

LIBERTY

LIBERTY'S BRIEFING ON THE POLICE, CRIME, SENTENCING AND COURTS BILL FOR REPORT STAGE IN THE HOUSE OF LORDS: PART 3 (PUBLIC ORDER)

JANUARY 2022

ABOUT LIBERTY

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at libertyhumanrights.org.uk/policy.

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EXECUTIVE SUMMARY

1. From 350 civil society organisations¹, ex-police chiefs², swathes of Parliamentarians (including a previous Prime Minister³), UN Special Rapporteurs⁴, the Council of Europe Human Rights Commissioner⁵ and several Government committees⁶, Part 3 of the Police, Crime, Sentencing and Courts Bill (“PCSC Bill”) has received widespread criticism for the sweeping new powers afforded to the police and the Home Secretary to restrict our protest rights. Whether it is through the power to clamp down on ‘noisy protests’, a mass expansion of stop and search or criminalising those who simply wish to link arms during a protest through a new, vague ‘locking-on’ offence, this Bill strikes at the heart of our right to protest and stands to stifle the very ways in which we make our voices heard by those in power.
2. Notwithstanding these concerns, the PCSC Bill has been rushed through both Houses with severely limited scrutiny. In Commons Report Stage, in spite of 133 pages of new clauses and amendments being tabled, the Bill was only allotted one day for debate, prompting Conservative MP Philip Davies to criticise the Government’s failure to provide sufficient time for Parliament to properly scrutinise the Bill as “an absolute abuse of this House.”⁷ We are seeing a repeat of this in the Lords, with the Government tabling amendments at the eleventh hour to further curtail our right to protest and participation in public life through new Serious Disruption Prevention Orders (SDPOs) and a slew of new public order offences.

This briefing focuses on Part 3 of the PCSC Bill concerning public order, set to enter Report Stage in the House of Lords on Monday 17th January. For the disproportionate negative impacts these clauses stand to have on minoritised communities already over-policed and discriminated against, for the substantial chilling effect they threaten to impose on the rights of freedom of expression and assembly, for the incredibly broad drafting that would hand untold powers to the Secretary of State to define terms and impose conditions almost at a whim, and for many more reasons outlined below, **Liberty urge Peers across the House of Lords to attend Part 3 Report Stage debates and vote in favour of ‘not stand**

¹ Helm, T. *Patel faces widening revolt over policing bill’s restrictions on protest*. The Guardian, 12 Sep 2021. Available at:

² Smith, M. *New police law could undermine trust and exacerbate violence, ex-chiefs warn*. The Mirror, 25 Oct 2021.

Available at: <https://www.mirror.co.uk/news/politics/new-police-law-could-undermine-25287863>

³ HC Deb 15 March 2021 vol 691

⁴ United Nations. *Letter to the UK Prime Minister from UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on the promotion and protection of the right to freedom and expression*. 25 May 2021. Available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26447>

⁵ Daly, P. *European human rights commissioner urges MPs and peers not to back protest curbs*. Evening Standard, 05 Jul 2021. Available at: <https://www.standard.co.uk/news/uk/mps-police-courts-crime-european-b944100.html>

⁶ Joint Committee on Human Rights. *Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)*. 16 Jun 2021. Available at: <https://committees.parliament.uk/publications/6367/documents/69842/default/>

⁷ “Surely the least this House should be able to expect is to have some proper free-flowing debate and some explanation from the Government of their position on each of the new clauses, which people have taken the time and trouble to table” (Philip Davies, Police, Crime, Sentencing and Courts Bill (Programme) (No. 2), Hansard, 5 July 2021, Vol.698, Col. 528)

part' amendments 122, 132, 133, 134, 135 and 140 *in the names of Lord Paddick, Lord Hain and Lord Hendy.*

We are also calling on Peers to take action in mitigating the harmful effects of this Bill by taking the following actions:

- Support amendment 115, 123, 124 and 125 to remove the ability of police to impose noise-based conditions on protest
- Vote against Government amendment 159 to prevent the introduction of Serious Disruption Prevention Orders (“SDPOs”)
- Vote against Government amendments 154-158 to prevent the introduction of protest-specific Stop and Search
- Vote against Government amendment 148 to prevent the creation of a new ‘locking-on’ offence
- Vote against Government amendment 149 to prevent the creation of a new offence of “being equipped to ‘lock-on””
- Vote against Government amendment 152 to prevent the creation of a new offence of interference with key national infrastructure
- Vote against Government amendment 150 to prevent the increase in sentence for wilful obstruction of the highway
- Vote against Government amendment 151 to prevent the creation of a new offence of obstruction of major transport works
- Support amendments on replacing the “ought to have known” knowledge requirement

OUR ASKS

SUPPORT AMENDMENTS 115, 123, 124 AND 125 TO REMOVE THE ABILITY OF POLICE TO IMPOSE NOISE-BASED CONDITIONS ON PROTEST

1. These amendments will remove the noise trigger within Clause 56 and 57. Clause 56 and 57 of the Bill amends s.12 of the Public Order Act (1986) (POA), allowing the police to impose conditions on a protest if they have a reasonable belief that the noise generated by persons taking part in the protest may “result in serious disruption to the activities of an organisation which are carried on in the vicinity of the procession” or may “have a significant and relevant impact on persons in the vicinity”.

