EXPLANATORY MEMORANDUM TO

THE PUBLIC ORDER ACT 1986 (SERIOUS DISRUPTION TO THE LIFE OF THE COMMUNITY) REGULATIONS 2023

2023 No.[x]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The instrument makes amendments to provisions in the Public Order Act 1986 ("the 1986 Act") concerning the meaning of the expression "serious disruption to the life of the community". This term is used for the purpose of the police powers under the 1986 Act to impose conditions on people organising and taking part in public processions and assemblies. The purpose of the instrument is to provide greater clarity in relation to the meaning of this expression in the Act for the police, the courts, and the public.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument is England, Wales, and Scotland.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 The Minister of State for Crime, Policing and Fire Rt. Hon. Chris Philp MP has made the following statement regarding Human Rights:

"In my view the provisions of the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 Sections 12 and 14 of the 1986 Act provide a framework for senior police officers to impose conditions on public processions and assemblies in order to maintain public order. It is a criminal offence to breach these conditions or incite others to breach them.

6.2 Under this framework, if a senior police officer reasonably believes that a public procession or assembly in England and Wales may result in serious disruption to the life of the community, they may give directions imposing such conditions on the persons organising or taking part in the procession or assembly as appear to the officer necessary to prevent this (section 12(1) and section 14(1A) of the 1986 Act).

6.3 There are other circumstances set out in the framework under which a senior police officer may impose conditions, but these are not relevant for the purposes of the instrument.

6.4 "Serious disruption to the life of the community" is not defined by the 1986 Act, however subsections (2A) and (2B) of section 12 and subsections (2A) and (2B) of section 14, as inserted by the Police, Crime, Sentencing and Courts Act 2022 ("the 2022 Act"), set out a non-exhaustive list of the cases in which a public procession or public assembly, respectively, may result in serious disruption to the life of the community, which includes where the procession or assembly may result in a significant delay to the delivery of a time sensitive product, or a prolonged disruption of access to any essential goods or any essential service.

6.5 Under sections 12(12) and 14(11) of the 1986 Act, as inserted by the 2022 Act, the Secretary of State may amend by regulations sections 12(2A) to (2C) and 14(2A) to (2C) to make provision about the meaning of "serious disruption to the life of the community". The instrument makes amendments to sections 12(2A) and (2B) and sections 14(2A) and (2B) of the 1986 Act under these powers. Sections 12(2C) and 14(2C) relate to the meaning of serious disruption to the activities of an organisation and are not being amended by the instrument.

6.6 During the Parliamentary passage of the 2022 Act, the government's intention was to insert a power to define the meaning of "serious disruption to the life of the community" into the 1986 Act without making any provision as to the meaning of that phrase on the face of the Bill. However, following a recommendation of the Delegated Powers and Regulatory Reform Committee, some examples of cases in which a procession or assembly may result in serious disruption to the life of the community were included, as set out in paragraph 6.4 above, in addition to the delegated power to make changes to these provisions.

6.7 During the Parliamentary passage of the Public Order Act 2023 ("the Bill") the government tabled amendments which would have amended sections 12 and 14 of the 1986 Act in the following ways: (i) to allow the cumulative disruption caused by processions and assemblies in the same area to be taken into account by senior police officers when exercising their powers under those sections; (ii) to allow the assessment of disruption to include any disruption which may occur in an area regardless of whether or not a procession or assembly takes place; (iii) to define the word "community"; (iv) to make clearer the threshold at which disruption is to be considered serious; and (v) to allow police to issue conditions which may apply to more than one procession or assembly. These amendments were narrowly defeated in the House of Lords.

6.8 However, subsequent to that vote, both Houses of Parliament did adopt these definitions of "Serious Disruption in relation to the 2023 Act, and the Government feels that consistency with the most recent definition which Parliament has accepted is important, which is the purpose of this SI.

7. Policy background

What is being done and why?

7.1 In 2022, protest groups Insulate Britain and Just Stop Oil caused wide-spread disruption across the nation through traffic obstruction and slow marches on roads. The groups repeatedly obstructed roads for limited periods of time, causing wide-

spread disruption over the course of several months. The police were clear that their powers to impose conditions on such protests were limited. The provisions in the 1986 Act, as amended by the 2022 Act, provide only limited examples of the meaning of "serious disruption to the life of the community", which police stakeholders have indicated to the government has led to a lack of clarity as to the circumstances in which conditions can be imposed on public processions and assemblies, in particular in relation to the point at which the police could assess that a procession or assembly may result in serious disruption. As a result, the police did not feel able to take action until the disruption was already being caused, as such requiring a time and resource intensive resolution, which could otherwise have been avoided had they been able to take action earlier.

7.2 Prior to the commencement of sections 73 and 74 of the 2022 Act "serious disruption to the life of the community" was not defined and as such the interpretation of the expression was left to the police and the courts.

7.3 The amendments made to sections 12 and 14 of the 1986 Act by sections 73 and 74 of the 2022 Act provide examples of the cases in which processions or assemblies may be considered to cause serious disruption the life of the community, to include where the procession or assembly may result in a significant delay to the delivery of a time-sensitive product or prolonged disruption to the delivery of essential goods or an essential service. A 'time-sensitive product' is defined as a product whose value or use to its consumers may be significantly reduced by a delay in the supply of the product to them. The following non-exhaustive list of essential goods and services is provided: the supply of money, food, water, energy or fuel; a system of communication; a place of worship; a transport facility; an educational institution; or a service relating to health.

