Police, Crime, Sentencing and Courts Bill

Part 3 – Public Order

House of Lords

Report Stage

Briefing and Endorsed Amendments

January 2022

For further information contact

Tyrone Steele, Criminal Justice Lawyer
email: tsteele@justice.org.uk

JUSTICE, 59 Carter Lane, London EC4V 5AQ tel: 020 7329 5100
fax: 020 7329 5055 email: admin@justice.org.uk website: www.justice.org.uk

Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.

2. From overcrowded prisons to endemic racial disproportionality, there are many pressing issues across the criminal justice system which need comprehensive, urgent redress. The Police, Crime, Sentencing and Courts Bill (the "**Bill**") purports to empower "*the police and courts to take more effective action against crime and lead [to] a fair justice system*." While some of the aspects of the Bill are welcome, such as the explicit reference to the best interests of the child with respect to remand hearings, and the raising of the threshold for children to be remanded in custody,[1] JUSTICE considers that the Bill would not meet this aim.

3. On the contrary, it could serve to actively deepen pre-existing issues within the criminal justice system, and present significant human rights violations. JUSTICE considers that several of the Bill's core proposals pose a significant threat to the UK's adherence to its domestic and international human rights obligations, while also lacking an evidential basis to justify their introduction.

4. **In particular, some of our main concerns and endorsed amendments relate to Part 3 and the increased powers for police to impose restrictions on peaceful procession, assembly, and protest**, which would expand the circumstances in which police can impose conditions on a range of activities. For example, religious festivals, community gatherings (from Notting Hill Carnival to firework nights, such as those in Lewes), football matches, LGBT+ Pride marches, vigils/remembrance ceremonies, and so on. The Bill also removes the need to knowingly breach police-imposed conditions in order to commit an offence and introduces a broad statutory offence of public nuisance with a maximum sentence of 10 years in prison. **These changes risk breaching rights to freedom of expression and assembly and the requirement for legal certainty.**

[1] JUSTICE also welcomes the explicit reference to the best interests of the child in clause 133(2) when considering remand decisions. This is in keeping with the UK's international obligations under article 3 of the UN Convention on the Rights of the Child and a 'child-centred' approach to the Youth Justice System. JUSTICE also welcomes the reforms to reduce custodial remand, for instance by raising, at clause 133(3)-(4), the threshold for children to be remanded in custody.

5. **JUSTICE opposes Part 3 of the Bill in its entirety. We recommend that Peers give notice of their intention that clauses 56 to 62 not stand part of the Bill and vote for Amendments 122, 132, 133, 134, 135, 140, and 147.**

6. In the alternative, should the deletion of Part 3 not succeed, JUSTICE endorses the following amendments which would mitigate some of its most damaging aspects. For more information on JUSTICE's position and concerns, we refer to our previous briefings.[2]

Restrictions on processions, assemblies, and one-person protests – Part 3, Clauses 56 – 62

Clauses 56 and 57 – Noise as a trigger for imposing conditions

7. The Bill proposes serious restrictions on the right to process and assemble peacefully in England and Wales by expanding the reasons the police may rely on to impose conditions. At present, under sections 12 and 14 of the Public Order Act 1986 ("**POA**"), a senior police officer can impose conditions on public processions and assemblies if they reasonably believe they may result in serious public disorder, serious damage to property or serious disruption to the life of the community. Clauses 56 and 57 of the Bill adds to this list "*noise which may result in serious disruption to an organisation in the vicinity*" and "*noise which will have a relevant and significant impact on persons in the vicinity*". Clause 62 would impose similar conditions with respect to one-person protests.

8. Under the proposed measures, noise may be judged to have a relevant impact on a person in the vicinity if it may cause persons of reasonable firmness to, amongst other things, suffer serious unease, alarm, or distress. When considering such noise, and whether there is a 'significant' impact, the police must have regard to the number of people "*of reasonable firmness*" who might feel such unease, the likely duration of the impact, and the likely "*intensity*" on such people.[3]

Removal of 'noise' as trigger for imposing conditions on processions and assemblies

Amendment 115

Page 48, line 29, leave out subsections (2) and (3)

Member's explanatory statement

[2] JUSTICE, 'Briefings on the Police, Crime, Sentencing and Courts Bill', (May 2021 – January 2022).

[3] *See* Clauses 55(3), 56(5), and 61(6)-(7).

This is based on a JCHR recommendation. This amendment would remove the proposed new trigger for imposing conditions on public processions based on noise in England and Wales.

Amendment 123

Page 50, line 4, leave out subsection (2)

Member's explanatory statement

This is part of a group of amendments based on JCHR recommendations. This and other amendments to this Clause would remove the proposed new trigger for imposing conditions on public assemblies based on noise in England and Wales.

Amendment 124

Page 50, line 23, leave out "impact"

Member's explanatory statement

This is part of a group of amendments based on JCHR recommendations. This and other amendments to this Clause would remove the proposed new trigger for imposing conditions on public assemblies based on noise in England and Wales.

Amendment 125

Page 50, line 32, leave out subsection (5)

Member's explanatory statement

This is part of a group of amendments based on JCHR recommendations. This and other amendments to this Clause would remove the proposed new trigger for imposing conditions on public assemblies based on noise in England and Wales.

Concerns

9. JUSTICE agrees with the Home Secretary that the "*right to protest peacefully is a cornerstone of our democracy*." It is surprising, then that this proposal has been introduced to supposedly respond "*to a significant change in protest tactics*."[4] She alleges that these changes have resulted in the hinderance of the work of emergency services and disruption of deliveries of newspapers from the printing press.

