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Note Verbale No. 358

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit its' response to communication OL GBR 16/2022, further to the letter dated 22 December 2022 from the Special Rapporteur on the right to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the right to privacy.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 9 December 2023

Special Procedures Branch
Office of the High Commissioner for Human Rights



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United Kingdom of Great Britain and Northern Ireland

Response to Special Procedure communication OL GBR 16/2022 of 22 December 2022 from the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the right to privacy.

Thank you for your letter of 22 December 2022 to the Foreign Secretary following your scrutiny of the draft Public Order Bill (the Bill). The Government has examined your report closely, and I note that you made a number of observations, to which we respond below.

The Government fully supports the right of individuals to engage in peaceful protest. It is a long-standing tradition in this country that people are free to gather and to demonstrate their views, provided they do so within the law. However, in recent years we have seen severe levels of disruption caused to the public and organisations by a small minority of protesters.

Some protests led to significant disruption of members of the public, with stories of people missing medical appointments, funerals and ambulances delayed. In the recent spate of protests by Just Stop Oil, for example, significant costs and human resources were required to respond to people obstructing roads, tunnelling and locking themselves to lorries and refineries. The Metropolitan Police Service estimated they spent £7.5million pounds and required 13,500 officer shifts, Essex Police estimated they spent around £5.6m, while Warwickshire police spent nearly £1m.

We fully accept the importance of tackling climate change but the Government – and the majority of the public – do not believe these tactics are a legitimate way to protest. The rights to freedom of expression and of assembly do not extend to disorder, crime, or infringing the rights of others. The Bill will therefore ensure the police can better balance the rights of the public and the right to protest.

1. Response to specific concerns raised

It is accurate that we previously attempted to introduce the measures that are now in the Public Order Bill in the earlier Police, Crime, Sentencing and Courts Act 2022 (the PCSC Act). As you note, they were rejected by the House of Lords and did not therefore become part of the

Act. While some would have been opposed to the measures themselves – as is their right – others voted against the measures because they did not believe they should have been added to the Bill without first having been considered by the elected chamber, the House of Commons.

In response to the concerns raised regarding the “locking on offence”, linking arms is not in itself an offence. The offence is only applicable if the act “causes, or is capable of causing serious disruption to two or more individuals or an organisation”. Groups of protestors linking arms and obstructing roads, or buildings can cause just as much disruption as those who use other equipment to lock-on. For example, it would be inconsistent if groups who glue themselves to roads may fall under this offence, but those who link arms and cause just as much disruption do not. The Government believes that where serious disruption is caused then the punishment available should be sufficient to deter those who believe that disrupting innocent members of the public is a legitimate protest tactic.

Given the definition of the offence, in the Bill set out above, it will not be used to arrest individuals going about their daily business in the way that you suggest someone locking a bicycle could be caught. The police are familiar with interpreting the law in a practical setting and how to discern criminal behaviour. Section 6 of the Human Rights Act 1998 (HRA) requires the Police, CPS and courts to act ECHR-compatibly. Furthermore, the courts would interpret the statutory provisions ECHR-compatibly as per section 3 of HRA. The Police and Criminal Evidence (PACE) Act 1984 Code G for police on the statutory power of arrest under section 24 of the PACE Act 1984 also states that “Before making a decision to arrest, a constable should take account of any facts and information that are available, including claims of innocence made by the person, that might dispel the suspicion”.

Similarly, we believe there are safeguards to avoid unnecessary prosecution. Paragraphs 4.6 of the Criminal Prosecution Service guidance in the Code for Crown Prosecutors explains that before making the decision to charge someone “Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. This includes a consideration of what the defence case may be, and how it is likely to affect the prospects of conviction”. It continues in paragraph 4.7 to say, “... [t]he finding that there is a realistic prospect of conviction is based on the prosecutor’s objective assessment of the evidence, **including the impact of any defence** and any other information that the suspect has put forward or on which they might rely.”

