



Public Order Bill

House of Commons

Ping Pong

Briefing

March 2023

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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. This briefing concerns the Public Order Bill (the "**Bill**") in advance of its Ping Pong stage in the House of Commons on 7 March 2023. **We urge MPs to support the following Lords Amendments:**
 - **Amendment 1:** Clause 1 (Meaning of "serious disruption");
 - **Amendments 6, 7, 8, 9:** Leave out clauses 11-14 (Removal of powers to stop and search without suspicion);
 - **Amendment 17:** After Clause 18, insert new clause (Protection for journalists and others monitoring protests); and
 - **Amendment 20:** Leave out clause 20 (Serious disruption prevention orders made otherwise than on conviction).
3. For more information, you can find JUSTICE's briefings on our website.¹

Amendment 1 - Definition of Serious Disruption

4. The House of Lords voted to include a definition of the term "serious disruption". This definition is vital, given its centrality to a range of measures, including the offences of "locking on" (clause 2), "causing serious disruption by tunnelling" (clause 4), "causing serious disruption by being present in a tunnel" (clause 5), as well as the "power of Secretary of State to bring proceedings" (clause 17) and SDPOs (clause 20).
5. Given the extent 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 potentially extremely broad 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

¹ <https://justice.org.uk/public-order-bill/>

protests, such as common law public nuisance,² breaches of police conditions imposed on protests, and activities which take place within that context.³ As such, the framework of definitions surrounding current protest-related offences are more than sufficient, and understood by police and prosecutors alike.

6. 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.”⁴

7. It is important to note that, if this amendment does not succeed, then the Bill will lack any definition of “serious disruption”. This means the offences specified above will be much vaguer, resulting in unacceptable levels of legal uncertainty, as well as a high levels of discretion for police forces on the ground to interpret the term in varying, inconsistent, and potentially damaging ways.

8. **We therefore urge MPs to support Lords Amendment 1 and retain the definition of “serious disruption” within the Bill.**

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,

² “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].

³ 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.

⁴ HL Deb, 16 November 2022, c917.

- (iii) a place of worship,
- (iv) a transport facility,
- (v) an educational institution, or
- (vi) a service relating to health.

(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.

Amendments 6, 7, 8, 9 – Leave our Increased Stop and Search Powers (Without Suspicion)

9. We urge MPs to accept Lords Amendments 6, 7, 8 and 9, which remove old clauses 11 to 14 (suspicion-less stop and search powers) from the Bill.
10. Old clause 10 (now clause 11) widens the range of circumstances in which an officer can stop and search individuals 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*”⁵ the offences of wilful obstruction of a highway,⁶ intentionally or recklessly causing a public nuisance,⁷ locking-on,⁸ causing serious disruption by creating a tunnel,⁹ causing serious disruption by being present in a tunnel,¹⁰ the obstruction of major transport works¹¹ and interference with use or operation of key national infrastructure.¹²
11. Old clause 11 would create a power to stop and search individuals for the same offences albeit but 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 “*anywhere within a specified locality*”, as long as it is “*for a specified period not*

⁵ Public Order Bill, ‘[Explanatory Notes](#)’, (May 2022), p.6.

⁶ Section 137 of the Highways Act 1980.

⁷ Section 78 of the PCSC Act (intentionally or recklessly causing public nuisance).

⁸ Clause 2.

⁹ Clause 4.

¹⁰ Clause 5.

¹¹ Clause 7.

¹² Clause 8.

exceeding 24 hours".¹³ This is similar to existing (and controversial) powers available under section 60 of the Criminal Justice and Public Order Act 1994.¹⁴ Any prohibited items found on an individual stopped may be seized.

12. These measures represent a deeply troubling expansion of existing stop and search powers. Speaking for the Government, the Home Office Minister at the time these provisions were first attempted to be introduced into the Police, Crime, Sentencing and Courts Bill, 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*".¹⁵ However, we consider stop and search power without suspicion to be disproportionate, without sufficient evidential basis, and hugely damaging to racialised communities. We note the following key concerns in particular.

13. First, 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 are meant to serve them. The Home Office's own data indicate that stop and search is ineffective at tackling crime,¹⁶ with its application to knife-related offences suggesting no statistically significant crime reduction effects.¹⁷ At best, stop and search shifts violence from one area to another.¹⁸ The Government's claim that existing stop and search powers are necessary for tackling serious violence is therefore already poorly evidenced. 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.

¹³ Old clause 11(3)

¹⁴ 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.

¹⁵ Parliament, '[Hansard \(Lords Chamber\), Volume 816: debated on Wednesday 24 November 2021](#)', column 977-978.

