

BRIEFING ON THE GOVERNMENT MOTIONS IN RESPONSE TO LORDS AMENDMENTS, MARCH 2023

Ahead of Commons consideration of Lords Amendments to the Public Order Bill on Tuesday 7 March, the Government has been forced to make compromises in recognition of the Bill's draconian nature. These are vital and important changes, that will go some way in mitigating the harms of Bill – however, they do not go far enough.

On Tuesday 7 March, we urge Parliamentarians to:

- Oppose the Government's motion to disagree with Lords Amendment 6 – *this will ensure that protest-specific, suspicion-less stop and search is removed from the Bill in its entirety*
- Oppose the Government's motion to disagree with Lords Amendment 20 and move amendments in lieu – *this will ensure that Serious Disruption Prevention Orders made otherwise than on conviction in their entirety are removed from the Bill*

SERIOUS DISRUPTION PREVENTION ORDERS MADE OTHERWISE THAN ON CONVICTION

1. The Government has rejected Lords Amendment 20 to scrap SDPOs without conviction and proposed amendments in lieu.¹ **Government Amendment 20a** would effectively narrow SDPOs without conviction, so that they can only be given to people who have committed two protest-related offences or breaches of injunction in the past five years. Previously, they could also be given to people who had committed non-criminal activities – if they had on two occasions in the past five years, carried out activities related to a protest; caused or contributed to the commission by another person of a protest offence; or caused or contributed to the carrying out by another person of activities related to a protest. **This is a crucial concession from the Government, and a recognition that people who have never committed an offence should never have their liberties restricted.**
2. Government Amendment 20a mirrors changes made to SDPOs with conviction, which can also only be given to people who have committed two protest-related offences/breaches of injunctions. The conditions under which these two kinds of SDPOs can be given are now essentially the same. The question is why the Government has refused to remove SDPOs without conviction in their entirety from the Bill. The answer appears to be procedural.
3. Under the Bill as it stands, a court can only make an SDPO on conviction **when a person has been convicted of a protest-related offence which was committed on or after this section of the Bill comes into force ('the current offence')**. The person also needs to have committed another protest-related offence or breach of an injunction in the five years preceding that conviction. The court will make an SDPO during proceedings for the current offence. On the other hand, for SDPOs made otherwise than on conviction, **a chief officer of police (or other relevant person) could apply to the magistrates' court to give a person an SDPO at any time**. An SDPO could subsequently be issued on the basis that the person has previously committed two protest-related offences or breaches of injunctions in the five years preceding the order. **In other words, whereas SDPOs on conviction will be made by a court when someone is convicted of an offence, an application from the police to the court to make an SDPO could take place at any time and on the basis of any relevant convictions.**
4. This is significant because it would effectively leave SDPOs made otherwise than on conviction looming over anyone who has ever committed two protest-related offences or breaches of injunctions. It would give the police the opportunity to trawl their records for anyone who has previously committed two protest-related offences or breaches of injunction in the preceding five years, and apply to the magistrates' court to give someone an SDPO, even if there is no immediate, instigating event of protest-related criminal proceedings. **It is fundamentally unclear why the Government has left a backdoor for SDPOs to be imposed on people in this way, if the conditions for SDPOs on and without conviction are the same. The potential ramifications of this confusing drafting – of enabling the police to target certain individuals including retrospectively (even if there is no current offence) – is highly concerning and risks further politicising policing and entrenching mistrust.**

We urge MPs to reject the Government's motion to oppose Lords Amendment 20 and to remove Serious Disruption Prevention Orders made otherwise than on conviction from the Bill in their entirety.

¹ For more information about our general concerns with SDPOs and suspicion-less stop and search, see our ping pong briefing: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2019/03/Libertys-briefing-on-the-Public-Order-Bill-for-MPs-ahead-of-consideration-of-Lords-amendments-March-2023.pdf>

SUSPICION-LESS STOP AND SEARCH

5. The Government has rejected Lords Amendment 6, which would have removed protest-specific, suspicion-less stop and search powers from the Bill. As detailed in our briefing, we are concerned that expanding suspicion-less stop and search to the protest context will entrench racial disproportionality and mistrust.

