Public Order Bill

House of Lords

Report Stage

Briefing

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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. The right to protest is a fundamental cornerstone of any democratic society. Protests can be uncomfortable, particularly for those who disagree with them. However, as the Government notes, "*freedom 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*".[1] Any unease must therefore be tolerated.

3. The Bill is unlikely to be compliant with the European Convention on Human Rights ("**ECHR**"), in particular Article 10 ECHR (freedom of expression) and Article 11 ECHR (freedom of assembly and association). Measures which allow the State to unduly restrict these rights undoubtedly risk violation, especially where the Convention serves to protect not only popular ideas and opinions but also those which "*offend, shock or disturb the State or any sector of the population.*"[2] In sum, the Bill would serve to give the police *carte blanche* to target protesters - similar laws can be found in Russia and Belarus.[3]

4. It is therefore unsurprising that equivalent measures to the Protest Banning Orders were previously roundly rejected by the police, Home Office and His Majesty's Inspectorate of Constabulary and Fire & Rescue Services ("**HMICFRS**") on the basis that such measures "*would neither be compatible with human rights legislation nor create an effective deterrent*."[4] A senior police officer further commented that such measures would constitute "*a massive civil liberty infringement*".[5]

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[1] Ministry of Justice, 'Human Rights Act Reform: A Modern Bill Of Rights', (December 2021), p.61.

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

[3] Amnesty International, 'Russia: No place for protest', 12 August 2021, p.6; Euronews, 'Belarus toughens laws against protesters and 'extremism'', 8 June 2021; The Moscow Times, 'Belarus Strongman Toughens Protest Laws', 8 June 2021.

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

[5] *Ibid*, p.137. 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*."

5. For these reasons, JUSTICE considers that the Bill would pose a significant threat to the UK's adherence to its domestic and international human rights obligations. The proposals also lack an evidential basis to justify their introduction. **JUSTICE therefore opposes the Bill in its entirety, and we call on Peers to support the following amendments:**

    i. **Amendment 1: Definition of Serious Disruption** (in the names of Lord Coaker, Lord Paddick, Baroness Chakrabarti, and Baroness Jones of Moulsecoomb)**.**

    ii. **Locking on offences**

        i. **Amendment 9**: Remove offence of locking on (clause 1) (***in the name of Baroness Chakrabarti, Baroness Jones of Moulsecoomb, the Lord Bishop of Bristol***)

        ii. **Amendment 10**: Remove offence of being equipped for locking on: clause 2 (***in the name of Baroness Chakrabarti, Baroness Jones of Moulsecoomb, the Lord Bishop of Bristol***)

    iii. **Stop and Search Powers**

        i. **Amendment 46**: Remove suspicion-based stop and search: clause 10 (**in the names of Lord Paddick, Baroness Chakrabarti, and the Lord Bishop of Manchester**)

        ii. **Amendment 47**: Remove suspicion-less stop and search: clause 11 (***in the names of Lord Coaker, Lord Paddick, Baroness Chakrabarti, and the Lord Bishop of Manchester***)

    iv. **Serious Disruption Prevention Orders**

        i. **Amendment 59**: Remove on conviction: clause 19 (***in the names of Lord Ponsonby of Shulbrede, Lord Paddick, Lord Anderson of Ipswich and Baroness Chakrabarti***)

        ii. **Amendment 63**: Remove without conviction: clause 20 (***in the names of Lord Ponsonby of Shulbrede, Lord Paddick, Baroness Chakrabarti, and Lord Anderson of Ipswich***)

Definition of Serious Disruption

1. The Bill contains no definition of the term "serious disruption". This is clearly concerning, given its centrality to a range of measures, including the offences of "locking on" (clause 1), "causing serious disruption by tunnelling" (clause 3), "causing serious disruption by being present in a tunnel" (clause 4), as well as the "power of Secretary of State to bring proceedings" (clause 17) and Protest Banning Orders (clauses 19 and 20). Moreover, by allowing this term to remain undefined, a great amount of discretion is created for police forces on the ground to interpret the term in varying, inconsistent, and potentially damaging ways.

