

# Public Order Act 1986 Regulations 2023

Serious disruption to the life of the community

Commencement: 15 June 2023

## Public Order Act 1986 (Serious disruption to the life of the community) Regulations 2023

- On 15 June 2023, Parliament enacted regulations that amended the Public Order Act (POA) 1986 to align some sections with the POA 2023. Amendments relate to **section 12** and **section 14** of the POA 1986 (imposing conditions on public processions and assemblies).
- This supplementary content must be read in conjunction with the recently published **public order public safety APP** and **protest operational advice**, and must be applied in accordance with public order public safety training.
- All decisions regarding police use of powers remain with the individual officer(s). Consideration should be given to the role of force legal advisors when contemplating use of this legislation.

## Important information

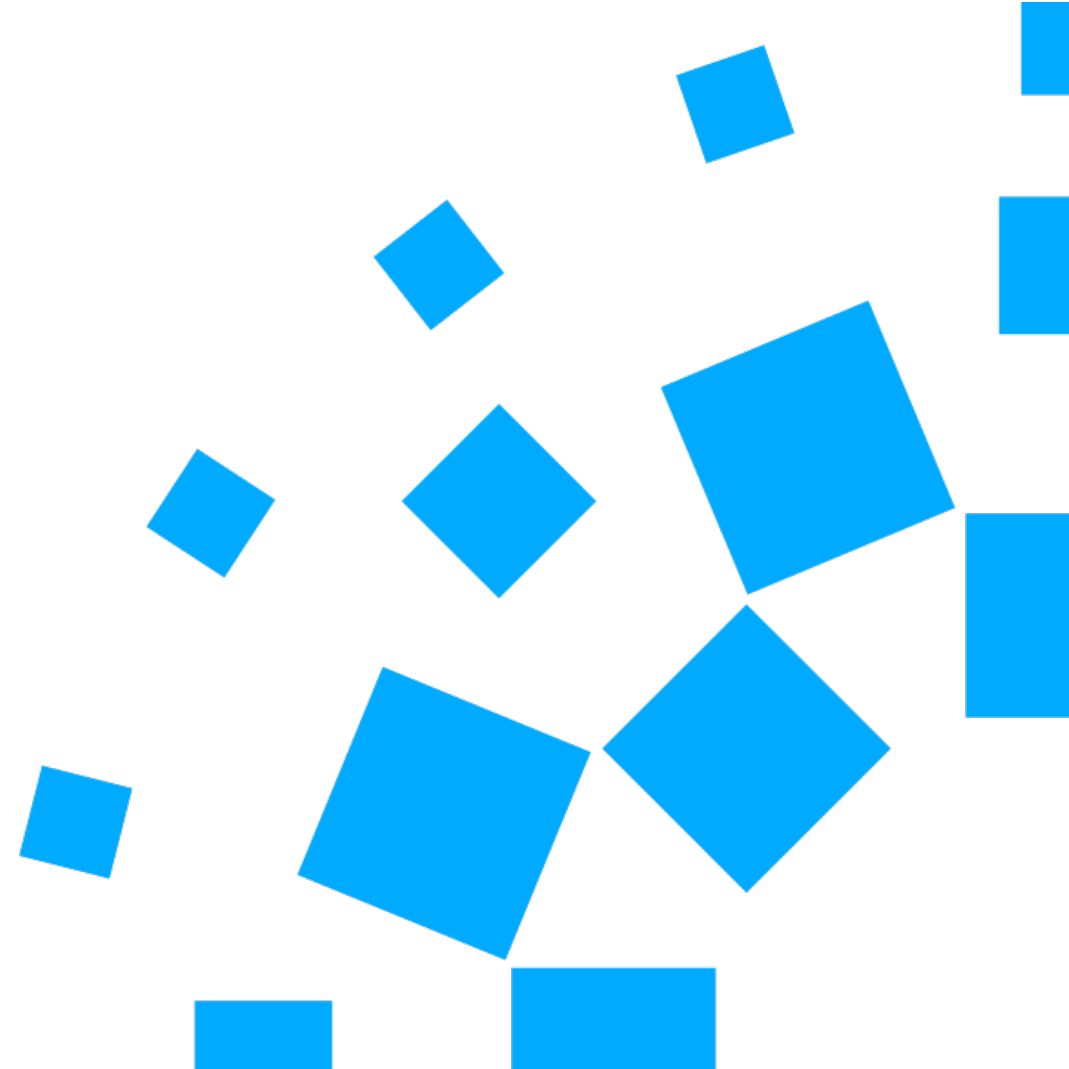
- The POA 1986 remains in effect in its entirety.
- Incremental introduction of the POA 2023 is ongoing, starting on 3 May 2023.
- The **Police, Crime, Sentencing and Courts Act (PCSC) 2022** first amended the POA 1986. This is now further amended by the POA 1986 (Serious disruption to the life of the community) Regulations 2023, commencing 15 June 2023.
- The definition of ‘serious disruption’ (POA 2023) and ‘serious disruption to the life of the community’ (POA 1986 amended) are **not** the same. Care should be taken when auditing your decisions and rationale.