10. This is not convincing. Existing laws, such as the POA which was introduced following the Southall riot in 1979, the Brixton riot in 1981, and the miners strikes of 1984-85, already

[4] Parliament, 'Hansard (Commons Chamber), Volume 691: debated on Monday 15 March 2021', column 64.

provide the police with a range of significant powers to deal with "*serious disruption*". As such, the introduction of additional factors which can trigger the imposition of conditions on protests are unnecessary.

11. Even if the Home Secretary's claim were accepted, it still would not justify the measures in clause 56-58 of the Bill, which risk breaching Article 10 ECHR (freedom of expression), and Article 11 ECHR (freedom of assembly and association). Conditions which are imposed because they may cause a person serious unease risk breaching Article 10 ECHR. This is because Article 10 ECHR protects not only popular ideas and opinions but also those which, "*offend, shock or disturb the State or any sector of the population.*"[5]

12. In relation to Article 11 ECHR, the European Court of Human Rights ("**ECtHR**") has held that the "*freedom to take part in a peaceful assembly… is of such importance that it cannot be restricted in any way, so long as the person concerned does not himself commit any reprehensible act*".[6] Reprehensible acts are generally acts of violence or inciting others to violence. Intentionally causing serious disruption has been considered a reprehensible act but only when it disrupts to a more significant extent than that caused by the normal exercise of the right of peaceful assembly in a public place.[7] Generating noise, even when it causes disruption, is a normal exercise of the right to peacefully assemble.[8] Indeed, it is the essence of many protests because it is the method by which a message is communicated, both to those gathered as well as to the wider public. Focusing on the noise generated by a protest is likely to be overinclusive and apply to most protests. Protests tend to be noisy and are often meant to be challenging. People who disagree with the cause of a protest may well feel serious unease by the noise generated by it. In a democracy, this unease must be tolerated. Further, as stated by Lord Dubs in the Bill's Committee Stage in the Lords,

> "[a]*ny restriction on the right to protest that targets noise is a particular concern, as it strikes at the heart of why people gather to protest. Larger and well-supported demos are much more likely to be louder. Therefore, restrictions on*

[5] *Handyside v United Kingdom* (App. no. 5493/72) (Judgment of 7 December 1976) ECtHR, para 49.

[6] *Ezelin v France* (App. No. 11800/85) (Judgment of 26 April 1991) ECtHR, paras 51-53.

[7] *Kudrevičius and Others v. Lithuania* (App. No. 37553/05) (Judgment of 15 October 2015) ECtHR (GC), para 173.

[8] As suggested in *Galstyan v Armenia* (App. No. 26986/03) (Judgment of 15 November 2007) ECtHR, para 116, where the court noted that it was, *"hard to imagine a huge political demonstration, at which people express their opinion, not generating a certain amount of noise."*

noise could disproportionately impact demonstrations that have the greatest public backing, which would be a perverse outcome."[9]

13. This perverse outcome sits uneasily with Baroness Stowell's argument that through the Bill, the Government is trying to "*make it possible for protests to continue in a way which does not divide society further*".[10] However, as Baroness Stowell notes herself, "*it is impossible for people to protest silently*":[11] having such a low trigger as noise for imposing conditions would act to effectively target processions and assemblies with the biggest public support, silencing popular and unifying causes (as was the case with the suffragettes) and exacerbating existing divisions. Indeed, as highlighted by Lord Oates, the suffragettes demonstrated that outlawing peaceful acts of protest does not stop protest; "[y]*ou deal with it by addressing the issues fairly. These measures will only further embitter the protests*."[12]

14. Specifically in relation to noise generated by protests, the ECtHR has suggested where such noise does not involve obscenity or incitements to violence, it will be difficult for a State to satisfy the requirement that restrictions on Article 11 ECHR are necessary in a democratic society.[13] The Government should bear in mind the words of Lord Denning, when he noted that protest "*is often the only means by which grievances can be brought to the knowledge of those in authority—at any rate with such impact as to gain a remedy. Our history is full of warnings against suppression of these rights*."[14]

15. It is equally important to note that the broad scope of the proposed powers would allow the police to place restrictions on processions and assemblies beyond those cited in recent debates (such as calls for greater racial and environmental justice). Where the criteria are so vague (e.g., "*noise*" which will have a "*relevant and significant impact*"), the police would have the discretion to place restrictions on a vast range of activities, including but not limited to:

---

[9] Parliament, 'Hansard (Lords Chamber), Volume 816: debated on Wednesday 24 November 2021', column 923.

[10] *Ibid*, column 929.

[11] *Ibid.*

[12] *Ibid*, column 942.

[13] *Galstyan v Armenia* (App. No. 26986/03) (Judgment of 15 November 2007) ECtHR, para 116-177; *Ashughyan v Armenia* (App. No. 33268/03) (Judgment of 17 July 2008) ECtHR, para 75-77.

[14] *Hubbard v Pitt* [1976] Q.B. 142, at 148.

i. religious festivals and activities, such as street preaching, chanting, singing, prayer vigils, public acts of worship, and community events. For example, faith leaders have highlighted "*a number of severe consequences*", which would "*have a chilling effect on the practices of millions of those putting their faith or belief into practice across the country*";[15]

ii. community gatherings (from Notting Hill Carnival and LGBT+ Pride marches to firework nights, such as those in Lewes);

iii. football matches;[16]

iv. vigils/remembrance ceremonies;[17] and

v. Trade disputes, pickets, and other forms of industrial action.[18]

16. Furthermore, government minister Baroness Williams referred to the significant cost to the Metropolitan Police of policing the Extinction Rebellion protests in August and September 2021, noting it diverted large numbers of police officers away from protecting local communities.[19] However, by significantly lowering the threshold for imposing restrictions on peaceful protests and assemblies, it would appear safe to conclude that more far-reaching restriction will be imposed on a wider range of activities. As explained by Lord Paddick, who has a wealth of experience in public order policing, "*[t]he more conditions that can be imposed and the more draconian those conditions, the bigger the drain on*

[15] *See* joint statement of representatives from the Church of England, Muslim Council of Britain, Board of Deputies of British Jews and other religious groups, Independent, 'Faith leaders urge Priti Patel to scrap planned protest crackdown and warn of 'chilling effect' on religious expression', 26 October 2021.

