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Secretary of State for the Home Department

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16 January 2026

Dear Secretary of State

Proposed Judicial Review re: The Public Order Act 2023 (Interference With Use or Operation of Key National Infrastructure) Regulations 2025

1. This is a formal letter before claim sent in accordance with the Pre-action Protocol for Judicial Review under the Civil Procedure Rules.

Details of the matter being challenged

2. The proposed challenge is to the decision, if and when made, of the Secretary of State for the Home Department (the **Secretary of State**) to exercise her powers under s7(7) of the Public Order Act 2023 (**POA 2023**) by making the Public Order Act 2023 (Interference With Use or Operation of Key National Infrastructure) Regulations 2025 (the **Regulations**).

3. The Regulations are currently proceeding through Parliament under the draft affirmative procedure (meaning that they have to be formally approved by Parliament, but without being subject to the same legislative scrutiny as bills, and without the possibility for amendment save in exceptional circumstances). They were approved by the House of Commons on 14 January 2026 but have not yet been approved by the House of Lords.

4. This is accordingly a prospective challenge to a decision that has not yet been made. The scope of the Regulations are already, however, clear, and the Claimants do not see any benefit in delaying this pre-action letter until the Regulations have been made. There is a clear practical advantage in a challenge to secondary legislation being determined as soon as possible after the draft legislation has been laid before Parliament[1] - namely, it allows the Secretary of State to more straightforwardly withdraw the draft Regulations if she agrees that they are unlawful, and allows the Claimants to bring a claim promptly if she does not.

[1] See *R v Her Majesty's Treasury ex parte Smedley* [1985] QB 657 (***Smedley***) [666F- 667E] [672C-H]

5. As explained below, the Claimants consider that, if made, the Regulations would be:

    a. *Ultra vires* s7(7) POA 2023, because "*life sciences infrastructure*" as defined by the Regulations is not "*key national infrastructure"*; and

    b. Potentially vitiated by procedural unfairness, on the basis that the Secretary of State appears to have undertaken a one-sided consultation exercise that fails to comply with the duty of fairness.

The proposed Claimants

6. The first proposed Claimant is Lawyers for Animals (registered charity number 1215659) (**LFA**). LFA was established in November 2025. Its objects are in essence to advance public education regarding animal protection law, relieve the suffering and distress of animals, and promote humane behaviour towards animals and the prevention of cruelty and suffering among animals though upholding the law and, in particular, animal protection law. LFA would have standing to pursue these proceedings in the public interest, in its capacity as an expert legal organisation engaged in the issues of animal protection and the upholding of relevant laws. LFA considers that lawful advocacy and protest are important, well-established mechanisms by which concerns about animal use in research are brought to public attention. This includes the raising of concerns about non-compliance with existing animal welfare law. LFA is, in addition, concerned about the potential 'chilling effect' of the Regulations on wider investigation into, and legal scrutiny of, facilities conducting animal testing.

7. The second proposed Claimant is Sole Iriart, a long-standing animal rights activist who has been involved in the "Camp Beagle" protest camp outside MBR Acres, a Cambridgeshire breeding facility for beagles used for animal testing. She would have standing to bring these proceedings as an individual who is likely to be affected by the passing of the Regulations.

The proposed Defendant

8. The proposed Defendant is the Secretary of State, as the Minister who laid the Regulations in draft before Parliament (and will in due course decide whether to make the Regulations).

Details of any interested parties

9. The Claimants do not consider there to be any interested parties; please let us know if you disagree.

Background

<u>The European Convention on Human Rights ("**ECHR**")</u>

10. Article 10 ECHR provides that (emphasis added):

> *"1) Everyone has the right to **freedom of expression**. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...*

2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

11. Article 11 ECHR provides that:

> *"1) Everyone has the right to* ***freedom of peaceful assembly and to freedom of association*** *with others…*
>
> *2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."*

The Public Order Act 2023

12. The POA 2023 provides that a person commits an offence if they knowingly or recklessly "*do an act which interferes with the use or operation of any key national infrastructure*" (s7(1)). That offence is liable on indictment to imprisonment for up to 12 months and/or a fine (s7(3)(b)).

13. s7(4) POA 2023 provides that "*a person's act interferes with the use or operation of key national infrastructure if it prevents the infrastructure from being used or operated to any extent for any of its intended purposes*".

14. s7(5) adds that "*[t]he cases in which infrastructure is prevented from being used or operated for any of its intended purposes include where its use or operation for any of those purposes is significantly delayed*."

