COURT OF APPEAL

(CA-2024-001242)

R (NATIONAL COUNCIL FOR CIVIL LIBERTIES) v SECRETARY OF STATE FOR THE HOME DEPARTMENT and others

(handed down 2 May 2025 at 10:30 a.m.)

Important note for press and public: this summary forms no part of the Court's decision. It is provided so as to assist the press and the public but the full judgment is the only authoritative document. It is available at: https://caselaw.nationalarchives.gov.uk ([2025] EWCA Civ 571).

JUDGMENT SUMMARY

1. This appeal concerns the validity of changes made in June 2023 to sections 12 and 14 of the Public Order Act 1986 ("the 1986 Act"). Those sections allow the police to impose conditions on a public procession or assembly where the responsible officer reasonably believes that it may result in "serious disruption to the life of the community". The changes were made by Regulations made by the then Home Secretary (the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023). The effect of the Regulations was to define "serious disruption", in typical kinds of case, as disruption which is "more than minor".

2. The National Council for Civil Liberties (generally known as "Liberty") was concerned that those changes would illegitimately restrict the right to protest on matters of public concern. With the support of Public Law Project ("PLP"), it brought judicial review proceedings in the High Court challenging the lawfulness of the Home Secretary's decision to make the Regulations.

3. In May 2024 the High Court upheld Liberty's challenge and quashed the Regulations. It did so on two distinct grounds, labelled as "the *ultra vires* ground" and "the consultation ground". ("*Ultra vires*" is a legal shorthand meaning that a public authority has acted outside their legal powers.)

4. The Home Secretary appealed. In its judgment handed down today the Court of Appeal upholds the decision of the High Court quashing the Regulations, but it does so on the

basis that they were unlawful only on the *ultra vires* ground and not on the consultation ground. In summary, its reasons are as follows.

The *ultra vires* ground

5. A minister can only make regulations (which are "secondary legislation") if Parliament has given them a power to do so. Such a power can include a power to amend the terms of an Act of Parliament ("primary legislation") – a so-called "Henry VIII" power. But the Supreme Court has held that in such cases courts should take the approach that:

> "The duty of the courts being to give effect to the will of Parliament, it is … legitimate to take account of the fact that a delegation to the Executive of power to modify primary legislation must be an exceptional course and that, if there is any doubt about the scope of the power conferred upon the Executive or upon whether it has been exercised, it should be resolved by a restrictive approach."

6. The power on which the Home Secretary relied in making the Regulations in this case was a power conferred by the Police, Crime, Sentencing and Courts Act 2022 ("the 2022 Act") to make regulations about, among other things, the meaning of the phrase "serious disruption to the life of the community", including by defining any aspect of it. The Court of Appeal agrees with the High Court (1) that that power did not permit the Home Secretary to define "serious disruption" in a way which fell outside its natural range of meanings; and (2) that, since "serious" connotes a relatively high threshold and "more than minor" a relatively low one, the definition in the Regulations went further than the 2022 Act permitted. It therefore upholds the decision that the Regulations were *ultra vires*.

7. The reasoning of the Court in support of that conclusion is in paras. 42-52 of the judgment of Lord Justice Underhill, with which Lord Justice Dingemans and Lord Justice Edis agreed, and more particularly at paras. 45-49. As there appears, the Court bases its conclusion primarily on what it believes is the natural meaning of the words of the 2022 Act empowering the Home Secretary to make changes to the 1986 Act. But it also refers to the facts that the right to protest by way of public processions and assemblies is recognised by the law as being of fundamental importance, and that the power in question was a Henry VIII power.

8. The result of the Court's decision is that the law remains as stated by Parliament in the 1986 Act. The police will continue to have power to impose conditions on processions

and assemblies where they reasonably believe that they may result in serious disruption; but the changes to define "serious" as "more than minor" have no effect.

The consultation ground

9. This ground relied on the fact that, before the Home Secretary made the Regulations, she sought input from various policing bodies about how "serious disruption to the life of the community" should be defined. It was Liberty's case, which the High Court accepted, that in those circumstances she was under a legal obligation also to seek the views of a body or bodies representing the interests of protesters.

10. The Court of Appeal does not uphold this ground. At paras. 84-103 of his judgment Lord Justice Underhill reviews the case-law about the circumstances in which the government may come under an obligation to conduct a formal consultation about changes to the law with a representative range of consultees; and at paras. 117-123 he holds that none of the recognised circumstances apply in the present case. The Home Secretary's engagement with the policing bodies in question was no more than a sensible, and necessary, attempt to obtain the views of the authorities responsible for imposing conditions on processions and assemblies: it did not constitute a formal consultation such that it was necessary to obtain the views of a representative range of parties.

Use of Parliamentary materials

11. The Speaker of the House of Commons and the Clerk of the Parliaments ("the Parliamentary Authorities") were granted permission to intervene in the appeal because they were concerned that the High Court had in its judgment relied on a ministerial statement in Parliament and a report of the Secondary Legislation Scrutiny Committee in ways which potentially infringed Parliamentary privilege. The Court of Appeal did not itself make use of the materials in any of the ways that had given rise to concern, and it did not rule on the use made of them by the High Court. But a discussion of the issues can be found at paras. 53-56 and 115 of Lord Justice Underhill's judgment, and a helpful note submitted by the Parliamentary Authorities on a separate issue about Parliamentary materials is annexed to the judgment.