



House of Commons

House of Lords

Joint Committee on Human
Rights

**The Government
response to covid-19:
freedom of assembly
and the right to protest:
Government Response
to the Committee's
Thirteenth Report of
Session 2019–21**

Fourth Special Report of Session 2021–22

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publication

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Fourth Special Report

The Joint Committee on Human Rights published its Thirteenth Report of Session 2019–21, [The Government response to covid-19: freedom of assembly and the right to protest](#) (HC 1328/ HL Paper 252) on 19 March 2021. The Government response was received on 14 July 2021 and is appended below.

Appendix: Government Response

Introduction

In response to the extraordinary circumstances created by the pandemic, it has been necessary for the Government to put in place a variety of measures to protect lives and livelihoods. The Government has not undertaken these measures lightly.

Freedom of assembly, rather than of expression, has been affected most by the restrictions on gatherings under the lockdown Regulations. As the Committee notes, this can have an impact on people's ability to protest through the mechanism of mass gatherings, albeit that all other methods remain unaffected; and of course the Government has not prevented people from expressing their views and opinions in other ways. The Government remains committed to the right of citizens to protest. An individual has been able, throughout our response to Covid-19, to form, hold and express publicly the same range of alternative, unorthodox, dissenting, or contrary opinions as he or she could at any other time.

People's rights to gather in large groups (regardless of purpose) have on occasion been restricted to some degree, and at times this has amounted to a nationwide restriction. This has been done reluctantly, and only when necessary, and always with the intention to protect the public's health. The Government acknowledges that some will feel that these necessary and proportionate restrictions on their freedom of assembly have had the effect of placing limits on their preferred method of protesting. However, the Government does not accept that these restrictions amount to a ban on protesting in general, nor to a blanket ban on gathering for the purpose of protesting. The list of exceptions that apply to the gathering restrictions has sometimes included gatherings for the purpose of protest, but even when it has not, there always remains the possibility that such a gathering could be organised without committing an offence, if there is a "reasonable excuse" to do so.

In providing police with the powers to prevent or manage individual gatherings (whether or not they have been organised for the purpose of protest), the Government has implemented a proportionate response to the public health risk posed by Covid-19 in accordance with the European Convention on Human Rights, including in particular Articles 10 and 11 of that Convention. This approach has been tested in the case of *Dolan*¹ where the Court of Appeal did not accept arguments advanced that actions taken were incompatible with Convention rights.

On 22 February 2021 the Government published its four step roadmap² that saw restrictions start to ease across England from 8 March. The Government has set out in law

1 R (on the application of Dolan and others) v the Secretary of State for Health and Social Care and another [2020] EWCA Civ 1605

2 <https://www.gov.uk/government/publications/covid-19-response-spring-2021>

and guidance clear information on individuals' rights to gather and to protest. In all steps there is an exception in the regulations to the gathering rules which allow for gatherings for protest to be organised which exceed the otherwise applicable limits, provided that specified measures are taken.

These provisions ensure that at any protest gathering that exceeds the gatherings limits, the gathering organiser can engage with Police and Local Authorities, and is responsible for ensuring that the appropriate measures have been followed. The Government has worked closely with the Police and Local Authorities to ensure that these requirements have been communicated clearly to individuals and organisations to allow the right to gather safely as part of a protest.

To protect public health, it is essential that the police have the power to tell individuals to disperse, direct them to return home or remove them from the gathering if it is not legally permitted. However, as with their general approach to Covid-19 restrictions, the police have responded to protest gatherings using the Four E's approach, seeking to Engage, Explain, Encourage and Enforce as a last resort. The Government continues to keep all restrictions under review taking into account scientific advice as we now move through the steps outlined in our roadmap.

The Law Governing Protests during the pandemic

Attending a protest could be in breach of the regulations despite it not being a criminal offence. The precise status of this 'unlawful but not criminal' behaviour is not clear, but its consequences for anyone considering gathering for a protest during lockdown could be significant.

The regulations are drafted to ensure those who have a reasonable excuse to gather are able to do so subject to necessary restrictions, required to control the spread of covid-19. They cover people's right to gather, and not their right to protest.

The Government acknowledges that whilst an individual may not have committed a criminal offence, they could be in breach of the regulations. This would include an individual who lawfully attends an arranged gathering (whether or not for the purpose of protesting) that exceeds the gathering limits or where the gathering organiser has failed to have specified measures in place. While the responsibility for undertaking the required precautions (and any subsequent finding of criminality in relation to organising the event) is upon the event organiser and not the individual attending, individuals should still assess whether the required precautions have been carried out.

