup>83</sup> The Review should therefore test not only whether the legal thresholds for restriction have widened too far, but whether current practice is compatible with the state's positive obligations to facilitate protest and to protect those exercising it from violence or hostility. Further, the Review should insist on clear legal tests, evidence-based decision-making, and a disciplined distinction between political controversy and conduct that meets the legal threshold for intervention.

### 4.3. CONSEQUENCES FOR TRUST IN INSTITUTIONS

59. Another danger is that rights which are increasingly risky to exercise in practice are not experienced as tangible rights. Public deliberative evidence collected in 2024 indicates that when people are informed about the recent protest framework, a dominant takeaway is that the law feels vague and difficult for both police and protesters to navigate. Participants consider clearer law essential to enabling compliance and legitimacy.<sup>84</sup> This point is reinforced by broader public opinion data showing strong support for the baseline right to protest and speak out without arrest. The same research records that 83% of respondents agreed everyone should be able to protest on issues they care about and 77% agreed people should be able to speak up on important issues without facing arrest.<sup>85</sup> When the on-the-ground experience of protest regularly involves expanded offences, intrusive powers or heavy preventive tools, this gap between public

<sup>82</sup> HM Inspectorate of Constabulary, Fire & Rescue Services. 2021. *Disproportionate Use of Police Powers: A Spotlight on Stop and Search and the Use of Force*. Available at: <https://assets-hmicfrs.justiceinspectorates.gov.uk/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>

<sup>83</sup> Home Affairs Committee. 2024. *Policing of Protests: Thirds Report of Session 2023-24*. Available at: <https://committees.parliament.uk/publications/43477/documents/218954/default/>

<sup>84</sup> Demos. 2024. *Public Deliberation on Protest Rights (The People's Town Square)*. Available at: [https://demos.co.uk/wp-content/uploads/2024/09/Liberty-Report\\_Sept\\_2024.pdf](https://demos.co.uk/wp-content/uploads/2024/09/Liberty-Report_Sept_2024.pdf)

<sup>85</sup> ibid

values and legal risk can harden cynicism about whether fundamental freedoms are being treated as conditional or cause-dependent.

60. This is a governance problem as much as a rights problem. The Review should therefore treat clarity, foreseeability, transparency of data and accessible routes to challenge conditions and orders as core components of restoring trust and reinforcing the principle that the police's role is to facilitate protest, not manage it away.

## 5. BALANCING FREEDOM OF EXPRESSION AND PROTEST WITH SAFETY AND PROTECTION

61. Over the last three years, and with particular intensity since the PCSCA 2022 and the POA 2023, the legal and operational approach to protest in England and Wales has shifted from a relatively contained framework focused on violence, serious disorder and targeted intervention to a denser scheme that normalises broad conditions, protest specific offences and preventive tools. This trajectory is now continuing in the Crime and Policing Bill 2025, including proposed restrictions on protests in the vicinity of places of worship and new provisions targeting the concealment of identity through face coverings at protests, further widening the scope for pre-emptive interference.<sup>86</sup> This is not just an expansion of powers on the statute book. It is a cumulative architecture that invites earlier, wider and more pre-emptive forms of interference, including in circumstances where the underlying conduct is lawful and where existing criminal law already provides routes to address genuine threats to safety or serious criminal damage.

62. In that environment, many protesters and organisers experience a move away from a presumption in favour of facilitating protest towards a model in which disruptive or persistent protest is treated as a problem to be managed, pre-empted and deterred. The Review's starting point should be to test whether this expansion is demonstrably necessary in a democratic society, or whether it has become a default governing philosophy that treats disruption as inherently illegitimate rather than as a predictable and often essential feature of political expression.

63. The overall balance has therefore tilted too far towards control and risk aversion. Protest is frequently approached as a public order risk to be minimised rather

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<sup>86</sup> Joint Committee on Human Rights. 2025. *Legislative Scrutiny: Crime and Policing Bill*. Available at: <https://committees.parliament.uk/publications/48758/documents/255740/default/>

than as a fundamental right that may cause inconvenience and disruption but is protected precisely because it enables people to challenge those in power. At the same time, on the hate crime side, there is a visible tension between genuine under-protection of targeted communities and the risk of over-policing some forms of controversial but lawful expression, particularly in high profile ‘culture war’ settings.

