# Court of Appeal rules UK government misused Henry VIII powers in protest law changes



A recent ruling by the Court of Appeal has determined that the UK government improperly utilised 'Henry VIII powers' when enacting changes to protest legislation, marking a significant development in the legal landscape surrounding public assemblies and civil liberties. This decision in the case of National Council for Civil Liberties (NCCL) v Secretary of State for Home Department has been described as a "huge victory" for democracy and the rule of law, prompting legal experts to reassess ongoing and past cases linked to the legislation.

The Court of Appeal's deliberation, presided over by Lord Justice Underhill, Lord Justice Dingemans, and Lord Justice Edis, focused specifically on the amendments made to the Public Order Act 1986. These changes aimed to provide police with enhanced powers to impose conditions on public processions and assemblies. The legal action was initiated two years prior by Liberty, formerly known as the NCCL, which argued that the amendments exceeded the powers granted to the government and were enacted following a flawed consultation process.

The original judicial review successfully quashed the regulations implemented by the then Home Secretary Suella Braverman. Following her appeal, and subsequent transition of office to Yvette Cooper, the new Home Secretary, the case went before the Court of Appeal last December. In their ruling, the judges upheld the divisional court's conclusion that the changes to the 1986 Act exceeded the amendment powers provided by the Police, Crime, Sentencing and Courts Act 2022.

In the lead judgment, Lord Justice Underhill expressed scepticism regarding the government's engagement with policing bodies during the consultation process, stating it resembled "essentially intra-governmental" dialogue rather than a formal consultation. He noted that while engagement is important, it did not meet the standards required for procedural fairness in formal consultations.

The court dismissed the appeal but stopped short of affirming that the regulations were entirely unlawful. Commenting on the judgment, Katy Watts, a lawyer at Liberty, remarked, “We launched this legal action two years ago to ensure that governments are not able to sneak in legislation via the back door that weakens the rights of all of us. This judgment is a victory for parliament and the rule of law.” She expressed hope that the ruling would encourage the government to reassess its stance on protest rights.

Shameem Ahmad, Chief Executive of the Public Law Project, which intervened in the case, echoed these sentiments, asserting that the restrictive protest laws should be abandoned and that the use of Henry VIII powers should be discontinued. Additionally, Raj Chada, head of criminal defence at Hodge Jones & Allen, indicated that they would "urgently review the cases of our clients who were convicted under this unlawful legislation and will be considering appeals," reflecting widespread concern about the impact of the contested regulations.

This ruling is anticipated to have significant implications for the future of protest rights in the UK, pressing the government to reconsider how it approaches such legislation and ensuring that legislative changes are subjected to adequate public consultation and legal scrutiny.

Source: [Noah Wire Services](https://www.noahwire.com)

## Bibliography

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2. <https://www.theguardian.com/uk-news/article/2024/may/21/new-police-powers-for-protests-unlawful-high-court-rules> - This piece discusses the High Court's ruling that former Home Secretary Suella Braverman acted unlawfully by using 'Henry VIII powers' to lower the threshold for police intervention in protests, a decision that was later appealed by the government.
3. <https://www.lawgazette.co.uk/news/high-court-finds-anti-protest-legislation-unlawful/5119798.article> - This article details the High Court's finding that the government's anti-protest legislation, which altered the threshold for police intervention in public processions and assemblies, was unlawful, quashing the regulations implemented by former Home Secretary Suella Braverman.
4. <https://www.libertyhumanrights.org.uk/issue/court-finds-government-anti-protest-legislation-unlawful-after-liberty-legal-challenge/> - This statement from Liberty highlights the High Court's ruling that the government acted unlawfully in creating legislation that gave police 'almost unlimited' powers to restrict protests, following a legal challenge from the human rights organization.
5. <https://www.hrlc.org.au/human-rights-case-summaries/2024/05/28/national-council-for-civil-liberties-v-secretary-of-state-for-the-home-department> - This case summary provides an overview of the High Court's decision that amendments to the Public Order Act 1986, which lowered the threshold for police intervention in protests, were unlawful, emphasizing the importance of adhering to legislative intent and maintaining procedural fairness.
6. <https://www.judiciary.uk/judgments/national-council-for-civil-liberties-v-secretary-of-state-for-the-home-department/> - This official judgment from the Court of Appeal outlines the legal proceedings and decisions in the case of National Council for Civil Liberties v Secretary of State for the Home Department, including the court's analysis and conclusions regarding the amendments to the Public Order Act 1986.
7. <https://www.lawgazette.co.uk/news/urgent-review-of-protest-cases-following-coa-ruling/5123189.article> - Please view link - unable to able to access data