

## **Does the law relating to public order offences adequately protect the right to freedom of expression and freedom of assembly under the European Courts on Human Rights?**

Once the **Isle of Man Human Rights Act 2001** was passed by Tynwald, and came into full force, all new legislation had to be drafted and interpreted in line with the European Convention on Human Rights (ECHR). Existing laws, including the **Isle of Man Public Order Act 1998**, had to be interpreted in a way that was compatible with Convention rights, recognising among others, the rights to freedom of expression (Article 10) and freedom of assembly and association (Article 11) as fundamental components of a democratic society.

Public order offences have always required a delicate balance. Whilst the state has a duty to maintain national security, peace, and prevent disorder, this must not come at the cost of suppressing legitimate protest and political dissent.

Recent years have seen an increasing tension between public order legislation and protest rights, particularly in light of contentious new laws such as the **Isle of Man Abortion Reform Act 2019**. However, the European Court of Human Rights (ECtHR) has ruled that vague or discretionary powers affecting protest rights must be exercised with great caution and judicial oversight - some level of disruption is acceptable in a democratic society, especially for protests of public interest.

The Isle of Man Public Order Act 1998 is the foundation for most protest-related offences, criminalising actions such as affray, fear or provocation of violence, and behaviour causing harassment, alarm, or distress. Meanwhile the UK introduced the **UK Police, Crime, Sentencing and Courts Act 2022** significantly extended police powers, particularly concerning the ability to impose conditions on protests based on their *perceived* level of disruption. The legislation has led to concerns that the UK Act is incompatible with civil liberties, movements such as the Suffragettes could have been criminalised had the powers existed historically for instance.

The UK Supreme Court decision in *Director of Public Prosecutions (DPP) v Ziegler and Others (1)* noted “*The proportionality assessment at trial before an independent impartial tribunal depends on the relevant factors being proved beyond reasonable doubt and the court being sure that the interference with the rights under Articles 10 and 11 was necessary*” In this example the Court concluded that the protestors lawfully exercised their rights and the prosecution failed to prove that the obstruction of the highway was unreasonable. In a concurring opinion Lady Arden stated “*Under that jurisprudence, the state must show a certain degree of tolerance to protestors, and it is accepted that in some circumstances protestors can obstruct the highway in the course of exercising their Article 11 rights*”.

The situation in the Isle of Man is somewhat different, but the trajectory appears similar. A proposed Private Members Bill - the **Safe Access Zones and Protected Public Places Bill 2024**, reflects a trend towards increasing regulation of protests. The Bill introduced by Dr Michelle Haywood, MHK (Rushen), seeks to introduce restricted areas where protests may

be limited to protect public safety and ensure access to medical services. While its stated aim is not to restrict all protests, many in the Manx community are concerned that it could establish a precedent for broader restrictions in the future.

One of the principal areas of unease is the potential for it to be amended or extended via secondary legislation. If Ministers are granted the discretion to designate new protected areas without full Tynwald oversight, there is a risk that it could be used to suppress protest in politically or commercially sensitive locations. Demonstrations against unpopular government policies, for example, could become increasingly difficult if sites were designated as protected public places under the Bill's provisions. Restrictions of this nature could disproportionately impact grassroots activists and minority voices, as larger organisations and established campaign groups often have the resources to navigate legal barriers more effectively. By imposing administrative and legal obstacles, government can indirectly stifle protest without outright criminalising it.

The concern is not purely hypothetical. The Isle of Man has taken a particularly robust approach to public order during emergencies. During the Foot & Mouth epidemic of 2001 the IOM implemented strict border and movement controls to protect its livestock industry, and during the COVID-19 pandemic, the island enforced some of the most restrictive lockdown measures in the British Isles, including imprisoning individuals for breaches. This demonstrates a willingness to prioritise public order over individual liberties in times of crisis, which raises the question of how the new Bill might be used in the future and while it may be limited in scope now, it could serve as a foundation for impending restrictions on political demonstrations.

What, then, is the appropriate balance? The case law suggests that any restriction on protest must be justified, necessary, and proportionate. The ECHR has consistently ruled that states must not restrict protests simply because they are disruptive or unpopular. However, the case of *ECHR Kudrevicius v Lithuania* **(2)** acted as a useful legal benchmark confirming that peaceful protest is protected - but not unlimited. Even when protests are non-violent, the method and impact matter, for instance blocking key infrastructure like ports can cross a legal threshold.

It is clear that the law on public order offences is evolving, and not necessarily in a way that strengthens fundamental freedoms. While there is no significant body of Manx case law specifically addressing the interaction between public order offences and Articles 10 and 11, the UK courts decisions such as *Redmond-Bate v DPP* [2000] HRLR 249 **(3)** affirm that speech should not be curtailed merely because it provokes a hostile reaction. Delivering his judgement Lord Justice Sedley ruled: "*Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative - provided it does not tend to promote violence*".

If the Isle of Man wishes to uphold its commitment to human rights, it must ensure that any new legislation is weighed against the importance of free expression and peaceful assembly. Otherwise, there is a danger that public order laws will increasingly serve as a tool for suppressing dissent, rather than safeguarding the public.

(1) *Director of Public Prosecutions v, Ziegler and others* [2021] UKSC23

(2) *Kudrevicius v Lithuania* [2015] ECHR 826

(3) *Redmond-Bate v DPP* [2000] HRLR 249

*Isle of Man Human Rights Act 2001* - *Human Rights Act 2001*

*Isle of Man Public Order Act 1998* - *Public Order Act 1998*

*Isle of Man Abortion Reform Act 2019* - *Abortion Reform Act 2019*

*UK Police, Crime, Sentencing and Courts Act 2022* - *Police, Crime, Sentencing and Courts Act 2022*

*Safe Access Zones and Protected Public Places Bill 2024* - *Safe Access Zones and Protected Public Places Bill 2024*