



# JOINT BRIEFING ON THE PUBLIC ORDER BILL FOR REPORT STAGE IN THE HOUSE OF COMMONS

**OCTOBER 2022**

The Public Order Bill reaches Report Stage in the House of Commons just months after anti-protest measures passed into the PCSC Act come into force.

As a coalition spanning the human rights, privacy, criminal justice, democracy, children's rights, international development, environment, freedom of speech and expression, violence against women and girls, refugees' and migrants' rights, community, and faith sectors, we stand against the Public Order Bill in its entirety. We urge MPs to defend everyone's right to protest by voting against this Bill in its entirety. Should this not be possible, we ask MPs to vote in favour of:

- Amendments 1 and 2 (serious disruption prevention orders) in the name of Sir Charles Walker MP
- Amendments 9, 10, 11, 12 and 13 (stop and search) and amendments 3 and 4 (locking on offences) in the name of Anne McLaughlin MP at Report Stage on Tuesday 13<sup>th</sup> September to ameliorate the most egregious aspects of this Bill.

No coherent case has been made by the Government for introducing further public order measures, yet the arguments against further clampdowns on the right to protest continues to pile high. The vast majority of measures contained within this Bill have already been **rejected by parliamentarians across the political spectrum after being voted out of the PCSC Act at Lords Report Stage in January 2022**. Further, the Joint Committee on Human Rights (JCHR) have recently joined voices of opposition through warning that the introduction of the Public Order Bill risks creating a "hostile environment" for people exercising their fundamental rights.<sup>1</sup>

This Bill must also be viewed alongside broader moves to curtail the rights beyond protest. As well as the PCSC Act coming into force, the Government have just passed legislation to introduce photographic voter ID and restrict judicial review, limiting people's ability to make their voices heard at the ballot box and in the courts. We have also seen the heavyhanded treatment of several anti-monarchist protesters in the run up to the Queen's funeral in September 2022<sup>2</sup>, leading

<sup>1</sup>Joint Committee on Human Rights, *Government creating hostile environment for peaceful protest, report finds*, 17 June 2022, available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>

<sup>2</sup> Notable cases include the three people who were charged with 'breach of the peace' in Edinburgh: a woman who was seen holding up a sign saying "Abolish the Monarchy, F\*\*\* Imperialism" during the Accession Proclamation of King Charles III; a man who allegedly heckled Prince Andrew; and another man who was allegedly holding eggs near the funeral cortege (see: Morrison, H., *Police Scotland actions during anti-monarchy protests to be reviewed by force*, The National, 21 September 2022: <https://www.thenational.scot/news/22454228.police-scotland-actions-anti-monarchy-protests-reviewed-force/>). In Oxford, a man was arrested and then de-arrested after shouting "who elected him" at a proclamation ceremony. He said he was told that he was arrested under the PCSC Act but Thames Valley Police later clarified that he had been arrested on suspicion of committing an offence under section 5 of the Public Order Act (See: Seaward, T., *Anti-monarchist 'arrested for shouting' during Oxford proclamation*, 11 September 2022:



parliamentarians across the political spectrum to voice their concerns over growing restrictions on protest, with David Davis MP expressing his hope that members of the public will “remain free to share their opinions and protest in regard to issues about which they feel strongly”.<sup>3</sup> Ultimately, the incidents led the National Police Chiefs’ Council to issue a statement, affirming that “[t]he ability to protest is a fundamental part of democracy and it is a long-established right in this country.”<sup>4</sup>

Through the raft of new protest-specific offences, expansion of police powers and introduction of ‘protest banning orders’, the Public Order Bill stands to create a significant chilling effect on our ability to stand up to power, dissuading people from exercising their right to protest and to freedom of assembly as well as sweeping more and more people into the criminal justice system for doing so.

## BRIEFING

### THE CREATION OF SERIOUS DISRUPTION PREVENTION ORDERS (‘SDPOS’ OR ‘PROTEST BANNING ORDERS’)

1. Part 2 of this Bill introduces a new civil order - Serious Disruption Prevention Orders (SDPOs) – that can be imposed on individuals who have participated in at least two protests within a five-year period, whether or not they have been convicted of a crime. They can last anywhere from one week to two years, with the potential to be renewed indefinitely (clauses 18(1) and 21(7)).
2. SDPOs are effectively ‘protest banning orders’, with the potential to ban named individuals from protesting, associating with certain people at certain times, and even using the internet in certain ways. Those subject to SDPOs may also be subject to a range of onerous requirements, including reporting to certain places at certain times and electronic monitoring. A person subject to a SDPO will commit a criminal offence if they fail without reasonable excuse to fulfil one of the requirements of the SDPO, violate one of the SDPO’s prohibitions, or notify to the police any information which they know to be false. The consequence of committing this offence is maximum 51 weeks’ imprisonment,<sup>5</sup> a fine, or both.