15. "*Key national infrastructure*" is defined in s7(6) as:

> *"(a) road transport infrastructure,*
>
> *(b) rail infrastructure,*
>
> *(c) air transport infrastructure,*
>
> *(d) harbour infrastructure,*
>
> *(e) downstream oil infrastructure,*
>
> *(f) downstream gas infrastructure,*
>
> *(g) onshore oil and gas exploration and production infrastructure,*

(h) onshore electricity generation infrastructure, or

(i) newspaper printing infrastructure."

16. s8 provides definitions of the "*key national infrastructure"* listed in s7(6).

17. s7(7) provides that the Secretary of State may, by regulations made by statutory instrument, "*amend subsection 6 to add a kind of infrastructure or to vary or remove a kind of infrastructure*", and to amend subsection 8.

18. Such regulations must be laid in draft before, and approved by a resolution of, each House of Parliament (s7(9)) (the affirmative procedure).

19. The POA 2023 was introduced in response to a series of disruptive protests by activists, including Just Stop Oil and Insulate Britain, which had had a significant impact on members of the public. The bill's factsheet,[2] published by the Home Office on 23 August 2023, stated that the "*new measures are needed to bolster the police's powers to respond more effectively to* ***disruptive and dangerous protests****. Over recent years, guerrilla tactics used by a small minority of protesters have caused a disproportionate impact on the hardworking majority* ***seeking to go about their everyday lives****, cost millions in taxpayers' money and put lives at risk. This has included halting public transport networks, disrupting fuel supplies and preventing hundreds of hard-working people from getting to their jobs*." The factsheet said that the measures would *"ensure that police can better balance the rights of protesters against the rights of others* ***to go about their daily business*** *and to focus their resources on keeping the public safe",* and confirmed that *"these measures will not ban protests. These measures will only prevent a small minority of individuals from causing* ***serious disruption to the daily lives of the public****"* (emphasis added).

20. The POA 2023 came into force on 3 May 2023.

21. The Government began a post-legislative scrutiny process in relation to the POA 2023 in May 2025, and intends to send a Command Paper to the Home Affairs Committee later this year to set out how the legislation is operating in practice.[3]

<u>The Regulations</u>

22. On 27 November 2025, the Secretary of State laid before Parliament the draft Regulations, which will (pursuant to her powers under s7(7) of the POA 2023) amend s7(6) of the POA 2023 to add "*life sciences infrastructure*" to the list of "*key national infrastructure"*.

23. It also seeks to add a new s8(16) defining "*life sciences infrastructure*" as:

"*infrastructure—*

(a) the primary purpose of which is facilitating—

[2] Public Order Bill: factsheet - GOV.UK
[3] Public Order Legislation - Hansard - UK Parliament

(i) pharmaceutical research or development, or

(ii) the manufacturing of pharmaceutical products for medical use, or

(b) used for or in connection with activities authorised by a licence under the Animals (Scientific Procedures) Act 1986" ("**ASPA**").

24. In the Delegated Legislation Committee debate on the Regulations on 17 December 2023,[4] Sarah Jones MP (the Minister for Policing and Crime) suggested that 135 ASPA licenced establishments (each of which might operate multiple sites) would fall within the s8(16)(b) definition – namely, licensed sites where procedures causing pain, suffering, distress or lasting harm to animals are carried out. Those include university labs, pharmaceutical companies, research labs, breeders of animals for scientific purposes, and others. s8(16)(a) expands the definition to also include organisations "*the primary purpose of which"* is "*facilitating"* pharmaceutical research, development or manufacture.

25. The Explanatory Memorandum to the Regulations[5] asserted that (emphasis added):

    a. "*The Life Sciences sector is being targeted by protestors who oppose current clinical research methods. This includes repeated obstruction of access to and from essential sites, which poses a risk to public safety and impedes operations**. Existing powers available to the police have proven inadequate** in effectively managing this ongoing disruptive activity*";

    b. "*Protecting the Life Sciences sector is **critical for ensuring drug safety testing and the UK's pandemic preparedness**"*;

    c. *"There is sufficient evidence to suggest that if protest activity is not addressed **it may give rise to a wider retreat of companies across the Life Sciences sector** from UK operations*";

    d. "*The measure is a targeted response to a clearly evidenced problem that has been **raised repeatedly by key stakeholders across the Life Sciences industry**, as well as in engagement with law enforcement partners*";

    e. "***Consultation for this amendment took place informally** due to the urgency of the threat to the Life Sciences sector as a result of disruptive protest activity*."