Liberty’s view

2. Noise stands at the heart of protest. Making noise is how we, quite literally, make our voices heard by those in power. The noise generated by protest may simply be a product of the number of people who assemble – like the hundreds of thousands of people who came

together in the streets to attend the countryside march⁸, oppose the Iraq War⁹, or make their voices heard on Brexit¹⁰ – which is often a central ingredient of effective protest. As legal academic Professor David Mead commented, the proposed power to regulate protest based on noise presents an “existential threat to protest, so closely entangled are protests with noise”.¹¹

3. Clauses 56 and 57 constitute a significant expansion of police power, enabling police officers to make judgements on what constitutes noisiness. It merits noting that **the police already have sufficient power to impose conditions on protest**. Under s12(1) of the Public Order Act, a senior police officer can impose conditions on protest if they reasonably believe that:
 - (a) It may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or
 - (b) The purpose of the persons organising it is the intimidation of others with a view of compelling them not to do an act they have a right to do, or to do an act they have a right not to do.
4. The nebulous nature of these provisions offers a high degree of discretion to the police which could lead to the facilitating of some protests while clamping down on others. Further, although the police have an obligation to facilitate our right to protest, police decision-making often appears to prioritise the rights of those not involved in demonstration, as evidenced in the Joint Committee on Human Rights report on Part 3:

“...we heard evidence from protesters and their supporters that police decision-making often appears to prioritise the rights of those not involved in demonstrations and does not give due weight to the obligation on the police to facilitate protest. Yet the compatibility of conditions imposed by the police with Convention rights can often only be effectively challenged after the event, when the conditions have already had their impact”.¹²

Furthermore, such provisions lack support from the police. HMICFRS did not examine or support the establishment of a “noise trigger” when responding to Home Office and police proposals. Similarly, in their evidence to the Joint Committee on Human Rights, the National Police Chiefs’ Council (NPCC) lead for Public Order did not advocate for a new power based on the noise generated by protest.¹³

⁸ Tania Branigan ‘400,000 bring rural protest to London,’ *The Guardian* (23 Sep 2002)

<https://www.theguardian.com/uk/2002/sep/23/hunting.ruralaffairs2>

⁹ ‘Million’ march against Iraq War,’ *BBC News* (16 February 2003) <http://news.bbc.co.uk/1/hi/uk/2765041.stm>

¹⁰ Brexit March: Million joined Brexit protest, organisers say,’ *BBC News* (23 March 2019)

<https://www.bbc.co.uk/news/uk-politics-47678763>. See also: Mark Townsend ‘March organisers hail ‘one of the greatest protest marches in British history,’’ *The Guardian* (19 October 2019) <https://www.theguardian.com/uk-news/2019/oct/19/peoples-vote-march-hailed-as-one-of-greatest-protest-marches-in-british-history>

¹¹ David Mead ‘Yes, you can... but only if you’re quiet,’ *Verfassungsblog* (17 March 2021) <https://verfassungsblog.de/uk-silence-protest>

¹² Joint Committee on Human Rights, Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order), Second Report of Session 2021–22, 16 June 2021, at p. 11 available at

<https://committees.parliament.uk/publications/6367/documents/69842/default/>

¹³ Joint Committee on Human Rights Oral evidence: Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, HC 1324 Wednesday 28 April 2021

VOTE AGAINST GOVERNMENT AMENDMENT 159 TO PREVENT THE INTRODUCTION OF SERIOUS DISRUPTION PREVENTION ORDERS (“SDPOS”)

5. Serious Disruption Prevention Orders (SDPOs) are a new civil order that can be imposed on individuals who have participated in at least two protests within a five-year period, either on conviction or without conviction. People who are given an SDPO will be subject to a set of conditions, requirements, and prohibitions, which can limit their ability to associate with certain people, to be at certain places at certain times, to have certain articles in their possession, and even to use the internet in certain ways. Breach of an SDPO can result in 51 weeks’ imprisonment or a fine or both. The court has to be satisfied that the SDPO is necessary for a listed reason, including to prevent the person from committing any ‘protest-related offences’/‘protest-related’ breaches of an injunction; carrying out activities related to a protest that result in or are likely to result in serious disruption to two or more people or an organisation in England and Wales; causing or contributing to the commission by any other person of such an offence/breaches of an injunction or the carrying out of such activities; or protecting two or more people or an organisation from the risk of serious disruption arising from a protest-related offence, a protest-related breach of an injunction, or activities related to a protest.

