



Public Order Bill

Impact on Journalists and Others Monitoring Protests

1. JUSTICE is a cross-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. This briefing sets out the impact of the Public Order Bill ("**Bill**") on journalists and others monitoring protests and recommends amendments to remove the damaging sections from the Bill, as well as provide more general protections to journalists, legal observers, and bystanders who report, observe, or otherwise record the police while they exercise their powers in relation to protests. For more information, please see JUSTICE's detailed briefings on the Bill.¹

Press Freedom in the UK

3. The UK is ranked 24th in the 2022 World Press Freedom Index,² categorised as yellow indicating that while press freedom in the UK is generally "*satisfactory*", it is not "*good*".³

¹JUSTICE, '[Public Order Bill House of Commons Second Reading Briefing](#)' (2022); JUSTICE, '[Public Order Bill House of Commons Report Stage Briefing](#)' (2022)

² Under heading 'Political context' the following is stated "A worrying political climate continued to impact press freedom in the UK, including the revival of an alarming proposal for reforms to official secrets laws that could see journalists jailed for "espionage". Journalists faced extensive freedom of information restrictions, with reports surfacing of a secretive government clearing house for freedom of information requests. Allegations of attempted governmental interference surrounded the failed appointment of Paul Dacre as chair of Ofcom, the UK's communications regulator." '[UK](#)', Reporters Without Borders

³ '[World Press Freedom Day](#)', House of Commons Library

Last year, the Department for Digital, Culture, Media & Sport held a Call for Evidence on Journalist Safety. Multiple respondents reported that:

“[T]he police themselves contributed towards threats or abuse towards journalists. This included police physically restricting access to spaces, arresting journalists, and holding negative conceptions about the role of journalists which affect how they treat them.”⁴

4. There exist several laws on the statute book which allow the police to control and impose conditions on protests. These include the Public Order Act 1986, the Criminal Justice and Public Order Act 1994, and the Police, Crime, Sentencing and Courts Act 2022.
5. Under existing laws, journalists continue to face arrest and detention for simply doing their job. Below are some examples of journalists who were arrested since August.

- **Peter Macdiarmid**

Award-winning journalist, Peter Macdiarmid, was arrested while covering a Just Stop Oil protest near an M25 service station on the 24th August 2022. The arrest happened despite him having a valid press card and camera. He was told that he was being arrested on suspicion of criminal damage and aggravated trespass. He was later released without any further action taken by the police.⁵

- **Charlotte Lynch**

Charlotte Lynch who is a journalist for LBC was arrested while reporting on the Just Stop Oil protest on the M25 on the 8th November 2022. She was accused of conspiracy to commit public nuisance despite standing well clear of the protest and showing a valid press card. She was handcuffed, had her devices seized and was held in a cell for 5 hours. Because it was clear that she was engaged in legitimate work, she was released with no further police action.⁶

- **Rich Felgate and Tom Bowles**

⁴ See 3.4.4 '[Call for evidence report](#)', UK Government (3 November 2021)

⁵ B Davis, '[Moment award-winning journalist Peter Macdiarmid arrested after police mistake him for Just Stop Oil activist](#)', (Evening Standard) (24 August 2022)

⁶ D Ponsford, '[up for covering M25 protests - police force says the arrests were justified](#)', (Press Gazette) (9 November 2022)

Rich Felgate and Tom Bowles were also arrested during the Just Stop Oil protest on the M25 on the 8th November 2022. Again, both peacefully asserted that they were journalists filming from a public area (a bridge over the M25) and offered to show their press cards. They were detained for 13 hours under section 1 of Police and Criminal Evidence Act 1984, which allows the police to stop, detain and search individuals on whom they believe they will find stolen or prohibited objects.⁷

6. The police should act proportionately and take into account the rights of journalists and observers who are a vital part of informing democratic discourse. However, the arrests of journalists, such as these, demonstrate that existing police powers can be used disproportionately. While all journalists were eventually released without charge, these arrests mean they could not get on with their work. Indeed, Michelle Stanistreet, general secretary of the National Union of Journalists expressed concern for, and disappointment in

“[T]he breach of journalists’ rights at recent Just Stop Oil protests. Film makers and photographers play an important role in relaying accurate information and quality journalism to members of the public.”⁸

7. We agree and consider that the proposals set out within the Bill could have a chilling effect on journalists, who may be fearful of being detained. Even more concerning, the Serious Disruption Prevention Orders (“**Protest Banning Orders**”) could potentially be used to ban individual journalists from attending, and therefore reporting on, protests. In turn, this would further diminish democratic discourse.

