

LIBERTY

BRIEFING ON THE PUBLIC ORDER BILL FOR REPORT STAGE IN THE HOUSE OF LORDS

JANUARY 2023

Protest is not a gift from the state, it is our fundamental right. The Public Order Bill is the Government's latest clampdown on protest through the dramatic expansion of police powers, ramping up of surveillance measures and the introduction of new protest-related offences that criminalise protest tactics. We are particularly concerned about measures that:

- **Introduce Serious Disruption Prevention Orders (SDPOs) aka 'protest banning orders'** that can be issued to protesters both on and without conviction and remove their fundamental right to protest. Those subject to an SDPO can be subject to a wide range of onerous requirements including reporting to certain places at certain times and the use of electronic monitoring.
- **Expand suspicion-based and suspicionless stop and search powers** which will further entrench racism in the criminal justice system, given the disproportionate use of existing powers on communities of colour – particularly the Black community.
- **Criminalise locking on** which will see people who attach themselves, someone else or another object to another person, an object, or land facing 51 weeks in prison, a fine or both. These offences cover a broad range of activities including linking arms with another person.

OUR ASKS

Report Stage in the House of Lords presents a vital opportunity for Peers to voice their opposition to the Public Order Bill and crucially, defend our right to protest by mitigating the Bill's harshest effects. **We are calling on Peers across all parties to vote in favour of the following amendments:**

- Amendment to remove Clauses 19 and Clause 20 (Serious Disruption Prevention Orders) *in the names of Lord Ponsonby of Shulbrede, Lord Paddick, Lord Anderson of Ipswich and Baroness Chakrabarti*
- Amendment to remove Clause 10 (suspicion-based stop and search) *in the names of Lord Paddick and Baroness Chakrabarti*
- Amendment to remove Clause 11 (suspicionless stop and search) *in the names of Lord Coaker, Lord Paddick and Baroness Chakrabarti*
- Amendments to remove Clauses 1 and 2 (offences relating to locking on) *in the names of Baroness Chakrabarti and Baroness Jones of Moulsecoomb*

FURTHER INFORMATION

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AMENDMENTS TO REMOVE SERIOUS DISRUPTION PREVENTION ORDERS

1. Part 2 of the Public Order Bill introduces Serious Disruption Prevention Orders (SDPOs) – a new civil order that can be imposed on individuals who have carried out (or contributed to another person carrying out) activities relating to at least two protests within a five-year period, whether or not they have been convicted of a crime. The Orders can last anywhere from one week to two years, with the potential to be renewed indefinitely.
 2. **SDPOs are an unprecedented, far-reaching and highly draconian measure.** Imposition of an Order can extinguish named individuals’ right to protest and subject them and their wider communities to intrusive surveillance. Those subject to SDPOs can be subject to a broad range of arduous requirements, including reporting to certain places at certain times and electronic monitoring. A person subject to a SDPO will commit a criminal offence if they fail without reasonable excuse to fulfil one of the requirements of the SDPO, violate one of the SDPO’s prohibitions, or notify to the police any information which they know to be false. The consequence of committing this offence is maximum 51 weeks’ imprisonment,¹ a fine, or both.
 3. **SDPOs can apply to a vast range of people.** For SDPOs made on conviction, the definition of ‘protest-related offences’ as “an offence which is directly related to a protest” is expansive and legally uncertain.² SDPOs made otherwise than on conviction go a step further: they can be imposed on a person who has not committed a criminal offence at all, but has merely *contributed to* the carrying out by *another person* of activities related to a protest that *were likely to* result in serious disruption. It is difficult to imagine a situation where someone’s actions would *not* somehow fall within the conditions under which someone could be given an SDPO - for example, it could cover anything from purchasing a bike lock, paint and superglue, to holding a banner, to observing a demonstration from afar.
 4. **SDPOs have weak procedural safeguards and lack robust scrutiny.** In a recent report, the Delegated Powers and Regulatory Reform Committee identified concerns over the Secretary of State’s power to issue guidance to the police on “identifying persons” to be given an SDPO with limited consultation and Parliamentary scrutiny, calling it “an extreme example of a power to issue guidance on the exercise of statutory functions”³ and risk impinging on the operational independence of the police.⁴
- **We urge Peers to vote in favour of amendments to remove SDPOs from the Public Order Bill at Report Stage.**

¹ 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.

