



Public Order Bill

House of Lords

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 Lords on 14 March 2023. **We urge Peers to reject the following Common's amendments, and insist on those passed during the House of Lord's Report Stage:**
 - **Amendment 1A:** Clause 1 (Meaning of "serious disruption"); and
 - **Amendments 6A, 7A, 8A, 9A:** Leave out clauses 11-14 (Removal of powers to stop and search without suspicion).
3. For more information, you can find JUSTICE's briefings on our website.¹

Common's Amendment 1A - 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 both types of Serious Disruption Prevention Order (clauses 20 and 21).
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 protests, such as common law public nuisance,² breaches of police conditions imposed

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

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].

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. If the Bill lacks a definition of "serious disruption", then the offences specified above will be much vaguer. However, the Government has decided to reject the House of Lords' definition, opting instead to revive a formulation which hinges on, *inter alia*, an individual being "*hindered to more than a minor degree*".
8. In our view, the Government's proposal is much worse than having no definition at all. This is because the threshold would be made far too low, thereby suffering from the same deficiencies as identified by Peers during the Bill's Report Stage by allowing large swathes of otherwise peaceful activity to be placed at risk of undue criminalisation. In sum, we agree with Lord Coaker's assessment that "*There is no legal certainty in what is meant by 'more than minor'*".⁵
9. **We therefore urge Peers to reject the Government's proposal (Lords Amendment 1A), and insist on Lords Amendment 1 retaining the original 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—

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.

⁵ HL Deb, 30 January 2023, Vol 827, [Col 429](#).

- (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.

(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.

Common’s Amendments 6A, 7A, 8A, 9A – Leave out Increased Stop and Search Powers (Without Suspicion)

10. We urge Peers to reject Common’s Amendments 6A, 7A, 8A and 9A, which would re-insert old clauses 11 to 14 (suspicion-less stop and search powers) to the Bill.

11. 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*”⁶ the offences of wilful obstruction of a highway,⁷ intentionally or recklessly causing a public nuisance,⁸ locking-on,⁹ causing serious disruption by creating a tunnel,¹⁰ causing serious

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

⁷ Section 137 of the Highways Act 1980.

⁸ Section 78 of the PCSC Act (intentionally or recklessly causing public nuisance).

⁹ Clause 2.

¹⁰ Clause 4.

disruption by being present in a tunnel,¹¹ the obstruction of major transport works¹² and interference with use or operation of key national infrastructure.¹³

12. 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 exceeding 24 hours*”.¹⁴ This is similar to existing (and controversial) powers available under section 60 of the Criminal Justice and Public Order Act 1994.¹⁵ Any prohibited items found on an individual stopped may be seized.
13. 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 were justified on the grounds that “*it is not always possible for the police to form suspicions that certain individuals have particular items with them*”.¹⁶ However, we consider stop and search power without suspicion to be disproportionate, without sufficient evidential basis, and hugely damaging to racialised communities. Indeed, as Conservative MP, Sir Charles Walker, noted during the Common’s Ping Pong debate,

*“When I am going about my business, I do not want to be stopped by a police officer and asked about my business. When I say to the police officer, “Why are you stopping me?”, it seems pretty odd that they can say, “I have not really got a reason to stop you, it is just that I can.”*¹⁷

¹¹ Clause 5.

¹² Clause 7.

¹³ Clause 8.

¹⁴ Clause 11(3)

¹⁵ 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.

¹⁶ Parliament, ‘[Hansard \(Lords Chamber\), Volume 816: debated on Wednesday 24 November 2021](#)’, column 977-978.

¹⁷ HC Deb, 7 March 2023, Vol 729, [Col 211](#).

14. We note the following key concerns in particular.

15. 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,¹⁸ with its application to knife-related offences suggesting no statistically significant crime reduction effects.¹⁹ At best, stop and search shifts violence from one area to another.²⁰ 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.

16. 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.²¹ 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:²²

*"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."*²³

17. 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

¹⁸ 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](#)'.

¹⁹ 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.

²⁰ 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.

²¹ Section 1(7) of the Police and Criminal Evidence Act 1984.

²² Liberty, '[Liberty files legal action over protest arrests](#)', (29 March 2021).

²³ 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.²⁴ 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.*”²⁵ 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.²⁶ Suspicion less stop and search powers only compound the racist effects of searches based on reasonable suspicion.

18. 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.²⁷ These stops are even less effective, with a mere 3.4% resulting in arrest.²⁸ Black people are fourteen times more likely to be searched than White people under suspicion-less stop and search powers.²⁹ 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.³⁰ 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 minorities.

19. 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

²⁴ P. Keeling, ‘[No Respect: Young BAME men, the police and stop and search](#)’ (Criminal Justice Alliance, 2017), p. 20.

²⁵ Home Affairs Select Committee, Serious youth violence, [Sixteenth report of session](#) 2017-2019, 18 July 2019.

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

²⁷ M. Ashby, ‘[Stop and Search in London July to September 2020](#)’, UCL Institute for Global City Policing, (November 2020), p.8.

²⁸ Home Office, ‘[Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2022](#)’, 27 October 2022.

²⁹ StopWatch, ‘[Section 60 factsheet](#)’

³⁰ V. Dodd, ‘[Police losing legitimacy among people of colour, top officers say](#)’, The Guardian, 8 September 2020.

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.

20. 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.³¹ 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*”.³² 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.
21. 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 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.
22. 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*”.

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³¹ BBC, ‘[Sarah Everard murder: Wayne Couzens given whole-life sentence](#)’, 30 September 2021.

³² Metropolitan Police, ‘[Our response to issues raised by the crimes of Wayne Couzens](#)’, 30 September 2021.