<https://www.oxfordmail.co.uk/news/21276222.anti-monarchist-arrested-shouting-oxford-proclamation/>). Another man was threatened with arrest over holding a blank piece of paper (Kingsley, T., *UK compared to Russia after barrister threatened with arrest over blank piece of paper*, 14 September 2022: <https://www.independent.co.uk/news/uk/home-news/anti-monarchy-protest-russia-police-b2166183.html>).

<sup>3</sup> Letter from Rt Hon David Davis MP to Chief Constable Sir Iain Livingstone KPM, 12 September 2022: <https://twitter.com/DavidDavisMP/status/1569700441490857988/photo/1>

<sup>4</sup> NPCC response to recent protest activity during this time of national mourning, 13 September 2022: <https://news.npcc.police.uk/releases/npcc-response-to-recent-protest-activity-during-this-time-of-national-mourning>

<sup>5</sup> The offence provides that a person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both. If the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, the maximum sentence will be six months; (b) if the offence is committed after that time, the maximum sentence will be 51 weeks.

3. We are calling on MPs to agree to amendments in the name of Sir Charles Walker MP for the following reasons:

- a. **This measure marks a significant expansion of State surveillance:** SDPOs, like other hybrid civil-criminal orders, rely on (and will therefore give rise to) far-reaching and intrusive surveillance on people's activities and behaviour, to inform the making of, and conditions and prohibitions attached to, such orders. 'Protest banning orders', as originally proposed by the Government and assessed by HMICFRS and the Home Office in 2020, are based on existing football banning orders (FBOs). Research into the use of FBOs in Scotland noted the use of extensive surveillance methods such as body-worn video, increased CCTV and plain-clothed police officers and that such methods were "disproportionate and unfairly selective."<sup>6</sup> The use of even more secretive tactics such as informants in the policing of football fans<sup>7</sup> adds to our concerns that in the protest-context, SDPOs may create additional pretexts under which the police can interlope in protests.
- b. **SDPOs have been criticised by police:** When an identical proposal for 'protest banning orders' that would restrict named individuals' right to protest was assessed by HMICFRS, they agreed with the Home Office and police interviewees that:

***"Such orders would neither be compatible with human rights legislation nor create an effective deterrent. All things considered, legislation creating protest banning orders would be legally very problematic because, however many safeguards might be put in place, a banning order would completely remove an individual's right to attend a protest. It is difficult to envisage a case where less intrusive measures could not be taken to address the risk that an individual poses, and where a court would therefore accept that it was proportionate to impose a banning order (emphasis added)".<sup>8</sup>***

- c. **SDPOs will likely create a net-widening effect:** The conditions under which an SDPO can be imposed risks creating a net-widening effect given the broad terms used throughout that could potentially catch any and all forms of activity related to a protest – for example, it could cover anything from purchasing a bike lock, paint and superglue, to holding a banner, to observing a demonstration from afar. As Liberal Democrat peer Lord Paddick noted during Report Stage of the PCSC Bill (now Act) where these measures were first introduced and resoundingly rejected, "you do not

<sup>6</sup> Hamilton-Smith, N, McBride, M and Atkinson, C. 2019. *Lights, camera, provocation? Exploring experiences of surveillance in the policing of Scottish football*, available at: [https://dspace.stir.ac.uk/bitstream/1893/30568/1/20191003%20-%20DOC%20-%20Football%20surveillance%20revised%20-%2014th%20Octo%202019\\_.pdf](https://dspace.stir.ac.uk/bitstream/1893/30568/1/20191003%20-%20DOC%20-%20Football%20surveillance%20revised%20-%2014th%20Octo%202019_.pdf)

<sup>7</sup> Atkinson, C, McBride, M and Moore, A. 2020. *Pitched! Informants and the covert policing of football fans in Scotland*, available at: <https://www.tandfonline.com/doi/full/10.1080/10439463.2020.1795168?needAccess=true>

<sup>8</sup> Pg. 16, HMICFRS, *Getting the balance right? An inspection of how effectively the police deal with protests*, March 2021, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf>

even have to have been to a protest to be banned from future ones.”<sup>9</sup> Further, analysis from Netpol on the “threshold and terminology matrix” purportedly used by counter-terrorism police to respond to far-right extremism shows that protest activities that cause as broad as a “a change to the behaviour of the population or change to specific government policy” are sufficient enough to constitute intervention by the police. This suggests that, should the Public Order Bill pass into law, SDPOs could be enforced against any activist, commentator, or politician who voices an opinion on any issue, that inspires someone else (who they don’t know and have never met) to change their behaviour or to protest in such a way as to cause ‘serious disruption’.<sup>10</sup>