Liberty’s view

6. SDPOs are an unprecedented and highly draconian measure that stands to extinguish named individuals’ fundamental right to protest and their ability to participate in a political community. As drafted, the Orders are likely to produce a significant ‘net-widening’ effect as the conditions for imposing an SDPO are extremely wide and vague – for example, in respect of SDPOs on conviction, the term “protest-related offences” has the potential to encompass an extremely wide range of offences; in respect of SDPOs without conviction, the scope of activities that someone needs to have carried out themselves, or even caused or contributed to the commission of by someone else, is sweeping.
7. SDPOs signal a move towards predictive and preventative policing that aims to criminalise and subject individuals to intrusive monitoring based on what they *may* do in the future. This is deeply concerning, especially given that many of the activities that might lead an individual to be given an SDPO on conviction would not be criminal activities were it not for the establishment of new offences (e.g.: locking on as seen in amendment 148) and their designation as ‘protest-related offences’. For SDPOs without conviction, such actions may not be criminal activities at all. For example, an SDPO without conviction could be imposed on someone who, in the last five years, has attended two protests in which they contributed to the carrying out by another person of activities related to a protest that were *likely to* result in serious disruption, in order to prevent them from contributing to the carrying out by another person of activities related to a protest that are likely to result in serious disruption at an unspecified point in the future. The terms used throughout the SDPO conditions are so broad so as to potentially catch any and all forms of activity related to a protest. Further, the connections between the actual activities that a person given an SDPO needs to have engaged in, the impact of these activities, and the preventative aims of the order are incredibly remote.
8. It merits emphasising that measures akin to SDPOs **are not supported by the police, HMICFRS, or the Home Office**. When consulted on an identical proposal to create protest

banning orders that would restrict named individuals' right to protest, HMICFRS and the Home Office stated:

“Such orders would neither be compatible with human rights legislation nor create an effective deterrent. All things considered, legislation creating protest banning orders would be legally very problematic because, 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” (emphasis added).¹⁴

In the same report, some senior police officers said protest banning orders would “unnecessarily curtail people's democratic right to protest”; that such orders would be “a massive civil liberty infringement”; and that “the proposal is a severe restriction on a person's rights to protest and in reality, is unworkable”.¹⁵

9. The introduction of SDPOs constitutes a significant expansion of state surveillance on those who protest, in respect of which the UK already has a shameful history. We know that the original proposal for ‘protest banning orders’, as considered by HMICFRS, was based on existing football banning orders (FBOs). There are significant parallels between the drafting of the new SDPOs and already-existing FBOs, including most importantly the fact that both orders rely on (and will therefore give rise to) far-reaching and intrusive surveillance on people's activities and behaviour, which informs the making of, and conditions attached to, these orders. Research into the use of FBOs in Scotland noted the use of extensive surveillance methods such as body-worn video, increased CCTV and plain-clothed police officers and that such methods were “disproportionate and unfairly selective”.¹⁶ The use of even more secretive tactics such as informants in the policing of football fans¹⁷ adds to our concerns that in the protest-context, SDPOs may create additional pretexts under which the police can interlope in protests.
10. Overarching these measures is the power of the Secretary of State to define the meaning of “serious disruption” guaranteed elsewhere in Part 3 of the Bill. It is not difficult to imagine SDPOs being used to target individuals who engage in kinds of activities related to protests that the Government of the day simply does not approve of. **We urge peers to vote against amendment (159) in the name of Baroness Williams.**

¹⁴ Pg. 16, HMICFRS, Getting the balance right? An inspection of how effectively the police deal with protests, March 2021, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-aninspection-of-how-effectively-the-police-deal-with-protests.pdf>

¹⁵ Pg. 137, HMICFRS, Getting the balance right? An inspection of how effectively the police deal with protests, March 2021, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-aninspection-of-how-effectively-the-police-deal-with-protests.pdf>

¹⁶ Hamilton-Smith, N, McBride, M and Atkinson, C. 2019. Lights, camera, provocation? Exploring experiences of surveillance in the policing of Scottish football, available at: https://dspace.stir.ac.uk/bitstream/1893/30568/1/20191003%20%20DOC%20%20Football%20surveillance%20revised%20-%2014th%20Octo%2019_.pdf

¹⁷ Atkinson, C, McBride, M and Moore, A. 2020. Pitched! Informants and the covert policing of football fans in Scotland, available at: <https://www.tandfonline.com/doi/full/10.1080/10439463.2020.1795168?needAccess=true>

VOTE AGAINST GOVERNMENT AMENDMENTS 154–158 TO PREVENT THE INTRODUCTION OF PROTEST-SPECIFIC STOP AND SEARCH

11. The following amendments constitute a drastic expansion of stop and search powers in relation to protest:

- a. **Powers to stop and search on suspicion (amendment 154):** This amendment amends s.1 of the Police and Criminal Evidence Act (PACE) 1984 to expand the types of offences that allow a police officer to stop and search a person or vehicle. The police officer must have reasonable grounds for suspecting they will find an article made, adapted or intended for use in the course of or in connection with the offences of wilful obstruction of a highway (section 137 Highways Act 1980), intentionally or recklessly causing public nuisance (clause 61), the offence of locking on and other activities (amendment 148), the offence of obstructing major transport works (amendment 151), and the offence of interference with use or operation of key national infrastructure (amendment 152). The police may seize any prohibited item found during a search.
- b. **Powers to stop and search without suspicion (amendments 155 and 156):** This amendment creates a new suspicion-less stop and search power, such that a police officer of or above the rank of inspector may make an authorisation applying to a particular place for a specified period, allowing police officers to stop and search someone or a vehicle without suspicion if they reasonably believe that one of the listed offences – wilful obstruction of a highway, intentionally or recklessly causing public nuisance (clause 61), the offence of locking on (amendment 148), the offence of obstructing major transport works (amendment 151), and the offence of interference with use or operation of key national infrastructure (amendment 152) may be committed in the area. Such authorisation may also be made if the officer reasonably believes that people in the area are carrying prohibited objects.¹⁸ There are additional requirements, whereby the officer must also reasonably believe that the authorisation is necessary to prevent the commission of the above offences or the carrying of prohibited objects; the specified locality is no greater than is necessary to prevent such activity; and the specified period is no longer than is necessary to prevent such activity. The authorisation can be in force for up to 24 hours (extendable by a further 24 hours if authorised by an officer of the rank of superintendent or above).¹⁹