## 5.1. THE PRINCIPLES THE REVIEW SHOULD APPLY

64. The Review should be explicit that its work is grounded in a clear human rights framework drawn from both domestic and international law. Domestically, the Human Rights Act 1998 requires public authorities, including the police and the Home Secretary, to act compatibly with Convention rights and, so far as possible, to interpret legislation consistently with those rights. In protest cases such as *DPP v Ziegler* the Supreme Court has confirmed that where Articles 10 and 11 are engaged, courts must undertake a structured proportionality assessment on the specific facts rather than treating deliberate obstruction or disruption as automatically justifying conviction.<sup>87</sup> At the international level, Articles 10 and 11 ECHR and Articles 19 and 21 International Covenant on Civil and Political Rights (ICCPR) require that any restriction on protest or expression is provided by law, pursues a legitimate aim, and is necessary in a democratic society in the sense of being proportionate to a pressing social need.<sup>88</sup> ECtHR case law on Article 11 stresses that freedom of peaceful assembly is a fundamental right that should not be interpreted restrictively and that states have both negative and positive obligations, including taking reasonable and appropriate measures to enable lawful demonstrations to proceed and to protect participants from violence or disruption by others, even where assemblies are controversial or attract counter-protests.<sup>89</sup>
65. Several core principles follow from this framework:

- **First, within the Article 10 and 11 balancing exercise, particularly restrictive measures should be exceptional rather than routine.** The starting point

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<sup>87</sup> UK Supreme Court. 2021. *Director of Public Prosecutions v Ziegler and others* [2021] UKSC 23. Available at: [https://supremecourt.uk/uploads/uksc\\_2019\\_0106\\_judgment\\_0bf6f93fde.pdf](https://supremecourt.uk/uploads/uksc_2019_0106_judgment_0bf6f93fde.pdf)

<sup>88</sup> European Court of Human Rights. 2025. *Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association* (updated). Available at: [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_11\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_11_eng); UN Human Rights Committee. 2020. *General Comment No. 37 on Article 21 (Right of Peaceful Assembly)*. CCPR/C/GC/37. Available at: <https://docs.un.org/CCPR/C/GC/37>

<sup>89</sup> Plattform ‘Ärzte für das Leben’ v. Austria, Application No. 10126/82. Available at: [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-60953%22\]}](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-60953%22]})

should be that peaceful protests are allowed to proceed, even where they are noisy, disruptive or politically contentious. ECtHR case law has recognised that public assemblies may cause disruption or annoyance to others, but that this does not, by itself, remove them from the protection of Article 11; a certain level of disruption must be tolerated if the right is to remain meaningful.<sup>90</sup>

- **Second, any powers that permit advance restrictions on protests or that create protest specific offences must be framed in clear, narrow terms.** The ‘prescribed by law’ requirement under Articles 10(2) and 11(2) demands that restrictions be formulated with sufficient precision to allow individuals to foresee the consequences of their actions and to guard against arbitrary or discriminatory enforcement.<sup>91</sup> Vague concepts that can be stretched to capture ordinary protest, such as very low disruption thresholds or open-ended notions of ‘intimidation’, sit uneasily with this requirement.
- **Third, the cumulative impact of the framework must be assessed, not only individual powers in isolation.** In practice, organisers and participants experience overlapping risks of conditions, arrest, intrusive policing and preventive orders. The Review should therefore test necessity and proportionality at the level of the overall scheme, including how multiple overlapping powers operate together on the ground.<sup>92</sup>
- **Fourth, the use and impact of protest and hate-crime powers should be monitored through robust, disaggregated and publicly accessible data.** Without reliable information on when and how powers such as protest-linked stop and search, conditions, arrests, SDPOs and hate-crime tools are used, it is difficult to assess whether they are necessary, whether they are being applied in a non-discriminatory way, or whether they are having disproportionate chilling effects on particular communities.<sup>93</sup>