2. Given the enormity of the powers contained within the Bill, it is essential that any definition should be placed at such a threshold as to minimise the possibility for abuse. The threshold should be at a suitable level to prevent the extraordinary powers within the Bill being used in a disproportionate and inappropriate manner. It is important to note that many existing criminal offences exist which would empower the police to respond to protests, such as common law public nuisance,[6] breaches of police conditions imposed on protests, and activities which take place within that context.[7] As such, the framework of definitions surrounding current protest-related offences are more than sufficient, and understood by police and prosecutors alike.

3. The Government has endorsed a series of amendments which would set the threshold for disruption across the offences of locking on, causing serious disruption by tunnelling, and causing serious disruption by being present in a tunnel, at a very low level, namely disruption of a type which is "*more than a minor degree*". We consider this definition unsatisfactory for the following reasons:
    a. **First,** it is unclear what would constitute disruption to "*more than a minor degree*". Given its departure from concepts of serious disruption which have been robustly considered both by the courts and by Parliament (including

[6] "*those events could be a sufficiently substantial injury to a significant section of the public to amount to a public nuisance*" – R v Rimmington [2006] 1 A.C. 459 at [36].

[7] See ss 12 and 14 Public Order Act 1986, which specify "*serious disruption to the life of the community*" means "*significant delay to the delivery of a time- sensitive product*" or "*prolonged disruption of access to any essential goods or any essential service*", such as systems of communication, places of worship, or a service relating to health.

most recently in the Police, Crime, Sentencing and Courts Act 2022), we consider that such a shift would serve only to invite confusion and increase legal uncertainty further.

b. **Second,** from the plain meaning of the words, this threshold would be far too low, particularly when read in conjunction with the offences of the Bill. The example of a member of the public bumping into a couple walking arm-in-arm, could conceivably cause such a minor disruption for an individual carrying out their daily activities.

4. We agree with Lord Anderson of Ipswich, who noted in relation to the offence of 'locking on', that:

> "[*I]t seems right that the threshold should be a very high one: 'prolonged disruption of access' to homes, workplaces or other places to which there is an urgent need to travel, or significant delay in the delivery of time sensitive products or essential goods and services.*"[8]

5. **We therefore urge Peers to support the following amendment tabled in the names of Lord Coaker, Lord Paddick, and Baroness Chakrabarti:**

Before Clause 1, insert the following new Clause—

"Meaning of "serious disruption"

(1) In this Act, "serious disruption" means disruption causing significant harm to persons, organisations or the life of the community, in particular where—

(a) it may result in a significant delay to the delivery of a time-sensitive product to consumers of that product, or

(b) it may result in a prolonged disruption of access to any essential goods or any essential service, including access to—

(i) the supply of money, food, water, energy, or fuel,

(ii) a system of communication,

(iii) a place of worship,

(iv) a transport facility,

(v) an educational institution, or

(vi) a service relating to health.

[8] HL Deb, 16 November 2022, c917.

(2) In subsection (1)(a), "time-sensitive product" means a product whose value or use to its consumers may be significantly reduced by a delay in the supply of the product to them."

Member's explanatory statement

This new Clause defines the concept of "serious disruption" for the purposes of this Bill, which is the trigger for several new offences and powers.

Sweeping new protest offences

Amendment 9 and Amendment 10

6. We urge Peers to oppose the Question that the following clauses stand part of the Bill:

    i. **Locking on offences**

        i. Offence of locking on: Clause 1 (***in the name of Baroness Chakrabarti, Baroness Jones of Moulsecoomb, the Lord Bishop of Bristol***)

        ii. Offence of being equipped for locking on: Clause 2 (***in the name of Baroness Chakrabarti, Baroness Jones of Moulsecoomb, the Lord Bishop of Bristol***)

Briefing

7. The Government has proposed broad new offences relating to protest. This includes, at clauses 1 and 2, new offences for "*locking on*",[9] and being equipped to lock on and obstructing major transport works. While Baroness Williams has stated, on behalf of the Government during the debate for the PCSC Act, 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*",[10] 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

[9] 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.

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

far beyond what could ever be reasonably "*necessary*" to deal with any supposed disruption.

8. 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:

    i. they intentionally attached themselves, someone else or an "*object*" to another person, "*object*" or land;

    ii. 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

    iii. the individual either intends or is reckless to the action causing such serious disruption.