If in the course of a search under this section a police officer discovers an object which they have reasonable grounds for suspecting to be a prohibited object, they may seize it. Any object seized by a police officer under this section may be retained in accordance with regulations made by the Secretary of State (amendment 157). The Secretary of State may make regulations regulating the retention and safe keeping, and the disposal or destruction in circumstances prescribed in the regulations, of such an object (amendment 157).

¹⁸ Prohibited object is defined as an object which is either made or adapted for the use *in the course of or in connection with* one of the listed offences, or is intended by the person who has it in their possession for such use by them or someone else (amendment 155).

¹⁹ (amendment 155)

- c. **Offences relating to suspicion-less stop and search (amendment 158):** This amendment creates a specific offence for intentional obstruction during the course of a suspicion-less, protest-specific stop and search. The maximum penalty for obstruction is 51 weeks' imprisonment, a fine not exceeding level 3 on the standard scale, or both.

Liberty's view

12. Each of these amendments are a mass expansion of police powers through the creation of protest-specific stop and search and related offences. While these stop and search powers are being introduced in a protest-specific context, we are concerned that they will replicate the same harms of existing stop and search. Indeed, as HMICFRS identified in its recent report into police use of stop and search, "some of the most intrusive and contentious police powers are those that allow the police to use force and to stop and search people."²⁰ In particular, we are highly concerned that the expansion of stop and search powers will further entrench racial disproportionality in the criminal justice system. In November 2021, the Home Office released its annual stop and search data which showed a sharp rise in the use of s.1 PACE stop and search powers, and according to the most recent statistics, Black people were seven times more likely to be stopped and searched than white people.²¹
13. Crucially, there is no consensus among the police that protest-specific stop and search is necessary or desirable. When HMICFRS consulted police on the Home Office's proposal for a new stop and search power, one police officer stated that "**a little inconvenience is more acceptable than a police state**"²² to which HMICFRS went on to state that it "agree[d] with this sentiment."²³
14. The impact of discriminatory stop and search on affected communities cannot be underestimated. Hackney Account – a youth-led social action project – conducted participatory research with young people in Hackney and found that the practice of stop and search can have a "damaging impact on mental wellbeing, causing feelings of embarrassment, humiliation or anger".²⁴ Building on this, research by Dr Patrick Williams with young people on the Metropolitan Police Service (MPS)'s 'Gangs Matrix' found that respondents identified stop and search as "the catalyst for the onset of their negative relationship with the police."²⁵ This is further exacerbated by the fact that the police are empowered to use reasonable force to

²⁰ HMICFRS, Disproportionate use of police powers: A spotlight on stop and search and the use of force, February 2021, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-policepowers-spotlight-on-stop-search-and-use-of-force.pdf>

²¹ Home Office, Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021, 18 November 2021 available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-stopand-search-and-arrests-england-and-wales-year-ending-31-march-2021>

²² HMICFRS, Getting the balance right? An inspection of how effectively the police deal with protests, March 2021, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-an-inspection-of-howeffectively-the-police-deal-with-protests.pdf>

²³ As above.

²⁴ Hackney Account, Policing in Hackney: Challenges from youth in 2020, 2020, available at: <https://static1.squarespace.com/static/5d234a046f941b0001dd1741/t/5f77795b9e2fdb6bf67d3c7d/11665467995/Final+Draft+-+Report+-+Account+%28Online%29.pdf>

²⁵ Williams, P. and StopWatch, Being Matrixed: The (Over)Policing of Gang Suspects In London, August 2018, at p. 6. Available here: http://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf

carry out a stop and search if necessary, including using taser, firearms, batons and handcuffs.²⁶

15. Suspicion-less stop and search powers, in particular, are an even greater contributor to racial disproportionality in the criminal justice system than regular stop and search powers. In the year ending March 2021, Black people were 9 times more likely to be stopped and searched under regular powers; when the reasonable grounds requirement was removed, they were 18x more likely to be stopped and searched.²⁷ Multiple policing bodies (including HMICFRS²⁸ and the College of Policing²⁹) and former police chiefs and frontline officers,³⁰ former Prime Minister and Home Secretary Theresa May,³¹ parliamentarians,³² and countless community groups³³ have highlighted issues with s.60 suspicion-less stop and search, including its ineffectiveness, contribution to racial disproportionality and erosion of trust in the criminal justice system.
16. We are highly concerned that the Government is rolling out new suspicion-less stop and search powers in a protest context, while evading scrutiny over existing powers. In July 2021, despite failing to publish any impact assessment of their pilot which removed the best use of stop and search safeguards (BUSSS) for s.60 suspicion-less stop and search – introduced by Theresa May as a result of widespread concern over the misuse of this power – the Government announced its ‘Beating crime plan’, which will permanently relax the BUSSS safeguards. Liberty and Stopwatch have since successfully forced the Government to U-turn on its decision to permanently relax the BUSSS safeguards due to an inadequate Equality Impact Assessment.³⁴ As of the date of publication of this briefing, in spite of a FOI request by the Criminal Justice Alliance and an intervention on the part of the Information Commissioner’s Office, the Government has refused to publish evidence as to why the