¹⁶ By their own statistics, of all the stops and searches undertaken in the year ending March 2022, 71% resulted in no further action. See, Home Office, '[Police powers and procedures, England and Wales, year ending 31 March 2022](#)'.

¹⁷ 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.

¹⁸ 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.

14. 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.¹⁹ 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:²⁰

*“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.”*²¹

15. 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.²² 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.*”²³ Recent Home Office data further shows that Black people in particular were over six times more likely to be stopped and searched than White people.²⁴ Suspicion less stop and search powers only compound the racist effects of searches based on reasonable suspicion.

16. Moreover, equivalent suspicionless 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.²⁵ These stops are even less

¹⁹ Section 1(7) of the Police and Criminal Evidence Act 1984.

²⁰ Liberty, ‘[Liberty files legal action over protest arrests](#)’, (29 March 2021).

²¹ Liberty, ‘[Briefing on the Government’s Amendments to the Police, Crime, Sentencing and Courts Bill \(Protest\)](#)’, November 2021, pp.9-10.

²² P. Keeling, ‘[No Respect: Young BAME men, the police and stop and search](#)’ (Criminal Justice Alliance, 2017), p. 20.

²³ Home Affairs Select Committee, Serious youth violence, [Sixteenth report of session 2017-2019](#), 18 July 2019.

²⁴ Home Office, ‘[Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2022](#)’, 27 October 2022.

²⁵ M. Ashby, ‘[Stop and Search in London July to September 2020](#)’, UCL Institute for Global City Policing, (November 2020), p.8.

effective, with a mere 3.4% resulting in arrest.²⁶ Black people are fourteen times more likely to be searched than White people under suspicion-less stop and search powers.²⁷ 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.²⁸ As a result, ethnic minority communities, not least the victims and witnesses of crime, are understandably reluctant to co-operate with the police. 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 11, 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.

17. Third, old 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.

18. 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.²⁹ 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*”.³⁰ 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.

19. In addition, to be stopped without suspicion merely requires that an individual is 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

²⁶ Home Office, ‘[Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2022](#)’, 27 October 2022.

²⁷ StopWatch, ‘[Section 60 factsheet](#)’

²⁸ V. Dodd, ‘[Police losing legitimacy among people of colour, top officers say](#)’, The Guardian, 8 September 2020.

²⁹ BBC, ‘[Sarah Everard murder: Wayne Couzens given whole-life sentence](#)’, 30 September 2021.

³⁰ Metropolitan Police, ‘[Our response to issues raised by the crimes of Wayne Couzens](#)’, 30 September 2021.

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.

20. 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”*.

Amendment 17 - After Clause 18, insert new clause (Protection for journalists and others monitoring protests)

21. We urge MPs to support the following amendment to safeguard the ability of people to monitor the exercise of police powers in the context of protests.

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.** This 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.³¹ 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. The UK is ranked 24th in the 2022 World Press Freedom Index,³² categorised as yellow indicating that while press freedom in the UK is generally "satisfactory", it is not "good".³³ 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."*³⁴

24. The work of journalists in the United Kingdom has become increasingly difficult in recent years, with the arrests of members of the press taking place in tandem with the rise of protests. The case of Charlotte Lynch, a reporter from LBC who was wrongly handcuffed and deprived of her liberty for several hours because of her coverage of the Just Stop Oil

³¹ Clauses 2(2), 4(2), 5(2), 7(2) and 8(2) Public Order Bill

³² 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

³³ 'World Press Freedom Day', House of Commons Library

³⁴ See 3.4.4 'Call for evidence report', UK Government (3 November 2021)

protests on the M25 last November, serves as a stark warning of the difficulties which journalists can face while doing their jobs.³⁵ This has not been an isolated incident.

25. Back in August, Peter Macdiarmid was also detained and taken in a police van to Redhill police station. The award-winning reporter, who has covered several historic and monumental events from the Arab Spring to the London riots, remarked: *“It’s the first time I’ve been in cuffs in the 35 years I have covered protests”*.³⁶ Likewise, former Daily Mirror correspondent Matthew Dresch encountered similar circumstances in Bristol the previous year, sharing footage of what he claimed was assault by police officers as he reported on protests in the city.

26. The amendment was passed overwhelmingly by the House of Lords on a cross-party basis, with Lord Cormack surmising:

*“A free society depends upon a free Parliament and free speech, and it depends upon a free press and free broadcasting. We are going in the wrong direction with this issue if we do not accept the amendment that has been signed by a very distinguished Law Lord: the noble and learned Lord, Lord Hope of Craighead. I would take his advice on this as much as I would take anyone’s. It would be better if the Government did not oppose this amendment.”*³⁷

27. The United Kingdom has a proud reputation as a country that upholds and defends freedom of speech. Journalists play a crucial role in safeguarding this principle, informing the public of matters that impact them, such as live protests, and uncovering abuses of power – impartially and professionally – where they happen. 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 protests and monitor police powers - an essential part of our democracy.