66. On hate crime and hate related expression, the Review will need a structured way of distinguishing between speech that should remain protected, however offensive, and speech that can legitimately be criminalised as incitement to

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<sup>90</sup> European Court of Human Rights. 2025. *Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association* (updated). Available at: [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_11\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_11_eng)

<sup>91</sup> *ibid*

<sup>92</sup> *ibid*

<sup>93</sup> HM Inspectorate of Constabulary and Fire & Rescue Services. 2021. *Getting the balance right? An inspection of how effectively the police deal with protests*. Available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests>; UN Human Rights Committee. 2020. *General Comment No. 37 on Article 21 (Right of Peaceful Assembly)*. CCPR/C/GC/37. Available at: <https://docs.un.org/CCPR/C/GC/37>

hatred. The Rabat Plan of Action sets out a six part threshold test that looks at context, speaker, intent, content and form, extent of dissemination and likelihood, including imminence, of harm.<sup>94</sup> The Review should use this framework to evaluate whether relevant speech offences and enforcement practices in England and Wales are drawn narrowly enough and whether they maintain a clear, high threshold focused on serious targeted harm rather than drifting into a general ‘harmful speech’ paradigm that risks chilling lawful expression.

67. Finally, preventive and pre-emptive measures such as SDPOs, protest linked suspicionless stop and search and orders that have banning like effects are among the most intrusive kinds of interference with protest rights. In a proportionality framework, measures that restrict future participation and expose individuals to serious criminal penalties for breach should be treated as lying at the outer edge of what can be compatible with Articles 10 and 11 and Article 21 ICCPR and should therefore be tightly constrained and demonstrably necessary.<sup>95</sup> The Review should scrutinise whether a rights-compliant approach requires recommending that such powers be repealed in protest contexts or, at minimum, subjected to very strict substantive and procedural safeguards.

## 5.2. HOW THOSE PRINCIPLES PLAY OUT IN PROTEST AND HATE CRIME

68. Applied to protest, these principles require the Review to question whether the current framework genuinely reflects a duty to facilitate protest. The pattern that has emerged since 2022 suggests the opposite. Lowered thresholds for imposing conditions under sections 12 and 14 of the POA 1986, the introduction of disruption and noise-based criteria, the creation of protest linked stop and search powers and new offences such as ‘locking on’, and the availability of preventive orders like SDPOs all tend in the same direction. They make it easier to restrict or penalise protests that are disruptive but lawful and to intervene at an earlier planning stage based on anticipated effects rather than actual harm.

69. In practice, as set out elsewhere in this submission, organisers report that large protests now routinely attract wide conditions, frequent stops and searches and

<sup>94</sup> HM Inspectorate of Constabulary and Fire & Rescue Services. 2021. *Getting the balance right? An inspection of how effectively the police deal with protests*. Available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests>

<sup>95</sup> European Court of Human Rights. 2025. *Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association* (updated). Available at: [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_art\\_11\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_art_11_eng); UN Human Rights Committee. 2020. *General Comment No. 37 on Article 21 (Right of Peaceful Assembly)*. CCPR/C/GC/37. Available at: <https://docs.un.org/CCPR/C/GC/37>

the threat of serious criminal charges even where previous experience would have suggested a more facilitative approach. When disruptive protest that does not involve violence is consistently approached through the lens of public nuisance, conspiracy, or preventive orders, it becomes difficult to argue that restrictions are truly exceptional or that less intrusive means have been properly considered.

