

LIBERTY

**LIBERTY'S WRITTEN SUBMISSION TO THE
THEMATIC REPORT BY THE SPECIAL
RAPPORTEUR ON THE RIGHTS TO FREEDOM OF
PEACEFUL ASSEMBLY AND OF ASSOCIATION**

JUNE 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 <https://www.libertyhumanrights.org.uk/policy>.

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INTRODUCTION

1. Liberty welcomes the opportunity to respond to the call for inputs from the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association for his report to be presented at the 77th session of the UN General Assembly.¹ We confine our comments to Questions 2 rather than providing an exhaustive summary of the human rights issues the questionnaire for Member States give rise to.

QUESTION 2

What laws or policies exist to safeguard ‘space’ for social movements in your country? Please provide details.

1. The right to freedom of expression and freedom of assembly, contained in Article 10 and Article 11 of the European Convention on Human Rights (ECHR) respectively, are given domestic effect through the Human Rights Act 1998. The State has a positive obligation to facilitate – not obstruct – protest. While a limited right, the State may only implement measures which interfere with these rights insofar as they are a necessary and proportionate means of achieving a legitimate aim. Articles 10 (2) and 11 (2) ECHR establish that protecting the rights and freedoms of others and preventing disorder or crime constitute legitimate aims. Protest and political activism are essential social goods, which serve as ways of creating community, effecting social change, and establishing a pressure valve for people’s frustrations over injustices. However, as we discuss below, we are concerned about the ways the UK Government is introducing new and targeted restrictions on this fundamental right, through the recently passed Police, Crime, Sentencing and Courts (PCSC) Act and the Public Order Bill, as well as other recent restrictions on protests that have taken place in the name of public health during the pandemic, as well as through novel and broad terms such as “serious disruption” that fall outside the scope of human rights terminology to capture non-violent but ‘inconvenient’ and ‘annoying’ protests.
2. In the UK, existing powers to manage protest are skewed heavily in favour of the authorities. Since the 1930’s, the trajectory of public order legislation has largely moved in one direction – incrementally chipping away at people’s fundamental rights and weighting the balance of power further towards the authorities. Under the Public Order Act 1986 (POA), police have wide powers to impose conditions and prohibit protests, as well as broad discretion in how those powers are applied. Indeed, in the 2019 judicial review of the ban on Extinction Rebellion protests across the whole of

¹ Call for inputs from the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association for his report to be presented at the 77th session of the UN General Assembly available here: <https://www.ohchr.org/sites/default/files/2022-05/Questionnaire-Member-States-CFI-GA77.pdf>

London, the Commissioner of the Met Police conceded she was satisfied that there were sufficient powers in the POA to allow them to legally deal with protests that, even in design, were attempting to stretch policing to the limits.² Protesters, meanwhile, are limited in terms of how they can hold the State to account and enforce their rights. The powers under the new Police, Crime, Sentencing and Courts (PCSC) Act (which we go into detail below), as well as the powers proposed under the Public Order Bill, further tip the balance of power towards the authorities.

3. The measures the UK Government is proposing to, or has been successful in implementing, seek to respond to the waves of protests and political activism that have swept across the country over the last two years. Where protests flourish – as mass mobilisations have in response to racial inequality, the climate crisis, and restrictions in the name of public health during the pandemic – anti-protest measures tend to follow. Dissent is the lifeblood of democracy and Liberty is profoundly concerned by attempts by the UK Government to limit the rights and civil liberties of groups it finds inconvenient, annoying, or controversial.

THE POLICE, CRIME, SENTENCING AND COURTS ACT

4. Liberty is concerned that the UK Government's recent legislative focus on introducing new measures to target "serious disruption," have had and will continue to have a chilling effect on the rights to freedom of expression and freedom of association and assembly, with disproportionate impacts on marginalised communities. Setting up a binary conflict between the right to protest, on the one hand, and protecting people from "serious disruption", on the other, overlooks the benefits of protest, undermines its value as a fundamental human right and is an unhelpful and artificial frame, which takes the curtailment of protest rights as its starting point.
5. The PCSC Act is evidence of the creeping criminalisation of dissent and makes sweeping changes to public order legislation in the UK. It gives the police greater powers to impose conditions on protests and rescinds limits on what those conditions may be. It also creates a new basis for restricting protests: their noisiness. Protests, by their very nature, are noisy. Noise is a means of expressing collective solidarity or grief and, quite literally, people making their voices heard by those in power. The noise protests generate 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