²⁶ 2 Ali A. and Champion, N. for the Criminal Justice Alliance, More harm than good - A super-complaint on the harms caused by ‘suspicion-less’ stop and searches and inadequate scrutiny of stop and search powers, May 2021, available at: https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stopand-search_FINAL.pdf

²⁷ No respect: Young BAME men, the police and stop and search, Peter Keeling, 2017

<http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617.pdf> as at 17 September 2021

²⁸ HMICFRS, Disproportionate use of police powers - A spotlight on stop and search and the use of force, 26 February 2021, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/disproportionate-use-of-police-powers-a-spotlight-on-stop-and-search-and-the-use-of-force/>

²⁹ College of Policing, Stop and search: Transparent, available at: <https://www.app.college.police.uk/app-content/stopand-search/transparent/>

³⁰ ITV News, Policing bill ‘disproportionately impacts black men’ and ‘exacerbates violence’, ex-chiefs warn, 25 October 2021, available at: <https://www.itv.com/news/2021-10-25/policing-bill-could-undermine-trust-and-exacerbate-violence-exchiefs-warn>

³¹ Home Office and The Rt Hon Theresa May MP, Oral Statement to Parliament: Stop and Search: comprehensive package of reform for police stop and search powers, 30 April 2014, available at: <https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-andsearch-powers>

³² Liberal Democrats, Ending suspicion-less Stop and Search: your questions answered, 17 July 2020, available at: <https://www.libdems.org.uk/stopandsearch-qna>; Lammy, D., Stop and search is inherently unfair, unjust and ineffectual, The Guardian, 13 October 2018, available at: <https://www.theguardian.com/law/2018/oct/13/stop-and-search-is-unjustunfair-ineffectual-david-lammy>

³³ 2 See for example: Eugene K., A sus law by any other name stinks as much, Stopwatch, 19 March 2021, available at: <https://www.stop-watch.org/news-opinion/a-sus-law-by-any-other-name-stinks-as-much/>; Hackney Account, Policing in Hackney: Challenges from youth in 2020, 2020, available at: <https://static1.squarespace.com/static/5d234a046f941b0001dd1741/t/5f77795b9e2fdb6bf67d3c7d/1601665467995/Final+Draft+-+Report+-+Account+%28Online%29.pdf>

³⁴ <https://www.libertyhumanrights.org.uk/issue/home-secretary-u-turns-on-stop-and-search-decision-after-legal-action-from-liberty-and-stopwatch/>

permanent relaxation of safeguards is necessary and what effects this withdrawal of restrictions has had on racial disproportionality.³⁵

17. On the creation of offences related to suspicion-less stop and search, we are concerned that this might be used to target legal observers (LOs). For example, we can envision 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 contained in amendment 155 – in this case, in order to scrutinise the police’s response to people engaging in certain kinds of protest tactics, or indeed to provide people with knowledge of their rights in relation to these offences (including the defence of ‘reasonable excuse’). This will have a disempowering effect on protests and on our ability to hold the police and the State to account over unlawful violations of our rights. This concern is heightened by the fact that Liberty has represented LOs who were wrongly arrested at a protest just this year.³⁶
18. Taken together, we are worried that the addition of more stop and search powers and related offences to the police’s arsenal of tools may result in further abuses of power. The breadth of the powers in amendments 154, 155 and 156 mean that the police will be given more grounds to stop and search people, and those doing vital work on the side-lines to ensure protestors know their rights will potentially be criminalised. We are concerned that this will ultimately drag more people – especially already overpoliced communities – into the criminal justice system.

VOTE AGAINST GOVERNMENT AMENDMENT 148 TO PREVENT THE CREATION OF A NEW OFFENCE OF “LOCKING ON”

19. Amendment 148 establishes a new criminal offence targeting people who engage in one of the following activities: attach themselves to another person, an object, or land; attach a person to another person, an object, or land; or attach an object to another object or to land; if such activities cause, or are capable of causing, “serious disruption” to two or more people or to an organisation in a public place. For the offence to apply, the person must intend the act to have this consequence or be reckless as to whether it will have this consequence. There is a defence of ‘reasonable excuse’. Breach of this offence is maximum 51 weeks’ imprisonment, a fine, or both.