70. The same human rights framework has implications for how hate crime and hate related expression are approached. Communities that experience repeated hate incidents in and around protests, or in online spaces linked to contentious public debates, require real protection and effective enforcement if their rights to equality and to participate in public life are to be meaningful.<sup>96</sup> At the same time, in the absence of clear, high thresholds and principled guidance, there is a risk that general public anxiety about ‘extremism’ or ‘hate speech’ is translated into pressure for over-broad enforcement against lawful but controversial expression.
71. The Rabat Plan’s emphasis on intent and on a realistic likelihood of harm is designed to guard against this drift by ensuring that only the most serious forms of advocacy are criminalised as incitement to hatred. Where offences or enforcement practices slide below that bar, they can simultaneously fail to protect those most at risk of hatred and undermine confidence in the fairness of the system among those engaged in robust political debate. The Review should therefore evaluate relevant public order and hate speech offences against Rabat’s criteria and against the proportionality standards in Articles 10 and 11, rather than assuming that current boundaries are self-evidently appropriate.

### **5.3. WHAT A BETTER BALANCE WOULD LOOK LIKE IN PRINCIPLE**

72. In practical terms, a better balance would mean re-centring protest as a fundamental right to be facilitated and progressively realised, rather than as a managerial problem to be controlled. Restrictions should be the exception, based on clear and high thresholds that focus on genuine violence, serious property damage and truly ‘serious disruption’ to essential services. Ordinary democratic inconvenience, including noise, congestion and public visibility, should not by itself justify the use of the heaviest public order tools.

On the legislative side, this implies a shift away from constant layering of new protest specific offences and preventive orders, and towards consolidation and simplification. Where new offences or powers essentially duplicate existing

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<sup>96</sup> UN Human Rights Committee. 2020. *General Comment No. 37 on Article 21 (Right of Peaceful Assembly)*. CCPR/C/GC/37. Available at: <https://docs.un.org/CCPR/C/GC/37>

criminal law, the Review should recommend rationalisation and, where appropriate, repeal or significant narrowing. On the operational side, it implies a policing posture that treats facilitation as the starting point, including for protests that are politically unpopular, and that uses negotiation, communication and proportionate, context specific measures before resorting to conditions, arrest or force and disaggregated data is collected for all hate crime offences.

## 6. PRIORITIES FOR CHANGE, AND ANY OTHER ISSUES THE REVIEW SHOULD CONSIDER

### 6.1. RECOMMENDATIONS

#### Protest framework

- Reaffirm a high ‘serious disruption’ threshold under the Public Order Act 1986 and resist further dilution.
  - Confirm that the meaning of ‘serious disruption’ in sections 12 and 14 POA 1986, as amended by the Police, Crime, Sentencing and Courts Act 2022 and clarified by the Court of Appeal in *Liberty v Secretary of State for the Home Department (Serious Disruption Regulations)*, must be applied as a genuinely high threshold for imposing conditions.
  - Recommend that the Review opposes any new ‘relevant cumulative disruption’ duty in the Crime and Policing Bill 2025 that would lower this threshold in practice or encourage conditions to become a routine response to repeat or persistent protest.
- Roll back key post-2022 legislative expansions that have shifted the default towards pre-emptive control. In particular, the Review should:
  - Recommend repeal of the statutory public nuisance offence in section 78 PCSCA 2022, or at minimum its disapplication in protest contexts, given its ‘serious harm’ definition built around ‘serious distress’, ‘serious annoyance’, ‘serious inconvenience’ and ‘serious loss of amenity’.
  - Recommend removal of the ‘noise’ grounds for imposing conditions in sections 12, 14 and 14ZA POA 1986, introduced by sections 73, 74 and 79 PCSC 2022, so that assemblies and processions cannot be restricted solely because of noise-based ‘impact’ on nearby organisations or persons.