26. No further information about the informal consultation has been provided by the Secretary of State. It appears, based on the Explanatory Memorandum, to have consisted of liaison with "*key stakeholders across the life sciences industry*" and law enforcement agencies, but no-one else (including activists or opponents of animal testing).

27. On 17 December 2025 the Joint Committee on Statutory Instruments decided not to report the Regulations.

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[4] Draft Public Order Act 2023 (Interference With Use or - Hansard - UK Parliament
[5] The Public Order Act 2023 (Interference With Use or Operation of Key National Infrastructure) Regulations 2025

28. On the same day, the Delegated Legislation Committee voted to approve the Regulations, following a debate at which a number of MPs (many of them non-Committee members, who were not entitled to vote) spoke in opposition to the measures.[6]

Animal Welfare Strategy

29. On 22 December 2025, the government published its *Animal Welfare Strategy* for England,[7] in which it committed to "*work with scientists, industry and civil society, supporting efforts to improve animal welfare, including by phasing out animal testing wherever possible, backing alternatives with funding and research partnerships*."

30. That followed its 11 November 2025 *Replacing Animals in Science* strategy, which set out a roadmap for "*phasing out animals in all but exceptional circumstances*" (including proposals to reduce the use of dogs and non-human primates in pharmacokinetic studies by at least 35% by 2030, and to reduce the use of dogs and non-human primates in studies of the cardiovascular effects of drugs by at least 50% by 2030).[8]

MBR Acres

31. MBR Acres Ltd operates a facility in Wyton, Cambridgeshire, that breeds beagle puppies for sale to laboratories in the UK and abroad for toxicology testing, pharmaceutical and chemical safety studies, and biomedical research. In recent years, it has arguably been the site of the UK's most high-profile protests against the use of animals in laboratories.

32. MBR Acres holds an establishment licence under ASPA and will as such be caught by the proposed s8(16)(b). On 17 July 2025, a Minister (Feryal Clark MP) specifically mentioned MBR Acres when she said, in response to a written question, that "*MBR Acres is a critical part of the UK's preclinical research infrastructure, which in turn is crucial for domestic pandemic preparedness*."[9] (During the Delegated Legislation Committee debate on 17 December 2026, however, the Minister (Sarah Jones MP) confirmed that "*During the covid pandemic, dogs—which have been mentioned a lot—were not tested for the vaccine*".[10])

33. The protests at MBR Acres accordingly provide an instructive example of the kinds of activities that the Regulations are seemingly intended to curtail. Since 2021, activists and protestors (including the second Claimant) have protested at the company's Wyton site, including through Camp Beagle, a permanent peaceful protest encampment.

34. MBR Acres has repeatedly sought to restrict protest activities at (in particular) the Wyton site. In 2021, it sought interim and final remedies against named protestors at the site and "*persons unknown*" (relying on, *inter alia*, claims of harassment and trespass).[11] Its position in those proceedings demonstrates the breadth of protest activities that MBR Acres says impede its ability to operate. The losses cited in its Particulars of Claim included, for example, a waste

[6] Draft Public Order Act 2023 (Interference With Use or - Hansard - UK Parliament
[7] Animal welfare strategy for England
[8] Replacing animals in science strategy - GOV.UK
[9] Written questions and answers - Written questions, answers and statements - UK Parliament
[10] Delegated Legislation Committee - Hansard - UK Parliament
[11] *MBR Acres Ltd & Ors v Free the MBR Beagles* [2021] EWHC 2996 (QB)

collection sub-contractor suspending waste collection at the site; a third-party supplier declining to attend the site for fear of adverse publicity; and the inability to transport animals to its customers. The second claimant, Jane Read, alleged that the protests had caused a deterioration in the mental health of MBR Acres's staff, increased staff absences, and several resignations [46].

35. MBR Acres sought sweeping injunctions which would, amongst other things, have: limited the number of permissible protestors to 25, including two leafletters; limited the permissible duration of protests to three hours, once per week, between 12pm and 3pm; prohibited "*intimidating…or otherwise interfering with*" staff, including by gesture, posters, placards, "*or any other means*"; prohibited photographing the site, including with drones; prohibited the use of loudspeakers "*or any instruments whatsoever (whether or not so designed) for the making of artificial or musical noise*"; prohibited the wearing of "*blood spattered clothing or costumes*"; and prohibited picketing, demonstrating or "*conducting other protests or protesting related activities*" within 50 metres of the premises of the claimant companies' "*suppliers or service providers*" (being anyone who "*directly or indirectly provides*" goods or services to the companies) [Appendix].

