

EXPLANATORY MEMORANDUM TO DRAFT STATUTORY GUIDANCE FOR SERIOUS DISRUPTION PREVENTION ORDERS, DATED DECEMBER 2023

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 Guidance

- 2.1 Section 30 of the Public Order Act 2023 provides that the Secretary of State may issue guidance to chief officers of police, the chief constable of the British Transport Police Force, the chief constable of the Civil Nuclear Constabulary, and the chief constable of the Ministry of Defence Police in relation to serious disruption prevention orders (SDPOs). The draft guidance sets out the processes in relation to how the police can apply for SDPOs, manage those subject to SDPOs, and take enforcement action where breaches of SDPOs occur. It will aid police forces in their use of SDPOs and ensure that SDPOs are applied for and enforced consistently across England and Wales.
- 2.2 The draft guidance is not a statutory instrument. However, the Government is required by Section 31 of the Public Order Act 2023 to lay a draft of the guidance before both Houses of Parliament for a period of 40 days, during which time either House may resolve not to approve the draft guidance.

3. Matters of special interest to Parliament

- 3.1 None

4. Extent and Territorial Application

- 4.1 The territorial extent of this guidance is England and Wales.
- 4.2 The territorial application of this guidance (that is, where the guidance produces a practical effect) is England and Wales.

5. European Convention on Human Rights

- 5.1 As the guidance is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The substantive SDPO provisions are not yet commenced; they will be commenced upon the issuing of the guidance.
- 6.2 Section 30 of the Public Order Act 2023 provides that the Secretary of State may issue guidance to chief officers of police, the chief constable of the British Transport Police Force, the chief constable of the Civil Nuclear Constabulary, and the chief constable of the Ministry of Defence Police, in relation to SDPOs, and that these chief officers and chief constables must have regard to any such guidance issued.
- 6.3 Section 31 of the Public Order Act 2023 provides that, before issuing guidance under section 30, the Secretary of State must lay a draft of the guidance before both Houses of Parliament for a period of 40 days, during which time either House may resolve not to approve the draft guidance. If no such resolution is made within that period, the Secretary of State may issue the guidance. The Secretary of State must publish any guidance issued.

7. Policy background

What is being done and why?

- 7.1 In recent years, we have seen an increase in protest tactics that are dangerous and cause serious disruption. The Government is committed to ensuring that the hard-working public are able to go about their daily business without disruption. SDPOs are designed to help curtail the activities of the most prolific offenders who consistently break the law, endanger themselves and others, and disrupt the public in the name of protest.
- 7.2 An SDPO is a court order which can impose prohibitions and requirements on certain individuals which are considered necessary and proportionate to prevent serious disruption caused by protest activity. The court must consider it necessary to make the SDPO for one of the following purposes:
- to prevent the individual from committing a protest-related offence or a protest-related breach of an injunction;
 - to prevent the individual 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 an organisation;
 - to prevent the individual from causing, or contributing to, the commission by any other person of a protest-related offence or a protest-related breach of an injunction, or the carrying out by any other individual of activities related to a protest that result in, or are likely to result in, serious disruption to two or more individuals or an organisation;
 - to protect two or more individuals or an organisation from the risk of serious disruption arising from a protest-related offence, a protest-related breach of an injunction, or activities related to a protest.

A court may impose any prohibition or requirement it deems necessary to meet the above objectives.

- 7.3 Guidance in relation to SDPOs may in particular include (a) guidance about the exercise by chief officers of police and the chief constables mentioned of their functions under Part 2 of the Public Order Act 2023, (b) guidance about identifying persons in respect of whom it may be appropriate for applications for SDPOs to be made, and (c) guidance about providing assistance to prosecutors in connection with applications for SDPOs. This will enable SDPOs to be consistently implemented and enforced across police forces in England and Wales.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 There is no statutory requirement for consultation on the guidance.

10. Consultation outcome

- 10.1 Not applicable.

11. Guidance

- 11.1 The draft guidance relating to SDPOs is itself a guidance document. It sets out matters to which the police must have regard when considering, applying for and enforcing SDPOs. The

Home Office has worked with relevant stakeholders to develop the draft guidance. The draft guidance is being laid in Parliament alongside this explanatory memorandum.

12. Impact

- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 The guidance will impact on police forces across England and Wales. All chief officers of police in England and Wales must have regard to this guidance, as well as the chief constables of the British Transport Police, the Civil Nuclear Constabulary and the Ministry of Defence Police.

13. Regulating small business

- 13.1 The SDPO legislation, and consequently the draft guidance, does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 A working group has been set up including all major stakeholders who will meet regularly for a period after commencement of the provisions to evaluate the impact of SDPOs and the guidance.

15. Contact

- 15.1 Michael Baird-Parker at the Home Office; email: Michael.baird-parker1@homeoffice.gov.uk, tel: 07823 828 238, can be contacted with any queries regarding the guidance.
- 15.2 Amina Khan, Head of Police Powers Unit at the Home Office can confirm that this explanatory memorandum meets the required standard.
- 15.3 Rt Hon Chris Philp, MP, Minister for Crime, Policing and Probation at the Home Office can confirm that this explanatory memorandum meets the required standard.