² Analogously, Football Banning Orders (on which the ‘protest banning orders’ considered and criticised by HMICFRS in its March 2021 report are based) (FBOs) can be imposed on the basis of an extremely wide list of offences, including driving etc. when under the influence of drink or drugs or with an alcohol concentration above the prescribed limit. See Annex B of the CPS’s guidance on FBOs:

<https://www.cps.gov.uk/legal-guidance/football-related-offences-and-football-banning-orders>

³ Delegated Powers and Regulatory Reform Committee, *Public Order Bill*, 3 November 2022:

<https://committees.parliament.uk/publications/31504/documents/176700/default/>

⁴ Lord Rooker, HL Deb 13 Dec 202, vol. 826, col.620.

AMENDMENTS TO REMOVE PROTEST-SPECIFIC STOP AND SEARCH POWERS

5. Clauses 10 to 14 of the Public Order Bill expand powers of stop and search to cover protest-specific offences. Expanding suspicion-based stop and search powers, Clause 10 amends Section 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, encompassing protest-related offences contained within the PCSC Act⁵ and as proposed elsewhere in this Bill.⁶ Clause 11 of the Bill creates a new suspicion-less stop and search power, allowing a police officer of or above the rank of inspector to make an authorisation applying to a particular place for a specified period, which would allow police officers to stop and search someone or a vehicle without suspicion. They will be able to do this if they reasonably believe a protest-related offence may be committed in the area. Such authorisation can also occur if the officer reasonably believes people in the area are carrying ‘prohibited objects’.⁷ Clause 14 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.
6. **These measures mark a gross expansion of police powers.** There is potentially an endless list of objects that could be ‘made, adapted, or intended for use in the course of or in connection with’ the listed offences, so broad are the terms in this definition; indeed, it could include such commonplace items as bike-locks, posters, placards, fliers, and banners. **We believe that the creation of protest-specific stop and search powers risks disproportionately interfering with individuals’ rights to a private and family life as well as freedom of expression and assembly, and have knock-on effects for their willingness and ability to exercise their fundamental rights.**
7. **These measures will further entrench racism in the criminal justice system.** On both suspicion-based and suspicionless stop and search, evidence persistently shows that powers are used disproportionately against communities of colour, particularly the Black community. Expansion of such powers will entrench racial disproportionality in the criminal justice system and further erode trust in public institutions, contrary to the prohibition against discrimination in Article 14 of the ECHR as protected under the HRA. 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, and according to the most recent statistics, Black people were 7 times more likely to be stopped and searched than white people.⁸ When the reasonable grounds requirement was removed, they were 14 times more likely to be stopped and searched.⁹

⁵ The offences of wilful obstruction of a highway (section 137 Highways Act 1980), intentionally or recklessly causing public nuisance (section 78 of the PCSC Act),

⁶ Locking-on (clause 1), obstructing major transport works (clause 6), interfering with the use or operation of key national infrastructure (clause 7), causing serious disruption by tunnelling (clause 3), or causing serious disruption by being present in a tunnel (clause 4).

⁷ ‘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.

