

The Public Order Act 2023 (Commencement No.1) Regulations 2023

1. Today, 3 May 2023, these Regulations bring into force sections 1, 2, 7, 8, 15 and 34 of the Public Order Act 2023. The following sections of the Act create new criminal offences focused particularly on combatting and criminalising disruptive protestors.
 - (a) section 1 (offence of locking on);
 - (b) section 2 (offence of being equipped for locking on);
 - (c) section 7 (interference with use or operation of key national infrastructure), to the extent not already in force;
 - (d) section 8 (key national infrastructure);
 - (e) section 15 (processions, assemblies and one-person protests: delegation of functions);
 - (f) section 34 (meaning of serious disruption).

Section 1 – the new criminal offences of ‘locking on’

2. This new offence is summary only and those convicted could be sentenced to a maximum of 6 months imprisonment or a fine or both. However, if the offence is committed after 14 July 2022, when s.281(5) of the Criminal Justice Act 2003 came into force, the maximum sentence is 51 weeks imprisonment.
3. A person will commit this offence if they attach themselves or a person to:
 - a) Another person;
 - b) An object;
 - c) LandAnd that act is capable of causing serious disruption to two or more individuals or an organisation in a place other than a dwelling.
4. They must also intend to cause serious disruption or be reckless as to whether serious disruption is caused. The definition of serious disruption is given in section 34 of the Act and will include circumstances where:

- a) a physical obstruction causes a person or organisation to be hindered to ‘more than a minor degree’ from carrying out their day to day activities (which specifically includes the making of a journey), construction or maintenance works or activities related to construction or maintenance works;
 - b) A person or organisation is prevented from, or suffer more than a minor delay in, the making or receiving a delivery of a time-sensitive product (which means a product whose value or use may be significantly reduced by a delay in its supply).
 - c) A person or organisation is prevented from, from or suffer more than a minor delay in, accessing any essential goods or service (which specifically includes the supply of money, food, water, energy, fuel, any system of communication, a place of worship, a transport facility, an educational institution or a health service).
5. Reasonable excuse will be a defence for those prosecuted for this offence but the burden of proof will be on the defendant in the usual way.

Section 2 – the new criminal offence of being equipped’ for locking on

- 6. A person will be guilty of an offence of being equipped for locking on if they have with them, in a place other than a dwelling, an object with the intention that it is used in the course of, or in connection with, the offence of locking on by any person.
- 7. This offence is summary only and the maximum sentence will be a fine.
- 8. It is notable that for this offence, only intention (as opposed to recklessness) will suffice and, as such, reasonable excuse will not be a defence.

Section 7 – the new criminal offence of interference with use or operation of key national infrastructure

- 9. A person will be guilty of an offence if they interfere with the use or operation of key national infrastructure. This includes:
 - a) Road
 - b) Rail
 - c) Air transport infrastructure
 - d) Harbour infrastructure
 - e) Oil, gas and electricity infrastructure

- f) Newspaper printing infrastructure (including national or local newspapers)
10. They must also have intent to interfere or be reckless as to whether their act will do so.
 11. ‘Interference’ is defined in s.7(4) of the Act as preventing the infrastructure from being used or operated to any extent for any of its intended purposes and this includes where its use or operation for any of those purposes is significantly delayed (s.7(5)).
 12. There are two defences identified in the Act:
 - a) Reasonable excuse
 - b) That the act was done wholly or mainly in contemplation or furtherance of a trade dispute.
 13. This offence is triable either way. On summary conviction, the maximum sentence is the general limit in a Magistrates’ Court, a fine or both. On conviction on indictment, the maximum sentence is 12 months imprisonment, a fine or both.

Criticism and rationale

14. The Office of the High Commissioner for Human Rights issued a press release on 27 April 2023 describing the Act as ‘deeply troubling legislation that is incompatible with the UK’s international human rights obligations regarding people’s rights to freedom of expression, peaceful assembly and association’.¹ These concerns have been echoed by other organisations including Amnesty International who describe the measures as ‘deeply authoritarian’².
15. The government has made its stance clear – that in recent times a small minority of protestors (including specifically Just Stop Oil and Insulate Britain) have caused serious disruption with the use of ‘guerrilla tactics’³ to the public and businesses who need more protection from their actions. The Home Office has also responded directly to the

¹ <https://www.ohchr.org/en/press-releases/2023/04/un-human-rights-chief-urges-uk-reverse-deeply-troubling-public-order-bill>

² <https://www.amnesty.org.uk/blogs/campaigns-blog/public-order-bill-explained>

³ <https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-factsheet>

Human Rights concerns in a memorandum last year making clear that the new legislation will be compatible with the European Convention on Human Rights.⁴

16. The legislation did not, however, garner support from all in the House of Commons. Baroness Jones of Moulsecoomb, for example, aired her concerns that the government have panicked in light of the recent actions of protestors and that the legislation undermines freedom of speech. In response to the internal and external scrutiny and criticism, Lord Sharpe of Epsom, perhaps summarising the views of those who voted in favour of the legislation, responded ‘the British Public are rightly sick of the disruption that has been caused by a very selfish minority and expect the Government to act. That is what this Bill does, and it is time for it to become law.’⁵

Practical considerations

17. The legislation has raised numerous practical considerations. For example:

- a. What will amount to ‘attaching’ for the purpose of the locking on offence? Clearly the use of locks, chains or glue will satisfy the definition but will this extend to a group of people linking arms? The Oxford Dictionary definition of ‘attach’ is to ‘join or fasten something to something else’ and makes no reference to the permanence of that joining. Could, therefore, the joining of arms or the clutching of a barrier for example, no matter how temporary, satisfy the definition?
- b. What will constitute a ‘more than minor’ hindrance for the purpose of the locking on offence? for example, it is clear that a protestor who causes a traffic build up and therefore delays will have satisfied the definition of serious disruption but how is this quantified? Will a 15 minute delay suffice? Or does it need to be more than that?
- c. How will the Crown prove that ‘a person or organisation’ has been adequately hindered? Will those sat in the traffic jams have to give evidence to prove this or will the evidence of the arresting officers suffice?

⁴ <https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-european-convention-on-human-rights-memorandum>

⁵ <https://www.parallelparliament.co.uk/debate/2023-04-26/lords/lords-chamber/public-order-bill>

- d. Similarly, how will the Crown show that there has been delay or prevention in making or receiving a delivery of a time-sensitive product? Will this depend on the delivery driver, and subsequently their employer, raising the issue with police? Or on the intended recipient of the goods or service making the complaint? If a food delivery is delayed by 2 hours and the frozen goods have spoiled or melted does that amount to significant reduction in value?
 - e. What will amount to a 'reasonable excuse'? This is a very familiar concept in criminal law but it is difficult to see how the common circumstances in which this defence is presently used will apply to these new offences.
18. These questions highlight some of the areas in which the defence may wish to focus when acting on behalf of a person prosecuted under this new legislation and similarly, some of the considerations for those prosecuting when deciding whether the standard of proof can be met.

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