9. Secondly, at clauses 3, 4, and 5, the Government has proposed new offences of causing serious disruption by tunnelling, causing serious disruption by being in a tunnel, and being equipped for tunnelling, subject to 3 years in prison or an unlimited fine, where:

    i. they create, or participate in the creation of, a "*tunnel";* [11]

    ii. the creation or existence of the tunnel causes, or is capable of causing, serious disruption to two or more individuals, or an organisation, in a place other than a dwelling; and

    iii. they intend or are reckless as to whether the creation or existence of the tunnel will cause serious disruption.

10. Likewise, an individual would commit the offence of causing serious disruption by being present in a tunnel where their presence causes serious disruption.

[11] Clause 3 defines a tunnel as an excavation that extends beneath land, whether or not (i) it is big enough to permit the entry or passage of an individual, or (ii) it leads to a particular destination. Further, an excavation which is created with the intention that it will become or connect with a tunnel is to be treated as a tunnel, whether or not (i) any tunnel with which it is intended to connect has already been created, or (ii) it is big enough to permit the entry or passage of an individual. The creation of an excavation includes (a) the extension or enlargement of an excavation, and (b) the alteration of a natural or artificial underground feature.

11. Clauses 6 and 7 would introduce offences relating to obstruction major transport works and interference with use or operation of "*key national infrastructure*" respectively. Clause 7(7) would allow the Secretary of State to vary, by way of statutory instrument, the types of infrastructure deemed "*key*".

12. In addition, the Government has also tabled amendments at Report Stage in the Commons, resulting in clauses 17 and 18. Clause 17 would allow the Secretary of State to apply for a precautionary injunction where she reasonably believes that persons are carrying out, or likely to carry out, activities related to a protest that are: (i) causing, or likely to cause, serious disruption to the use or operation of key national infrastructure or to access to essential goods or services; or (ii) are likely to have a serious adverse effect on public safety. There is a carve out for activities carried out in contemplation or furtherance of a trade dispute. Clause 18 would empower the Secretary of State to apply to the High Court to attach powers of arrest and remand to such injunctions.

Concerns

13. 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. 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. Even more concerningly, these terms will be defined by the Government with minimal parliamentary scrutiny since they will be set out by way of secondary legislation.

14. 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.*"[12]

15. 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

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

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.

16. 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 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.

17. 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 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*" locking on.

18. 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. While the first of these examples may seem unrealistic, the fact that it would be perfectly possible for a paramedic to commit an offence in this context highlights the highly disproportionate nature of the measures. We are therefore seriously concerned with this vague and sweeping criminalisation that goes much further than the stated intention of targeting lock on protestors.

19. With respect to the proposed offences relating to obstruction major transport works and interference with use or operation of key national infrastructure, we note that there is a

defence where such disruption occurs as a result of a "*trade dispute*". However, this means that the police would still 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.

20. Ostensibly, these proposals are aimed at protestors such as Just Stop Oil and Extinction Rebellion. However, the breadth and vagueness of these offences mean that even trade dispute activities would be at risk of criminalisation. The trade dispute defence provided in the Bill is insufficient if intended to protect workers' and trade union activities. Indeed, its application is limited to 'workers' and would exclude those attempting to show support. Additionally, the trade dispute defence is unavailable for the other (broad) offences proposed in this Bill, such as clause 1 (locking on). This may well have a chilling effect on the ability to organise for trade disputes and build solidarity or coalition networks.

21. Neither is criminalising "*locking on*" popular with the police. HMICFRS found, when they interviewed junior police officers, that the majority opposed the creation of a new "*locking on*" offence for numerous reasons, ranging from "*operational difficulties*" to issues around the "*proportionality*" and "*potentiality invasive nature*" of the powers.[13]

22. With respect to offences related to tunnelling, though the former Minister for Crime and Policing, Kit Malthouse, stated the new offences will *"deter a committed cohort of protest tunnellers*",[14] the National Police Chiefs' Council has stated *"we do not believe that a specific offence around tunnelling will add anything above and beyond our current available powers"*. The National Police Chiefs' Council has also argued the Criminal Damage Act 1971, which contains offences of damaging property and having articles to do so, contains sufficient search powers to tackle dangerous tunnelling activity. Finally, they have expressed concerns as to the offence's application to private property, which they state would create significant further responsibilities for policing.[15]

23. In respect of the new clauses that have been tabled, if passed they would allow the Secretary of State pre-emptively and speculatively to criminalise individuals in a way that

[13] HMICFRS, 'Getting the balance right? An inspection of how effectively the police deal with protests', p. 125.