We urge Parliamentarians to remove protest-specific, suspicion-less stop and search from the Bill by rejecting the Government motion to oppose Lords Amendment 6.

SERIOUS DISRUPTION

6. The Government have also rejected Lords Amendment 1 defining serious disruption and proposed an alternative definition setting an extremely low threshold. Under the Government's definition, serious disruption will mean 'more than minor' impact on day to day activities, construction or maintenance works or activities related to such work; or a more than minor delay to the delivery of a time-sensitive product or access of any essential goods or services. This definition would apply across the Bill, such as to the newly-created protest-related offences. For example, if this definition is included in the Bill, a person could commit the offence of locking on if they attached themselves to another person and that act causes, or is capable of causing, by way of physical obstruction a "more than minor" hindrance to individuals' day to day activities, including making a journey. The importance of this definition is that once the threshold for 'serious disruption' is met, a person may be committing a criminal offence, meaning that the police may intervene to stop it.
7. As noted by numerous peers in the House of Lords at Report Stage when similar amendments were debated, the threshold set in this definition – 'more than a minor degree' – is fundamentally illogical. **Simply put, 'serious' does not mean 'more than a minor degree'; and yet, this is what 'serious disruption' will mean, should the Government amendment pass.** We echo Baroness Chakrabarti's statement that this "set[s] the bar too low before a number of intrusive police powers and vague criminal offences kick in: "more than minor" hindrance is not serious disruption. More than minor is not serious enough."²
8. **When read across the stop and search powers in the Bill, this definition would drastically expand the conditions under which the police could stop and search people for protest-related offences both on and without suspicion (if the latter is not removed from the Bill).** For example, if an inspector reasonably believes that an act of locking on may cause, or may be capable of causing, by way of physical obstruction individuals being hindered to a "more than minor" degree from carrying out their day to day activities – in other words, the offence of locking on could be committed – they could authorise the police to use stop and search people without suspicion within the area to prevent the commission of that offence.
9. **Such a low threshold for police intervention is likely to be incompatible with the rights to freedom of expression and assembly protected by articles 10 and 11 of the European Convention on Human Rights (ECHR) as incorporated by the Human Rights Act 1998.** The European Court of Human Rights has acknowledged that public authorities should show "a certain degree of tolerance" towards demonstrations that cause a certain level of disruption to ordinary life, including disruption of traffic, with the appropriate degree of tolerance dependent on the particular circumstances of the case and the extent of the disruption.³ While Articles 10 and 11 do not prevent the state from taking proportionate action against those who cause severe disruption, they provide a much higher threshold than the 'more than a minor degree' threshold set out in the new amendment.
10. **The 'more than minor' threshold risks being insufficiently legally certain, and thus disproportionate.** It is unclear what 'more than minor' hindrances would amount to across the Bill. For example, if a person in a wheelchair attached themselves to a traffic light and if that hindered two or more people from crossing the street for 10 minutes, would this be a 'more than minor' hindrance to those individuals' daily activities, requiring police intervention? Would this be different if it was a busy crossroad near Parliament or in a quiet suburb? **We are highly concerned by the Government's proposed definition of 'serious disruption' for this Bill.**⁴

² 30 January 2023, HL Deb vol.827, col. 437.

³ Kudrevicius and Others v Lithuania (Application no.37553/05). Also see: Director of Public Prosecutions (Respondent) v Ziegler and others (Appellants), [2021] UKSC 23

⁴ See Liberty's briefing on the Government amendments at Report Stage, January 2023: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2019/03/Libertys-briefing-on-Government-amendments-to-the-Public-Order-Bill-January-2023-.pdf>