Public Order Bill Provisions

8. Journalists report on important political issues and illuminate pressing social concerns, their work will often involve covering live protests, sometimes with a significant police presence. Concerningly, the Bill would afford an even wider level of discretion to the police than already exists under current powers used to police protests. This could lead to ever more misuse of their powers. There are a number of provisions in the Bill that could have particularly alarming consequences for journalists, observers and other professionals; reducing press freedom further.

⁷ D Ponsford, [‘Three journalists locked up for covering M25 protests - police force says the arrests were justified’](#), (Press Gazette) (9 November 2022)

⁸ [‘Journalists’ arrests at Just Stop Oil protests threaten press freedom’](#), National Union of Journalists (9 November 2022)

The offence of being equipped for locking on

9. Journalists and observers could face a fine if convicted of being equipped for locking on under clause 2 of the Bill. In fact, this offence could be committed even if an individual did not themselves lock on and even if the object they were equipped with could not be used to lock on. This is because the ingredients of the offence are far too broad: an individual would only have to be carrying an object “*with the intention that it may be used*” “*in connection with*” the offence of locking on “*by any person*”.⁹
10. A journalist who carries a camera intent on taking a picture of someone who is locking on, could inadvertently fall foul of this offence. This is because the camera could constitute an object used in connection with the offence of locking on. Clearly, this offence would criminalise those with only the most tangential connection to the offence of locking on.

The offences relating to being present in a tunnel, transport works and key national infrastructure

11. Journalists and observers could face fines and even imprisonment if found to be guilty of being present in a tunnel, obstructing major transport works like the HS2 or interfering with key national infrastructure including road, rail and energy infrastructure.¹⁰ This is a distinct possibility for two reasons.
12. First, journalists pursuant to their legitimate work will report from the site of a tunnel and wherever major transport works or infrastructure projects are undertaken. For example, the BBC has reported from tunnelling sites and even shared filming equipment with protestors to film the inside of tunnels dug to disrupt the construction of the HS2 rail network.¹¹
13. Second, the offences have been drafted with inadequate protections for journalists. There is no explicit exemption for journalists, the only protection is the “*reasonable excuse*” defence.¹² However, a defence is available only after an arrest. Therefore, as Lord Paddick said:

⁹ Clause 2(1) Public Order Bill

¹⁰ Clauses 4, 6 and 7 Public Order Bill

¹¹ ‘[HS2 protesters dig ‘secret tunnel’ near Euston station](#)’, (BBC) (26 January 2021). For longer footage including the moment the camera is handed from the journalist to the protestor see the [BBC video](#) posted to YouTube.

¹² Clauses 4(2), 6(2)(a) and 7(2)(a) Public Order Bill

*“[Journalists] are still faced with the possibility of being arrested and detained for five hours by the police [...] It seems an onerous experience for a completely innocent person to go through that, and to have to rely on the fact that, at the end of the day, the courts will not convict them, when they have been completely innocent from the start”.*¹³

14. The Government has rightly agreed that the arrest of journalists doing their work is wrong. However, we are concerned that the Government places the onus of mitigating further arrests on more police training,¹⁴ rather than simply providing clarity in legislation. Without this clarity, the Bill could cause the arrest of journalists for reporting on important news stories at the sites of tunnelling, disruption and interference.

Powers to stop and search without suspicion

15. Journalists and observers would be subject to the expansive stop and search powers that the Bill would confer on the police. Clause 11 would allow the police to stop and search individuals, even without suspicion. These powers were previously preserved for violent crime and terrorism-related offences but could be used to target journalists under the Bill.¹⁵
16. For example, an officer who “*reasonably believes*” an individual is carrying a prohibited object i.e., an object “*made or adapted for use in the course of or in connection with [a protest-related] offence*” can conduct a ‘*suspicionless*’ search.¹⁶ The officer may then seize any object found if they reasonably suspect it is prohibited.¹⁷ Cameras used by journalists, clipboards used by observers, even medical equipment, could conceivably constitute a prohibited object for use in connection with a protest that could be seized. This would stifle the legitimate work of journalists and observers who monitor police powers, even though their work is essential for preventing abuse.

¹³ UK Parliament, ‘[Hansard Public Order Bill debated on Wednesday 16 November 2022](#)’, column 949

¹⁴ UK Parliament, ‘Hansard Public Order Bill debated on Wednesday 16 November 2022’, column 922.