[14] Parliament, 'Hansard (Public Bill Committee), Public Order Bill (Fifth sitting): debated on Thursday 16 June 2022', column 140.

[15] National Police Chiefs' Council, 'Evidence submission to the Public Order Bill Committee by the National Police Chiefs' Council'

would render even the contemplation of a protest-related activity potentially criminal. It is difficult to envisage how such clauses could comply with the UK's obligations to safeguard and respect rights to freedom of speech, assembly, and association pursuant to Articles 9/10/11 ECHR.

Increased Stop and Search Powers

Amendment 46 and Amendment 47

24. We urge Peers to oppose the Question that the following clauses stand part of the Bill:

    i. **Stop and Search Powers**

        i. Suspicion-based stop and search: clause 10 (**in the names of Lord Paddick, Baroness Chakrabarti, and the Lord Bishop of Manchester**)

        ii. Suspicion-less stop and search: clause 11 (***in the names of Lord Coaker, Lord Paddick, Baroness Chakrabarti, and the Lord Bishop of Manchester***)

Briefing

25. Clauses 10 and 11 would significantly expand existing stop and search powers. In summary,

    i. **Clause 10** 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 to include "*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*"[16] the offences of wilful obstruction of a highway,[17] intentionally or recklessly causing a public nuisance,[18] locking-on,[19] the obstruction of major transport works,[20] interference with use or operation of key national infrastructure,[21] causing serious disruption by creating a tunnel,[22] and causing serious disruption by being

[16] Public Order Bill, 'Explanatory Notes', (May 2022), p.6.

[17] Section 137 of the Highways Act 1980.

[18] Section 78 of the PCSC Act (intentionally or recklessly causing public nuisance).

[19] Clause 1.

[20] Clause 6.

[21] Clause 7.

[22] Clause 3.

present in a tunnel.[23] Any prohibited items found on an individual stopped may be seized.

ii. **Clause 11** 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*". This is similar to existing (and controversial) powers available under section 60 of the Criminal Justice and Public Order Act 1994.[24] Again, any prohibited items found on an individual stopped may be seized. In addition, the Bill includes clauses 11, 12, and 13 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 clause 14, which would create an offence of obstructing such a search.

Concerns

26. These measures represent a deeply troubling expansion of existing stop and search powers. Speaking for the Government, the Home Office Minister at the time, Baroness Williams, claimed 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*".[25] Overall, we consider these amendments disproportionate, without sufficient evidential basis, and hugely damaging to racialised communities. We note the following key concerns in particular.

27. 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

[23] Clause 4.

[24] 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.

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

indicate that stop and search is ineffective at tackling crime,[26] with its application to knife-related offences suggesting no statistically significant crime reduction effects.[27] At best, stop and search shifts violence from one area to another.[28]

28. 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 clause 11(2) would allow 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.[29] 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. Equally, we note the concerns of Liberty and others in terms of the impact that this could have on Legal Observers who attend protests, who envision[30]

> "*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*."[31]

29. 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.

30. 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

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[26] 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.

[27] 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.

[28] 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.

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

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

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

children and young adults already think that they and their communities are targeted unfairly by stop and search powers.[32] 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*."[33] 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.[34] Suspicion less stop and search powers only compound the racist effects of searches based on reasonable suspicion.

31. Moreover, equivalent suspicion less stop and search powers that exist pursuant to section 60 of the Criminal Justice and Public Order Act 1994 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.[35] These stops are even less effective, with a mere 4% resulting in arrest.[36] Black people are fourteen times more likely to be searched than White people under suspicion-less stop and search powers.[37] Indeed, the cost of the policy is steep, both in terms of significant resources deployed and the detrimental impact on the confidence of ethnic minority communities in the police.[38] 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 crime going unreported, and unaddressed, resulting in increasing damage to communities alongside associated policing costs. It seems inevitable, that these issues would translate across to the new powers per clause 10, with the disproportionate brunt of these new powers to stop and search individuals in the context of potentially lawful activities borne by ethnic minority communities.