² *Jones & Ors v Commissioner of Police for the Metropolis* [2019] EWHC 2957 [76]

the countryside march,³ oppose the Iraq War⁴ or make their voices heard on Brexit⁵ – which is often a central ingredient of effective protest. As legal academic Professor David Mead commented, this can be considered an “existential threat to protest, so closely entangled are protests with noise”.⁶

6. These broadly drawn powers will empower the police to curtail protests in ways that attack the very essence of the right to protest and deter people from exercising their rights. The provisions may also embolden the police to impose increasingly expansive restrictions which may hollow out the right to protest and amount to an effective ban. The line between an intrusive condition – for example that a protest cannot take place across a particular area, cannot be attended by more than ten people, or can only last for one hour – and an outright ban may make little difference in practice for people seeking to exercise their right to protest.
7. The Act gives the Home Secretary power to determine, by way of secondary legislation, the meaning of “serious disruption”. This gives the Government of the day an expansive power – subject to limited Parliamentary scrutiny – to effectively define what constitutes “serious disruption,” declare the kind of protests and causes it deems inconvenient or unacceptable and provide the police a licence to limit them. The Home Secretary has already been vocal in her opinions about protests, calling “Kill the Bill” demonstrators in Bristol, “thugs” and Extinction Rebellion activists, “so-called eco-crusaders turned criminals”.⁷ As the former Prime Minister and Home Secretary Theresa May cautioned during second reading, “it is tempting when Home Secretary to think that giving powers to the Home Secretary is very reasonable, because we all think we are reasonable, but future Home Secretaries may not be so reasonable”, urging the Government to “consider carefully the need to walk a fine line between being popular and populist. Our freedoms depend on it.”⁸
8. These powers mark a significant expansion in informal, as well as formal, police power. When the police unlawfully impose conditions that go beyond even these permissive powers, protesters will still be arrested, and protests ended. While some

³ Tania Branigan ‘400,000 bring rural protest to London,’ *The Guardian* (23 Sep 2002) <https://www.theguardian.com/uk/2002/sep/23/hunting.ruralaffairs2>

⁴ ‘Million’ march against Iraq War,’ *BBC News* (16 February 2003) <http://news.bbc.co.uk/1/hi/uk/2765041.stm>

⁵ ‘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>

⁶ David Mead ‘Yes, you can... but only if you’re quiet,’ *Verfassungsblog* (17 March 2021) <https://verfassungsblog.de/uk-silence-protest/>

⁷ Vikram Dodd ‘Extinction Rebellion ‘criminals’ threaten UK way of life’ *The Guardian* 08 September 2020 <https://www.theguardian.com/environment/2020/sep/08/extinction-rebellion-criminals-threaten-uks-way-of-life-says-priti-patel>

⁸ HC Deb 15 March 2021 vol 691

protesters may be able to challenge the powers in the courts several months later – if they have the resources to do so – this does not assist them to make their political demands known at the time. It is therefore critical that police powers themselves are tightly circumscribed. The broad discretion afforded by the PCSC Act provisions is a recipe for diminishing protest rights, regardless of whether conditions amount to a ban, and risk criminalising people, *en masse*, who are exercising their fundamental rights.

9. You may read more about the PCSC Act in Liberty’s briefing [here](#).

THE PUBLIC ORDER BILL

10. The Public Order Bill marks the Government’s latest move in their sustained attack on our right to protest. This Bill’s passage through Parliament comes just a matter of weeks after the Police, Crime, Sentencing and Courts Act (PCSC Act) gained Royal Assent, marking a significant expansion of police powers that were roundly opposed by parliamentarians across the political spectrum, hundreds of civil society groups, former Prime Ministers and former police officers. Despite this the Government announced its intention to introduce further limitations on freedom of expression and assembly.⁹
11. This Bill regurgitates measures already rejected by Parliamentarians, including Serious Disruption Prevention Orders (protest banning orders), new protest-specific stop and search police powers, and new criminal offences of locking-on and going equipped to lock on. When the measures in the Public Order Bill were first introduced in the debates on the PCSC Act, peers argued that these eleventh-hour additions were a dangerous power grab and a blatant attempt to sideline parliamentary scrutiny. Liberal Democrat peer Lord Beith remarked that “it seems... political considerations have taken precedence over all considerations relating to making good law and, indeed, policing protests satisfactorily and effectively.”¹⁰ Ultimately, peers voted overwhelmingly to object to their inclusion in the Act.
12. Now, before the provisions in the PCSC Act have even come into force and their effects on protest robustly scrutinised – including whether, as warned by Conservative MP David Davis and former police chiefs,¹¹ its measures would further

⁹The European Court of Human Rights has repeatedly noted that the issues of freedom of expression and freedom of peaceful assembly are closely linked. The protection of personal opinions, secured by article 10 of the Convention, is one of the objectives of freedom of peaceful assembly as enshrined in article 11 of the Convention (*Ezelin v France* (1992)).