¹⁵ Section 60 Criminal Justice and Public Order Act 1994 and section 47A Terrorism Act 2000

¹⁶ Clause 11(1)(b) Public Order Bill

¹⁷ Clause 11(8) Public Order Bill

Protest Banning Orders (Serious Disruption Prevention Orders)

17. Journalists and observers could be denied access to protest sites via clauses 19 and 20 of the Bill, which would create Protest Banning Orders. The threshold for their application is low. Protest Banning Orders could be imposed on an individual where they have on two occasions in the past 5 years merely “*contributed to the carrying out*” by another person of “*activities related to a protest*” that “*were likely to result in serious disruption*” to two or more people.¹⁸ The standard of proof to which this has to be proved is the lower civil standard of “*the balance of probabilities*”.¹⁹

18. This clearly endangers the freedom of the press to report. For example, if a journalist covers a protest, it is foreseeable that this coverage could “*contribute*” to protest related activities such that the conditions for imposing a Protest Banning Order could be satisfied.²⁰ If imposed, it could last for up to 2 years, be renewed, and could result in journalists being banned from attending protests, restrictions on their internet usage, GPS ankle taking and, if breached, imprisonment. This serves to demonstrate the extremely broad nature of Protest Banning Orders, and the level of discretion and power which the police would have to clamp down on legitimate journalistic activities.

Amendment 54 - Protection for Journalists and Others Monitoring Protests

19. Without adequate protections, the Bill could lead to more arrests of journalists who are simply doing their job. This could exacerbate the perceived threat to the freedom of expression that is encroaching on journalism and other forms of reporting that are so vital to our democracy.²¹ That is why JUSTICE, along with the National Union of Journalists

¹⁸ Clause 20(2)(a) Public Order Bill

¹⁹ As opposed to the criminal standard where the jury or judge must be “*satisfied so that they are sure*” of the defendant’s guilt. See clause 19(3) Public Order Bill

²⁰ Clause 20(2)(v) Public Order Bill

²¹ See 3.4.4 ‘Call for evidence report’, UK Government (3 November 2021)

and other organisations, signed an open letter to the Home Secretary, expressing our concerns, noting that:

*“Preventing or deterring journalists from reporting on issues of public interest such as environmental protests – will furthermore create a chilling effect for freedom of expression and access to information”.*²²

20. Therefore, we urge peers to support the following amendment, tabled in the names of Baroness Chakrabarti, Lord Paddick, Baroness Boycott, and Lord Hope of Craighead to safeguard the ability of people to monitor the exercise of police powers in the context of protests.

21. After Clause 18, insert the following new Clause -

“Protection for journalists and others monitoring protests

A constable may not exercise any police power for the principal purpose of preventing a person from observing or otherwise reporting on a protest or the exercise of police powers in relation to—

(a) a protest-related offence,

(b) a protest-related breach of an injunction, or

(c) activities related to a protest.”

Member's explanatory statement

This new Clause would protect journalists, legal observers, academics, and bystanders who observe or report on protests or the police's use of powers related to protests.

22. This new clause would protect journalists, legal observers, academics, and bystanders who monitor or record the police's use of powers related to protests. **Without this clause, the Bill could lead to an increase in the arrest of journalists, observers and other professionals working near protest sites.** That is because there is no explicit provision in the Bill, or existing legislation, that protects them prior to arrest i.e., the defence of “reasonable excuse” is only available once the individual has already been charged.²³

²² [‘NUJ signs joint letter to Home Secretary after police arrests of journalists’](#), National Union of Journalists (12 November 2022)

²³ Clauses 1(2), 3(2), 4(2), 6(2) and 7(2) Public Order Bill

Arguably, the police should not arrest journalists even under existing protest laws because they will be aware that this defence exists. Policing should be proportionate and preclude the arrest of people who would be able to rely on the defence, like journalists. In practise however, journalists are being arrested. By the time they are released, often hours later, the damage will be done because the journalist will have been unable to do their job.

23. This amendment would ensure that speculative arrests of journalists do not take place. This would help ensure journalists, observers and other professionals continue to have access to protest sites in order to report on and monitor police powers, which is an essential part of our democracy.

For more information, please contact:

Tyrone Steele, Criminal Justice Lawyer, JUSTICE – tsteele@justice.org.uk

JUSTICE
27 January 2023