36. On 10 November 2021, Nicklin J granted a "*very limited*" interim injunction [103], imposing an exclusion zone around the Wyton site's entrance, but declining to grant the other terms sought by MBR Acres. He held that "*the terms of the injunction sought by the Claimants…are neither necessary nor proportionate restrictions on the Defendants' rights of freedom of expression and protest*" [104].

37. In 2022, MBR Acres brought contempt proceedings against a solicitor acting for protestors at the site, alleging that she had breached the injunction as a "*person unknown*". Nicklin J held that the claim had been "*wholly frivolous…border[ing] on vexatious*",[12] and ruled that MBR Acres was required to seek the Court's permission before instituting further contempt proceedings against persons unknown:

> "*In ordinary cases, the Court might usually expect that a litigant who had obtained such an injunction would consider carefully whether it was proportionate and/or a sensible use of the Court's and the parties' resources for contempt proceedings to be brought against someone who had inadvertently contravened the terms of the injunction. The Claimants have demonstrated that, even with the benefit of professional advice and representation, the Court cannot rely upon them to perform that task appropriately*" [101].

38. In 2025, Nicklin J ordered a final injunction in much narrower terms than those sought by the claimants, prohibiting physical trespass and deliberate obstruction of vehicles.[13]

39. Since (as discussed below) organisations in the life sciences sector are so distinct from the infrastructure currently on the s7(6) list, it is difficult to have any certainty about what kind of activities will be considered to "*prevent…the infrastructure from being used or operated to any extent for any of its intended purposes*" (as prohibited by s7(4)) should the Regulations pass. The history of the MBR Acres litigation is, however, instructive. Clearly the sector's concerns

[12] *MBR Acres Ltd v McGivern* [2022] EWHC 2072 (QB) [96]
[13] *MBR Acres & Ors v Curtin* [2025] EWHC 331 (KB)

go beyond trespass, which there are already adequate legal remedies to address, as confirmed in MBR Acres' 2021 injunction judgment ("*Whilst the Defendants are entitled to protest, they are not entitled to enter onto the First Claimant's land, without permission, for that or any other reason*."[14]) MBR Acres' view, as set out in those proceedings, is that a vast range of activities beyond trespass - including (but not limited to) noisy protest, upsetting placards, drone photography, negative online commentary, "*protesting related activities*" in relation to its suppliers, and solicitors visiting protestors at the site - are all actions that interfere with its use and operation of its facilities.

Analysis

What is "key national infrastructure" in the POA 2023?

40. "*Key national infrastructure*" was intended by Parliament, in the POA 2023, to refer to structures and facilities used in relation to transport, energy, and communications, the obstruction of which is liable to directly impede the ability of the public, or a section of the public, to go about their day-to-day lives.

41. The list at s7(6) POA 2023 mirrors the ordinary, natural meaning of the word "*infrastructure*", defined by the Cambridge Dictionary as "*the basic physical and organisational structures and facilities needed for the operation of a society or enterprise*".

42. That is echoed in the definition in the House of Commons' recent library briefing *Infrastructure in the UK* (June 2025), which confirms that "*Infrastructure refers to the physical systems and structures that support a society, economy and enterprises. It includes physical components like roads, bridges, railways, airports, and utilities (such as water supply, electricity, and telecommunications), which are often thought of as economic infrastructure. It also includes social infrastructure like schools, hospitals, and housing*."[15] (The document makes no mention of the life sciences sector.) The Government's *UK Infrastructure: A 10 Year Strategy*[16] (June 2025) similarly makes no mention of the life sciences sector, other than to say that – like the digital and technology sectors – it will benefit from increased investment in rail infrastructure and the growth of the Oxford to Cambridge corridor.

43. The list at s7(6) POA 2023 consists of what the June 2025 briefing called "*economic infrastructure*". Interference with of any of the infrastructure in the list is liable to directly impact the public (or a section of it) in their day-to-day lives – either immediately (e.g. by shutting down a transport route) or in the relatively short-term (e.g. by disrupting energy supply) – with the impact directly, causatively linked to the interference.