- d. **The harms of electronic monitoring:** One of the requirements that can be imposed on an individual subject to an SDPO is electronic monitoring (EM). Such conditions are likely to be a highly disproportionate interference with people’s human rights, including and especially if they employ GPS tracking<sup>11</sup>, especially given the broad and vague purposes for which they can be imposed. While it is unclear how the Public Order Bill proposes to implement electronic monitoring, we could potentially see a 24/7 GPS tag imposed on someone to monitor their associations, whereabouts, and activities, under the auspices of preventing them from causing ‘serious disruption’. Geolocation data is highly sensitive: it tells you where someone has been, which GP practice they attend, where they shop, and much more. These are intimate details of one’s private life that bear no relation to one’s protest-related activities. Once an individual is subject to a 24/7 GPS tag, all of this data is potentially laid bare to the State, with the further potential to cause people to alter their behaviour and actions. These harms are exacerbated by the potential lengthy duration of an electronic monitoring condition. Clause 21(9) limits the duration of an electronic monitoring requirement to 12 months but according to the explanatory notes “this does not preclude a further extension... if the SDPO is renewed.”<sup>12</sup>
- e. **SDPOs can be established on a weak procedural basis:** The SDPO regime relies on a civil standard of proof, meaning that the conditions for making an SDPO only need to be proven to the balance of probabilities (clauses 12(2)(a) and 13(2)), rather than beyond reasonable doubt. In terms of evidence that can be used to make an SDPO, SDPOs on conviction can be made on the basis of lower quality evidence: evidence that would not have been admissible in the current offence is admissible for the

<sup>9</sup> HL Deb 17 Jan 2022, vol.817, col. 1439

<sup>10</sup> Netpol. *Lost in the Matrix – how police surveillance is mapping protest movements*. Aug 2022, <https://netpol.org/2022/08/02/lost-in-the-matrix/>

<sup>11</sup> Privacy International, *Electronic monitoring using GPS tags: a tech primer*, 9 February 2022, available at: <https://privacyinternational.org/explainer/4796/electronic-monitoring-using-gps-tags-tech-primer>

<sup>12</sup> Para 130, Public Order Bill: Explanatory Notes, May 2022, <https://publications.parliament.uk/pa/bills/cbill/58-03/0008/en/220008en.pdf>



making of the SDPO, meaning that information collected via intrusive surveillance as detailed above may be admissible) (clause 12(9)); for SDPOs made without conviction, there are no requirements in respect of what evidence can be used, meaning that ostensibly any information – including that which is collected covertly or through intrusive technologies such as facial recognition technology – could be used to establish if a person was at a protest and engaged in any of the listed activities. An SDPO without conviction can be applied for by a wide range of police officers, including the chief officer of an area who simply believes that a person *intends to* come to their area (clause 13(8)(b))– a highly subjective judgment that could have drastic implications for a person’s freedom of movement. On the low threshold for imposition of an SDPO, Labour MP Diane Abbott remarked during the Second Reading debate on this Bill: “The truth is that no citizen should ever be subject to the arbitrary and unsubstantiated curbing of important civil rights by the state”.<sup>13</sup>

## THE INTRODUCTION OF PROTEST-SPECIFIC STOP AND SEARCH

4. **On suspicion:** Clause 9 of the Bill amends section 1 of the Police and Criminal Evidence Act (PACE) 1984 to expand the types of offences that allow a police officer to stop and search a person or vehicle. The police officer must have reasonable grounds for suspecting they will find an article “made, adapted or intended for use in the course of or in connection with” ‘protest-related’ offences contained within the PCSC Act<sup>14</sup> and as proposed elsewhere in this Bill<sup>15</sup>. The police may seize any prohibited item found during a search.
5. **Without suspicion:** Clause 10 of the Bill creates a new suspicion-less stop and search power, such that a police officer of or above the rank of inspector may make an authorisation applying to a particular place for a specified period, which would allow police officers to stop and search someone or a vehicle without suspicion. They will be able to do this if they reasonably believe that one of the following offences may be committed in the area: wilful obstruction of a highway (section 137 of the Highways Act 1980), intentionally or recklessly causing public nuisance (section 78 of the PCSC Act), locking on (clause 1), obstructing major transport works (clause 6), interfering with the use or operation of key national infrastructure (clause 7), causing serious disruption by tunnelling (clause 3), or causing serious disruption by being present in a tunnel (clause 4). Such authorisation can also arise if the officer reasonably believes that people in the area are carrying ‘prohibited objects’. ‘Prohibited object’ is defined as an object which is either made or adapted for the use in the course of or in connection with one of the listed offences, or is intended by the person who has it in their possession for such use by them or someone else.

<sup>13</sup> HC Deb, 23 May 2022, vol. 715, col. 74

<sup>14</sup> The offences of wilful obstruction of a highway (section 137 Highways Act 1980), intentionally or recklessly causing public nuisance (section 78 of the PCSC Act),

<sup>15</sup> Locking-on (clause 1), obstructing major transport works (clause 6), interfering with the use or operation of key national infrastructure (clause 7), causing serious disruption by tunnelling (clause 3), or causing serious disruption by being present in a tunnel (clause 4).

