

BRIEFING

LORDS' AMENDMENT 73 TO REMOVE THE ABILITY OF THE POLICE TO IMPOSE NOISE-BASED RESTRICTIONS ON PUBLIC PROCESSIONS

1. This amendment removes subsections (2) and (3) from Clause 55 of the PCSC Bill. Clause 55 of the Bill amends Section 12 of the Public Order Act (1986) (POA), enabling the police to impose conditions on a protest if they have a reasonable belief that the noise generated by persons taking part in the protest may “result in serious disruption to the activities of an organisation which are carried on in the vicinity of the procession” or may “have a significant and relevant impact on persons in the vicinity”.
2. We urge MPs to agree to this amendment for the following reasons:
 - a. **Defending our right to protest** - Noise stands at the heart of protest. Making noise is how we, quite literally, make our voices heard by those in power. During Part 3 Report Stage which saw Peers across all parties and affiliations turn out to express their opposition to this measure, and other measures contained in Part 3, Conservative Peer Lord Deben remarked: “If I cannot go outside here and make a noise to point out that I think a whole range of things that the Government - or any Government - are doing are unacceptable, then my human rights are very seriously impugned”.⁶ Following this, Labour Peer and member of the Joint Committee on Human Rights Lord Dubs reflected on the importance of noisy protest: “Without noisy demos, a lot of changes do not happen. One looks at the suffragettes and all sorts of important demos; this is the nature of our democracy, and this Government are trying to trample all over it.”⁷
 - b. **Existing police powers** - The police already have sufficient power to impose conditions on protest, including where noise levels are believed to result in serious damage, disorder or disruption. Section 12(1) of the Public Order Act enables senior police officers to impose conditions on protest if they reasonably believe that such protest will result in “serious public disorder, serious damage to property or serious disruption to the life of the community” or “the purpose of the persons organising it is the intimidation of others with a view of compelling them not to do an act they have a right to do, or to do an act they have a right not to do.” In response to widespread concerns about Clause 55, the Government have stated that such powers will only be used “where necessary and proportionate”.⁸ However, it is important to note that the point at which it is established in the courts that a power has not been used proportionately would be too late with protesters likely having already been arrested and protests being restricted that should not have been. As well as having consequences for individual protests and protestors,

⁶ HL Deb 17 January 2022, vol 817, col 1432.

⁷ As above

⁸ As above

enabling the police to impose noise-based restrictions will have a significant chilling effect on protest as a whole.

- c. **Reduced knowledge threshold** - We are concerned about the ways that the noise restriction might combine with other powers established by Part 3 to restrict protest and drag people into the criminal justice system for exercising their fundamental rights. Clause 75 of the PCSC Bill (as amended at report stage in the House of Lords) reduces the knowledge requirement for an offence to be committed under Sections 12 and 14 of the Public Order Act, so it is no longer necessary to prove that a person actually knew of the conditions, just that they “ought to have known” a condition was in force. As noted by the JCHR, the combination of the noise restriction and the reduction of the knowledge threshold is highly concerning: “How is a person who knows that a condition restricting noise levels is in place meant to know whether they personally have breached that condition?”⁹

- d. **Unprecedented levels of police discretion** - As originally drafted, Clause 55 draws upon criteria by enabling police to impose conditions if the noise made causes “serious unease, alarm or distress”. The vague, nebulous nature of these terms offers a high degree of discretion to the police which could lead to the facilitating of some protests while clamping down on others. Further, although the police have an obligation to facilitate our right to protest, police decision-making often appears to prioritise the rights of those not involved in demonstrations, as evidenced in the Joint Committee on Human Rights report on Part 3:

“...we heard evidence from protesters and their supporters that police decision-making often appears to prioritise the rights of those not involved in demonstrations and does not give due weight to the obligation on the police to facilitate protest. Yet the compatibility of conditions imposed by the police with Convention rights can often only be effectively challenged after the event, when the conditions have already had their impact”.¹⁰

- e. **Lack of evidence and police support for such powers** - The establishment of a “noise trigger” in Clause 55 lacks support from the police. In their report examining Home Office and police proposals for new legislation to respond to protest, Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) did not examine nor support the establishment of a “noise trigger”. Similarly, in their evidence to the Joint Committee on Human Rights, the National Police Chiefs Counsel (NPCC) lead for public order did not advocate for a new power based on the noise generated by protest.¹¹ Former police chiefs and senior officers have voiced opposition to these measures that

⁹ 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

¹⁰ *ibid*

¹¹ Joint Committee on Human Rights Oral evidence: Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, HC 1324 Wednesday 28 April 2021

in their view will place “onerous burdens” on frontline officers and subject them to “greater political pressure”.¹² Furthermore, as the Lord Bishop of Bristol remarked during Report Stage in the House of Lords, “I am unconvinced that the Government have made a strong enough case that the existing powers of the police are insufficient in limiting legitimate protests”.¹³