[16] *See* the Football Supporters' Association's briefing, which analyses the impact on football fans, noting that "the new powers will accidentally, and without justification, capture and limit peaceful, traditional, and culturally-significant fan behaviour". Football Supporters Association, 'Call for Evidence – Legislative Scrutiny, Police, Crime, Sentencing and Courts Bill, Submission from the Football Supporters Association', 1 June 2021.

[17] For example, the Bill would permit the police to place restrictions similar to those imposed on the Sarah Everard vigil pursuant to the Coronavirus Act 2020. *See* BBC News, 'Sarah Everard vigil: Woman preparing legal action against Met Police over arrest', 25 June 2021.

[18] Gilmore notes that certain measures in the Bill would "*make it easier for the Government to target groups it does not like, such as striking workers picketing outside their workplace, or trade unionists protesting against Government cuts*". See Gilmore, Joanna, 'Police, Crime, Sentencing and Courts Bill 2021: A Briefing for Trade Unionists', (2021), p.1.

[19] Parliament, 'Hansard (Lords Chamber), Volume 816: debated on Wednesday 24 November 2021', column 956.

already overstretched police resources":[20] it costs more to police processions and assemblies which are subject to restrictions than it does to police those that are not, since such restrictions must be monitored and enforced where necessary. These measures are therefore likely to prove counterproductive to the government's concern, as stated by Baroness Williams, over police resources and will in fact put significant additional demands and strain on the police. As mentioned above, the suffragettes showed that the criminalisation of protest does not address the causes of protest and is not effective in preventing it.

17. While the Government might claim the powers are tightly defined, this is clearly not the case given the wide range of activities that could be covered. As the Rt. Hon. Theresa May MP, the former Prime Minister and Home Secretary, noted during the Commons' second reading debate:

> "*it is tempting when Home Secretary to think that giving powers to the Home Secretary is very reasonable, because we all think we are reasonable, but future Home Secretaries may not be so reasonable […] I would urge the Government to consider carefully the need to walk a fine line between being popular and populist. Our freedoms depend on it.*"[21]

18. JUSTICE echoes this concern, and finds it all the more palpable when considered in conjunction with the poor safeguards that exist for the use of the new restrictions. During the Bill's Committee Stage in the Commons, the Government admitted that there is no minimum rank of officer necessary to invoke the powers. This could allow severe restrictions to be placed at the behest of one individual at the scene of a gathering based on an incredibly vague standard of 'noise'. As the Joint Committee on Human Rights noted, the new noise trigger

> "*involves uncertain standards that place considerable judgment in the hands of the police officer responsible for the decision whether to impose conditions...What one person considers to be noise sufficiently "intense" to be*

[20] Parliament, 'Hansard (Lords Chamber), Volume 816: debated on Wednesday 24 November 2021', column 950.

[21] HC Deb (15 March 2021). vol 691, col 78. Available here.

likely to cause "serious unease, alarm or distress" may be very different to what another person would believe meets this threshold."[22]

19. It is therefore unsurprising that many police forces and representative bodies have shown little appetite for the powers. Neither Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services nor the National Police Chiefs Counsel reference or advocate for the 'noise' provision.[23] Similarly, a group of six former senior officers, chairs of police authority associations and serving police officers have written to the Home Secretary expressing their concerns that the Bill "*contains dangerously oppressive components that will increase the politicisation of the police, pile even more pressure on front-line officers and put at risk the democratic legitimacy of British policing*".[24]

20. The above amendments would remedy these issues by removing 'noise' as a criterion for the imposition of conditions on processions and assemblies. As a result, the provision would benefit from much greater legal certainty, reduce potential issues that would result from a wider police discretion, and mitigate against potential unintended consequences in terms of wide range of events that would be captured.

Clauses 58 and 62 (section 15ZA(9)) – Knowledge Requirement and Accidental Breach of Conditions

21. Clause 58 would remove the requirement that conditions imposed on a public procession or assembly need to be knowingly breached. Rather, the standard would be that the person "*knows or ought to know that a condition has been imposed*". This clause would also increase the maximum sanction following a conviction for breaching a condition from three months to 51 weeks of imprisonment. Clause 62 (section 14ZA(9)) would provision the same knowledge test for one-person protests. In each case, there would be a defence where the person could "*prove that the failure arose from circumstances beyond the person's control*".

Concerns

22. JUSTICE is deeply concerned by this test, as it would result in the potential criminalisation of people who accidentally breach conditions through no fault of their own. The

[22] Joint Committee on Human Rights, 'Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)', Second Report of Session 2021–22, 16 June 2021, at p.14.

[23] Joint Committee on Human Rights, 'Oral evidence: Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill', HC 1324 Wednesday 28 April 2021.

[24] O. West, 'The Policing Bill will leave officers in an impossible position', The Times, 7 July 2021.

Government's stated intention is to "*close a loophole which some protesters exploit*" as some "*will cover their ears and tear up written conditions handed to them by the police*".[25]

23. However, there is no evidence that this is significant issue. The Government relies on the assessment of HM Inspectorate of Constabulary and Fire & Rescue Services (the "**HMICFRS**"), which states that "[w]*e heard how some protest groups are training protesters to put their fingers, headphones or earplugs in their ears when the police impose conditions. Some protesters try to drown them out by chanting or singing. Others simply walk away when the police try to speak to them*".[26] One high-profile case is referenced in support of this claim.[27]. JUSTICE notes that this test, under the Public Order Act 1986, has been in use to police processions and assemblies for 35 years. In the absence of clear evidence, we remain unconvinced that such a drastic shift is necessary or desirable.