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

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

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

[35] M. Ashby, 'Stop and Search in London July to September 2020', UCL Institute for Global City Policing, (November 2020), p.8.

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

[37] StopWatch, 'Section 60 factsheet'

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

32. Third, clause 14 would create 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 clause 11. 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.

33. 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.[39] 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*".[40] 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.

34. 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.

35. The suspicion-less and vaguely and widely defined search powers will also create a wider chilling effect on the right to protest. Those who protest both legally and peaceably will be discouraged from exercising their right to protest due to fear of an illegitimate and traumatic police search. Adam Wagner has given the example of a peaceful protestor who travels to a protest by bike. They will fear being arrested for possessing a bike lock to secure the bike outside the location of the protest. In his words, *"it won't deter the people you are worried about or the previous witnesses were worried about* [protestors who are willing to go to prison]. *It will deter lots of other people who you are not worried about".*

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

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

Serious Disruption Prevention Orders

Amendment 59 and Amendment 63

36. We urge Peers to oppose the Question that the following clauses stand part of the Bill:

    i. **Serious Disruption Prevention Orders**

        i. On conviction: Clause 19 (***in the names of Lord Ponsonby of Shulbrede, Lord Paddick, Lord Anderson of Ipswich and Baroness Chakrabarti***)

        ii. Without conviction: Clause 20 (***in the names of Lord Ponsonby of Shulbrede, Lord Paddick, Baroness Chakrabarti, and Lord Anderson of Ipswich***)

Briefing

37. Clauses 19 and 20 would introduce Serious Disruption Prevention Orders ("**Protest Banning Orders**"). Protest Banning Orders would follow the model of other 'hybrid orders'[41] seen elsewhere in the justice system.[42] The Protest Banning Order could be imposed on individuals who have taken part in, or contributed to another person taking part in, more than one protest within a five-year period, whether or not that person has ever been convicted of an offence.[43] They can impose broad and severely intrusive requirements on recipients, including prohibiting named individuals from exercising their fundamental rights to protest (as protected by Article 10 and 11 of the ECHR), associating with others as well as using the internet in certain ways. While Protest Banning Orders are obtained via a civil process, breach of the conditions could result in a prison sentence of up to 51 weeks or an unlimited fine, or both.

Protest Banning Orders on Conviction

38. Clause 19 would allow a court to issue a Protest Banning Order in respect of an individual over the age of 18 if it can be shown on the balance of probabilities that the individual

[41] Hybrid orders are orders obtained via a civil process, usually on behalf of State, which seek to impose conditions concerning the behaviour of the recipient, for the purpose of preventing some type of risk. Such conditions can have criminal consequences if breached.

[42] Other examples of Hybrid Orders including Community Protection Notices, Anti-Social Behaviour Injunctions, Gang Injunctions, Knife Crime Prevention Orders, Criminal Behaviour Orders amongst others.

[43] Protest Banning Orders could be imposed on an individual either on conviction of a "*protest-related*" offence (Clause 19), or without conviction (Clause 20).

committed a "*protest related*" offence. Further conditions include where the individual, in the past 5 years was convicted of a "*protest related*" offence, committed a protest-related breach of an injunction, took part in activities related to a protest that resulted in, or were likely to have resulted in, serious disruption to two or more individuals or an organisation, caused or contributed to any other person carrying out a "*protest related*" offence or breach of an injunction, or caused or contributed to the carrying out by any other person activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals or an organisation in England and Wales.[44]

39. Courts can impose a Protest Banning Order for any one of a number of purposes, which include preventing the individual from committing a "*protest-related*" offence or "*protest-related*" breach of an injunction, carrying out activities related to a protest that are likely to result in serious disruption to two or more individuals or an organisation in England and Wales, or causing or contributing to the commission by any other person of a "*protest-related*" offence or breaches of an injunction or the carrying out of such activities that are likely to result in serious disruption to two more or more individuals or an organisation in England and Wales.