Though the police are able to enforce the Regulations through formal means, they have continually followed the 'Four E's approach to dispersing gatherings: seeking to Engage, Explain, Encourage and only Enforce as a last resort. As such, the police have prioritised engaging with individuals in order to establish whether they have a reasonable excuse to gather, prior to enforcement. However, it is essential that the police retain discretion to prevent or disperse gatherings that are a risk to public health.

The regulations must be corrected to ensure that persons who have a reasonable excuse to gather, and who are therefore not committing an offence, cannot be directed to disperse or leave, or removed from the gathering. (Paragraph 51).

The Steps Regulations,³ which came into force on 29th March 2021, have provided further clarification that protest gatherings can take place in all of the steps taking England out of lockdown.

At each step, protests may take place within the gatherings limits set by the regulations. In addition, the regulations provide an exception, permitting protest gatherings that exceed the limits, providing these are organised by specified organisations⁴ and the required precautions are taken. As set out above, although the police will follow the Four E approach, they must be able to disperse a gathering should it not have the required precautions in place. This ensures that protest gatherings can take place, but with appropriate measures to manage the risk to public health. In using their enforcement powers, the police must act in a way that is compatible with people's human rights.

While the law surrounding protest during the pandemic has been and remains far from clear, this does not justify inaccurate and misleading communications from Government. Indeed, it demands the opposite. Public communications from Government about the law must be accurate. (Paragraph 61)

Throughout the pandemic we have communicated rules through different channels, including regular press conferences and Ministerial statements, Gov.uk guidance, more accessible digital products and marketing, and communications targeted at specific groups (including translations and guidance aimed at young people).

The Government has also published visual guides such as posters to convey the key messages in simple graphic form, and issued targeted communications products, such as translated guidance or versions aimed at young people. In addition, detailed guidance is provided to specific groups including local government, police, other enforcement bodies and businesses. The Government engages extensively with each of these groups, including during the policy development phase and once legislation is made, to address questions and concerns. This is managed by a wide range of government departments, who have an extensive and longstanding understanding of the needs and priorities of the sectors for which they have responsibility and maintain an ongoing dialogue with these stakeholders.

The Government agrees that clarity is important, particularly as it has been necessary to change legislation quickly in response to evolving information to protect public health. Action has been taken to ensure that information on the legality of gatherings and to protest is presented clearly to the public. The Government has continued to listen to feedback and has simplified and strengthened the rules, to make them easier for the public to understand, for instance with the introduction of the roadmap out of lockdown.

The guidance has been regularly updated, most recently on 21 May 2021 when England moved into Step 3.⁵ This refers to permitted large gatherings, specifically including when protest gatherings can take place. This ensures that the appropriate steps are taken and that all protest gatherings are secure and safe, in line with legislation.

3 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021

4 a business, a charitable, benevolent or philanthropic institution, a public body or a political body

5 <https://www.gov.uk/guidance/covid-19-coronavirus-restrictions-what-you-can-and-cannot-do>

Impacts on the Police and Public

Ambiguous or confusing law poses a challenge to those tasked with enforcing the law as well as those seeking to abide by it. The police should not be required to enforce laws that are unclear, as this could lead to interferences with human rights that do not have a proper basis in law. (Paragraph 66)

A significant challenge for Covid-19 has been the need to legislate in good time, in order to address the public health emergency with the level of speed and agility that the situation warrants, and that the public rightly expect. This has meant that components of the response (including Regulations and guidance) that, in normal times, we would expect to formulate over several weeks or months, had to be produced in days and weeks, but always using the best evidence available at the time.

As explained above, the Government has provided guidance in a variety of media, ensuring that this is updated with changes as they evolve. To support ease of access and aid legal certainty, the Government's national archives created a Coronavirus service⁶ to provide important information about Covid-19 legislation, including links to key regulations, and guidance for researching it.

The Government has continued to work hand in glove with operational partners, including the National Police Chiefs Council, National Police Coordination Centre and the College of Policing. Dialogue is on a near continuous basis, in line with the rapidly evolving context. The policing partners are consulted on proposals of measures to be put in place, police capacity concerns and to address any issues arising.

The Government has issued guidance to local authorities to help them interpret the regulations, including providing templates for issuing notices and other enforcement action. We also continue to work closely with the Police on the new measures, and work with the National Police Chiefs' Council and the College of Policing to ensure that the guidance they produce for forces is updated to reflect the latest rules. Police continue to use their professional judgement and experience in enforcing the restrictions to support communication of the guidance, seeking to identify organisers of protest gatherings to engage, explain and encourage compliance with Covid-19 regulations before enforcement.