- Recommend reversal of the ‘knows or ought to know’ test for breach of conditions under sections 12 and 14 POA 1986, introduced by section 75 Police, Crime, Sentencing and Courts Act 2022, restoring a requirement of actual knowledge that conditions have been imposed.
- Recommend repeal of all protest-specific offences in Part 1 POA 2023, including the ‘locking on’ offences, the tunnelling offences, and the offence of obstructing major transport works and interfering with key national infrastructure (currently contained in sections 1 to 7), on the basis that existing criminal law already addresses genuinely harmful conduct.
- Recommend repeal of the protest-linked suspicion-based and suspicionless stop and search powers in sections 10 and 11 POA 2023. If repeal is not accepted, these powers should be narrowed to a materially higher authorisation threshold, tighter geographic and temporal scope, and robust transparency and equality-impact safeguards.
- Treat Serious Disruption Prevention Orders (SDPOs) as presumptively incompatible with a rights-based framework.
  - Recommend repeal of Part 2 POA 2023 (Serious Disruption Prevention Orders).
  - If repeal is not accepted, recommend a complete redesign so that any replacement order regime:
    - is only available on conviction for a clearly defined, serious protest-related offence
    - has sharply narrower permissible conditions, focused on specific, evidence-based risks
    - is subject to higher evidential thresholds and full proportionality assessment, and
    - is strictly time-limited, with short maximum duration and no rolling renewals.
- Address the use of low-threshold public order powers as de facto protest control tools.
  - Recommend that the Review examines the use in protest contexts of low-threshold offences such as those under section 5 POA 1986 (harassment,

alarm or distress) and related provisions, to test whether they are being used as a substitute for higher public order thresholds.

- Recommend clearer operational tests and guidance to ensure these powers are reserved for genuinely threatening or abusive conduct, including where behaviour overlaps with hate crime, and not used to manage peaceful but contentious protest.

## Hate crime and hate-related expression

- Re-anchor hate crime and hate-related expression in a serious-harm, victim-protection focus.
  - Recommend that the Review tests whether current hate crime offences, aggravation provisions and operational practice are sufficiently focused on serious targeted harm and on meaningful outcomes for victims and communities, rather than on broad notions of 'offence' or 'controversy' in protest and public debate.
  - Recommend an assessment of whether resourcing, investigative practice and charging decisions are aligned with this serious-harm focus, particularly for groups who face repeated hate incidents in and around protests and online.
- Use the Rabat Plan of Action as the benchmark for incitement to hatred.
  - Recommend that the Review uses the Rabat Plan of Action six-part test (context, speaker, intent, content and form, extent of dissemination, and likelihood, including imminence, of harm) as a reference point for evaluating UK incitement provisions and enforcement practice.
  - Recommend that incitement offences and related guidance are recalibrated, where necessary, so that:
    - protected political expression, including sharp, contentious and unpopular speech, is clearly distinguished from
    - genuinely criminal advocacy of hatred that meets Rabat's intent and likelihood of harm thresholds.
- Clarify the role and limits of non-crime hate incident recording.

- Recommend that guidance and training based on the College of Policing Code of Practice on non-crime hate incidents make clear that not all offensive or controversial speech is criminal or recordable.
- Recommend robust safeguards, including necessity and proportionality tests and clear routes to challenge, so that non-crime recording does not become an informal means of policing lawful but unpopular expression.

## Guidance, training, oversight, data and access to justice

- Re-orient operational guidance towards facilitation, not deterrence.
  - Recommend that national operational advice (including College of Policing public order guidance and PACE Code A) is revised so that it explicitly starts from the state's positive obligations under Articles 10 and 11 ECHR to:
    - facilitate peaceful protest, and
    - protect participants from interference by state and non-state actors, rather than treating disruption as a threat to be neutralised.
  - Recommend scenario-based guidance on proportionality for imposing conditions under sections 12, 14 and 14ZA POA 1986, using statutory public nuisance, applying sections 10 and 11 Public Order Act 2023 stop and search powers, and seeking SDPOs or other preventive measures.
- Strengthen training on rights and discrimination.
  - Recommend enhanced training for police, prosecutors and relevant decision-makers on:
    - Articles 10 and 11 ECHR (and the corresponding provisions of the Human Rights Act 1998)
    - equality and non-discrimination obligations, including the Public Sector Equality Duty, and
    - how layered discretionary powers (conditions, stop and search, bail conditions, civil injunctions and SDPOs) can cumulatively intensify disproportionate impacts on racialised and other marginalised communities.
- Improve data, transparency and independent scrutiny.