Liberty’s view

³⁵ Criminal Justice Alliance, Government fails to produce evidence behind expansion of stop and search, 1 November 2021, available at: <https://www.criminaljusticealliance.org/blog/government-fails-to-produce-evidence-behind-expansion-of-stop-and-search/> and

Dearden, L. *Home Office refuses to reveal impact of expanded powers to stop and search people without suspicion*. The Independent, 6 Jan 2022, available at: <https://www.independent.co.uk/news/uk/home-news/police-stop-and-search-section-60-suspicion-b1978317.html>

³⁶ For example, during protests against the very Bill that these amendments would effect, legal observers have been arrested alongside protestors - many of which have been from marginalised communities, including legal observers of colour, and LGBT+ legal observers. In March, Liberty lawyers sent a pre-action protocol letter to the Met, arguing that their arrests at a recent protest were unlawful and a dangerous attack on the right to protest. The Metropolitan Police proceeded to drop these charges. See here: <https://www.libertyhumanrights.org.uk/issue/liberty-files-legal-action-over-protest-arrests/>

20. Case law confirms that we have a right to choose how we protest,³⁷ and the diversity of protest tactics throughout history demonstrates the deeply interconnected nature of free expression, creativity, and dissent.³⁸ The creation of this offence strikes at the heart of those principles as well as criminalising an innumerable list of activities that extend far beyond what would be typically understood as ‘lock-on protests’³⁹ to any activities involving people ‘attaching’ themselves to other people, an object, or land; or ‘attaching’ objects to other objects and land. The broad and vague nature of the word ‘attach’ – which is not defined in the Bill – means that this offence could potentially catch people engaged in activities such as linking arms with one another⁴⁰ and trees,⁴¹ or locking their wheelchairs to traffic lights.⁴² As it is also unclear what the offence means when referring to ‘attaching an object to another object or land’, we are concerned that this measure will clamp down on the use of props in protest, further stifling people’s right to choose the manner and form of their expressions of dissent.⁴³
21. In criminalising activities that would not be illegal activities but for the creation of this offence, we are highly concerned about the likely chilling effect on the right to protest and how this would prevent people from exercising their rights. In our view, the defence of ‘reasonable excuse’ provides an inadequate safeguard for the exercise of Convention rights, given that it is unclear in what circumstances doing each one of these activities would constitute a ‘reasonable excuse’.
22. Further, **this measure is not supported by the police.** When consulted on an identical proposal by HMICFRS, police respondents said: “most interviewees [junior police officers] did not wish to criminalise protest actions through the creation of a specific offence concerning locking-on.”⁴⁴

³⁷ “Organisers’ autonomy in determining the assembly’s location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other ways, are important aspects of freedom of assembly. Thus, the purpose of an assembly is often linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact.” See *Lashmankin v Russia* (Application No.57818/09).

³⁸ Gabbatt, A., Hundreds attend kiss-in outside John Snow pub after venue closes its doors, *The Guardian*, 15 April 2011, available at: <https://www.theguardian.com/uk/2011/apr/15/john-snow-kiss-in-london>

³⁹ A ‘lock-on’ is understood as the act of people locking themselves to one another via a ‘lock-on’ device. See here: Sisters Uncut, “We are the suffragettes!”: Sisters Uncut chain themselves to Parliament at government art launch, 8 June 2016, available at: <https://www.sistersuncut.org/2016/06/08/we-are-the-suffragettes-sisters-uncut-chain-themselves-toparliament-at-government-art-launch/>

⁴⁰ Stead, J., The Greenham Common peace camp and legacy, *The Guardian*, 5 September 2006, available at: <https://www.theguardian.com/uk/2006/sep/05/greenham5>

⁴¹ Topham, G., Priest to chain herself to tree at Euston in protest against HS2 felling plans, *The Guardian*, 11 January 2018, available at: <https://www.theguardian.com/environment/2018/jan/11/priest-chain-tree-protest-euston-hs2-felling-planslondon>

⁴² Susan Archibald is a disability rights campaigner who shut down Trafalgar Square with fellow activists in 2012 when they chained their wheelchairs to traffic lights in a protest against the UK welfare assessment regime, then administered by Atos. See: Paterson, K., WATCH: Scots wheelchair stunt activist hits out at Policing Bill, *The National*, 24 November 2021, available at: <https://www.thenational.scot/news/19739616.watch-scots-wheelchair-stunt-activist-hits-policing-bill/> and Liberty’s series of videos showcasing the power of protest in which Susan is featured: <https://www.libertyhumanrights.org.uk/fundamental/we-protest/>

⁴³ Neary, H., Extinction Rebellion’s huge pink table torn down after Covent Garden protest, *MyLondon*, 24 August 2021, available at: <https://www.mylondon.news/news/west-london-news/extinction-rebellions-huge-pink-table-21390596>

⁴⁴ Pg 125, HMICFRS, Getting the balance right? An inspection of how effectively the police deal with protests, March 2021, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-aninspection-of-how-effectively-the-police-deal-with-protests.pdf>

VOTE AGAINST GOVERNMENT AMENDMENT 149 TO PREVENT THE CREATION OF A NEW OFFENCE OF “BEING EQUIPPED TO LOCK ON”

23. Amendment 149 creates a new criminal offence, seeking to capture those who have an object with them in a public place with the intention that it will be used ‘in the course of or in connection with’ the commission, by any person, of the offence established by amendment 148. The punishment for this offence is an unspecified – and therefore potentially unlimited – fine.

Liberty’s view

24. Our concerns about the vague and potentially unlimited list of activities covered by amendment 148 are compounded by this amendment. In particular, we note that the ‘object’ as drafted in this amendment **does not have to be related to a protest at all** – it merely needs to be established that a person intended for the object to be used in a certain way. Nor does the object have to be used by the person who has it in their possession; the offence refers to the commission by ‘any person’ of the offence. The phrase, ‘in the course of or in connection with’, casts an extremely wide net, potentially encompassing any activities that relate to one of the activities in Amendment 148.
25. Taken together, this means that someone could be convicted and given a fine simply for having an object in their possession with the intention that they themselves – or anyone else – would use it in the course of or in connection with someone attaching themselves or someone else to another person, an object, or land; or someone attaching an object to an object, or land. As we have noted, the activities in 148 would not be an offence but for the provision; this amendment will therefore exacerbate the criminalisation of certain protest tactics, dragging more people into the criminal justice system in the process.