44. As the Court of Appeal noted in *R v Sarti, Hall and Plummer* [2025] EWCA Crim 61, a case concerning s7 POA 2023:

> *"…The term "key national infrastructure" in the heading to s. 7 and in s. 7(1)(a), taken with the definition in s. 7(6) (as elaborated in s. 8), makes it clear that the intention was to specify categories of infrastructure regarded as essential to national life. The list*

[14] *MBR Acres Ltd & Ors v Free the MBR Beagles* [2021] EWHC 2996 (QB) [110]
[15] Infrastructure in the UK
[16] CP 1344 – UK Infrastructure: A 10 Year Strategy

includes the infrastructure necessary for the transport of people and goods, the supply of fuel, electricity generation and newspaper printing..." [58]

45. Protest is a fundamental constitutional right; the ECHR confirms (qualified) rights to freedom of expression (Article 10) and freedom of assembly (Article 11). s7(6) POA 2023 constitutes an interference with those fundamental rights. Parliament was clearly mindful of the need for such interference to be necessary and proportionate; the fact that it intended to limit the scope of the proposed interference is clear throughout s7, including in the addition of the qualifying words "*key*" and "*national*" before "*infrastructure".*

46. Many sectors which could be said to be important to the operation of society in various ways are regularly subject to protest. To give just a few examples, the banking sector, higher education institutions, the cultural sector, and the Government itself have all been subject to significant protest activity in recent years, including:

    a. protests against banks, most notably Barclays, by climate and pro-Palestine activists, including (in June 2024) the targeting of 20 branches with red paint, graffiti and other property damage,[17] and a national boycott campaign calling on customers to close their accounts;[18]

    b. pro-Palestine protests at 36 UK universities, which in some cases involved encampments lasting several months, and included actions such as the interruption of staff meetings, the disruption of graduation ceremonies, the cancellation of events, and property damage;[19]

    c. climate protests targeting the National Gallery and other cultural institutions, which leaders in the sector said were "*hugely damaging to the reputation of UK museums and cause enormous stress for colleagues at every level of an organisation, along with visitors who now no longer feel safe visiting the nation's finest museums and galleries*";[20] and

    d. protests targeting Government buildings, including actions outside the Ministry of Justice in support of the hunger-striking Palestine Action activists,[21] and protests outside the Home Office in relation to the proscription of Palestine Action.[22]

47. None of those organisations / sectors are on the s7(6) POA 2023 list; they are clearly not within the scope of its definition of "*infrastructure"* (much less "*key national infrastructure"*). Protests targeting organisations in those sectors may be extremely disruptive and reputationally damaging, and may impact their ability to operate in a way that would eventually impact the public (or a section of it) – but those protests do not have the kind of immediate, tangible impact

[17] Barclays branches targeted by pro-Palestine activists | Money News | Sky News
[18] Boycott Barclays Bank - Palestine Solidarity Campaign
[19] New HEPI report tells the inside story of the pro-Palestine encampments on UK campuses - HEPI
[20] UK Museum Directors Say Climate Protests in Galleries 'Have to Stop'
[21] Pro-Palestine activists daub MoJ building with red paint in protest over hunger strikers | UK news | The Guardian
[22] Defend Our Juries protest outside Home Office ahead of proscription legal challenge | Morning Star

on the public that Parliament considered to justify the POA 2023's particularly severe deterrent provisions.

The life sciences sector

48. Even if it is possible to argue that the life sciences sector is analogous to those listed at paragraph 46, it is not - on any reading that is natural or consistent with the POA 2023 – "*a kind of infrastructure"* (which is required before the Secretary of State can exercise her powers under s7(7)), let alone "*key national infrastructure".*

49. As defined by the Regulations, the life sciences sector includes a whole spectrum of organisations carrying out ASPA-licensed activities, including university laboratories, testing sites operated by large pharma companies, government research facilities, and animal breeding sites. It also includes any infrastructure "*the primary purpose of which is facilitating*" pharmaceutical research, development or manufacture. "*Interference*" with any of those sites by protestors would have no impact on the ability of the public to go about their daily lives.

50. The Secretary of State's argument that those organisations collectively constitute "*key national infrastructure"*, insofar as she has made one, appears to be that the disruption of such facilities by protestors may slow down their work, which in turn may inhibit the production of new drugs or vaccines, which in turn may eventually impact the public by making fewer drugs available.

51. Alternatively, she suggests that, without the Regulations, protest activity might eventually cause (for example) animal testing facilities to shut down their UK operations. (Given that this is precisely the outcome presumably intended to result from the Government's own plans to phase out animal testing (see paragraphs 29-30) it is unclear why the Secretary of State considers it to be an urgent risk to the public in this context.)

52. All of those impacts are highly speculative – not least since the effectiveness of animal testing in drug development is highly contested, with over 90% of drugs that succeed in animal tests failing in humans. In any event, given that the development and approval of new drugs takes years if not decades – the Covid-19 vaccines being a striking exception – any alleged impact would come many years after the event, and would be based on an unprovable counterfactual ("*had protest X not happened, drug Y would have been approved sooner*").