If people have to go to court to establish whether their actions are lawful or criminal, it is questionable whether the law is meeting the standards of accessibility and foreseeability required by the Convention. (Paragraph 77)

The Government has never imposed a blanket ban on the act of protesting, and all restrictions on gatherings were necessary and proportionate in the context of the public health emergency. The Government believes that the actions taken were proportionate and compliant with Article 10 and 11 ECHR. This has been considered and accepted by the Court of Appeal in the recent case of Dolan.⁷

As explained above, the Steps Regulations, which implement the most recent restrictions, include an explicit exemption to gathering limits, permitting protest gatherings during

6 www.legislation.gov.uk/coronavirus

7 R (on the application of Dolan and others) v the Secretary of State for Health and Social Care and another [2020] EWCA Civ 1605

steps 1–3, subject to the gathering organiser taking the required precautions.⁸ These precautions require the organiser to undertake a risk assessment and implement all reasonable measures to limit the risk of transmission of Coronavirus. Reasonable measures will be specific to individual protest gatherings, taking account of the risk assessment and government guidance. These are necessary, proportionate and temporary measures to protect public health.

The Government recognises that in this fast-flowing response to the ever changing nature of the pandemic, the legal requirements and guidance have also changed at a similar pace. Even in settled areas of the law, there is a need for an ongoing process to resolve emerging ambiguities and uncertainties. It is therefore unsurprising that, in the entirely novel field of the lockdown regulations, the courts may be required from time to time to provide greater certainty. The lessons learned from such cases are acted upon.

Conclusions and way forward

The limited definition of a “political campaigning organisation” seems to prevent an individual from being able to protest against a private company or its activities. We assume this is not the intention and recommend that the regulations are changed to allow individuals to protest against private companies. (Paragraph 79)

Although sometimes restricted, when necessary, there has been no blanket ban on the act of protesting. As part of the Government’s commitment to protect individual’s convention rights, an individual’s ability to protest has not been prevented at any point during the response to the Covid-19 pandemic. Though necessary measures have been required to respond to the pandemic, an individual has retained the right to protest on their own or within the gathering limits applicable at the time, against any issue or group.

A protest gathering that exceeds gathering limits would need to have an organising body. Nonetheless, provided that this requirement is met, such gatherings can still proceed, and can be against or about a particular activity, or industry, or company. The Regulations therefore do not limit the scope or range of issues or causes that can form part of a protest gathering.

The provision creating an exemption to the gathering limits provides the Police and Local Authorities with a point of contact to ensure all the required precautions have been taken prior to the protest gathering going ahead. The measures are necessary against the public health risk posed by large events to reduce the risk to public health.

The regulations that applied in October and December 2020 confirmed that protest could go ahead subject to the organisers completing reasonable safeguards. However, during periods of national lockdown, the law became confusing and unclear. Numerous communications from public authorities implied or stated that protest was illegal, while in court Government lawyers argued the opposite. Even when properly understood, the lockdown laws leave the right to protest dependent on interpretation of the highly subjective “reasonable excuse”. This is unacceptable and leaves the public unsure of their rights, and at risk of arbitrary or discriminatory decision-making. The Government must make clearer that protest is not, and never has been, completely illegal during the pandemic—even under lockdown. The Government should amend

8 Regulation 6 & Sch 1–3 of The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021

the law to make clear that protest is permitted if conducted in a manner that reduces public health risks to an acceptable level. The model used in Tiers 1 to 3 under The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, whereby protest is permitted where a risk assessment has been conducted and all reasonable measures to limit the risk of transmission have been taken, could also be applied to outdoor protests in Tier 4. (Paragraph 86)

Although sometimes restricted, when necessary, there has been no blanket ban on the act of protesting. Though necessary measures have been required to respond to the pandemic, an individual has retained the right to protest on their own or within the gathering limits applicable at the time, against any issue or group. Our social distancing regulations have not sought to override people's convention rights.

As restrictions have eased, the Government has set out in law and guidance clear detail on individuals' right to protest and to gather. As acknowledged, this was included within the Regulations for Tiers 1 to 3,⁹ and again more recently within the Steps regulations.¹⁰

The Government believes that the current regulations and associated guidance make clear that gatherings for the purpose of protest are permitted, within clear parameters that reduce the risk to public health.

9 The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020

10 The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021