24. Furthermore, the Government's proposed remedy is clearly disproportionate. By creating a strict liability test, a huge swathe of individuals risk prosecution. This would include many more than the allegedly small group of protesters that "put their fingers" in their ears to avoid learning about conditions. For example, members of the public who happen to be in an area on which conditions are imposed risk being in accidental breach through no fault of their own. Moreover, and most importantly, the new test significantly shifts the responsibility from the police to inform participants in processions, assemblies, and one-person protests of conditions, to individuals.

25. Indeed, Baroness Williams noted these issues on behalf of the government, recognising "*concerns that we must ensure that these measures do not sweep up those who are inadvertently or accidentally unaware of conditions in place*."[28] However, in rejecting these amendments, that is precisely what these measures would do.

26. This is clearly unacceptable and would represent a disproportionate interference with Article 11 ECHR, the right to freedom of assembly and association, as well as the requirement for legal certainty. We would encourage peers to support amendments that

[25] Home Office, 'Police, Crime, Sentencing and Courts Bill 2021: protest powers factsheet', May 2021, part 3.

[26] HMICFRS, 'Getting the Balance Right? An inspection of how effectively the police deal with protests', (March 2021), p.114.

[27] *See* BBC News, 'Green MP Caroline Lucas cleared over fracking protest', 17 April 2014.

[28] Parliament, 'Hansard (Lords Chamber), Volume 816: debated on Wednesday 24 November 2021', column 958.

would help tighten the offence to ensure that those who are in accidental breach are not captured, while addressing the 'loophole' that presently exists.

Late stage government amendments which contain severe additional restrictions on processions and assemblies, as well as introduce wide new police powers - Amendments 148 – 159

27. On 15 November, late on in the Bill's Lords Committee Stage, the government introduced over 18 pages of amendments. The measures included in these amendments are some of the most controversial in the Bill and are likely to interfere most extensively with human rights, in particular with Article 10 ECHR (freedom of expression), and Article 11 ECHR (freedom of assembly and association). They include sweeping new offences, stop and search powers and a form of protest banning order that will enable the government to efficiently target and criminalise almost any act of protest. While the government states that they are pursuing a few individuals who have utilised disruptive protest techniques, these measures will allow the government to criminalise a breathtakingly wide range of peaceful behaviour, including that with only the most tangential connection to protests.

28. As noted by many Lords in the brief period of the Committee Stage debate that remained for discussion of these measures, there was immediate concern that it may not be possible to subject them to the required parliamentary scrutiny. Indeed, Baroness Jones noted that the late tabling of the amendments "*is a democratic outrage. They are of such legal significance and such a threat to people's human rights that they should be the subject of a whole Bill, with public discussion about it, public consultation, human rights declarations and equalities impact assessments.*"[29]

29. Lord Oates further stated that "[t]*o bring this number of amendments, introducing, as they do, among other things, unlimited fines, wide-ranging suspicionless stop and search powers, the creation of criminal liability on the basis of the civil burden of proof, with powers of indefinite renewal, at such a late stage in the Bill and at this time of night amounts to absolute contempt of Parliament.*"[30] While the content of the amendments is itself a cause for serious concern, the lack of meaningful scrutiny of the measures makes these amendments even more problematic.

[29] Parliament, 'Hansard (Lords Chamber), Volume 816: debated on Wednesday 24 November 2021', column 989.

[30] *Ibid.*

Amendments 148 – 153 – Sweeping new protest offences

30. The Government has proposed broad new offences relating to protest. This includes new offences for "locking on" (amendment 148),[31] and being equipped to lock on and obstructing major transport works (amendment 149). While Baroness Williams has stated, on behalf of the Government, that "[t]*his suite of new measures is necessary to protect the public from the unacceptable levels of disruption that we have seen as a result of the reckless and selfish tactics employed by some protest organisations in recent weeks*",[32] in reference to the Insulate Britain protests, these new offences would once again criminalise a huge range of peaceful, non-disruptive behaviour and in fact go far beyond what is "necessary" to deal with the disruption caused by protests like Insulate Britain.

31. Under the proposals, individuals would commit the offence of locking on and be subject to up to 51 weeks in prison and an unlimited fine where:

    (a) they intentionally attached themselves, someone else or an "object" to another person, "object" or land;

    (b) this causes, or is capable of causing, serious disruption to more than one person or an organisation, in a place that is not a dwelling; and

    (c) the individual either intends or is reckless to the action causing such serious disruption.

32. In addition, Amendments 150, 151, 153 and 153 would introduce offences relating to wilful obstruction of highway, major transport works, interference with use or operation of key national infrastructure respectively, the criminalisation of which is further articulated in later amendments. Although there is a defence where such disruption occurs as a result of a "trade dispute", it is important to note that this is a defence, meaning the police would be empowered to pursue a prosecution, at which stage the individual prosecuted would have to raise it in court later down the line, after having incurred the stress, costs, and uncertainty that legal action can incur. This is unacceptable, and such broad and vague criminalisation is deeply concerning.

---

[31] Amendment 148 at clause (1) defines "locking on" as where a person intentionally attaches (i) themselves to another person, to an object, or to land, (ii) a person to another, to an object, or to land, or (iii) an object to another object or to land. The individual must intend for the act to cause serious disruption to two or more individuals or an organisation, or be reckless as to such consequence.

[32] Parliament, 'Hansard (Lords Chamber), Volume 816: debated on Wednesday 24 November 2021', column 979.