53. Impacts of that nature are not the kind of impacts – namely, interference with the public's ability "*to go about their daily business*" - that the POA 2023 was intended by Parliament to address. If passed, the Regulations would materially change the nature of the s7(6) list.

Grounds of challenge

Ground 1: The Regulations are *ultra vires* the enabling power at s7(7) POA 2023

The law

54. It is well established that, unlike statutes, the lawfulness of statutory instruments (like other subordinate legislation) can be challenged in court.

55. Any executive use of delegated powers in a way that subverts the will of Parliament can be quashed by the courts.[23] As confirmed by the Supreme Court in *R (Public Law Project) v Lord Chancellor* [2016] UKSC 39:

> "*Subordinate legislation will be held by a court to be invalid if it has an effect, or is made for a purpose, which is ultra vires, that is, outside the scope of the statutory power pursuant to which it was purportedly made. In declaring subordinate legislation to be invalid in such a case, the court is upholding the supremacy of Parliament over the Executive*" [22].

56. Delegated powers should be interpreted restrictively, particularly where they empower a minister to amend primary legislation relating to fundamental constitutional rights; any doubt about the scope of such a power will be construed narrowly.

57. *R (UNISON) v Lord Chancellor* [2017] UKSC 51 (***UNISON***), for example, concerned secondary legislation (a Fees Order increasing Employment Tribunal fees) which impacted on the fundamental right of access to justice. The Supreme Court confirmed that that right could not be undermined through delegated legislation unless the interference had been expressly and clearly authorised in the primary legislation [76-79], and that "*[e]ven where a statutory power authorises an intrusion upon the right of access to the courts, it is interpreted as authorising only such a degree of intrusion as is reasonably necessary to fulfil the objective of the provision in question*" [80]. The Court concluded that the Fees Order effectively prevented access to justice in a way that was not expressly authorised by the primary legislation, and was accordingly unlawful [98].

58. In *Liberty v Secretary of State for the Home Department* [2025] EWCA Civ 571 (***Liberty***), a successful *ultra vires* challenge to the Secretary of State's attempt to amend (through secondary legislation) the Public Order Act 1986, the Court of Appeal held that (emphasis added):

> *"…it is inherently unlikely that Parliament would have intended to grant by secondary legislation the power to amend the primary statute in a way which changed a criterion which was fundamental to the balance which it struck between the rights of individuals to protest and the rights of the community…*
>
> *…that consideration is reinforced by the nature of the rights with which the statute is concerned.* ***Parliament is unlikely to have granted a right to interfere by secondary legislation with the balance which it had chosen to strike as regards fundamental rights****. It is also relevant that breach of a condition imposed under sections 12 or 14 is a criminal offence"* [47-48].

59. Nominally allowing a protest to continue, while requiring it to change its location or form, still constitutes an interference with Convention rights. In *Tabernacle v the Secretary of State for Defence* [2009] EWCA Civ 23 - a challenge to byelaws prohibiting a protest encampment occupied by Aldermaston Women's Peace Camp near the Atomic Weapons Establishment -

[23] *R v Secretary of State for the Home Department, ex parte Fire Brigades Union* [1995] 2 A.C. 513 [567E-G])

the Court of Appeal was clear that the ability to choose the location of a protest can be a key part of the exercise of Convention rights (emphasis added):

> "*As I have said it is plain in this case that the Secretary of State has not sought to impose anything approaching a blanket ban on AWPC's rights of protest. They may protest as much as they like: all they are stopped from doing is camping in the Controlled Areas. In that sense it may be said that paragraph 7(2)(f) of the 2007 Byelaws only goes to the manner and form of the exercise of the appellant's rights under ECHR Article 10. It is not on its face directed towards the suppression of free speech…*
>
> *But* ***this "manner and form" may constitute the actual nature and quality of the protest; it may have acquired a symbolic force inseparable from the protesters' message; it may be the very witness of their beliefs****…To them, and (it may fairly be assumed) to many who support them, and indeed to others who disapprove and oppose them, the "manner and form" is the protest itself.*
>
> *In my judgment, therefore, the fact that the camp can be categorised as the mode not the essence of the protest carries little weight*." [36-38]

Application to this case

60. s7(7) POA 2023 relevantly gives the Secretary of State the power to make regulations to "*add a kind of infrastructure"* to the list of "*key national infrastructure*" at s7(6) (and to the definitions section in s8).

