

GARDEN COURT



CHAMBERS



Public Order Act 2023

Stop and search powers

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GARDEN COURT CHAMBERS



TOP TIER SET
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s.10 Powers to stop and search on suspicion

- Amends section 1 of the Police and Criminal Evidence Act 1984 to allow a constable to stop and search a person or vehicle if they have reasonable grounds for suspecting that they will find an article made, or adapted or intended, for use in the course of or in connection with the following offences:
 - Wilful obstruction of the highway (section 137 of the Highways Act 1980)
 - Public nuisance (section 78 of the Police, Crime, Sentencing and Courts Act 2022) Locking on (section 1 of the POA 2023)
 - Offences of causing serious disruption by tunnelling or by being present in tunnel (sections 3 and 4 of the POA 2023)
 - Obstruction of major transport works (section 6 of the POA 2023)
 - Interference with use or operation of key national infrastructure (section 7 of the POA 2023).



S.11 Power to stop and search without suspicion

- Provides that an Inspector or a more senior officer can authorise a uniformed police officer to undertake **suspicion-less** stop and searches in **a particular location for a specific period**, when the senior officer **reasonably believes** the following:
- The offences listed in s. 11(1)(a) **may be committed**:
 - (i) Wilful obstruction of the highway
 - (ii) Intentionally/recklessly causing public nuisance
 - (iii) Locking-on
 - (iv) Obstructing major transport works
 - (v) Interfering with the use or operation of key national infrastructure
 - (vi) Causing serious disruption by tunnelling or being present in a tunnel
- That persons are carrying prohibited objects in any locality within the officer's police area (s11(1)(b)).



S.11 continued...

- A “prohibited object” means an object which is made or adapted for use **in the course of or in connection with an offence** OR is intended by the person having it with them for such use by them or by some other person.
- Section 11(4) provides that the police officer reasonably believes that:
 - a) the authorisation is necessary to prevent people committing the listed offences or carrying prohibited objects,
 - b) the specified locality must be no greater than is necessary to prevent such activity, and
 - c) specified period is no longer than is necessary to prevent such an activity.
- Powers can be authorised for a period not exceeding 24 hours (s.11(3)(b), and may be extended for a further 24 hours if the officer continues to consider it necessary (s.11(5)).



S.11 continued...

- Section 11(6) confers the power on any constable in uniform to:
 - (a) stop and search any person or anything carried by them for a prohibited object; and
 - (b) to stop and search the vehicle, its driver and any passenger for a prohibited object.
- Can be done **whether or not the constable has any grounds for suspecting that the person or vehicle is carrying a prohibited object (s.11(7))**
- If a constable has reasonable grounds for suspecting it is a prohibited object, he may seize it (s.11(8))



S.11: Formalities and procedural provisions

- Section 12:
 - If an Inspector gives an authorisation under s.11, the inspector must, as soon as it is practicable to do so, cause an officer of above the rank of superintendent to be informed (s.12(1)).
 - The authorisation must: (a) be in writing signed by the officer giving it, (b) specify the grounds on which it is given, and (c) specify the locality in which and the period during which the powers are exercisable (s.12(2))
 - A direction to continue the authorisation beyond 24 hours must be given in writing as soon as it is practicable to do so (s.12(3)).
- Section 13: a person who is searched, or the driver of a vehicle that is stopped under s.11 is entitled to obtain a written statement that they were searched under s.11 powers, if they apply for the statement within the period of 12 months.



s.14: Offence relating to s.11

- (1) A person commits an offence if the person **intentionally obstructs** a constable in the exercise of the constable's powers under section 11.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks, to a fine not exceeding level 3 on the standard scale or to both.
- (3) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales), the reference in subsection (2) to 51 weeks is to be read as a reference to 1 month.



S.11: Implications

- Equation of peaceful and disruptive protest with violence. Explicitly modelled on “Section 60” searches under the CJPOA 1994.
- Vague and widely defined powers: risks police over-reach and the deterrence of peaceful and lawful protest.
- Potential for discriminatory application.
- Fosters mistrust and overcriminalisation.



Thank you

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SERIOUS DISRUPTION PREVENTION ORDERS

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JUSTICE

Serious Disruption Prevention Orders

The Public Order Act (POA) 2023 creates the power to impose serious disruption prevention orders.

Although the POA received Royal Assent on 2 May 2023, the provisions in relation to SDPO are **not yet in force** and can only be brought into force by regulations created by statutory instrument.

The focus of SDPO is the prevention of protest-related offences and protest-related breaches of injunction.



What is a Serious Disruption Prevention Order?