Concerns

33. The wording of the offence of "locking on" is so vague that it would appear to capture a couple walking arm-in-arm down a busy street where they may be being reckless as to causing "*significant disruption*" to another couple walking the opposite way. As is the case with public nuisance and Protest Banning Orders noted below, the meaning of "*serious disruption*" is central to this offence, however its meaning is unclear. It is therefore uncertain whether a couple could cause "*significant disruption*" to another couple walking in the opposite direction on a busy street merely by being thoughtlessly in their way. However, this new offence has the potential to criminalise such conduct.

34. While there is a defence of having a "*reasonable excuse*", as pointed out by Lord Paddick in relation to an identical defence for the offence of public nuisance, since it is a defence rather than a required element of the offence that the individual has no reasonable excuse for their actions, "*the police would be justified in arresting and charging people who believed that they had a reasonable excuse because the reasonable excuse provision applies only once a person has been charged.*"[33]

35. The offence can also be committed where someone attaches an "*object*" to a person, another "*object*" or the land. Again, the ambiguity and vagueness of this wording is cause for serious concern. It would appear that the police would be fully justified in arresting someone for thoughtlessly locking up their bicycle where it might impede more than one person walking down the street, or someone who ties up their dog outside of a café while getting a coffee where the dog causes disruptive noise or otherwise impedes pedestrians.

36. Though, as stated by Baroness Williams, "[i]*t is a defence for a person to prove that they had a reasonable excuse for carrying the equipment in question. For example, carrying a bike lock for the purposes of locking one's bike to a designated space for bikes could be considered a reasonable excuse*", it is surely alarming that people will need to have "*reasonable excuses*" for carrying out these peaceful (and, heretofore, lawful) actions in order to avoid the potential for up to 51 weeks in prison and an unlimited fine. The remit of the criminal conduct must be more narrowly confined, as it is highly concerning that individuals can be arrested and charged for actions such as locking up their bicycle.

37. Of further concern is the offence of being equipped for locking on, which criminalises an even wider breadth of conduct. A person commits the offence, and is liable for an unlimited

[33] Parliament, '[Hansard (Lords Chamber), Volume 816: debated on Wednesday 24 November 2021]', column 971.

fine, where they have an "*object*" with them with the intention that it will be used in the course of or in connection with the commission by any person for an offence of locking on. Given the enormous width of the offence, it is difficult to appreciate how many activities involve "*objects*" that will be used "*in the course of or in connection with*" such offences.

38. This would appear to capture and criminalise paramedics supervising locking on protests with emergency medical equipment, legal observers carrying cameras or clipboards used to monitor events and police actions related to the alleged offence, or individuals that give support to protestors with a megaphone, or even those who try to dissuade such protestors, as there is no requirement in the offence that individuals need to assist with the locking on, or indeed be the person undertaking the "locking on". The only requirement is that that their "*object*" is intended to be used "*in connection with*" the offence, which could capture a range of activities and individuals that observe, or are near, the "locking on". There is also not even a "*reasonable excuse*" defence to this provision. We are seriously concerned with this vague and sweeping criminalisation that goes much further than the stated intention of targeting lock on protestors.

Amendments 154 - 158 – Increased Stop and Search Powers

39. The Government has tabled two amendments which would significantly expand existing stop and search powers. In summary,

    i. **Amendment 154** would amend section 1 of the Police and Criminal Evidence Act 1984 to widen the range of circumstances in which an officer could stop and search an individual "*if they have reasonable grounds for suspecting that they will find an article made, adapted or intended for use in the course of or in connection with*"[34] the offences of wilful obstruction of a highway,[35] intentionally or recklessly causing a public nuisance,[36] locking-on,[37] the obstruction of major transport works,[38] and interference with use or operation of key national infrastructure.[39] Any prohibited items found on an individual stopped may be seized.

[34] Members' explanatory statement to Amendment 154.

[35] Section 137 of the Highways Act 1980, as amended by Amendment 150.

[36] Clause 61 of the Bill.

[37] Amendment 148.

[38] Amendment 151.

[39] Amendment 152.

ii. **Amendment 155** would create a similar power to stop and search for the same abovementioned offences, albeit without suspicion, where an officer reasonably believes that such offences will take place in a certain locality and they have requested authorisation for such powers to be used, pursuant to subsection (3), "*anywhere within a specified locality*", as long as it is "*for a specified period not exceeding 24 hours*". Again, any prohibited items found on an individual stopped may be seized. In addition, the Government has tabled Amendments 156 and 157, which would provide the way in which an individual can be stopped and search without suspicion (e.g., need for written authorisation and entitlement of the person stopped to receive a written statement of the search), and Amendment 158, which would create an offence of obstructing such a search.

Concerns

40. These amendments represent a deeply troubling expansion of existing stop and search powers. Speaking for the Government, Baroness Williams claims that these new powers are necessary to "*ensure that the police have the ability to proactively prevent protesters causing harm*". Measures that remove any need for suspicion are justified on the grounds that "*it is not always possible for the police to form suspicions that certain individuals have particular items with them*".[40] Overall, we consider these amendments disproportionate, without sufficient evidential basis, and hugely damaging to racialised communities. We note the following key concerns in particular.

41. First, it is well established that existing stop and search powers are already problematic, in terms of their discriminatory application to racialised communities, as well as their counterproductive consequences in fostering a deep sense of mistrust between such communities and the police who purport to serve them. The Home Office's own data indicate that stop and search is ineffective at tackling crime,[41] with its application to knife-

[40] Parliament, 'Hansard (Lords Chamber), Volume 816: debated on Wednesday 24 November 2021', column 977-978.