7.4 However, the examples given by the current provisions still do not provide the police with enough clarity to make full use of their powers. Whilst they cover a number of specific and serious circumstances, they do not usually cover the frequent and repeated type of disruption which occurs as a result of these types of protest, which is the interruption of the lives of the general public as they go about their normal activities. Over the past year there have been circumstances where serious disruption has been caused to communities, but the police have been reluctant to act as they have not been certain that they have the power to do so. This relates in particular to the question as to whether or not the police can take into account the cumulative disruption caused by concurrent and repeated processions or assemblies in the same area, the consideration of the relative disruption caused by processions or assemblies against disruption typical of the area, what constitutes "community", the fact that there is only a limited list of examples of cases which constitute serious disruption, and the fact that the examples given set a threshold which is in many cases too high.

7.5 In order to better clarify the legal position in relation to these issues, the amendments to the provisions in the 1986 Act made by this instrument seek to clarify the meaning of "serious disruption to the life of the community" in the following ways:

7.6 *Cumulative Impact*: the amendments clarify that the cumulative impact of concurrent and repeated processions and assemblies in the same area can be considered when assessing whether a particular procession or assembly may result in serious disruption to the life of the community.

7.7 *Absolute Disruption*: the amendments make clear that when assessing whether a procession or assembly may result in serious disruption to the life of the community the police must take into account any disruption the procession or assembly may cause whether or not there may be disruption in an area regardless of the procession or assembly. For example, serious disruption may be caused if a procession or assembly causes a traffic jam in an area where traffic jams are common.

7.8 *Meaning of "community"*: the amendments define the term "community" to mean any group of persons affected by the procession or assembly and not just those who live or work in the vicinity of that procession or assembly.

7.9 *List of examples of cases which may constitute "serious disruption to the life of the community":* the amendments amend the non-exhaustive list of cases where a procession or assembly may result in serious disruption to the life of the community to include where it may, by way of physical disruption, result in the prevention of, or a hinderance that is more than minor to, the carrying out of day-to-day activities (including in particular the making of a journey).

7.10 *Threshold for the examples of cases which may constitute 'serious disruption to the life of the community"*: the amendments change the threshold for when disruption should be considered to constitute "serious disruption to the life of the community" in the list of examples, from "significant delay" and "prolonged disruption" to "the prevention of or a delay that is more than minor to" and "the prevention of or a disruption that is more than minor to", as well as making clear that this may be by way of physical obstruction. This aligns with the definition of "serious disruption" in the Public Order Bill derived from recent protest case law and proposed by the former Deputy President of the Supreme Court of the United Kingdom, Lord Hope of Craighead. Replicating this threshold in the Public Order Act 1986 ensures consistency across the statute book.

7.11 These amendments are intended to address the key issues raised by the police as preventing them from acting at the appropriate time to allow serious disruption to be prevented. They are also intended to ensure the provisions in the 1986 Act better align with the definition of "serious disruption" as contained within the Public Order Bill, ensuring consistency across the statute book and allowing for more consistent policing in the context of protest management.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 A full consultation was not necessary as the provisions in this instrument serve to clarify existing police powers and do not create new powers or criminal offences. Instead, targeted engagement with operational leads was held.

10.2 The National Police Chiefs Council, the Metropolitan Police Service, the Police and Crime Commissioners of the police forces whose areas include the M25, and National

Highways were consulted on how to improve the response to highly disruptive protests at a roundtable chaired by the Prime Minister.

10.3 Both the National Police Chiefs Council and the Metropolitan Police Service welcomed a commitment to bring further clarity to the meaning of "serious disruption to the life of the community". Drafts of the proposed amendments to the Public Order Bill (see paragraph 6.7) were shared with and commented on by both organisations. As set out in this Explanatory Memorandum, those amendments provided the basis for the changes made by the instrument.

10.4 National Highways have expressed the importance of the road networks, which are typically disrupted by protests, operating efficiently and that the public have a right to expect this. The changes made by the instrument will improve the police's ability to protect this right.

11. Guidance

11.1 The College of Policing regularly updates its operational guidance for public order officers to reflect all relevant changes to the law. It is aware that the instrument is being laid. Home Office officials are working with the College of Policing to ensure that its guidance is updated in time for the coming into force of the instrument.

11.2 The Crown Prosecution Service has comprehensive guidance on public order legislation, including on the discretionary police powers that will be amended by the instrument. It is aware that the instrument is being laid. Home Office officials are working with the Crown Prosecution Service to ensure that its guidance is updated in time for the coming into force of the instrument.

12. Impact

12.1 The impact on business, charities and voluntary bodies is that they will be better protected from serious disruption caused by public processions and assemblies.

12.2 The impact on the public sector, particularly the emergency services, is that they will be better protected from serious disruption caused by public processions and assemblies. The police will benefit from the legislative clarity provided, improving operational management of protests.

12.3 An Economic Note in relation to the impact of the instrument is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Sections 73 and 74 of the 2022 Act, which amended sections 12 and 14 of the 1986 Act, place a statutory duty on the Secretary of State to prepare, publish and lay before Parliament a report on the operation of the amendments to sections 12 and 14 of the 1986 Act two years after the commencement of those amendments. This will be on the 28th of June 2024. The review will, by necessity, also take account of the amendments to those sections made by the instrument.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Mark Williams at the Home Office, telephone: 07787 001257 or email: Mark.Williams@homeoffice.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Mark Williams, Deputy Director for Police Powers, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. Chris Philp MP, Minister for Crime, Policing and Fire, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.