A serious disruption prevention order (SDPO) is an order imposed for the following purposes:

- (a) to **prevent P from committing a protest-related offence or a protest-related breach of an injunction;**
- (b) to prevent P from carrying out activities related to a protest that result in, or are likely to result in, serious disruption to two or more individuals, or to an organisation, in England and Wales;
- (c) to prevent P from causing or contributing to—
 - (i) the commission by any other person of a protest-related offence or a protest-related breach of an injunction, or
 - (ii) the carrying out by any other person of activities related to a protest that result in, or are likely to result in, serious disruption to two or more individuals, or to an organisation, in England and Wales;
- (d) to protect two or more individuals, or an organisation, in England and Wales from the risk of serious disruption arising from—
 - (i) a protest-related offence,
 - (ii) a protest-related breach of an injunction, or
 - (iii) activities related to a protest.

SDPO on conviction

A SDPO can be imposed on conviction in the following circumstances set out in section 20 POA:

- (1) This section applies where—
 - (a) a person **aged 18 or over** (“P”) is convicted of an offence (“the current offence”) which was committed on or after the day on which this section comes into force, and
 - (b) the **prosecution applies** for a serious disruption prevention order to be made in respect of P.
- (2) The court dealing with P in respect of the current offence may make a serious disruption prevention order in respect of P if—
 - (a) the court is satisfied on the **balance of probabilities that the current offence is a protest-related offence** (see section 32 (interpretation)),
 - (b) the condition in subsection (3) is met, and
 - (c) the court considers it **necessary** to make the order for a purpose mentioned in subsection (5).
- (3) The condition in this subsection is that the court is satisfied on the balance of probabilities that—
 - (a) within the **relevant period**, P has—
 - (i) **committed another protest-related offence** for which P was **convicted**, or
 - (ii) **committed a protest-related breach of an injunction** (see section 32 (interpretation)) for which P was found in contempt of court,
 - (b) the current offence and P's conduct mentioned in paragraph (a)—
 - (i) relate to **different protests**, or
 - (ii) took place on **different days**, and
 - (c) P's conduct mentioned in paragraph (a) **has not been taken into account when making any previous serious disruption prevention order** in respect of P.
- (4) In subsection (3) “the relevant period” means the period of **5 years** ending with the day on which P is convicted of the current offence; but P's conduct may be taken into account for the purposes of this section only if it took place—
 - (a) **on or after the day on which this section comes into force**, and
 - (b) when P was **aged 16 or over**.

SDPO on application

The following individuals (set out in section 21(7)) may under section 21(1) make apply for a SDPO by way of complaint:

- (a) a relevant chief officer of police;
- (b) the chief constable of the British Transport Police Force;
- (c) the chief constable of the Civil Nuclear Constabulary;
- (d) the chief constable of the Ministry of Defence Police.

A SDPO can be made on application where the following conditions (as set out on section 21(2)) are made out:

- (a) on at least two occasions in the relevant period, P has—
 - (i) **committed a protest-related offence** for which P was **convicted**, or
 - (ii) **committed a protest-related breach of an injunction** for which P was found in **contempt of court**,
- (b) P's conduct in relation to each occasion mentioned in paragraph (a)—
 - (i) related to a **different protest**, or
 - (ii) took place on a **different day**, and
- (c) P's conduct in relation to each occasion mentioned in paragraph (a) **has not been taken into account when making any previous serious disruption prevention order** in respect of P.

(3) In subsection (2) “the relevant period” means the period of **5 years ending with the day on which the order is made**; but P's conduct may be taken into account for the purposes of this section only if it took place—

- (a) **on or after the day on which this section comes into force**, and
- (b) **when P was aged 16 or over**.

The making of the order

It **does not matter whether the evidence would have been admissible** in the proceedings for the current offence (section 20(9)).

The **court may adjourn** any proceedings on an application for a serious disruption prevention order even after sentencing P (section 20(10)).

If P does not appear for any adjourned proceedings the court may (a) further adjourn the proceedings, (b) issue a warrant for P's arrest, or (c) hear the proceedings in P's absence (section 20(11)).

The court may not issue a warrant unless it is satisfied that P has had adequate notice of the time and place of the adjourned proceedings (section 20(12)).

The court may not proceed in P's absence under subsection (11)(c) unless it is satisfied that P—

- (a) has had **adequate notice of the time and place** of the adjourned proceedings, and
- (b) has been **informed** that if P does not appear for those proceedings the court may hear the proceedings in P's absence.

On making a serious disruption prevention order the court must in **ordinary language explain to P the effects of the order** (section 20(14)).

Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of this section to have been committed on the last of those days (section 20(15)).