61. Any doubt about the scope of the s7(7) power falls to be interpreted narrowly, particularly given that its proposed exercise involves an interference with fundamental constitutional rights (*UNISON*) - namely the right to protest, as codified by Articles 10 and 11 – and the imposition of criminal sanctions (*Liberty*).

62. As explained above, organisations carrying out animal testing or pharmaceutical work (or facilitating such work) are not, on any reading that is natural or consistent with the POA 2023, "*infrastructure",* let alone "*key national infrastructure"*, and a decision by the Secretary of State to add them (through the Regulations) to the s7(6) list would be *ultra vires* the power give to her by Parliament through s7(7).

63. To be lawful, such an interference with Constitution rights would need to have been expressly authorised by Parliament in the POA 2023. It was not.

64. The proposed measures can only lawfully be effected through primary legislation; to introduce them through the Regulations would be an unjustified interference with Parliamentary sovereignty.

Ground 2: The Regulations are vitiated by procedural unfairness due to a failure to conduct a lawful consultation

The law

65. A decision to make secondary legislation can be declared unlawful on the basis that it is not authorised by statute or by common law principles of public law.[24] A decision to make the Regulations could accordingly be found to be unlawful on the basis of procedural unfairness (as well as on the basis that it is *ultra vires*).

66. Whether or not consultation is a legal requirement, if it is embarked upon it must be carried out properly,[25] even if for reasons of urgency it is carried out informally and over a short period.[26] The standards for a fair consultation are well known - namely that the consultation must take place when the proposals are at a formative stage, with sufficient reasons (and adequate time to respond) given to consultees, and conscientious consideration given to their responses.[27]

67. While the *Gunning* criteria do not expressly refer to a duty to consult an appropriate pool of consultees, the criteria are not exhaustive, and such a duty is implicitly part of the broad expectation of fairness. See for example *R (Milton Keynes Council) v Secretary of State for Communities & Local Government* [2011] EWCA Civ 1575, in which Pill LJ held (emphasis added): "*I do not accept the submission that a decision-maker can routinely pick and choose whom he will consult. **A fair consultation requires fairness in deciding whom to consult** as well as fairness in deciding the subject matter of the consultation and its timing*" [32]. In *R (Association of Personal Injury Lawyers) v Secretary of State for Justice [2013]* EWHC 1358 (Admin), Elias LJ described the *Milton Keynes* case as supporting the proposition "*that there may be circumstances where a selective consultation exercise will render a decision taken pursuant to it unlawful*" [36].

68. Those duties will apply to a formal consultation – one relating to a specific proposal, that is likely to have a direct impact on a person or group of people, on which the authority is seeking views – but not to mere "*engagement exercises*" through which the authority is gathering information or exploring the issues.[28]

69. In *Liberty*, the claimant argued that, by engaging with the policing authorities, the Secretary of State had instigated a consultation process which required it (in the interests of fairness) to consult a broader range of consultees. The consultation ground failed, because the Court of Appeal did not believe that (emphasis added):

> *"the Government's engagement with the policing bodies in December 2022 had the character of a formal consultation – or, to put it another way, it was not of a character that required it to comply with the common law principles as regards procedural fairness. It was not a process set up by the Government with a view to hearing arguments from a range of affected parties for and against the legislative and other*

[24] *Smedley* [666H-667A], [672C], [673A]
[25] *R v North and East Devon Health Authority ex p Coughlan* [2001] QB 213 [108]
[26] *R (Article 39) v Secretary of State for Education* [2021] PTSR 696 [77-78]
[27] As set out in *R v Brent London Borough Council, ex p Gunning* (1985) 84 LGR 168 (and endorsed in *R (Moseley) v Haringay LBC* [2014] 1 WLR 3947)
[28] *R (Eveleigh) v Secretary of State for Work and Pensions* [2023] EWCA Civ 810 (***Eveleigh***)

changes which it was contemplating making in the light of the Parliamentary debates in the summer and the Just Stop Oil protests in the summer. Rather, its purpose was to obtain the input of the policing bodies as the authorities with executive responsibility in the relevant field. ***Although of course the police are not a department of government, they are nevertheless arms of the state, for which the Home Secretary has constitutional responsibility: in that sense, the process was essentially intra-governmental****. Engagement of this kind is not only sensible but necessary; but it is of a wholly different character from formal consultation."*

Application to this case

70. The Secretary of State has confirmed that she carried out an informal consultation process, which was condensed due to the apparent urgency of passing the Regulations (see paragraph 25 above). The consultation appears (according to the Explanatory Memorandum) to have included "*key stakeholders across the Life Sciences industry"* as well as "*law enforcement partners*", but no-one else.