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# Proportionality



## Fundamental duties of police

- **Section 3** of the **Human Rights Act (1998)** –

‘So far as is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with convention rights.’

- **Section 6** of the **Human Rights Act (1998)** –

Act in a way that is compatible with the human rights of every person involved, even if it is not possible in the circumstances to uphold those rights to the fullest extent.

**When developing strategies in line with the POA 1986, PCSC 2022 and POA 2023, consider engagement with your force legal advisor.**

## Striking a fair balance

**Consideration of all available information and intelligence, coupled with the ‘structured approach’, will assist commanders in rationalising the proportionality of their decision.**

The courts have settled on an approach to assessing the lawfulness – particularly the proportionality – of the state’s interference in citizens’ European Convention on Human Rights (ECHR) rights where the action is said to be justified under Articles 9(2), 10(2) or 11(2) of the Convention.

Police officers should be aware that this is likely to be the basis for a court’s determination of whether their decisions were in accordance with ECHR. If a police officer follows the same process and records their reasons for taking action by reference to the same criteria, this will give the best prospect of the action being lawful.

## Structured approach

- a. Is the individual exercising one or more of their rights under Article 9, 10 or 11?
- b. If so, is there an interference by the police with that right?
- c. If there is an interference, is it prescribed by law?
- d. Is the interference in pursuit of a legitimate aim, as set out in paragraph 2 of Article 9, 10 or 11?
- e. If so, is the interference 'necessary in a democratic society' to achieve that legitimate aim?
  - i. Is the aim sufficiently important to justify interference with a fundamental right?
  - ii. Is there a rational connection between the means chosen and the aim in view?
  - iii. Are there less restrictive alternative means available to achieve that aim?
  - iv. Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?

See appendix A protest operational advice for further guidance on using the structured approach to support decision making.



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# POA 1986 (Serious disruption to the life of the community) Regulations 2023



## Overview of amendment

The changes in the legislation may, in practical terms, lead to the police determining that the threshold for imposing conditions under section 12(1) and/or section 14(1) is met more frequently than it was before.

However, it does **not** automatically follow that conditions should be imposed.

The need to consider proportionality will always arise in relation to the questions of whether to impose any conditions on peaceful gatherings, and the nature of any such conditions.

This will require the police to strike a fair balance between upholding the rights of the protestors and the rights of other members of the community.

# As of 15 June 2023 – Section 12 of the POA 1986 (1 of 5)

## Section 12 – Imposing conditions on public processions

1. If the senior police officer, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that—

- a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community,
- aa) in the case of a procession in England and Wales, the noise generated by persons taking part in the procession may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the procession,
- ab) in the case of a procession in England and Wales—
  - i) the noise generated by persons taking part in the procession may have a relevant impact on persons in the vicinity of the procession, and
  - ii) that impact may be significant, or
- b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do, he may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption, impact or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions.

## Section 12 of the POA 1986 (2 of 5)

2. In subsection (1) “the senior police officer” means—

- a) in relation to a procession being held, or to a procession intended to be held in a case where persons are assembling with a view to taking part in it, the most senior in rank of the police officers present at the scene, and
- b) in relation to a procession intended to be held in a case where paragraph (a) does not apply, the chief officer of police.

**2A. For the purposes of subsection (1)(a)—**

- a) the cases in which a public procession in England and Wales may result in serious disruption to the life of the community include, in particular, where it may, by way of physical obstruction, result in—
  - i) the prevention of, or a hindrance that is more than minor to, the carrying out of day-to-day activities (including in particular the making of a journey),
  - ii) the prevention of, or a delay that is more than minor to, the delivery of a time-sensitive product to consumers of that product, or
  - iii) the prevention of, or a disruption that is more than minor to, access to any essential goods or any essential service

## Section 12 of the POA 1986 (3 of 5)

b) in considering whether a public procession in England and Wales may result in serious disruption to the life of the community, the senior police officer—

i) must take into account all relevant disruption, and

ii) may take into account any relevant cumulative disruption, and

c) “community”, in relation to a public procession in England and Wales, means any group of persons that may be affected by the procession, whether or not all or any of those persons live or work in the vicinity of the procession.