¹⁰ HL Deb 24 Nov 2021, vol.816, col. 980

¹¹ Hamilton, F., *Policing bill ‘is harmful to democracy’*, The Times, 5 July 2021, available at: <https://www.thetimes.co.uk/article/policing-bill-is-harmful-to-democracy-ft9dg6r3x>; see also: West, O., *The Policing Bill*

politicise the policing of public order, with detrimental effects on trust in public institutions¹² - the Government is pushing forward with its plans to further restrict civil liberties.

13. No coherent case has been made for introducing further public order measures, particularly in a context where protest legislation (including the PCSC Act) is largely already weighted in favour of the authorities. As then-Home secretary Sajid Javid MP noted in 2018, citing the vast legislation that “already exists to restrict protest activities that cause harm to others” including the Public Order Act 1986 and the Protection from Harassment Act 1997: “it is a long-standing tradition that people are free to gather together and to demonstrate their views. This is something to be rightly proud of.... where a crime is committed the police have the powers to act so that people feel protected”.¹³ Measures contained within the Bill are also not supported by police. Although this Bill is purportedly a response to the recent tactics of Insulate Britain and Just Stop Oil protestors, measures such as the introduction of Serious Disruption Prevention Orders (SDPOs) had been consulted on as early as autumn 2020 by Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) and rejected by police officers as potentially violative of human rights, not to mention ineffective and difficult to implement.¹⁴
14. Communities that already experience overpolicing, particularly the Black community, will be most sharply impacted by this Bill. Measures to introduce new protest-specific stop and search powers – both on and without suspicion – fly in the face of the Government’s own evidence of significant racial disproportionality in use of existing stop and search powers. These plans also fail to account for research by policing bodies, community groups and academics that clearly evidences the violent, humiliating, and traumatising impact of such powers, and the recently announced police Race Action Plan.¹⁵ Further, introduction of new protest-specific stop and search must be viewed alongside the announcement of the permanent relaxation of vital stop and search safeguards, making it easier for Section 60 suspicionless stop

will leave officers in an impossible position, The Times, 7 July 2021, available at: https://www.thetimes.co.uk/article/the-policing-bill-will-leave-officers-in-an-impossible-position-979fpzbs?CMP=TNLEmail_2014964_14271412_119

¹² David Davis, Police, Crime, Sentencing and Courts Bill, Second Reading (Commons), Hansard, 5 July 2021, Vol. 698, Col. 568

¹³ House of Commons, Abortion Clinic Protest Review, 13 September 2018, <https://hansard.parliament.uk/Commons/2018-09-13/debates/18091329000018/AbortionClinicProtestReview?contribution-974CF934-8681-4514-88EC-1A2397C66011>

¹⁴ 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-how-effectively-the-police-deal-with-protests.pdf>

¹⁵ Police Race Action Plan: Improving policing for Black people, <https://www.college.police.uk/support-forces/diversity-and-inclusion/action-plan>

and search powers to be authorised, to be deployed for longer periods and implemented without informing communities affected.¹⁶

15. As noted by Lord Pannick during debates on the PCSC Act, “the ability to demonstrate... is a very valuable safety valve in our civil society. If you close off that safety valve, you are going to cause a far greater mischief than is currently the case.”¹⁷ The Public Order Bill risks pouring cement into the valve, by criminalising activities with only the most tenuous links to protest and plunging more and more people into the criminal justice system. The Government cannot legislate and punish people into silence; as such, the ultimate effect of the Bill will be to push people towards seeking more urgent routes to protest, while potentially decimating their trust in public institutions.
16. You may read more about the Public Order Bill in Liberty’s briefing [here](#).

PROTEST RIGHTS DURING THE COVID-19 PANDEMIC

17. The PCSC Act and Public Order Bill are but two illustrations of the Government curtailing the right to protest in the UK. In recent years, the environment for people’s ability to make their voices heard has grown ever more hostile, with the authorities clamping down on protest in a heavy-handed way. During the pandemic, the police have arrested scores of protesters, and even stopped protests from going ahead, based on the incorrect claim that protest was outright banned under the coronavirus regulations.¹⁸ In 2019, the Metropolitan Police unlawfully imposed a blanket ban on Extinction Rebellion protests across London.¹⁹ And in 2021, the Court of Appeal quashed the convictions of the Stansted 15, a group of non-violent human rights activists, who were charged with and convicted of serious terrorism-related offences in 2015.^{20,21} These instances suggest that heavy handed tactics – which pose a significant threat to protest and dissent – are becoming increasingly normalised.
18. In the context of Covid-19, protest has been an important way for communities facing structural inequality, economic hardship and decisions which have immediate impacts on their freedoms to make their voices heard. It is a crucial means of expressing