⁸ 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-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2021>

⁹ Home Office, *Public Order Bill: Equality Impact Assessment, 2022*, <https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-equality-impact-assessment>

8. **The traumatic impact of stop and search is long-lasting.** Experiencing stop and search can be mentally and physically traumatising.¹⁰ 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”.¹¹ This is further exacerbated by the fact that the police are empowered to use reasonable force to carry out a stop and search if necessary, including using taser, firearms, batons, and handcuffs.¹² The impact of discriminatory stop and search on affected communities is deep and enduring. 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.”¹³ The Home Office itself acknowledges that the expansion of stop and search “would risk having a negative effect on a part of the community where trust and confidence levels are relatively low.”¹⁴
9. **We urge Peers to vote in favour of amendments to remove stop and search measures from the Public Order Bill at Report Stage.**

AMENDMENT TO REMOVE THE CRIMINAL OFFENCE OF LOCKING-ON

10. Clause 1 establishes a new criminal offence of ‘locking on’, targeting people who 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. Punishment for breach is 51 weeks’ imprisonment,¹⁵ a fine, or both. Consequentially, Clause 2 establishes a criminal offence of ‘being equipped for locking on’, targeting people who is carrying an object with the intention of using such object “in the course of or in connection with” themselves or any other person committing the offence of locking on as defined in Clause 1.
11. **This offence restricts our right to choose how we protest.** Our right to choose how we protest is confirmed in case law¹⁶ and the tactic of locking on is one of many protest

¹⁰ 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-stop-and-search_FINAL.pdf

¹¹ 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>

¹² 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-stop-and-search_FINAL.pdf

¹³ 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

¹⁴ Home Office, *Public Order Bill: Equality Impact Assessment*, 2022, <https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-equality-impact-assessment>

¹⁵ 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.

¹⁶ “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*

tactics that have been used throughout history to stand up to power and make our voices heard. For example, suffragettes from the Women's Freedom League chained themselves to the grille in the Ladies' Gallery in order to protest their exclusion from Parliament.¹⁷ This offence not only defies our right to choose how we protest, but criminalises an endless list of activities, stretching beyond what would typically be understood as 'lock-on protests' (where people lock themselves to one another via a 'lock-on' device or chain themselves to Parliament¹⁸) to any activity involving people 'attaching' themselves to other people, an object, or land; or 'attaching' objects to other objects and land.¹⁹

12. **This offence widens the criminal dragnet.** Almost every term in the new offence is left undefined, including the word 'attach' – meaning that this offence could potentially catch people engaged in activities such as linking arms with one another²⁰ and trees,²¹ or locking their wheelchairs to traffic lights.²² The 'object' in the offence of locking on does not have to be related to a protest, nor does the object have to be used by the person who has it in their possession. What this means is that essentially any person walking around with a bike lock, packet of glue, roll of tape or twine, or any number of other everyday objects could be at risk of having been found to have committed this offence, so wide is the net cast by it. During debates on this amendment during the passage of the PCSC Act, Lord Paddick raised the following example: "You could buy a tube of superglue to repair a broken chair at home, then get caught up in a protest and be accused of going equipped for locking on."²³

13. **We urge Peers to vote in favour of amendments to remove locking on offences from the Public Order Bill at Report Stage.**

CONCLUSION

14. Shortly before the Public Order Bill's Report Stage, the Government added amendments to define serious disruption in relation to specified new offences, limit the defence of reasonable excuse, and create new triggers for the police to impose conditions on protest. Together, they constitute a drastic, further expansion of police power, allowing the police to intervene in and impose conditions on protests that have a 'more than minimal', rather than 'serious' impact. Far from clarifying matters, these amendments exacerbate legal uncertainty and threaten to further restrict the right to protest. The addition of these controversial amendments at such a late stage in the

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).

¹⁷ The Grille Incident, UK Parliament. <https://www.parliament.uk/about/living-heritage/transformingsociety/electionsvoting/womenvote/parliamentary-collections/ladies-gallery-grille/grille-incident/>

¹⁸ 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-to-parliament-at-government-art-launch/>

¹⁹ HL Deb 17 Jan 2022, vol.817, col. 1433.

²⁰ 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>

²¹ 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-plans-london>

²² 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/>

²³ HL Deb 24 Nov 2021, vol.816, col. 980

passage of the Bill raises further concerns as to whether their impact can be robustly scrutinised.

15. Our right to protest is under enormous threat and we must not underestimate the grave implications of the Public Order Bill on our ability to challenge injustice should it pass unamended.