6. **Creation of offences related to stop and search without suspicion:** Clause 13 creates a specific offence for intentional obstruction during the course of a suspicion-less, protest-specific stop and search. The maximum penalty for obstruction is 51 weeks' imprisonment, a fine not exceeding level 3 on the standard scale, or both.
7. **We are calling on MPs to agree to amendments in the name of Anne McLaughlin MP for the following reasons:**
  - a. **These measures mark a gross expansion of police powers:** There is a potentially endless list of objects that could be 'made, adapted, or intended for use in the course of or in connection with' the listed offences, so broad are the terms in this definition; indeed, it could include such commonplace items as bike-locks, posters, placards, fliers, and banners. Arguably the police could have a reasonable suspicion that *any* person on the street would have a bike lock or any other such item on them; how would they subsequently establish if that person intended to use such an item "in the course of or in connection with" a protest – would it be based on one's vicinity to a protest site? What if there happened to be a bike shop nearby, and one simply crossed the road to see what was happening at the demonstration? **We believe that this stop and search power risks disproportionately interfering with individuals' rights to a private and family life as well as freedom of expression and assembly, and have knock-on effects for their willingness and ability to exercise their fundamental rights.**

The JCHR highlights that the power to stop and search without reasonable suspicion has previously been introduced only to deal with "the most serious offending", including where "serious violence" is anticipated or where it is believed weapons are being carried; or "where it is reasonable suspected that an act of terrorism will take place. In the JCHR's words, "It is surprising and concerning that the Bill would introduce similar powers to deal not with serious offences punishable with very lengthy prison terms, but with the possibility of non-violent offences relating to protest, most of which cover conduct that is not even currently criminal." During the debate over this proposed power in the House of Lords during the passage of the PCSC Act, crossbench peer Lord Carlile of Berriew warned that "the dilution of without-suspicion stop and search powers is a menacing and dangerous measure" and that the power is "disproportionate, and the Government should think twice about it."<sup>16</sup> We note that the UN Human Rights Council's General Comment on the Freedom of Peaceful Assembly has rejected protest-specific 'suspicionless' stop and search: "The mere fact that authorities associate an individual with a peaceful assembly does not constitute reasonable grounds for stopping and searching them."<sup>17</sup>

Lastly, it merits noting that whilst provisions to create new protest-specific stop and search will constitute a significant expansion of police powers, existing powers of stop and search are already used heavily in protest contexts Research from Big

<sup>16</sup> HL Deb 17 Jan 2022, vol.817, col. 1435

<sup>17</sup> General comment no. 37 (2020) on the right of peaceful assembly (article 21): Human Rights Committee at para 83

Brother Watch found that the number of stops and searches in Central London rose by 20.5% over weekends with protests despite stats showing that protestors are no more likely to be arrested after a search than the wider public.<sup>18</sup>

- b. **These measures will further entrench racism in the criminal justice system:** Time and time again, on stop and search both with and without suspicion, evidence has shown that such powers are used disproportionately against communities of colour, particularly the Black community. We are deeply concerned that expansion of such powers will entrench racial disproportionality in the criminal justice system and further erode trust in public institutions, contrary to the prohibition against discrimination in Article 14 of the ECHR as protected under the HRA. In November 2021, the Home Office released its annual stop and search data which showed a sharp rise in the use of s.1 PACE, and according to the most recent statistics, Black people were 7 times more likely to be stopped and searched than white people<sup>19</sup> When the reasonable grounds requirement was removed, they were 14 times more likely to be stopped and searched.<sup>20</sup> At Second Reading of this Bill, Conservative MP Richard Fuller urged the Government to “think carefully” about extending such powers given the sheer amount of evidence on how they are already used disproportionately against communities of colour, particularly the Black community.<sup>21</sup> Further, in the context of a broader ongoing crisis in policing, a joint statement signed by organisations across the Violence Against Women and Girls (VAWG) sector noted in opposition to this Bill that “such attempts to erode our right to protest are a stark warning to those most likely to be impacted by human rights abuses, over-policing and state violence – including Black and minoritised women...”<sup>22</sup>
- c. **The traumatic impact of these measures is long-lasting:** Experiencing stop and search can be mentally and physically traumatising.<sup>23</sup> Hackney Account – a youth-led social action project – conducted participatory research with young people in Hackney, and found that the practice of stop and search can have “a damaging impact on mental wellbeing, causing feelings of embarrassment, humiliation or anger”.<sup>24</sup> This

<sup>18</sup> Gayle, D. *Police abuse stop and search powers to target protesters, suggests data*. The Guardian, Aug 2022, <https://www.theguardian.com/law/2022/aug/18/police-abuse-stop-and-search-powers-to-target-protesters-suggests-data>

<sup>19</sup> Home Office, *Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021*, 18 November 2021 available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2021>

<sup>20</sup> Home Office, *Public Order Bill: Equality Impact Assessment*, 2022, <https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-equality-impact-assessment>

<sup>21</sup> HC Deb, 23 May 2022, vol. 715, col. 103

<sup>22</sup> End Violence Against Women (EVAW). 2022. *Women’s rights organisations oppose the Public Order Bill: the right to protest is a feminist issue*. Jun 2022, available at: <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2022/06/VAWG-statement-on-the-Public-Order-Bill-.pdf>

