

CRIMINAL JUSTICE BILL

EUROPEAN CONVENTION ON HUMAN RIGHTS

Supplementary Memorandum by the Home Office

Introduction

1. This memorandum supplements memorandums dated November¹ and December² 2023, prepared by the Home Office and Ministry of Justice, which addressed issues under the European Convention on Human Rights (“ECHR”) in relation to the Criminal Justice Bill.
2. This supplementary memorandum addresses the issues under the ECHR that arise in relation to further Government amendments, tabled on 9 January 2024 for Commons Committee stage. This memorandum has been prepared by the Home Office.
3. The amendments considered in this memorandum are:
 - (a) New clause “Dispersal powers: removal of senior police officer authorisation”, which removes the requirement that a police officer of at least the rank of inspector must authorise the use of dispersal powers under section 35 of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”).
 - (b) New clause “Dispersal powers: extension to local authorities”, which confers dispersal powers under section 35 of the 2014 Act on persons authorised by local authorities.
4. It is not considered that any other amendments tabled on 9 January give rise to new issues under the ECHR.

New clauses “Dispersal powers: removal of senior police officer authorisation” and “Dispersal powers: extension to local authorities”

5. New clause “Dispersal powers: removal of senior police officer authorisation” enables a constable in uniform to issue directions excluding a person from an area under section 35 of the 2014 Act without prior authorisation from a senior officer. The constable must have reasonable grounds to suspect that the behaviour of the person has contributed or is likely to contribute to members of the public in the locality being harassed, alarmed or distressed, or the occurrence in the locality of crime or disorder. The constable must also be satisfied that the direction is necessary for the purpose of removing or reducing the likelihood of anti-social behaviour, crime or disorder.
6. Where those statutory tests are met, subject to the restrictions set out in section 36 of the 2014 Act, a constable in uniform may direct a person who is in a public place in the locality to leave the locality (or part of the locality) and not return for a

¹ Accessible here: [ECHR memo \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

² Accessible here: [Supplementary Memorandum \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

specified period. A person who fails to comply with such a direction without reasonable excuse commits an offence (see section 39 of the 2014 Act).

7. New clause “Dispersal powers: extension to local authorities” enables a person authorised by a local authority (an “authorised LA officer”) to issue directions excluding a person from an area under section 35 of the 2014 Act. No material changes are made to the scope of the dispersal power or how it is exercised; the existing statutory preconditions and safeguards will apply to the exercise of the power by the authorised LA officer in the same way as they apply to a uniformed police officer.
8. These measures may engage Articles 8, 9 10 and 11 of, and Article 1 of the First Protocol to, the ECHR but are assessed to be compatible with the rights protected under those Articles.

Article 8

9. Directing a person to leave a particular locality for a specified period may engage the right to a private and family life (Article 8), for example if it would have the effect of separating a parent from their child. Though the measures do not alter the scope of the dispersal power, removal of the requirement for senior officer authorisation simplifies the process which may increase the frequency with which such directions are issued. Extension of the power to authorised LA officers may also have such an effect.
10. The Government considers any interference with an individual's private or family life under Article 8, as a qualified right, to be in accordance with the law and proportionate to achieve a legitimate aim: the power to issue directions is prescribed in primary legislation, with clear and detailed safeguards (see sections 35 and 36 of the 2014 Act). There are express limitations which ensure that the person cannot be excluded from their home or their place of work or education (see section 36 of the 2014 Act). Additionally, as a public authority, the police must exercise the powers compatibly with Article 8 (and so consider impacts on private and family life) by virtue of section 6 of the Human Rights Act 1998.
11. Given these measures are intended to combat anti-social behaviour, crime and disorder, the Government considers that they are a proportionate means to achieve the legitimate aim of the prevention of crime, the protection of public safety, and the protection of the rights and freedoms of others under Article 8(2) ECHR. They seek to protect the rights of others to go about their lawful business without being subjected to harassment, alarm or distress. As such, the Government considers the measures are compatible with Article 8 ECHR.

Article 9

12. The issuing of a dispersal direction may also engage Article 9 ECHR: the right to freedom of thought, conscience and religion if, for example, a direction had the effect of excluding a person from their regular place of worship.

13. Article 9 is a qualified right, that is subject to restrictions or penalties as are prescribed by law and are necessary in a democratic society for the prevention of disorder or crime. As set out above, the power to issue a dispersal direction is clearly prescribed in legislation with appropriate safeguards: a direction could not exclude a person from all places of worship, just those in the particular locality; any exclusion would be strictly limited in terms of time and geographical location; and the direction must be considered to be necessary to remove or reduce the likelihood of antisocial behaviour or the occurrence of crime or disorder. As such, the Government considers the measures are compatible with Article 9 ECHR.

Articles 10 and 11

14. The issuing of a dispersal direction may also engage Article 10 ECHR: the right to freedom of expression covers speech which offends, shocks or disturbs the State or a section of the population (*Handyside v UK*³). Conduct leading to the issue of a dispersal direction (that which is likely to contribute to members of the public in the locality being harassed, alarmed or distressed), and which is thereby prevented by the issuance of the direction, may therefore engage Article 10.

15. The dispersal power may be used in the context of protests where people are exercising their right to freedom of assembly and as such its use may engage Article 11 ECHR.

16. Articles 10 and 11 are qualified rights, which may subject to restrictions or penalties as are prescribed by law and are necessary in a democratic society for the prevention of disorder or crime. As outlined above, the power to issue dispersal directions is clearly prescribed in legislation, and interference is in pursuit of the legitimate aim of protecting public safety, preventing crime and disorder and protecting the rights and freedoms of others. Section 36(4) and (5) of the 2014 Act contain express statutory safeguards to ensure that rights to freedom of expression and of assembly are protected, including that:

- (a) a direction may not be given to persons engaged in lawful picketing or a public procession of a kind mentioned in section 11(1) of the Public Order Act 1986; and
- (b) in deciding whether to give a direction, particular regard must be given to the right of freedom of expression and freedom of assembly set out in Articles 10 and 11 of the ECHR.

17. As such, the Government considers the measures are compatible with Articles 10 and 11 ECHR.

Article 1, Protocol 1 (A1P1)

18. A constable who gives a person a direction under section 35 may also direct the person to surrender to the constable any item in the person's possession or control that the constable reasonably believes has been used or is likely to be used in anti-social behaviour (see section 37 of the 2014 Act). The removal of the requirement

³ *Handyside v the UK* (5493/72) [1976] ECHR 5

for senior office authorisation may lead to greater use of the dispersal power, which may lead to greater use of the section 37 power, and so may engage A1P1⁴.

19. This measure is intended to combat anti-social behaviour, crime and disorder. As such, the Government considers the surrender of an item under section 37 can be regarded as a necessary control of use of property in accordance with the general interest under paragraph (2) of A1P1 and so can be compatible with this qualified right. The power to require items and retain them is strictly time limited (unless the item is to be retained pending criminal proceedings) as the item(s) will be returned once the period of the direction is finished; therefore, this is a control rather than a permanent deprivation of property. Further, the power will remain subject to the existing statutory safeguards, including that:

- (a) the constable must reasonably believe that the item has been used or is likely to be used in behaviour that harasses, alarms or distresses members of the public;
- (b) the direction must be in writing unless that is not reasonably practicable; and
- (c) the constable must give the person information in writing about when and how the person may recover the surrendered item.

20. As such, the Government considers the measure to be compatible with A1P1.

Home Office
9 January 2024

⁴ The measure to extend the dispersal power to authorised LA officers will not engage A1P1 as the power to direct the surrender of items under section 37 is not being extended to authorised LA officers.