³⁵ Charlotte Lynch, [“Arrested for doing my job’: LBC’s Charlotte Lynch tells of being held in a cell while covering M25 protest”](#), LBC, 9 November 2022

³⁶ Barney Davis, [‘Moment award-winning journalist Peter Macdiarmid arrested after police mistake him for Just Stop Oil activist’](#), Evening Standard, 24 August 2022

³⁷ *Hansard* HL Deb. [vol 827, col. 1132](#), 7 February 2023.

Amendment 20 - Leave out clause 20 (Serious disruption prevention orders made otherwise than on conviction)

28. We urge MPs to accept Lords Amendment 20, which would remove Serious Disruption Prevention Orders (without conviction) from the Bill (“SDPOs”).

29. JUSTICE has serious concerns with SDPOs generally. However, the House of Lords only removed those which can be imposed without conviction. Old clause 20 would allow the police to apply to the magistrates’ court to impose an SDPO. The court could grant the SDPO where it is satisfied on the balance of probabilities that on more than one occasion in the past 5 years, the individual has: (i) been convicted of a “protest-related” offence; (ii) been found in contempt of court for a “protest-related” breach of an injunction; (iii) carried out activities related to a protest that resulted in or were likely to result in serious disruption to two or more individuals or to an organisation; (iv) caused or contributed to the commission by any other person of a protest-related offence or a protest-related breach of an injunction; or (v) contributed to another person carrying out activities related to a protest that resulted in or were likely to result in serious disruption to two or more individuals or an organisation.³⁸

30. The court must also consider it necessary to issue the SDPO for any one of a number of purposes which relate to preventing the individual carrying out a protest related offence or protest related activities likely to result in serious disruption or contributing to someone else carrying out a protest related offence or activities likely to cause serious disruption.³⁹

31. JUSTICE has serious concerns about SDPOs, 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”.⁴⁰

³⁸ Old Clause 20(1)(c) and (2).

³⁹ Old Clause 20(1)(d) and (4).

⁴⁰ 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.

Breadth of conduct captured by SDPOs

32. A key issue with the SDPOs is the truly vast range of peaceful and innocent conduct that they capture. Baroness Williams, speaking on behalf of the Government, stated that the SDPOs are “*designed to tackle protestors who are determined to repeatedly cause disruption to the public*”.⁴¹ However, the vague wording of the Bill will, in fact, target a much broader range of persons and activity, including allowing the police to impose these orders on the basis of the behaviour of others.
33. Moreover, the test for imposing an SDPO is wide and vague. They can be imposed to prevent someone from committing a protest related offence, however clause 31 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 Police, Crime, Sentencing and Courts Act 2022 (“**PCSC Act**”) (such as unknowingly breaching the conditions imposed on a public procession), but also offences which are carried out in the vicinity, but are otherwise unrelated to any activity causing disruption to the public since these could be construed as being “*directly related*” to the protest.
34. SDPOs 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*”.⁴² 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 a protest related offence, protest related activities or breaching a protest injunction.⁴³ Again, it is notably wide and vague. Indeed, Bell Ribeiro-Addy MP stated that SDPOs 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*.”⁴⁴ Underlining this, the police have raised concerns regarding the ability to operationalise these ill-defined

⁴¹ Parliament, ‘[Hansard \(Lords Chamber\), Volume 816: debated on Wednesday 24 November 2021](#)’, column 978.

⁴² Old Clause 20(4)(b).

⁴³ Old Clause 20(4)(c).

⁴⁴ Parliament, ‘[Hansard \(Commons Chamber\), Public Order Bill: debated on Monday 23 May 2022](#)’, column 93.

terms. In the words of Peter Fahy, former Chief Constable of Greater Manchester Police, there is “*a real difficulty with definitions*”.⁴⁵

35. The criteria for imposition of SDPOs are so vague, the police would have the discretion to place restrictions on individuals who take part in a vast range of activities, beyond those referenced as the intended target of the Bill (Just Stop Oil, Insulate Britain and Extinction Rebellion) including, but not limited to:

- a) religious festivals and activities, such as street preaching, chanting, singing, prayer vigils, public acts of worship, and community events;
- b) community gatherings (from Notting Hill Carnival and LGBT+ Pride marches to firework nights, such as those in Lewes);
- c) football matches;
- d) vigils/remembrance ceremonies;⁴⁶ and
- e) trade disputes, pickets, and other forms of industrial action.