<sup>23</sup> Ali A. and Champion, N. for the Criminal Justice Alliance, *More harm than good - A super-complaint on the harms caused by ‘suspicion-less’ stop and searches and inadequate scrutiny of stop and search powers*, May 2021, available at: [https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search\\_FINAL.pdf](https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf)

<sup>24</sup> Hackney Account, *Policing in Hackney: Challenges from youth in 2020*, 2020, available at: <https://static1.squarespace.com/static/5d234a046f941b0001dd1741/t/5f77795b9e2fdb6bf67d3c7d/1601665467995/Final+Draft+-+Report+-+Account+%28Online%29.pdf>

is further exacerbated by the fact that the police are empowered to use reasonable force to carry out a stop and search if necessary, including using taser, firearms, batons, and handcuffs.<sup>25</sup> The impact of discriminatory stop and search on affected communities is deep and enduring. Research by Dr Patrick Williams with young people on the Metropolitan Police Service (MPS)'s 'Gangs Matrix' found that respondents identified stop and search as "the catalyst for the onset of their negative relationship with the police."<sup>26</sup> A report by the Criminal Justice Alliance spoke to young BAME people with first-hand experience of stop and search. They described feeling harassed, targeted, provoked, and even violated by these coercive encounters.<sup>27</sup> The Home Office itself acknowledges that the expansion of stop and search "would risk having a negative effect on a part of the community where trust and confidence levels are relatively low."<sup>28</sup>

- d. **Clause 13 threatens the provision of legal guidance at protest:** One of the consequences of Clause 13 is that it might be used to target legal observers who have already been subject to wrongful arrest as recent as in 2021.<sup>29</sup> For example, we can envision a situation whereby a legal observer on their way to a protest may be stopped and searched for carrying items such as bust cards or wearing an identifiable yellow bib, on the basis that these are 'prohibited objects' because they are made for use 'in the course of or in connection with' the conduct of others of one of the listed offences.). This will have a disempowering effect on protests and on our ability to hold the police and the State to account over unlawful violations of our rights.<sup>30</sup>

<sup>25</sup> Ali A. and Champion, N. for the Criminal Justice Alliance, More harm than good - A super-complaint on the harms caused by 'suspicion-less' stop and searches and inadequate scrutiny of stop and search powers, May 2021, available at: [https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search\\_FINAL.pdf](https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf)

<sup>26</sup> Williams, P. and StopWatch, *Being Matrixed: The (Over)Policing of Gang Suspects In London*, August 2018, at p. 6. Available here: [http://www.stop-watch.org/uploads/documents/Being\\_Matrixed.pdf](http://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf)

<sup>27</sup> Criminal Justice Alliance, *No respect: Young BAME men, the police and stop and search*. Available here: <http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617-1.pdf>. The IPCC identified stop and search as the leading cause of tension between young people and the police. See the London Assembly's, *Stop and search: An investigation of the Met's new approach to stop and search*, available here: [https://www.london.gov.uk/sites/default/files/14-02-06-Stop%20and%20search%20FINAL\\_1.pdf](https://www.london.gov.uk/sites/default/files/14-02-06-Stop%20and%20search%20FINAL_1.pdf). Additionally, as David Lammy MP pointed out in his 2017 report on the treatment and outcomes for BAME people in the criminal justice system, this drains trust in the whole system. See: David Lammy MP, *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, September 2017, at p. 17.

<sup>28</sup> Home Office, *Public Order Bill: Equality Impact Assessment*, 2022, <https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-equality-impact-assessment>

<sup>29</sup> For example, during protests against the very Bill that these amendments would effect, legal observers have been arrested alongside protestors - many of which have been from marginalised communities, including legal observers of colour, and LGBT+ legal observers. In March, Liberty lawyers sent a pre-action protocol letter to the Met, arguing that their arrests at a recent protest were unlawful and a dangerous attack on the right to protest. The Metropolitan Police proceeded to drop these charges. See here: <https://www.libertyhumanrights.org.uk/issue/liberty-files-legal-action-over-protest-arrests/> and <https://www.libertyhumanrights.org.uk/issue/case-update-police-drop-protest-fines-after-liberty-legal-action/>

<sup>30</sup> Netpol, *Protecting protest: Why independent legal observers remain essential*, 11 May 2022, available at: <https://netpol.org/2022/05/11/protecting-protest-article1/>