Protest Banning Orders otherwise than on Conviction

40. Clause 20 would allow a magistrates' court may issue a Protest Banning Order in respect of an individual over the age of 18 where it is applied for by the police and 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 been convicted of a "protest-related" offence, been found in contempt of court for a "protest-related" breach of an injunction, carried out activities related to a protest that are likely to result in serious disruption to two or more individuals or to an organisation in England and Wales, caused or contributed to the commission by any other person of a protest-related offence or a protest-related breach of an injunction, 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 or an organisation in England and Wales. [45]

41. In these scenarios, the court must consider it necessary to issue the Protest Banning Order for any one of a number of purposes, which include preventing the individual from[46] committing a "*protest-related*" offence or "*protest-related*" breach of an injunction, carrying

[44] Clause 19, sub-ss (2)(b), (3) and (4).

[45] Clause 20, sub-ss (1)(c) and (2).

[46] Clause 20, sub-ss (1)(d) and (4).

out activities related to a protest that are likely to result in serious disruption to two or more individuals or an organisation in England and Wales, or causing or contributing to the commission by any other person of a "*protest-related*" offence or breaches of an injunction or the carrying out of such activities that are likely to result in serious disruption to two more or more individuals or an organisation in England and Wales.

Concerns

42. JUSTICE has serious concerns about Protest Banning Orders, not least because they grant 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*".[47]

Breadth of conduct captured by Protest Banning Orders

43. A key issue with the Protest Banning Orders is the truly vast range of peaceful and innocent conduct that the police would be able 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*".[48] However, the vague wording of the Bill will, in fact, target a much broader range of persons. The protestors envisaged by Baroness Williams is likely to constitute only a small portion of those that could be subject to these orders. The expansive nature of the behaviours means Protest Banning Orders allow the police to criminalise individuals for the behaviour of others.

44. Moreover, the test for imposing a Protest Banning Order is wide and vague. They can be imposed to prevent someone from committing a protest related offence. Clause 33 provides a circular definition for "*protest-related offence*", namely as "*an offence which is directly related to a protest*". This could foreseeably cover not only the incredibly wide new offences contained in the PCSC Act (such as unknowingly breaching the conditions imposed on a public procession), but also offences which are carried out in the vicinity,

[47] 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.

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

but are otherwise unrelated to any activity causing disruption to the public since these could be construed as being "*directly related*" to the protest. More worryingly, Protest Banning Orders can also be imposed to prevent someone from carrying out "*activities related to a protest*" that could cause serious disruption. There is no definition provided as to what constitutes "*activities related to a protest*".[49] For example, it is unclear whether the act of painting a banner, or holding up said banner could amount to a protest related activity. Similarly, no detail is provided as to what activity would be deemed as "*causing or contributing to*" another person carrying out an offence or breaching an injunction.[50] Again, it is notably wide and vague. Indeed, Bell Ribeiro-Addy MP stated that Protest Banning Orders could target "*union officials who regularly attend and organise pickets".* She further noted that "*[t]he Trade Union Act 2016, the Police, Crime, Sentencing and Courts Act and everything in between, and now this Bill, have all but eradicated what was already a severely restricted right to picket*."[51] Underlining this, the police have raised concerns regarding the ability to operationalise these ill-defined terms. In the words of Peter Fahy, former Chief Constable of Greater Manchester Police, there is *"a real difficulty with definitions*".[52]

Types of Protest and Assembly captured by Protest Banning Orders

45. It is 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., any offence, injunction-breach, or other activity which is related to a protest), the police would have the discretion to place restrictions on individuals who take part in a vast range of activities, including but not limited to:

    i. religious festivals and activities, such as street preaching, chanting, singing, prayer vigils, public acts of worship, and community events;
    ii. community gatherings (from Notting Hill Carnival and LGBT+ Pride marches to firework nights, such as those in Lewes);
    iii. football matches;

[49] Clause 19(5)(b); Clause 20(4)(b).

[50] Clause 19(5)(c); Clause 20(4)(c).

[51] Parliament, 'Hansard (Commons Chamber), Public Order Bill: debated on Monday 23 May 2022', column 93.

[52] Parliament, 'Hansard (Public Bill Committee), Public Order Bill (Second sitting): debated on Thursday 9 June 2022', column 54.

iv. vigils/remembrance ceremonies;[53] and
v. trade disputes, pickets, and other forms of industrial action.

46. 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 protest results in a breach of such conditions (for instance, where the police deem the procession or assembly is too 'noisy' per the PCSC Act), 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 of breach of an injunction or has contributed in some way to another person doing so.