- Recommend comprehensive, disaggregated and publicly accessible data, subject to independent scrutiny, on:
  - the use of protest powers, including conditions under sections 12, 14 and 14ZA POA 1986, arrests for protest-related offences (including section 78 PCSCA 2022 and Part 1 POA 2023), SDPO applications and orders under Part 2 POA 2023, and protest-linked stop and search under sections 10 and 11 POA 2023
  - hate crime reports, outcomes and non-crime hate incident recording.
- Recommend that this data is broken down by protected characteristic, offence type and outcome so that necessity and proportionality can be meaningfully assessed.
- Address access to legal advice and the practical ability to challenge decisions.
  - Recommend that the Review highlights the need for adequate access to independent legal advice and representation for protesters and for victims of hate crime, including through legal aid where appropriate, so that individuals can challenge conditions, stop and search, bail conditions, SDPOs, injunctions and decisions not to pursue hate crime cases.

## 6.2. OTHER ISSUES OF CONCERN

73. Although this Review is not a legislative inquiry into any single Bill, it should explicitly note that the Crime and Policing Bill 2025 appears to extend the same pattern of layered expansion the Review is examining. The proposed face coverings powers and restrictions linked to places of worship raise risks of widening discretion and increasing uncertainty for organisers without a clear, evidence-based demonstration that existing powers are inadequate.<sup>97</sup> These proposals also carry particular risks for groups with legitimate reasons for anonymity, and for communities whose places of worship are located in dense urban areas where broad ‘vicinity’ provisions may create significant de facto exclusion effects. The Review should therefore recommend that further protest-related expansion is paused until the post-2022 framework has been evaluated as a whole against legality, necessity and proportionality standards.

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<sup>97</sup> Joint Committee on Human Rights. 2025. *Legislative Scrutiny: Crime and Policing Bill*. Available at: <https://committees.parliament.uk/publications/48758/documents/255740/default/>

74. The Review should also address the civic and associational dimension of large-scale demonstrations that have been subject to politicised ‘hate’ framing. In many such contexts, the lived experience of participants is one of solidarity, mutual support and collective grief. A facilitative human rights approach requires that this associational element of protest is protected, including where the political context is polarised and where participants may also face hostility from third parties. The risk of treating such mobilisation as presumptively suspect is that it erodes the practical enjoyment of both freedom of expression and assembly.

75. Finally, the Review should examine the protest environment in educational settings, including the policing and regulation of student demonstrations and any emerging evidence of surveillance or disciplinary approaches that chill lawful expression. This is relevant to restoring clarity and confidence in the wider ecosystem of public debate about free speech, hate and public order.<sup>98</sup>

## 6.3. FURTHER ENGAGEMENT WITH THE REVIEW

76. Given the scale of these issues, Liberty would welcome the opportunity to give oral evidence on protest, public order and freedom of expression, including the cumulative impact of post-2022 reforms on organisers, participants and affected communities.

77. The Review should ensure meaningful opportunities for those most affected to contribute to the evidence base, including protest organisers, grassroots groups, communities exposed to hate-related intimidation, and civil society organisations with monitoring and legal expertise. A process that is inclusive, transparent and grounded in the lived experience of those subject to both over-policing and under-protection will be best placed to deliver a durable settlement that restores clarity, strengthens legitimacy, and recalibrates the balance towards the effective enjoyment of Articles 10 and 11 rights.

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<sup>98</sup> Liberty Investigates. 2025. *Pro-Palestine student protesters convicted of trespassing at their own uni*. Available at: <https://libertyinvestigates.org.uk/articles/pro-palestine-student-protests-leicester-convictions-trespass/>; Liberty Investigates. 2025. *Universities in UK told arms firms they would monitor students for protest intel, emails suggest*. Available at: <https://libertyinvestigates.org.uk/articles/universities-in-uk-told-arms-firms-they-would-monitor-students-for-protest-intel-emails-suggest/>