Furthermore, an SDPO could be granted where an individual was not even directly involved in any of these events but merely “*caused or contributed*” to the activities of someone else who did participate in them.

36. An illustrative example is a local community faith leader who organises peaceful religious processions and protests. Under old clause 20, the faith leader need not be convicted of any offence in order to be subject to an SDPO. For example, if the procession were subject to noise restrictions (imposed under the PSCS Act) which were then breached, this would be a “*protest related offence*”. The faith leader who organised the procession need not have even been present - by virtue of having organised the procession they will have caused or contributed to the commission by another person of a protest related offence

⁴⁵ Parliament, [‘Hansard \(Public Bill Committee\), Public Order Bill \(Second sitting\): debated on Thursday 9 June 2022’](#), column 54.

⁴⁶ 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.

and, under old clause 20, this is sufficient for the court to impose an SDPO (if it is the second occasion in five years this or something similar has occurred).

37. Members of the community who helped facilitate the procession in other ways (but may not have been directly involved), for example by driving a bus of churchgoers to the procession or organising their transport, lending someone a car or bike to get to the procession or donating or fundraising money to assist with the costs of organising the procession may well also be deemed to have 'caused or contributed' to the commission of protest related offence. They too could be given SDPOs.

38. Indeed, faith leaders, in a letter to the Prime Minister, expressed their deep concern about SDPOs being issued to members of their communities who organise or are tangentially involved in peaceful processions and protests, calling it an "*unprecedented attack on religious and belief communities*"⁴⁷

Low evidential standards

39. 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 successfully apply for the imposition SDPOs on individuals, which would have serious criminal penalties if breached.⁴⁸ Baroness Williams' contention that since "*these are civil orders...it is entirely appropriate for the civil standard of proof to apply*"⁴⁹ 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.⁵⁰ For example, since an SDPO 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,⁵¹ a problematic type of order which can impose a broad range of restrictions on an individual's

⁴⁷ <https://www.churchtimes.co.uk/articles/2023/27-january/news/uk/new-public-order-bill-will-criminalise-peaceful-protest-say-faith-leaders>

⁴⁸ Old Clause 20(2)(a).

⁴⁹ Parliament, '[Hansard \(Lords Chamber\), Volume 816: debated on Wednesday 24 November 2021](#)', column 995.

⁵⁰ 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.

⁵¹ Terrorism Prevention and Investigation Measures Act 2011.

liberty, introduced to replace the heavily discredited system of Control Orders.⁵² 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*”.⁵³

Intrusive requirements

40. Once it is determined that an SDPO 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, e.g., the individual must report to a particular place at particular times on a particular day and negative e.g., the individual may be prohibited from going to a particular place, associating with particular people and even using the internet in particular ways.⁵⁴ While we note that the Government has removed the electronic monitoring of compliance with SDPOs, we consider that the overall provision remains deeply intrusive.
41. SDPOs be imposed for up to two years, with the ability to renew once. Individuals can therefore be subject to these restrictions for up to four years. The potential impact such restrictions can have on an individual’s liberty are severe: they 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 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 SDPO and being punished.
42. To relate this to the previous example of the local community faith leader who was given an SDPO for organising a number of religious processions could be prevented 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.
43. 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

⁵² Prevention of Terrorism Act 2005.

⁵³ Parliament, ‘[Hansard \(Public Bill Committee\), Public Order Bill \(Second sitting\): debated on Thursday 9 June 2022](#)’, column 42.

⁵⁴ Clause 21(4)(g).

12 months from organising further protests.⁵⁵ In Belarus, individuals who take part in more than one unauthorised protest can be sentenced to up to three years in prison.⁵⁶ This indicates just how overpowered these measures are to achieve their purpose of targeting “acts by a minority of people that cause serious disruption to the hard-working majority.”⁵⁷ In fact, their breadth enables them to potentially suppress almost a huge range of 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.⁵⁸ It is difficult to see how lengthy bans on an enormous range of protest-related activities, imposed on individuals who may have only a tangential connection to previous protests, could meet this test.

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⁵⁵ Amnesty International, [‘Russia: No place for protest’](#), 12 August 2021, p.6.

⁵⁶ Euronews, [‘Belarus toughens laws against protesters and ‘extremism’](#)’, 8 June 2021; The Moscow Times, [‘Belarus Strongman Toughens Protest Laws’](#), 8 June 2021.

⁵⁷ Lord Sharpe, [Hansard HL Deb. Vol 825, Col 140](#), 1 November 2022

⁵⁸ [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*”.