## THE CREATION OF PROTEST-SPECIFIC OFFENCES: ‘LOCKING ON’

8. Clause 1 establishes a new criminal offence of ‘locking on’, targeting people who attach themselves to another person, an object or land; attach a person to another person, an object or land; or attach an object to another object or to land; if such activities cause, or are capable of causing ‘serious disruption’ to two or more people or to an organisation in a public place. For the offence to apply, the person must intend the act to have this consequence or be reckless as to whether it will have this consequence. There is a defence of ‘reasonable excuse’. Breach of this offence is maximum 51 weeks’ imprisonment,<sup>31</sup> a fine, or both.
9. Clause 2 creates an additional offence of ‘being equipped for locking on’, targeting people who have an object with them in a public place with the intention that it will be used ‘in the course of or in connection with’ the commission, by any person, of the new offence of locking on. The punishment for this offence is an unlimited fine.
10. We are calling on MPs to agree to amendments in the name of Anne McLaughlin MP for the following reasons:
  - a. **These measures restrict our right to choose how we protest:** Throughout history, a broad and diverse range of protest tactics have been used to stand up to power and make our voices heard and our right to choose the how we protest is confirmed in case law.<sup>32</sup> For example, suffragettes from the Women’s Freedom League chained themselves to the grille in the Ladies’ Gallery in order to protest their exclusion from Parliament.<sup>33</sup> This offence not only defies our right to choose how we protest, but criminalises an innumerable list of activities, stretching beyond what would typically be understood as ‘lock-on protests’ (where people lock themselves to one another via a ‘lock-on’ device or chain themselves to Parliament<sup>34</sup>) to any activity involving people ‘attaching’ themselves to other people, an object, or land; or ‘attaching’ objects to other objects and land.<sup>35</sup>

<sup>31</sup> The offence provides that a person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both. If the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, the maximum sentence will be six months; (b) if the offence is committed after that time, the maximum sentence will be 51 weeks.

<sup>32</sup> “Organisers’ autonomy in determining the assembly’s location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other ways, are *important aspects of freedom of assembly*. Thus, the purpose of an assembly is often *linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact*.” See *Lashmankin v Russia* (Application No.57818/09).

<sup>33</sup> The Grille Incident, UK Parliament. <https://www.parliament.uk/about/living-heritage/transformingsociety/electionsvoting/womenvote/parliamentary-collections/ladies-gallery-grille/grille-incident/>

<sup>34</sup> Sisters Uncut, “*We are the suffragettes!*”: *Sisters Uncut chain themselves to Parliament at government art launch*, 8 June 2016, available at: <https://www.sistersuncut.org/2016/06/08/we-are-the-suffragettes-sisters-uncut-chain-themselves-to-parliament-at-government-art-launch/>

<sup>35</sup> HL Deb 17 Jan 2022, vol.817, col. 1433.

Furthermore, the broad and vague nature of the word ‘attach’ – which is not defined in the Bill – means that this offence could potentially catch people engaged in activities such as linking arms with one another<sup>36</sup> and trees,<sup>37</sup> or locking their wheelchairs to traffic lights.<sup>38</sup> As it is unclear what the offence means when it refers to ‘attaching an object to another object or land’, we are also concerned that this measure will clamp down on the use of props in protests, further constraining people’s right to choose the manner and form of their expressions of dissent.<sup>39</sup>

- b. **These measures widen the criminalising dragnet:** We note that the ‘object’ in the offence of locking on does not have to be related to a protest at all – it must simply be established that a person intended for it to be used in a certain way. Nor does the object have to be used by the person who has it in their possession; the offence refers to the commission by ‘any person’ of the offence. This means that essentially any person walking around with a bike lock, packet of glue, roll of tape or twine, or any number of other everyday objects could be at risk of having found to have committed this offence, so wide is the net cast by it. During debates on this amendment during the passage of the PCSC Act, Lord Paddick raised the following example: “You could buy a tube of superglue to repair a broken chair at home, then get caught up in a protest and be accused of going equipped for locking on.”<sup>40</sup>

The possibilities are endless: the phrase “used in the course of or in connection with” an offence of locking on by *any* person could include the provision of bottled water or food to other people “in connection with” their direct action of locking on, or potentially just having on one’s person a mobile phone to livestream or record the action. This will not only have the effect of further deterring people from going to protests – or even walking in the vicinity of them – it could compound the criminalisation of people exercising their right to choose different methods of protest.

- c. **These measures will create a chilling effect on the right to protest:** Clause 1(2) allows for the defence ‘reasonable excuse’ which we believe provides an inadequate safeguard for the exercise of our right to protest, given that someone would have to

<sup>36</sup> Stead, J., *The Greenham Common peace camp and legacy*, The Guardian, 5 September 2006, available at: <https://www.theguardian.com/uk/2006/sep/05/greenham5>

<sup>37</sup> Topham, G., *Priest to chain herself to tree at Euston in protest against HS2 felling plans*, The Guardian, 11 January 2018, available at: <https://www.theguardian.com/environment/2018/jan/11/priest-chain-tree-protest-euston-hs2-felling-plans-london>