We do agree with you, however, that the Bill could be improved with a clearer definition of a “serious disruption”. The Government acted on the lack of a definition of serious disruption and tabled an amendment to the Bill to include a definition. Although the Government amendment was defeated, the Opposition amendment to include their definition of “serious disruption” was passed.

In relation to the trade disputes protection the reason the defence singles out workers is to ensure that they are not caught by the offence if their strike action is the cause of disruption to key infrastructure. Those who are engaged in a trade union dispute will not be caught by the offence unless they interfere with the use or operation of infrastructure.

You queried the need for the tunnelling offences introduced by the Bill including causing serious disruption by tunnelling, being present in a tunnel and being equipped for tunnelling. The tunnelling offences have been introduced because, although the offences of aggravated trespass and criminal damage may apply, there is no existing piece of legislation that directly

addresses the threat of tunnelling. Furthermore, aggravated trespass only carries a maximum penalty of 3-months imprisonment and/or a £2,500 fine, which we do not consider to be proportionate to the harm, disruption and risk tunnelling can cause. This new offence is tailored to directly address the disruptive tunnelling we have seen at recent protests.

Finally, it is right that the British Transport Police and the Ministry of Defence Police are able to use the powers which Home Office forces are able to use to better manage protests.

1a. Serious Disruption Prevention Orders

In response to the concerns raised regarding Serious Disruption Prevention Orders (SDPOs), all measures in the Bill, including SDPOs, are compatible with the ICCPR and the ECHR. The Government believes that allowing small numbers of individuals to continually commit criminal offences or inflict serious disruption on the public under the cover of protests is wrong, and these orders offer a proportionate way to protect the public whilst ensuring the ICCPR article 19 (right to expression) and 21 (right to peaceful assembly) rights are not interfered with.

The Government has listened to concerns regarding SDPOs raised during the parliamentary passage of the Bill, which mirror some of those highlighted in your letter. The Government has since tabled several amendments which address your concerns regarding electronic monitoring and the lack of limitation on the number of times SDPOs could be imposed. The Government tabled three amendments to the SDPO measure which, remove the electronic monitoring provision from the Bill, limit the number of times a SDPO can be renewed to only once and reduce the number of years in which conduct is considered for a SDPO from five years to three.

We do not consider that SDPO measures will create a “chilling effect”, as suggested in your letter, on those who wish to participate in assemblies or join organisations for the purpose of pursuing climate justice or other human rights issues. SDPOs are only used where there is evidence of two or more instances where the individual has been convicted of a protest-related offence, breached a protest-related injunction, or has committed, caused or contributed to another specified protest-related activity. They are only to be used in a proportional manner where the courts find clear evidence that an SDPO is absolutely necessary to prevent an individual from engaging in prohibited activity. Similar legal provisions exist for injunctions, which can already be obtained in relation to those who have not committed a criminal offence, including against “persons unknown”.

We believe that giving the courts the right to approve or reject SDPOs provides a strong safeguard. They will have the discretion to impose any prohibitions and requirements necessary to protect the public from protest-related crimes and serious disruption. It is up to the court to decide which prohibitions or requirements are necessary and proportionate for the specific individual who has a SDPO.

You queried the evidential standard for SDPOs, however, the use of the civil standard of proof is not a novel concept for preventative orders. Football banning orders, for example, use the same standard of proof to help prevent violence or disorder at, or in connection with, any regulated football matches.

1b. Stop and search powers

The stop and search powers introduced by the Public Order Bill will enable the police to proactively tackle highly disruptive protest offences by searching for and seizing items which are made, adapted or intended to be used in connection with protest-related offences, such

as glue, chains and locks. Stop and search can also act as a deterrent by preventing offenders from carrying items for protest related offences in the first place because of the increased chance of being caught.