[41] By their own statistics, of all the stops and searches undertaken in the year ending March 2020, 76% resulted in no further action. See, Home Office, 'Police powers and procedures, England and Wales, year ending 31 March 2020', p. 1.

related offences suggesting no statistically significant crime reduction effects.[42] At best, stop and search shifts violence from one area to another.[43]

42. The Government's claim that existing stop and search powers are necessary for tackling serious violence is therefore already poorly evidenced and subject to challenge. It is therefore unclear how it can be justified to allow for such intrusive powers to be used in the context of peaceful protest or lawful acts. Indeed, it is important to recall that amendment 154 allows for the police to search an individual where they have reasonable grounds for finding an article that is "*made or adapted for use in the course of or in connection*" with one of the relevant offences.[44] Bluntly, this could be anything, from a mobile phone to call friends also attending a procession or assembly to a leaflet about the event that they have picked up on the floor. Affording such a discretion degrades the notion of 'reasonable suspicion' and could capture a wide range of individuals who are acting in a peaceful and lawful manner within a democratic society. Such powers, and the consequent restrictions they represent, are therefore unacceptable.

43. Second, by permitting searches without reasonable suspicion, there is a clear risk that ethnic minority individuals will be unduly targeted. Three quarters of ethnic minority children and young adults already think that they and their communities are targeted unfairly by stop and search powers.[45] During a round table discussion held by the Home Affairs Committee a Black child said, "*we know the police treat Black people differently...it means that we do not feel safe ever*."[46] Recent Home Office data further highlights the reality faced by racialised communities, with there being a steep increase in the police's use of reasonable suspicion stop and search powers. Black people in particular were seven times more likely to be stopped and searched than White people.[47]

---

[42] R. McCandless, A. Feist, J. Allan, and N. Morgan, 'Do Initiatives Involving Substantial Increases in Stop and Search Reduce Crime? Assessing the Impact of Operation BLUNT 2', Home Office, 2016.

[43] Tiratelli, M., Quinton, P., & Bradford, B. '*Does Stop and Search Deter Crime? Evidence From Ten Years of London-wide Data*', The British Journal of Criminology, Volume 58(5), September 2018, p. 1212–1231.

[44] Section 1(7) of the Police and Criminal Evidence Act 1984.

[45] P. Keeling, 'No Respect: Young BAME men, the police and stop and search' (Criminal Justice Alliance, 2017), p. 20.

[46] Home Affairs Select Committee, Serious youth violence, Sixteenth report of session 2017-2019, 18 July 2019.

[47] Home Office, 'Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021', 18 November 2021.

44. Moreover, equivalent powers that exist pursuant to section 60 of the Criminal Justice and Public Order Act 1994[48] are especially ineffective and discriminatory in their application. Section 60 powers are primarily used in deprived areas, which often have a higher population of Black people.[49] These stops are even less effective, with merely 4% resulting in arrest.[50] Indeed, the cost of the policy is steep, both in terms of significant resources deployed, as well as with respect to the detrimental impact on the confidence of ethnic minority communities in the police.[51] As a result, ethnic minority communities, not least the victims and witnesses of crime, are understandably reluctant to co-operate with a police force that acts in such a disproportionate fashion. This risks crimes going unreported, and unaddressed, resulting in increasing damage to communities alongside associated policing costs. It seems inevitable, therefore, that these issues would translate across to the new powers per amendment 155. The disproportionate brunt of these new powers to stop and search individuals in the context of potentially lawful activities will therefore be faced by ethnic minority communities.

45. Third, amendment 158 creates an offence where a "*person intentionally obstructs a constable in the exercise of the constable's powers*" or conducting a stop and search without suspicion, per amendment 156. The consequences of such interference (imprisonment of up to 51 weeks, a fine, or both) are severe and potentially ruinous, and would make the already problematic new stop and search powers even more severe. For example, we note the concerns of Liberty and others in terms of the impact that this could have on Legal Observers who attend protests.[52]

> "*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*

[48] Section 60 powers allow any senior officer to authorise the use of stop and search powers within a designated area for up to 48 hours where they reasonably believe that incidents involving serious violence may take place, or that weapons are being carried. Once authorisation is given, the implementing officer does not require any grounds to stop a person or vehicle within the area.

[49] https://discovery.ucl.ac.uk/id/eprint/10115766/1/2020-Q3.pdf p.8

[50] Home Office, 'Police powers and procedures, England and Wales, year ending 31 March 2020', p. 13.

[51] V. Dodd, 'Police losing legitimacy among people of colour, top officers say', The Guardian, 8 September 2020.

[52] Liberty, 'Liberty files legal action over protest arrests', (29 March 2021).

made for use 'in the course of or in connection with' the conduct of others of one of the listed offences."[53]

46. Moreover, the police would have the discretion to trigger this offence as a result of individuals following some of the recent advice that the Metropolitan Police have given following the murder of Sarah Everard by Wayne Couzens, one its own officers.[54] Where there is a sole plain clothes police officer, the Metropolitan Police recommend asking "*some very searching questions of that officer*", noting that "*it is entirely reasonable for you to seek further reassurance of that officer's identity and intentions*".[55] Yet, if this measure were implemented, there are real concerns that asking such questions could be viewed as obstruction and result in the questioner breaking the law and potentially being arrested.

47. In addition, to be stopped without suspicion merely requires that an individual within an area that the procession or assembly is taking place. The purpose of the search would be to find a "*prohibited object*". As noted above, this is widely and vaguely defined, and could include a wide range of ordinary items. This would therefore afford the police the de facto discretion to stop and search everyone in the area. This is manifestly disproportionate and would risk criminalising individuals who question or resist the police searching them for no apparent reason at all. As evidence shows from existing stop and search powers, the brunt of the criminalisation will undoubtedly fall on the shoulders of racialised minorities. The further entrenchment and legalisation of discriminatory policing tactics, therefore, must be resisted.