<sup>38</sup> Susan Archibald is a disability rights campaigner who shut down Trafalgar Square with fellow activists in 2012 when they chained their wheelchairs to traffic lights in a protest against the UK welfare assessment regime, then administered by Atos. See: Paterson, K., *WATCH: Scots wheelchair stunt activist hits out at Policing Bill*, The National, 24 November 2021, available at: <https://www.thenational.scot/news/19739616.watch-scots-wheelchair-stunt-activist-hits-policing-bill/> and Liberty’s series of videos showcasing the power of protest in which Susan is featured: <https://www.libertyhumanrights.org.uk/fundamental/we-protest/>

<sup>39</sup> Neary, H., *Extinction Rebellion’s huge pink table torn down after Covent Garden protest*, MyLondon, 24 August 2021, available at: <https://www.mylondon.news/news/west-london-news/extinction-rebellions-huge-pink-table-21390596>

<sup>40</sup> HL Deb 24 Nov 2021, vol.816, col. 980

be arrested before being able to plead the defence of reasonable excuse. In other words, as explained by the JCHR, “while this defence may protect an individual against wrongful conviction in breach of their Convention rights, it is less likely to protect them against prosecution and, particularly, arrest. Police officers are unlikely to refrain from arresting someone if all the elements of the offence are made out, meaning a protester with a ‘reasonable excuse’ based on exercise of Article 10 and 11 rights is likely to face arrest regardless.” The very threat of arrest would be an interference with individuals’ human rights, while also contributing to the chilling effect of the Bill on those exercising their fundamental rights.

- d. **These measures have been criticised by police:** When consulted on an identical proposal by Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS), “most interviewees [junior police officers] did not wish to criminalise protest actions through the creation of a specific offence concerning locking-on.”<sup>41</sup> Further, when the Government attempted to introduce the same offences during the passage of the PCSC Bill (now Act), Lord Rosser noted: “The reality is that powers already exist for dealing with lock-ons. What we should be looking at is proper guidance, training and, as the inspectorate raised, improving our use of existing resources and specialist officers.”<sup>42</sup>

## THE CREATION OF PROTEST-SPECIFIC OFFENCES: WORKS AND INFRASTRUCTURE

11. **Clause 6 creates a new criminal offence of obstruction of major transport works.** A person will commit an offence if they obstruct an undertaker (e.g: a construction worker) in setting out the lines of any major transport works, constructing or maintaining any major transport works, or in taking ‘any steps that are reasonably necessary for facilitating, or in connection with, the construction or maintenance of any major transport works’ (clause 6(1)(a)). It will also be an offence to interfere with, move, or remove any apparatus which relates to the construction or maintenance of any major transport works, and which belongs to the undertaker (clause 6(1)(b)). There is a defence of ‘reasonable excuse’. The maximum penalty for this offence is 51 weeks’ imprisonment,<sup>43</sup> or a fine, or both.
12. **Clause 7 creates an offence where a person does an act which interferes with the use or operation of key national infrastructure in England and Wales,** intending or being reckless as to whether the act will interfere with the use or operation. Key national

<sup>41</sup> Pg 125, HMICFRS, *Getting the balance right? An inspection of how effectively the police deal with protests*, March 2021, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf>

<sup>42</sup> HL Deb 17 Jan 2022, vol.817, col. 1433

<sup>43</sup> The offence provides that a person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both. If the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, the maximum sentence will be six months; (b) if the offence is committed after that time, the maximum sentence will be 51 weeks.

infrastructure is defined to include road transport, rail, air transport, harbour, downstream oil, downstream gas, onshore oil and gas exploration and production, electricity generating, and newspaper printing infrastructure. The Bill gives the Secretary of State the power to add to the list by regulations. The maximum penalty for this offence is 51 weeks' imprisonment,<sup>44</sup> or a fine, or both.

13. **We are calling on MPs to agree to amendments in the name of Anne McLaughlin MP for the following reasons:**

- a. **These measures threaten the right to strike:** The right to participate in industrial action is protected by Article 11 ECHR. We are concerned about the impact Clause 6 and 7 could have on strikes or other industrial action given that such activities may result in obstruction to the construction or maintenance of major transport works or interference with key national infrastructure. As above, we do not believe the 'reasonable excuse' defence is sufficient as a safeguard for the chilling effect that the offence could have on people exercising their fundamental rights, even with the additional defence provided for individuals who can show that their action "was done wholly or mainly in contemplation or furtherance of a trade dispute", given the lack of clarity over what would amount to such a defence and the concerns over the shifting of the burden of proof above.
- b. **These measures target environmental protesters:** One of the key ways that people seek to make their protests effective is to draw attention to sites of power: in the context of the climate crisis, for example, environmental protesters have frequently sought to protest at sites of infrastructure that consume fossil fuels. The JCHR highlights that the ECtHR has previously interpreted Article 2 to include a positive obligation to protect individuals from hazardous industrial activities, and Article 8 to protect individuals against severe environmental pollution. As a result, "criminalising peaceful protest against environmental harm may become harder to justify as proportionate as the effects of climate change become more acute."<sup>45</sup>

Furthermore, in relation to the offence of obstruction of major transport works, Lord Rosser previously highlighted the particular impact that this offence will have on environmental protesters, remarking: "Frankly, we have reached a sorry state of affairs when we legislate still further specifically against those concerned about the

<sup>44</sup> The offence provides that a person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both. If the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, the maximum sentence will be six months; (b) if the offence is committed after that time, the maximum sentence will be 51 weeks.