¹⁶ Home Office. 2022. *Home Secretary backs police to increase stop and search*. 16 May 2022, available at: <https://www.gov.uk/government/news/home-secretary-backs-police-to-increase-stop-and-search>

¹⁷ HL Deb 17 January 2022, vol.817, col. 1405

¹⁸ Damien Gayle and Mattha Busby, ‘Police arrest 155 anti-lockdown protesters in London’ *The Guardian* (28 November 2020) <https://www.theguardian.com/world/2020/nov/28/met-police-anti-lockdown-protest-london>

¹⁹ ‘Extinction Rebellion: High Court rules London protest ban unlawful’, *BBC News* (06 November 2019) <https://www.bbc.co.uk/news/uk-50316561>

²⁰ ‘Stansted 15 win appeal against conviction for deportation flight protest’, *BBC News* (29 January 2021) <https://www.bbc.co.uk/news/uk-england-essex-55859455>

²¹ *Thacker & Ors v R.* [2021] EWCA Crim 97 (29 January 2021)

dissent, actively asserting our membership of society and building movements to effect change and hold the Government to account. As power has been concentrated in the hands of the executive and democratic scrutiny mechanisms are diminished, preserving people's ability to safely protest and hold the authorities to account becomes more, not less, critical.

19. While necessary and proportionate restrictions on protest to protect public health are permissible under human rights law, no explicit protection was made for protest in the Coronavirus Act 2020 or in many of the regulations made under the Public Health Act 1984 which impose restrictions on movement and gatherings. In November 2020, the Home Secretary also made the very concerning claim that protests of more than two people are unlawful, and reportedly briefed police chiefs that they were expected to impose this effective blanket ban on protest. Following legal action challenging the police's refusal to facilitate a series of vigils to mourn the death of Sarah Everard, the Metropolitan Police conceded that a blanket prohibition on protesting during the pandemic would constitute a disproportionate interference with the rights to freedom of expression and assembly.
20. In practice, however, people have been criminalised *en masse* for voicing opposition to state practices. Scores of people have been arrested for taking to the streets to protest against lockdown restrictions, and protest organisers who have done their best to comply with pandemic restrictions, such as carrying out a risk assessment, have been cowed into not going ahead.²² In March 2021, Greater Manchester Police fined a healthcare worker £10,000 at a small, socially distanced protest against the Government's decision on NHS pay.²³ Further, as Liberty commented in relation to the policing of the vigil for Sarah Everard in Clapham Common, the heavy-handed policing of assemblies has not served to protect people's health and safety, it has put them at risk.²⁴

CONCLUSION

21. Our right to protest continues to be subject to attack by a Government intent on making it harder to stand up for a cause you believe in. Measures passed into law through the Police, Crime, Sentencing and Courts Act are yet to see the light of day and its expansive protest restrictions assessed for their effectiveness, human rights compatibility, or ability for police to manage extensive new powers yet the

²² BBC News, *Covid: More than 150 arrests at London anti-lockdown protest*, 28 November 2020, available at: <https://www.bbc.co.uk/news/uk-england-london-55116470>.

²³ Robson, S., *Organiser of NHS pay protest in city centre facing £10,000 fine*, Manchester Evening News, 7 March 2021, available at: <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/nhs-pay-protest-fine-manchester-19984620>

²⁴ <https://www.libertyhumanrights.org.uk/issue/liberty-condemns-policing-of-reclaim-these-streets-vigil/>

Government are already pushing through a Public Order Bill full of rehashed provisions that were resoundingly voted against just a matter of months ago.

22. At the same time, the UK Government have just passed legislation to introduce photographic voter ID and restrict judicial review, further limiting people's ability to make their voices heard at the ballot box and challenge public bodies in the courts. It has announced its intention to scrap the Human Rights Act and replace it with an inferior alternative that will make it harder for people to challenge violations of their rights and that will further centralise power in the hands of the executive. Taken together the rights to freedom of peaceful assembly and of association in the UK are under threat in way not experienced for many years in the UK. **Liberty is grateful for the opportunity to bring these urgent human rights matters to the attention of the Special Rapporteur on the rights to freedom of peaceful assembly and of association for his report to be presented at the 77th session of the UN General Assembly.**