In subsection (2A) and this subsection— “access to any essential goods or any essential service” includes, in particular, access to—

a) the supply of money, food, water, energy or fuel,

e) an educational institution, or

b) a system of communication,

f) a service relating to health;

c) a place of worship,

d) a transport facility,

## Section 12 of the POA 1986 (4 of 5)

“area”, in relation to a public procession or public assembly, means such area as the senior police officer considers appropriate, having regard to the nature and extent of the disruption that may result from the procession or assembly

“relevant cumulative disruption”, in relation to a public procession in England and Wales, means the cumulative disruption to the life of the community resulting from—

- a) the procession,
- b) any other public procession in England and Wales that was held, is being held or is intended to be held in the same area as the area in which the procession mentioned in paragraph (a) is being held or is intended to be held (whether or not directions have been given under subsection (1) in relation to that other procession), and
- c) any public assembly in England and Wales that was held, is being held or is intended to be held in the same area in which the procession mentioned in paragraph (a) is being held or is intended to be held (whether or not directions have been given under section 14(1A) in relation to that assembly),

and it does not matter whether or not the procession mentioned in paragraph (a) and any procession or assembly within paragraph (b) or (c) are organised by the same person, are attended by any of the same persons or are held or are intended to be held at the same time;

## Section 12 of the POA 1986 (5 of 5)

“relevant disruption”, in relation to a public procession in England and Wales, means all disruption to the life of the community—

a) that may result from the procession, or

b) that may occur regardless of whether the procession is held (including in particular normal traffic congestion);

“time-sensitive product” means a product whose value or use to its consumers may be significantly reduced by a delay in the supply of the product to them.

## As of 15 June 2023 – Section 14 of the POA 1986

Amendments to section 14 are in similar terms to those for section 12. The test for serious disruption to the life of the community is the same, albeit with different considerations for static assemblies compared to the start and end points or route of a procession. The text below is an extract from the legislation.

Section 14 of the Public Order Act 1986 (imposing conditions on public assemblies) is amended:

- a) the cases in which a public assembly in England and Wales may result in serious disruption to the life of the community include, in particular, where it may, by way of physical obstruction, result in
- i) the prevention of, or a hindrance that is more than minor to, the carrying out of day-to-day activities (including in particular the making of a journey),
  - ii) the prevention of, or a delay that is more than minor to, the delivery of a time-sensitive product to consumers of that product, or
  - iii) the prevention of, or a disruption that is more than minor to, access to any essential goods or any essential service,
- b) in considering whether a public assembly in England and Wales may result in serious disruption to the life of the community, the senior police officer—
- (i) must take into account all relevant disruption, and
  - (ii) may take into account any relevant cumulative disruption, and

## More than minor

There is no statutory definition of ‘more than minor’ within the legislation.

In each case, when considering whether serious disruption is caused, the threshold of ‘more than minor’ appears to allow only two categories of disruption:

- minor (not ‘serious disruption’)
- more than minor (‘serious disruption’)

However, the statute does not dictate that all cases of disruption that are more than minor are automatically serious disruption, rather that this **may** be so.



# Glossary

- **Area** – the area that the senior police officer considers appropriate, having regard to the nature and extent of the disruption that may result from the procession or assembly.
- **Access to any essential goods or any essential service** – (a) the supply of money, food, water, energy or fuel, (b) a system of communication, (c) a place of worship, (d) a transport facility, (e) an educational institution or (f) a service relating to health.
- **Community** – any group of persons that may be affected by the procession, whether or not all or any of those persons live or work in the vicinity of the procession.
- **Relevant cumulative disruption** – the cumulative disruption to the life of the community resulting from the procession, any other public procession (intended for same area) or any public assembly (intended for same area).
- **Relevant disruption** – all disruption to the life of the community.
- **Time-sensitive product** – a product whose value or use to its consumers may be significantly reduced by a delay in the supply of the product to them.

# Hyperlinks

- Legislation
  - [Human Rights Act 1998](#)
  - [Public Order Act 2023](#)
  - [Police, Crime, Sentencing and Courts Act 2022](#)
  - [Public Order Act 1986](#)
    - [Section 12, 'Imposing conditions on public processions'](#)
    - [Section 14, 'Imposing conditions on public assemblies'](#)
- Reference
  - [Protest operational advice document](#)
  - [Article 8 ECHR](#)
  - [Article 9 ECHR](#)
  - [Article 10 ECHR](#)
  - [Article 11 ECHR](#)
  - [Public Order Bill fact sheet](#)
  - [Our guides to the changes from the Public Order Act 2023 and PCSC Act 2022](#)
  - [Public order public safety APP](#)