In response to the concern raised regarding the risk of discriminatory practice of the new stop and search powers, the Government is clear that nobody should be stopped and searched because of their race. Extensive safeguards such as statutory codes of practice and body worn video exists to ensure that this does not happen. In addition, the Home Office publishes extensive data on police's use of stop and search in the interests of transparency and will expand this publication to the use of the new powers provided for in this Bill. Further, the potential impact of the Bill on individuals with protected characteristics has been considered, as per the Public Sector Equality Duty, and an Equality Impact Assessment has been published.

In response to the concern raised in the letter questioning the need for intrusive powers for protest, in the fast-paced context of a protest, it can be challenging to assert the appropriate level of suspicion needed for a suspicion led search. In addition, the use of suspicion-less stop and search is not inconsistent with the right to engage in peaceful protest, as it would only be targeted at preventing the guerrilla tactics employed by some. His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) recognised the need for the police to be granted suspicion-less powers to stop and search for articles connected with protest related offences and at the Bill's Oral evidence session HM's Inspector Matt Parr reaffirmed his support for the measures.

You raised concerns with the offence of obstructing a constable in the exercise of their powers to stop and search. However, this was based on existing legislation as can be seen in section 60 of Criminal Justice and Public Order Act 1994 (power to stop and search in anticipation of violence). The Government does not want to complicate legislation and by ensuring consistency with existing legislation this will ensure the police have clarity and prevents making it more difficult to learn how to use the powers correctly. It should be noted however that clause 14 has been removed from the Bill since during the Report Stage in the House of Lords.

2. The compliance of the proposed legislation with international human rights norms and actions the Government are taking to improve the Bill

In response to the concerns raised regarding the ICCPR articles 17 (right to privacy), 19 (right to expression) and 21 (right to peaceful assembly) in relation to the Public Order Bill. The Government recognises its international human rights law obligations and the requirement to comply with the ICCPR and ECHR; however, it is noted in both covenants that ICCPR articles 17, 19 and 21 and the parallel rights in the ECHR (articles 8, 10 and 11) can be restricted if "necessary" for the protection of others' rights.

These rights are not absolute rights and so where individuals' conduct exceeds the protection of the articles, it is right that they face consequences for the disruption they cause. We believe, therefore, that the measures in the Bill, alongside the penalties for the offences introduced in the Bill, are consistent with the relevant articles of the ICCPR or ECHR.

3. Stakeholder consultation during the drafting of the proposed legislation

In answer to your question regarding whether we consulted with stakeholders during the drafting of the Public Order Bill, the legislation was drafted with consultation and collaboration

from the police. In addition, the Bill builds on the recommendations of the March 2021 HMICFRS report titled “Getting the balance right? An inspection of how effectively the police deal with protests”. This report highlighted that some officers saw the Public Order Act 1986 as “hopelessly outdated” and that “fundamental reform was needed to make it easier to police protests”.

4. The compatibility of the fines and penalties in the Bill with the necessity and proportionality requirements

The fines and penalties provided for the new offences introduced by this Bill are maximum limits. These allow the judiciary to apply appropriate penalties relative to the harm and risk caused by protesters actions. These include significant losses to organisation by disrupting their activities or putting lives at risk by tunnelling.

5. Steps the Government is taking to take the concerns raised in this letter into account

During the House of Lords Report Stage, the Government has tabled amendments responding to some of the main criticisms the Bill has faced during its parliamentary passage. This includes some of those you raised including the omission of a definition of “serious disruption”, the electronic monitoring provision for SDPOs and the unlimited number of times by which a SDPO can be renewed. The Government has listened and acted to ensure that the Bill is improved.

There has been a lot of inaccurate statements made about the Bill and, indeed, the PCSC Act, which preceded it. That legislation, enacted in May 2022, has not led to the end of protest and nor will the Public Order Bill. His Majesty’s Government is confident the Bill is fully compatible with the European Convention on Human Rights and our international obligations. As above, it safeguards the rights of the public and the right to protest.