Provisions of an order

SDPO may include requirements for P to do the following:

- (a) **to present themselves** to a particular person at a particular place at, or between, particular times on particular days;
- (b) **to remain at a particular place for particular periods.**

The prohibitions imposed on a person (“P”) by a serious disruption prevention order may, in particular, have the effect of prohibiting P from—

- (a) being in or entering a particular place or area;
- (b) being in or entering a particular place or area between particular times on particular days;
- (c) being in or entering a particular place or area between particular times on any day;
- (d) being with particular persons;
- (e) participating in particular activities;
- (f) having particular articles with them;
- (g) using the internet to facilitate or encourage persons to—
 - (i) commit a protest-related offence or a protest-related breach of an injunction, or
 - (ii) carry out activities related to a protest that result in, or are likely to result in, serious disruption to two or more individuals, or to an organisation, in England and Wales.

The requirements or prohibitions which are imposed on a person by a serious disruption prevention order must, so far as practicable, be such as to avoid—

- (a) any conflict with the person's religious beliefs, and
- (b) any interference with the times, if any, at which the person normally works or attends any educational establishment.

Provisions of the order cont

The order must include:

(a) The reasons for making the order.

(a) The penalties which may be imposed for breaching the order.

Notification requirements in SDPO

Perhaps the most concerning aspect of the new SDPO is the requirement that the order includes notification requirements similar to notification requirements for those convicted of sexual offences

On order must include a requirement that P provides the following information to the police within 3 days of the order taking effect

- (a) P's **name** on the day that the notification is given and, where P uses one or more other names on that day, each of those names,
- (b) P's **home address** on that day, and
- (c) the **address of any other premises at which, on that day, P regularly resides or stays.**

P must inform the police within 3 days of P doing the following

- (a) uses a **name which has not been previously notified** to the police in accordance with the order,
- (b) **changes their home address**, or
- (c) decides to live for a period of **one month or more** at any premises the address of which has not been previously notified to the police in accordance with the order.

The notification requirement is satisfied by providing the information in the following ways

- (a) **attending at a police station** in a police area in which P lives, and
- (b) giving an **oral notification to a police officer, or to any person authorised** for the purpose by the officer in charge of the station.

Duration

A SDPO can be imposed for a period of not less than 1 week and not more than 2 years (section 25).

The order takes effect on the day it is made unless P has been remanded in custody, is serving a sentence in custody or is on licence in which case the Court may order that it does not take effect until

- (a) P is released from custody,
- (b) P ceases to be subject to a custodial sentence, or
- (c) P ceases to be on licence.

Where a court makes a serious disruption prevention order in respect of a person and the person is already subject to such an order, the earlier order ceases to have effect (section 25(6)).

Offences relating to SDPO

Section 27 sets out the offences relating to SDPO. P may commit an offence where P:

- (a) fails without reasonable excuse to do anything P is required to do by the order,
- (b) without reasonable excuse does anything P is prohibited from doing by the order, or
- (c) notifies to the police, in purported compliance with the order, any information which P knows to be false.

Offences under section 27 are punishable by the maximum for summary offences.

Other provisions

Section 28 sets out provisions for **varying, renewing or discharging an order**. Such applications can be made by P or specified police officers set out in section 28(2) and (3)).

(a) Where an order was imposed by the Magistrates Court, the application will be to the Magistrates Court

(b) Where an order was imposed by the Crown Court or Court of Appeal, the application will be to the Crown Court

Section 29 sets out the provisions in relation to appeals.

(a) Appeal against the making of an SDPO on conviction is as if it were a sentence. If the order was made on conviction in the Magistrates Court, P can appeal to the Crown Court within 21 days of the order being made

(b) If an order was made on conviction in the Crown Court, P can appeal with permission to the Court of Appeal within 28 days of the date of the order being made

(c) If the order was **made on application**, P can appeal from the Magistrates Court to the Crown Court

(d) If the Magistrates Court **refuses to impose an order**, the person applying for the order may appeal to the Crown Court.

Practical consideration

Legal aid

The provisions for the making of SDPO are not yet in force but it is expected that legal aid will be available for proceedings relating to SDPO as prescribed proceedings.

Statutory guidance

The POA states that the Secretary of State may issue published guidance in relation to SDPO as were published in relation to anti-social behaviour powers provided in the Anti-social Behaviour, Crime and Policing Act 2014 . This will be guidance for the police but will be essential reading for anyone dealing with applications relating to SDPO.

The caselaw relating to other behaviour orders are likely to be relevant: particularly caselaw relating to criminal behaviour orders and their predecessors and to notification requirements imposed under the Sexual Offences Act 2003.

Rehabilitation of offenders

As with other orders imposed on conviction, it is likely that the rehabilitation period for the purposes of the Rehabilitation of Offenders Act 1974 will be impacted by the imposition of a SDPO.

Outcomes in criminal cases and contempt proceedings

The outcome of criminal proceedings and committal proceedings will become even more important. Careful consideration of out of court disposals and representations in relation to public interest considerations will need to be carefully considered.

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