LORDS’ AMENDMENT 80 TO REMOVE THE ABILITY OF THE POLICE TO IMPOSE GREATER CONDITIONS ON STATIC DEMONSTRATIONS

1. This amendment removes Clause 56 of the PCSC Bill. Clause 56 replicates the power to impose conditions based on noisiness contained in Clause 55 and applies them to static assemblies. Further, it removes the caveat under Section 14 of the POA that conditions on static assemblies may only be imposed on the place an assembly may be held, its maximum duration or the maximum number of people attending, insofar as they apply to assemblies in England and Wales. Under Clause 56 any conditions that “appear necessary” could be imposed on static assemblies, aligning Sections 12 and 14 of the POA.
2. **We urge MPs to agree this amendment for the following reasons:**
 - a. **Removing necessary limits on police powers** - Clause 56 of the PCSC Bill constitutes an attempt to reduce the limits on powers to regulate static assemblies. Currently, the distinction between Sections 12 and 14 of the POA exists to reflect the less disruptive nature of, and the relative ease with which the police can facilitate, static assemblies compared to marches, with this Clause seeking to erode such distinction. During the passage of the Public Order Act in 1986, then Home Secretary Lord Hurd of Westwell stated “[w]e stopped short of a power to ban because we believed that that would be an excessive limit on the right of assembly and freedom of speech. For this reason, Clause 14 does not permit the police to impose conditions changing the date and time of an assembly. They will be able only to impose conditions limiting its size, location or duration”.¹⁴
 - b. **Unprecedented levels of police discretion** - Clause 56 represents a subtle change that will likely carry dramatic consequences. By reducing the limits on the nature of conditions that can be imposed on assemblies, Clause 56 affords the police near unfettered discretion to impose any condition they see fit including, for example, restrictions on the words or slogans that can be expressed on placards.
 - c. **Amounting to an effective ban** - Such changes to the range of conditions available to the police has the potential to hollow out the right to protest and amount to an effective ban. The line between an intrusive condition – for example that a protest cannot take place

¹² Hamilton, F., *Policing bill ‘is harmful to democracy’*, The Times, 5 July 2021, available at: <https://www.thetimes.co.uk/article/policing-bill-is-harmful-to-democracy-ft9dg6r3x>

¹³ HL Deb 17 January 2022, vol 817, col 1432.

¹⁴ HC Deb 13 January 1986 vol 89 797

across a particular area, cannot be attended by more than ten people, or can only last for one hour – and an outright ban may make little difference in practice for people seeking to exercise their right to protest.

LORDS' AMENDMENT 87 TO REMOVE THE ABILITY OF THE POLICE TO IMPOSE CONDITIONS ON ONE-PERSON PROTESTS

1. This amendment removes Clause 61 of the PCSC Bill. Clause 61 establishes a new police power to impose conditions on one-person protests on the basis that the noise generated will seriously disrupt the activities of an organisation or cause significant impact on people in the vicinity.
2. We urge MPs to agree this amendment for the following reasons:
 - a. **Unprecedented and disproportionate** - Clause 61 is designed specifically to stifle individuals protesting alone from exercising their fundamental rights, constituting an unprecedented and disproportionate move to curtail our right to protest. All the concerns set out above in regard to the noise trigger also apply to this power.
 - b. **Net-widening effect** - Clause 61 also establishes a criminal offence of inciting someone to engage in a one-person protest, should conditions be applied to them which they proceed to ignore, potentially leaving interested members of the public simply stopping to engage in conversation with an individual protestor at risk of committing an offence. Further, it is not difficult to imagine this Clause being applied to a wider range of activities, such as street preaching or those who use performance art as a form of protest, as stressed by organisations working in the arts sector.¹⁵

CONCLUSION

The threats presented by Part 3 of the PCSC Bill, as outlined above, must not be underestimated. As a broad coalition of civil society organisations, we remain entirely opposed to Part 3 of the PCSC Bill, including the creation of a parliamentary buffer zone, punitive sentencing provisions for existing public order offences as well as the creation of a slew of new public order offences that stand to have a damning impact on our freedom to protest and our democracy as a whole.

As the Bill re-enters the House of Commons, we urge MPs to continue the strength of opposition to Part 3 during 'Ping Pong' stages and agree Lords' amendments 73, 80 and 87 to mitigate the worst harms that will unfold as a result of this Bill's passage.

¹⁵Abrams, A-R. *UK's controversial new police bill poses major threat to the art world*. The Art Newspaper, 7 Sept 2021. Available at: <https://www.theartnewspaper.com/2021/09/07/uks-controversial-new-police-bill-poses-major-threat-to-the-art-world>