

LIBERTY

BRIEFING ON THE SERIOUS DISRUPTION REGULATIONS, MAY 2023

The Government's clampdown on the right to protest continues apace, bringing forward regulations in a statutory instrument comprised of measures previously rejected by the House of Lords. **This is reportedly the first time a Government has sought to make changes to the law through secondary legislation that have already been rejected when introduced in primary legislation.** The regulations redefine "serious disruption" so as to give the police greater powers to restrict protest, furthering the Government's attack on our fundamental civil liberties.

Whether it was protesters arrested before they even began protesting, journalists arrested for monitoring protest or volunteers working to keep women and girls safe and spectators of the Coronation held in police custody - the policing of the Coronation showed us the consequences of the Government's creation of a hostile environment for protest. Yet, the Government continues to plummet to new depths to restrict our rights, now reaching for secondary legislation to push through already rejected measures.

We urge Parliamentarians to decline to approve the Serious Disruption regulations.

GOVERNMENT BY DIKTAT

The cynical use of secondary legislation to further restrict the right to protest sees the Government plummet to new depths. Measures in the Serious Disruption regulations first appeared in the Public Order Act 2023 (POA 2023) as Government amendments introduced between Committee and Report Stage in the House of Lords. Peers in the House of Lords voted by majority to throw out the late additions, in large part because they had not had the benefit of scrutiny from the House of Commons.

According to the cross-party Secondary Legislation Scrutiny Committee, the Serious Disruption regulations mark **the first time a Government has sought to make changes to the law through secondary legislation that have already been rejected when introduced in primary legislation.**¹ The SLSC also noted several deficiencies with the Government's approach, including an unsatisfactory Explanatory Memorandum, overbroad measures, and an "inadequate" and effectively biased consultation process. Notwithstanding the substance of the measures, the process by which the Government is seeking to smuggle them through is highly worrying from the standpoint of democratic accountability, given the well-established principle that secondary legislation is afforded far less robust scrutiny than primary legislation.²

HANDING NEW, UNPRECEDENTED POWERS AND DISRECTION TO POLICE

The Serious Disruption regulations are made under s.12(12) and s.14(11) of the Public Order Act 1986 (POA 1986) as added by the Police Crime, Sentencing and Courts Act 2022 (PCSC Act). These sections give the Home Secretary the power to redefine "serious disruption to the life of the community" and to give examples of cases in which a protest is, or is not, to be treated as resulting in such "serious disruption", definitions which the police will use when deciding what conditions to impose on public assemblies and processions.

When this power was first proposed, it was criticised by the Joint Committee on Human Rights and former Prime Minister and Home Secretary Theresa May, who warned the Government to carefully consider the need to "walk a fine line between being popular and populist".³ The Select Committee on the Constitution went so far as to recommend its excision from the Bill on the basis of executive overreach.⁴

The wider context for the introduction of these regulations is the Government's stated aim of cracking down on 'slow walking' protests.⁵ It is highly concerning for the Government to be effectively legislating to target

¹ Secondary Legislation Scrutiny Committee, 38th Report of Session 2022-2023, 11 May 2023.

² Secondary Legislation Scrutiny Committee, *Government by Diktat: A call to return power to Parliament*, 24 November 2021.

³ HC Deb 15 March 2021 vol 691

⁴ Select Committee on the Constitution 7th Report of Session 2021-2022, *Police, Crime, Sentencing and Courts Bill*, 9 September 2021

⁵ Dearden, L., *Police to get power to break up slow-walking climate protests, Braverman says*, 27 April 2023.

LIBERTY

specific groups and tactics, but the effects of these regulations will also extend far beyond these cases. The Serious Disruption regulations:

1. Lower the threshold of serious disruption from “significant” to “more than minor”.

Under the current law, “serious disruption to the life of the community” means a “significant delay” or “prolonged disruption”. The new Serious Disruption regulations would see this threshold drastically lowered to a “more than minor” hindrance to everyday activities, the delivery of products, or access to goods or services.

The words ‘serious disruption’ imply a high threshold – they simply cannot mean a ‘more than minor’ hindrance to everyday activities, the delivery of products, or access to goods or services. The lowered threshold risks being insufficiently legally certain and therefore disproportionate. Such uncertainty gives broad discretion to the police, placing an unhelpful burden on frontline officers – a concern raised by a range of former police chiefs.⁶ Examples of protest actions that may meet the ‘more than minor’ threshold include:

- The police could consider that a static assembly outside a train station by a trade union will result in a ‘more than minor’ delay in access to public transportation services. The police could subsequently impose a condition that the trade union cannot protest outside the train station – even though they are precisely seeking to protest outside their workplace/against their employer.
- The police could consider that a public procession on the pavement that risks spilling onto the road could result in a ‘more than minor’ delay to people driving on the road. This could lead the police to impose a condition saying that the march must take place on a street where there is limited traffic but also limited footfall, thereby undermining the awareness-raising purpose of the march.

2. Require the police to consider “all relevant disruption”, including disruption occurring regardless of where a protest is held (e.g: in an area with normal traffic congestion). In the recent case of the Coronation, were these regulations in place, the police would have needed to consider the disruption caused by the events and road closures in deciding whether, and how, protests could go ahead.

3. Allow the police to consider the “cumulative disruption to the life of the community” resulting from the protest, including any protest previously held, currently being held, or intended to be held in the same area; and any other protest that will take place in the same area. In the context of a broader clampdown on particular protest movements, this could result in the police facilitating some protests based on their content (or at least the perception of this) while imposing restrictions on others.

The “more than minor” threshold, requirement on the police to consider “all relevant disruption”, and granting of the power to consider the “cumulative disruption” caused by multiple protests when considering whether to impose conditions, means that the **police will be given new powers to restrict protest, including to effectively gut them of their relevance and effectiveness**. This could also extinguish protests before they even begin if the conditions imposed are too onerous and/or if people are deterred from protesting because of the risk of the criminal consequences of breaching a condition.

DEFENDING OUR RIGHT TO PROTEST

Protest is the lifeblood of our democracy – and we must protect it. The Serious Disruption regulations will expand the police’s powers to intervene in and restrict protest, while exacerbating legal uncertainty, as the ink is barely dry on the Public Order Act 2023.

We urge Parliamentarians to decline to approve the Serious Disruption regulations.

For more information, including a full analysis of the Serious Disruption regulations, please email Jodie Beck jodieb@libertyhumanrights.org.uk and Jun Pang junp@libertyhumanrights.org.uk.

⁶Sophia Sleight, ‘Really dodgy definitions’: Ex-police chief sounds warning over proposed powers for policing protests’, *Evening Standard*, 15 March 2021 <https://www.standard.co.uk/news/politics/policing-bill-protests-warning-sir-peter-fahy-b924136.html>