<sup>45</sup> Joint Committee on Human Rights, *Government creating hostile environment for peaceful protest, report finds*, 17 June 2022, available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>



proven threat of climate change and its impact on our way of life and that of our children and grandchildren, and the tardy action on environmental issues.”<sup>46</sup>

- c. **The creation of these offences widens the criminalising dragnet:** The breadth of the offences created by clauses 6 and 7 criminalises a broad range of acts. For example, on clause 6, the JCHR notes that the lack of requirement that actions be carried out that are capable of causing or with particular intention of causing significant disruption, means that inadvertent actions, such as moving a shovel, broom, or traffic cone that somehow ‘relates to’ construction or maintenance of major transport works, or indeed, moving any apparatus that belongs to a person acting under the authority of the person in charge of the works, could result in arrest or even a criminal penalty. Similarly, clause 8 of the Bill provides the definition of “key national infrastructure” and, as the JCHR note, “covers some items that do not appear to justify this categorisation” and overlaps with existing legislation on obstruction of the highway and public nuisance. The loose drafting, low threshold, and imprecise nature of these offences means it is likely to be a disproportionate interference with individuals’ rights, a result that Lord Beith warned the Government of during the passage of the PCSC Bill: “[i]f you try to write legislation around an individual set of circumstances that has arisen, you get into trouble. You turn into general law attempts to deal with very specific cases.” We reiterate our concerns about the heavy maximum sentence of 51 weeks’ imprisonment, a fine, or both, that accompanies this offence.

14. We also note the introduction of three new ‘tunnelling’ offences into this Bill by the Government at Committee Stage. We are acutely concerned about the Government’s moves to crack down on different protest tactics for politically expedient reasons, with no assessment of the impact of these measures on individuals’ right to protest, nor providing an evidence base for them. We also reiterate our concern about the defence of reasonable excuse as an ineffective safeguard for the reasons highlighted above.

15. Additionally, the Government has proposed two new clauses to the POB (NC7 and NC8) which pertain to protest-related injunctions.<sup>47</sup> Currently, civil injunctions can only be applied for by people who are affected, such as a Highway Authority or private company. The majority of civil injunctions do not give the police powers of arrest.<sup>48</sup> Expansive civil injunctions are being used with growing and alarming frequency to clamp down on direct action tactics, with a wider chilling effect on the right to protest.<sup>49</sup>

<sup>46</sup> HL Deb 17 Jan 2022, vol.817, col. 1433

<sup>47</sup> Gov NC7 and NC8 on the Public Order Bill Amendment Paper as of 22 July 2022:

[https://publications.parliament.uk/pa/bills/cbill/58-03/0116/amend/public\\_rm\\_rep\\_0722.pdf](https://publications.parliament.uk/pa/bills/cbill/58-03/0116/amend/public_rm_rep_0722.pdf)

<sup>48</sup> One type of injunction that gives rise to a power of arrest is an injunction issued under the Protection from Harassment Act 1999. See: Green and Black Cross, *Dealing with injunctions – a brief protesters’ guide*: <https://greenandblackcross.org/guides/injunctions/>

<sup>49</sup> De Kauwe, K., *Fighting back: defending the right to protest*, 22 July 2019: <https://policy.friendsoftheearth.uk/opinion/fighting-back-defending-right-protest>



16. NC7 allows the Secretary of State to apply for a ‘quia timet’ injunction (i.e. a precautionary injunction) to prevent people from carrying out a protest or protest-related activities, despite not being affected or a party in the normal sense. The threshold for applying for such an injunction is if the Secretary of State reasonably believes that the activities are causing or likely to cause serious disruption to the use or operation of any key national infrastructure or access to essential goods or services; or if they are having or likely to have a serious adverse effect on public safety. NC8 gives the Secretary of State the power to apply to the court to attach a power of arrest and remand to injunctions granted under NC7 which prohibit conduct that causes nuisance or annoyance or is capable of having an adverse effect on public safety. These clauses blur the line between the civil and criminal law, by effectively giving the Secretary of State new powers to intervene in protests and criminalise those who participate in them.

## CONCLUSION

17. The threats presented by the Public Order Bill, as detailed above, must not be underestimated. From protests taking place in opposition to the Government’s Rwanda asylum plan, to gatherings in Parliament Square raising the alarm about the ongoing cost of living crisis to people protesting for racial justice for Black people and striking for climate justice, it is clear that protest remains at the heart of how we stand up to power and we must fight to defend it.
18. As the Public Order Bill reaches Report Stage in the House of Commons, we urge MPs to defend our right to protest by voting in favour of amendments in the names of Sir Charles Walker MP and Anne McLaughlin MP.