REJECT GOVERNMENT AMENDMENT 152 TO PREVENT THE CREATION OF A NEW OFFENCE OF INTERFERENCE WITH KEY NATIONAL INFRASTRUCTURE

26. Amendment 152 creates a new criminal offence, whereby a person will commit an offence if they “do an act which interferes with the use or operation of any key national infrastructure in England and Wales” and “they intend that act to interfere with the use or operation of such infrastructure or are reckless as to whether it will do so”. There are two available defence options under this provision: a reasonable excuse defence or if the act was done “wholly or mainly in contemplation or furtherance of a trade dispute”. The punishment for this offence is maximum 12 months imprisonment, a fine, or both.

27. This Amendment defines “key national infrastructure” as including:
- a. Road transport infrastructure;
 - b. Rail infrastructure;
 - c. Air transport infrastructure;
 - d. Harbour infrastructure;
 - e. Downstream oil infrastructure; and
 - f. Newspaper printing infrastructure.

Liberty’s view

28. As noted above, our right to choose *how* we protest is confirmed in case law.⁴⁵ This new offence strikes at the heart of this right in its specific targeting of direct action tactics that, from the Grunwick Dispute⁴⁶ to the Stansted 15,⁴⁷ have been and continue to be used to protect and uphold our rights. Such tactics often have multiple simultaneous goals: they can be an act of protest, and they can also seek to make a direct impact at a site of power. When people are protesting the practices of those in power, it is critical they are facilitated to meaningfully make their voices heard.
29. We are highly concerned that this Amendment enables the Secretary of State to amend, and add to, the list of defined “key national infrastructure”, offering unprecedented power to the Home Secretary of the day to clamp down on particular protest sites. As with the power afforded to the Home Secretary to amend the definition of “serious disruption”, it is not difficult to imagine this power being used to extinguish protests that they simply do not approve of.

VOTE AGAINST GOVERNMENT AMENDMENT 150 TO PREVENT THE INCREASE IN SENTENCE FOR WILFUL OBSTRUCTION OF THE HIGHWAY

30. Amendment 150 increases the sentence for the existing offence of wilful obstruction of a highway, provided for in s.137 of the Highways Act 1980. The current penalty is a fine, whereas this amendment raises this to maximum 51 weeks’ imprisonment, or a fine (maximum level 3 on the standard scale), or both.

Liberty’s view

31. We echo concerns voiced by civil society organisations and parliamentarians about the impact of heavy sentences for protest. As noted by Lord Dubs in the PCSC Bill’s committee stage in the House of Lords: “An overly severe penalty may have a chilling effect on those considering exercising their right to protest.”⁴⁸ Indeed, we have previously warned of the chilling effect that clause 57 of the PCSC Bill will have, in its lowering of the knowledge threshold and raising of the penalty for the offence of breaching a police-imposed condition on protest under sections 12 and 14 of the Public Order Act (POA) 1986) from three months to 51 weeks’ imprisonment and the increase of the maximum fine that may be imposed on organisers and attendees of a protest from level 3 to level 4 on the standard scale.
32. We note that provisions that increase maximum sentences are not rooted in evidence. As recently reported by the Prison Reform Trust, recent changes to sentencing have not been driven by an increase in the incidence of serious crime.⁴⁹ In the protest context, the increase in sentences may well deter some people from engaging in these activities; but for those who deliberately choose to break the law as a tactic of protest, this is not likely to have a significant effect. What this provision does is to create a chilling effect on people’s exercise of their right to protest and their right to choose the manner and form of their protest.

⁴⁵ See *Lashmankin v Russia* (Application No.57818/09).

⁴⁶ Anitha, S and Pearson, R. *Remembering the Grunwick Dispute*. British Library. Available at: <https://www.bl.uk/womens-rights/articles/remembering-the-grunwick-dispute>

⁴⁷ BBC. ‘Stansted 15’ face no further action over airport protest. Available at: <https://www.bbc.co.uk/news/uk-england-essex-56200496>

⁴⁸ Lord Dubs, Police, Crime, Sentencing and Courts Bill, Committee Stage (Lords), Hansard, 24 November 2021, Vol. 816, Col. 924

⁴⁹ Prison Reform Trust (October 2021) Long-term prisoners: the facts

VOTE AGAINST GOVERNMENT AMENDMENT 151 TO PREVENT THE CREATION OF A NEW OFFENCE OF OBSTRUCTION OF MAJOR TRANSPORT WORKS

33. Amendment 151 creates a new criminal offence, whereby a person will commit an offence if they obstruct an undertaker (e.g. a construction worker) in setting out the lines of any major transport works, constructing or maintaining any major transport works, or in taking ‘any steps that are reasonably necessary for facilitating, or in connection with, the construction or maintenance of any major transport works’. It will also be an offence to interfere with, move, or remove any apparatus which relates to the construction or maintenance of any major transport works, and which belongs to the undertaker. There is a defence of ‘reasonable excuse’. The maximum penalty for this offence is 51 weeks’ imprisonment, or a fine, or both.
34. The list of works to which this offence would apply includes construction works in England and Wales relating to transport infrastructure authorised by an Act of Parliament; and construction works which are or form part of projects under paragraphs (h) to (l) of s.14(1) Planning Act including highway-related developments,⁵⁰ airport-related developments,⁵¹ the construction or alteration of harbour facilities, the construction or alteration of a railway, and the construction or alteration of a rail freight interchange.