71. Given the paucity of information provided by the Secretary of State, the exact nature of the consultation exercise is not clear. It does not, however, appear to have been an "*essentially intra-governmental"* discussion about the operational aspects of the proposals, akin to the one in *Liberty*, given that it included stakeholders in the private sector (namely companies from across the life sciences industry).

72. As detailed below, the Secretary of State is asked to provide further information regarding the consultation. On the facts available, it appears to the Claimants that the exercise may have constituted a consultation as defined by *Eveleigh*, and as such to have been subject to a duty of fairness. If so, fairness required the Secretary of State to:

    a. consult with a broader pool of consultees (including activists, opponents of animal testing, and organisations concerned with civil liberties), rather than just with parties who might reasonably be expected to support the proposed Regulations; and

    b. provide consultees with sufficient information about the proposals to allow them to take an informed view on their merits, including the evidence relied on as justifying the measures, and information regarding how the proposals are intended to sit alongside the commitments to phase out animal testing in the Government's *Animal Welfare Strategy* and *Replacing Animals in Science* strategy.

73. Her failure to do so would mean that the making of the Regulations was vitiated by procedural unfairness.

74. The fact that the Regulations are subject to the affirmative procedure, and have accordingly been subject to a limited degree of Parliamentary scrutiny, would not remedy that lack of fairness, given that:

    a. it was not open to members of the public or civil society to engage in (for example) the Delegated Legislation Committee debate;

b. many of the MPs who engaged in that debate were not Committee members and so were not entitled to vote on the decision to approve the Regulations; and

c. there is in any event no scope for the Regulations to be amended by either House of Parliament, save in exceptional circumstances, and the draft Regulations accordingly cannot be said to have been presented to Parliament at a "*formative stage*".

75. The Claimants reserve their right to amend or expand on these arguments in any Particulars of Claim, following receipt of the information requested below.

Action and information requested

76. The Secretary of State is asked to confirm that she will not make the Regulations (even if they are approved by resolution of both Houses of Parliament).

77. Failing that, she is asked to respond to the proposed challenge set out above. As part of that response, she is asked to provide:

a. further details and documentation relating to the informal consultation exercise, including details of who was consulted, over what period, and in what form;

b. any representations received from stakeholders in the life sciences industry pursuant to that consultation (or otherwise in relation to the Regulations);

c. whether she maintains that there was no time to conduct a broader consultation, and if so on what basis;

d. confirmation of whether she has assessed / considered the nature and number of organisations that are likely to come within the proposed definition of "*life sciences infrastructure"* (and a copy of that assessment if so);

e. whether she maintains that the following assertions are correct (and, if so, the evidence she relies on to that end):

i. Existing powers available to the police have proven inadequate in effectively managing disruptive activity affecting the life sciences sector;

ii. Protecting the life sciences sector is critical for ensuring drug safety testing and the UK's pandemic preparedness; and

iii. A failure to address disruptive protest activity may lead to a retreat of companies across the life sciences sector from UK operations.

Alternative dispute resolution

78. The Claimants do not currently consider that alternative dispute resolution is likely to be effective, but would be happy to consider any proposals put forward by the Secretary of State to that end.

Judicial Review Costs Capping Order

79. Should they have to issue proceedings, the Claimants propose – given the clear public interest in the claim being brought – applying for a costs capping order, if the Secretary of State's estimated costs of defending the claim are such that they would not reasonably be able to pursue the challenge without one.

80. To assist the Claimants in considering whether such an order is required, please include in your response to this letter an estimate of the Secretary of State's legal costs to trial. (We draw your attention to the Court's decision in *R (Good Law Project) v Secretary of State for Health and Social Care* [2022] EWHC 2888 (TCC), in which the Defendant's refusal to provide an early estimate of costs for this purpose was criticised.)

The address for reply and service of court documents

81. The Claimants are represented by Helen Fry of Bates Wells. All correspondence should be addressed to Ms Fry, who is instructed to accept service of Court documents on the Claimants' behalf by email to [redacted]. It would be of assistance if such emails were copied to [redacted]. We can accept email attachments of up to 50MB only.

Proposed reply date

82. We understand that the House of Lords is due to vote on the Regulations on 21 January 2026. The Secretary of State is asked to respond to this letter before making any decision to make the Regulations, and by no later than 30 January 2026.

Yours faithfully

[redacted]

Bates Wells & Braithwaite London LLP