The Right to Protest vs. the Role of the Police

Whilst there is no specific ‘right to protest’ in law, everyone does have the right to peacefully protest. This right is enshrined in the rights to freedom of thought, conscience and religion, freedom of expression, and freedom of assembly and association, which are rights protected under Articles 9, 10 and 11 of the European Convention on Human Rights (ECHR). The ECHR is enshrined in UK law in the Human Rights Act 1998.

In terms of the role of the police with regard to protests, one of the better explanations comes in the 2009 Her Majesty’s Inspectorate of Constabulary report, Adapting to Protest, **‘ECHR Article 11 places both negative and positive obligations on the police. The police must not prevent or restrict peaceful protest except to the extent allowed by ECHR Article 11**. In addition, **the police have a duty in certain circumstances to safeguard the right to peaceful assembly**. In other words, public authorities, including the police, are required to show a certain degree of tolerance towards peaceful gatherings where demonstrators do not engage in acts of violence, even if these protests cause a level of obstruction or disruption. The level of tolerance that should be extended is likely to be the subject of extensive public and political debate, which has merit in its own right.’

Therefore, whilst public authorities should not normally interfere with the rights to protest, they are however qualified rights, and there are circumstances where the right to protest can be restricted if that restriction is assessed to be proportionate (e.g. if the restrictions are prescribed by law, pursue one or more legitimate aims, and are necessary in a democratic society). The government has enacted legislation over the years to prescribe in law restrictions to the right to protest, e.g. Public Order Act 1986, Police Crime Sentencing and Courts Act 2022, and Public Order Act 2023. When the police choose to use such legislation, it is for the courts to determine whether or not their restriction to the right to protest is necessary and proportionate, or actually unlawful (as was the case with the Metropolitan Police and the October 2019 protest in London).

Further more detailed legal advice is available in the Arrestee and Legal Support section and via Informed Dissent Resources.