Liberty’s view

35. We are highly concerned that the number of acts potentially criminalised by this offence are extremely broad – they include the obstruction of not only actual construction work, but ‘any steps that are reasonably necessary for facilitating the construction or maintenance of major transport works.’ In relation to the offence on interference with apparatuses relating to major transport works, we note that the term ‘apparatus’ is left largely undefined and the terms ‘interfere, move, or remove’ could catch a wide range of actions. We reiterate our concerns about the heavy maximum sentence of 51 weeks’ imprisonment, a fine, or both, that accompanies this offence.

SUPPORT AMENDMENTS ON REPLACING THE “OUGHT TO HAVE KNOWN” KNOWLEDGE REQUIREMENT

36. Clause 58 reduces the knowledge requirement for an offence to be committed under sections 12 and 14 of the POA, so it is no longer necessary to prove that a person actually knew of the conditions, just that they “ought to have known” a condition was in force.
37. This amendment replaces the “ought to have known” knowledge requirement with “deliberately or recklessly”, preventing a person who unknowingly breaches police imposed restrictions from being criminalised under sections 12 and 14 of the POA.

⁵⁰ Taylor, D., HS2 protesters Swampy and Satchel leave Wendover tunnel after 35 days, The Guardian, 13 November 2021, available at: <https://www.theguardian.com/uk-news/2021/nov/13/hs2-protesters-swampy-and-satchel-leave-wendover-tunnel-after-35-days>

⁵¹ Mortimer, C., Plane Stupid climate change activists block Heathrow runway in protest at airport expansion, The Independent, 14 July 2015, available at: <https://www.independent.co.uk/news/uk/home-news/heathrow-protest-liveplane-stupid-climate-change-activists-block-runway-protest-airport-expansion-10384280.html>

Please note that, at the time of writing, this amendment is not yet tabled. In the first instance, we urge Peers to support stand part amendment 133. Should further amendments on this section be placed before the vote, we call on Peers to support amendments, as recommended by the Joint Committee on Human Rights (JCHR) that will reduce the pernicious impact the current wording will have.

Liberty's view

38. Sections 12 and 14 of the POA already criminalise behaviour that would not in itself be a criminal offence but for the imposition of conditions by the police. Clause 58 takes this a step further and risks criminalising people who unwittingly breach conditions the police impose. In doing so, this provision places an additional undue burden on the organisers of protests to inform protestors of conditions and on protestors themselves to gather information on any conditions that might be imposed. It may disproportionately criminalise small, under-resourced and spontaneous protest groups. Furthermore, people who are digitally excluded – which disproportionately includes disabled, older and poor people – may not have access to information that, for example, the police communicate on digital platforms. Many people may avoid organising or attending protests for fear of arrest for breaching a condition they were not aware of, while others may attend a protest but feel compelled to follow what they are told is a necessary condition but turns out is not in force or legally invalid.
39. Once a person knows or ought to have known a condition is in place, it is essentially a strict liability offence. The Joint Committee on Human Rights' report provides two pertinent examples of the risks, and unintended consequences, this poses:
- A person who attended a demonstration limited to 100 people would commit the offence if they knew or ought to know of this limit, even if they had no idea that they were the 101st person to join the assembly or procession. This is a particular concern if the condition in question relates to noise levels—how is a person who knows that a condition restricting noise levels is in place meant to know whether they personally have breached that condition?⁵²
40. Clause 57 is rendered more worrying by provisions which significantly increase the maximum sentence for breaching a police-imposed condition. The Bill increases the maximum sentence from three months to 51 weeks imprisonment. It also increases the maximum fines that may be imposed on both an organiser and attendee of a protest from level 3 to level 4 on the standard scale. These changes would substantially extend the criminal sanctions that could be imposed on people for the exercise of a fundamental right when they engage in behaviour – such as simply being in a particular place at a particular time – that is not in itself a criminal offence, save for the imposition of conditions by the police.

⁵² Joint Committee on Human Rights, *Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)*, Second Report of Session 2021–22, 16 June 2021, at pp. 23-24 available at <https://committees.parliament.uk/publications/6367/documents/69842/default/>

CONCLUSION

41. As stated above, the measures contained in Part 3 of the PCSC Bill will criminalise our ability to stand up to power, whether through the creation of protest banning orders (SDPOs), increasing sentences for existing offences or the unprecedented expansion of stop and search through the creation of a new protest-specific power. As the Government usher through endless pieces of legislation that enable them to avoid scrutiny and accountability, it has never been more important that we are able to stand up to power and make our voices heard - Monday 17th January presents a final opportunity for Peers to vote against Government attempts to extinguish our ability to do this.