47. 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. JUSTICE is also aware of concerns raised by other groups that some religious organisations see direct action as a key part of their faith. It is deeply concerning to think that some groups may be criminalised for following their faith.[54]

48. By way of example, the court may also impose a Protest Banning Order where it considers it necessary, subject to the conditions noted above, 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. Again, this would capture 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

[53] 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.

[54] 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.

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*". 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*."[55]

Low evidential standards

49. Alarmingly, the court need only be satisfied "*on the balance of probabilities*" that the tests set out above, are met. This low evidential standard is concerning because it greatly increases the ease with which the police can impose Protest Banning Orders on individuals, which would have serious criminal penalties if breached.[56] Baroness Williams' contention that since "*these are civil orders…it is entirely appropriate for the civil standard of proof to apply*"[57] ignores the clear and significant criminal aspects that would inevitably flow from their application not least the punishment which could lead to a maximum of 51 weeks imprisonment.[58] For example, since a Protest Banning Order would be obtainable from the civil courts, hearsay evidence would usually be admissible, making it permissible for the police to lead statements on behalf of others as proof that the order should be issued. This is similar to the regime that governs Terrorism Prevention and Investigation Measures,[59] a problematic type of order which can impose a broad range of restrictions on an individual's liberty, introduced to replace the heavily discredited system of Control Orders.[60] This has been highlighted by human rights barrister, Adam Wagner, who concluded that "the *Bill treats peaceful protest like knife crime, drug dealing or terrorism. I do not mean that metaphorically; I mean it directly".*[61]

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

[56] *Ibid,* s 342S.

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

[58] 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.

[59] Terrorism Prevention and Investigation Measures Act 2011.

[60] Prevention of Terrorism Act 2005.

[61] Parliament, 'Hansard (Public Bill Committee), Public Order Bill (Second sitting): debated on Thursday 9 June 2022', column 42.

50. Additionally, the 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.[62] 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-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. The inclusion of hearsay evidence in such proceedings has already attracted significant criticism in respect of other hybrid orders.[63] We strongly suggest that the Government take these concerns into account before exacerbating the problem with Protest Banning Orders.

Intrusive requirements

51. 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 such as to "*encourage*" people to protest).[64] While we note that the Government has tabled amendment 65 to remove the electronic monitoring of compliance with Protest Banning Orders, we consider that the overall provision remains deeply intrusive.

52. Protest Banning Orders can be imposed for between one week and two years, and the Government has tabled an amendment to allow for one renewal..[65] The potential impact such requirements can have on an individual's liberty is astounding: such measures can erode an individual's political or religious identity by very effectively prohibiting them from taking part in meetings, assemblies, religious activities, and even personal relationships

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

[63] Civil Evidence Act 1995, s.1(1). For examples of orders which allow hearsay evidence see Community Protection Notices, Anti-Social Behaviour Notices, Serious Violence Reduction Orders, Sexual Risk Orders. *See also* Crawford, A., Lewis, S. & Traynor, P, "It ain't (just) what you do, it's (also) the way that you do it": The role of Procedural Justice in the Implementation of Anti-social Behaviour Interventions with Young People.' Eur J Crim Policy Res 23, 9–26 (2017).

[64] Clause 21(4)(g).

[65] Amendment 69.

that relate to a common and unifying cause. Restrictions on internet use could foreseeably result in an individual who posts on social media, for example by retweeting a post about a protest, breaching the terms of the Protest Banning Order and being punished.

53. To relate this to the previous example of the local community faith leader who was given a Protest Banning Order for organising a number of religious processions requirements under the order could prevent them from conducting related services, meetings and even providing support. If such requirements are breached, the faith leader could be sentenced to up to 51 weeks in prison or an unlimited fine, or both.

54. It would not be an exaggeration to describe these measures as draconian and authoritarian – similar measures can be found in Belarus and Russia. In Russia, there are laws which ban people who have previously organised two or more protests in the previous 12 months from organising further protests. [66] In Belarus, individuals who take part in more than one unauthorised protest can be sentenced to up to three years in prison.[67] 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 centre of political discussion, organisation, and identity. Articles 10 and 11 ECHR require that any infringement be proportionate and necessary in a democratic society.[68] It is difficult to see how lengthy bans on an enormous range of protest-related activities could ever meet this test.

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

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

[68] 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*".