Amendment 159 – Serious Disruption Prevention Orders

48. The Government has proposed to introduce Serious Disruption Prevention Orders ("**Protest Banning Orders**") into Part 11 of the Sentencing Code. Protest Banning Orders would be a new type of 'hybrid order'[56] that can impose broad and severely intrusive requirements on individuals who have taken part in, or contributed to another person taking part in, more than one protest within a five-year period. While Protest Banning Orders would be civil orders, breach of the conditions could result in a prison sentence of up to 51

[53] Liberty, 'Briefing on the Government's Amendments to the Police, Crime, Sentencing and Courts Bill (Protest)', November 2021, pp.9-10.

[54] BBC, 'Sarah Everard murder: Wayne Couzens given whole-life sentence', 30 September 2021.

[55] Metropolitan Police, 'Our response to issues raised by the crimes of Wayne Couzens', 30 September 2021.

[56] Hybrid orders are civil orders which can have criminal consequences if breached.

weeks or an unlimited fine, or both. Protest Banning Orders could be imposed on an individual either on conviction of a "protest-related" offence, or without conviction.

Protest Banning Orders on Conviction[57]

49. A court may issue a Protest Banning Order in respect of an individual over the age of 18, where:

    (a) the individual is convicted of an offence that on the balance of probabilities is a "protest-related" offence;[58]

    (b) the individual has, in the past 5 years, been convicted of a separate offence that on the balance of probabilities is also a "protest-related" offence;[59] and

    (c) the court considers it necessary to issue the Protest Banning Order for any one of a number of purposes, which include preventing the individual from:[60]
        - committing a further "protest-related" offence;
        - carrying out activities related to a protest that are likely to result in serious disruption to two or more individuals; or
        - contributing to another person carrying out activities related to a protest that are likely to result in serious disruption to two or more individuals.

Protest Banning Orders otherwise than on Conviction[61]

50. A magistrates' court may issue a Protest Banning Order in respect of an individual over the age of 18 where:

    (a) it is applied for by one of the listed police officers or a chief officer of (i) the police area where the individual lives or (ii) the police area that the chief officer believes the individual is in or is intending to come to;[62]

    (b) the court is satisfied on the balance of probabilities that on more than one occasion in the past 5 years, the individual has, amongst other things:[63]

---

[57] Sentencing Code (as amended by the Bill), s 342L.

[58] *Ibid,* sub-s (2)(a).

[59] *Ibid,* sub-ss (2)(b), (3) and (4).

[60] *Ibid,* sub-ss (2)(c) and (5).

[61] *Ibid,* s 342M.

[62] *Ibid,* sub-ss (1)(a), (7) and (8).

[63] *Ibid,* sub-ss (1)(c) and (2).

- been convicted of a "protest-related" offence;
- carried out activities related to a protest that are likely to result in serious disruption to two or more individuals; or
- contributed to another person carrying out activities related to a protest that are likely to result in serious disruption to two or more individuals; and

(c) the court considers it necessary to issue the Protest Banning Order for any one of a number of purposes, which include preventing the individual from:[64]
- committing a further "protest-related" offence;
- carrying out activities related to a protest that are likely to result in serious disruption to two or more individuals; or
- contributing to another person carrying out activities related to a protest that are likely to result in serious disruption to two or more individuals.

Concerns

51. JUSTICE is seriously concerned with these Protest Banning Orders, which give police extraordinary powers to criminalise and prevent an incredibly wide range of people from meaningfully exercising their Article 10 ECHR right to freedom of expression and Article 11 ECHR right to freedom of assembly and association. The measure stands in contrast to the Government's claim, in the Human Rights Act consultation, that "*[f]reedom of expression is a unique and precious liberty on which the UK has historically placed great emphasis in our traditions of Parliamentary privilege, freedom of the press and free speech*".[65]

Width of those potentially subject to Protest Banning Orders

52. A key issue with the Protest Banning Orders is the truly vast amount of peaceful and innocent behaviour that the police would be empowered to criminalise. Baroness Williams, speaking on behalf of the government, stated that the Protest Banning Orders are "*designed to tackle protestors who are determined to repeatedly cause disruption to the public*".[66] However, it is clear from the vague wording of the Bill that such protestors will constitute only a small portion of those that could be subject to them.

---

[64] *Ibid,* sub-ss (1)(d) and (4).

[65] Ministry of Justice, 'Human Rights Act Reform: A Modern Bill of Rights – A consultation to reform the Human Rights Act 1998', December 2021, p.61.

[66] Parliament, 'Hansard (Lords Chamber), Volume 816: debated on Wednesday 24 November 2021', column 978.

53. Protest Banning Orders can be imposed on individuals convicted of a "protest-related" offence, who have also been convicted of such an offence within the past five years. "Protest-related" offence is not defined and could foreseeably cover not only the incredibly wide new offences proposed by the government (such as unknowingly breaching the conditions imposed on a public procession), but offences unrelated to any disruptive activities which nonetheless have some connection to a protest (such as minor shoplifting or drug possession offences at protests).

54. An illustrative example for these purposes would be a local community faith leader who organises peaceful religious processions and protests. Where police impose restrictions on such a procession (for instance, on the basis that the religious chanting or protest songs are too noisy) and the faith leader, unaware of such restrictions, breaches them (for instance, by continuing to proceed on the pre-planned route despite the police having required the route to change), the faith leader would have committed a "protest-related" offence. If considered necessary by a court to prevent the faith leader arranging another similar event, a Protest Banning Order could be imposed on conviction if the faith leader has previously been convicted of such a "protest-related" offence.

55. Shockingly, even where the faith leader is not convicted of a "protest-related" offence, a relevant police officer may still apply to a magistrates' court for a Protest Banning Order. The court may issue a Protest Banning Order where it considers it necessary to meet one of the listed conditions and is satisfied that on more than one occasion in the past five years the faith leader has, for example, contributed to another person carrying out activities that were likely to result in serious disruption (perhaps, as noted, through chanting or singing that was considered too noisy). This would likely be satisfied by the faith leader organising the processions or assisting in other ways, for instance by driving a bus of churchgoers to the procession.

56. As noted, for a court to impose a Protest Banning Order, it must be satisfied that it is necessary for a listed purpose.[67] There are a number of very wide purposes. While some seem intuitive, such as where the court considers it necessary to prevent the individual from carrying out further "protest-related" offences, our concern over the width and vagueness of "protest-related" offences means that even this purpose may apply to far more people than the disruptive Insulate Britain protestors that government is targeting.

[67] Sentencing Code (as amended by the Bill), s 342L(5) and s 342M(4).

57. By way of example, the court may also impose a Protest Banning Order where it considers it necessary to prevent an individual contributing to another person carrying out activities related to a protest that are likely to result in serious disruption to two or more people. As discussed, serious disruption may be caused by chanting that is deemed too loud and the threshold for serious disruption can be lowered by the Home Secretary through statutory instrument. Again, this captures a huge range of activities outside of those that the government stated that it is targeting. Courts would appear to be able to impose Protest Banning Orders in order to prevent people carrying out activities such as cheering on protestors, donating money to assist with legal fees for arrested protestors and driving others to protests, on the basis that such activities might contribute to activities that are likely to result in "serious disruption".

Low evidential standards

58. Alarmingly, the court need only be satisfied "*on the balance of probabilities*" that (i) where the Protest Banning Order is issued on conviction, the current and previous offences were "*protest-related*",[68] or (ii) where the Protest Banning Order is issued otherwise than on conviction, the faith leader had contributed to similar processions or protests more than once in the last five years. This low evidential standard is concerning not only because it greatly increases the ease with which the police can impose Protest Banning Orders on individuals, but also because of the serious criminal penalties for breaching the orders.[69] Baroness Williams' contention that since "*these are civil orders…it is entirely appropriate for the civil standard of proof to apply*"[70] ignores the clear and significant criminal aspects that would inevitably flow from their application.

59. Additionally, the amendment provision specifically states that, when considering whether to issue a Protest Banning Order on conviction of a "*protest-related*" offence, the court may consider evidence from the proceedings of the individual's current offence even where such evidence was inadmissible in those proceedings.[71] This allows the court to consider otherwise inadmissible hearsay and other unsafe, unreliable and illegally obtained forms of evidence when determining whether to issue a Protest Banning Order. In the example of the faith leader, a Protest Banning Order could be issued on conviction of the "*protest-*

[68] *Ibid,* s 342L(2)(a) and s 342M(2).

[69] *Ibid,* s 342S.

[70] Parliament, 'Hansard (Lords Chamber), Volume 816: debated on Wednesday 24 November 2021', column 995.

[71] Sentencing Code (as amended by the Bill), s 342L(8) and (9).

related" offence outlined above where the court is satisfied, based on unreliable hearsay evidence, that the faith leader was likely to carry out further, more disruptive protests.

Intrusive requirements

60. Once it is determined that a Protest Banning Order will be imposed on an individual, there is a wide range of intrusive measures that the individual can be required to comply with. These requirements can be both positive (i.e., the individual must report to a particular place at particular times on a particular day) and negative (i.e., the individual may be prohibited from going to a particular place, associating with particular people and even using the internet in particular ways).[72]

61. The potential impact such requirements can have on an individual's liberty is astounding: such measures can erode an individual's political identity by very effectively prohibiting them from taking part in meetings, assemblies and even personal relationships that relate to a common and unifying cause. Protest Banning Orders can be imposed for between one week and two years, and there is no limit on how many times they can be reimposed.[73]

62. To relate this to the previous example of the local community faith leader that organised a number of religious processions, requirements preventing them from conducting related services, meetings and even providing support online could foreseeably be imposed. If such requirements are breached, the faith leader could be sentenced to up to 51 weeks in prison or an unlimited fine, or both.

63. It would not seem to be an exaggeration to describe these measures as authoritarian: measures banning people who have previously organised two or more protests in the previous 12 months from organising further protests and measures subjecting individuals who take part in more than one unauthorised protest to up to three years in prison have been passed in Russia[74] and Belarus[75] respectively. This indicates just how overpowered these measures are to achieve their purpose, as stated by Baroness Williams, of combatting the few disruptive protestors from the 'Insulate Britain' movement. In fact, their breadth enables them to potentially suppress almost all protest and opposition by preventing individuals from taking part in the activities and associations that are at the

[72] *Ibid*, s 342N and 342O.

[73] *Ibid,* s 342T.

[74] Amnesty International, 'Russia: No place for protest', 12 August 2021, p.6.

[75] Euronews, 'Belarus toughens laws against protesters and 'extremism'', 8 June 2021; The Moscow Times, 'Belarus Strongman Toughens Protest Laws', 8 June 2021.

centre of political discussion, organisation, and identity. Articles 10 and 11 ECHR require that any infringement be proportionate and necessary in a democratic society.[76] It is difficult to see how lengthy bans on wide forms of opposition could ever meet this test.

64. It is therefore unsurprising that equivalent measures to the Protest Banning Orders were previously roundly rejected by the police, Home Office and HMICFRS on the basis that such measures "*would neither be compatible with human rights legislation nor create an effective deterrent*."[77] A senior police officer further commented that such measures would constitute "*a massive civil liberty infringement*",[78] and indeed the HMICFRS went onto say:

> "*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.*"[79]

JUSTICE

11th January 2022

[76] Glor v Switzerland (App. No. 13444/04) (Judgement of 30 April 2009), para 94 - "*The Court considers that in order for a measure to be considered proportionate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned*".

[77] HMICFRS, 'Getting the Balance Right? An inspection of how effectively the police deal with protests', (March 2021), p.16.

[78] *Ibid*, p.137.

[79] *Ibid*.