

LIBERTY

**LIBERTY'S BRIEFING ON THE PUBLIC ORDER
BILL FOR COMMITTEE STAGE IN THE HOUSE
OF LORDS**

NOVEMBER 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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INTRODUCTION

1. **The Public Order Bill – which resurrects measures thrown out of the Police, Crime, Sentencing and Courts Act 2022 (PCSC Act) by the House of Lords earlier this year - is a staggering escalation of the Government’s clampdown on dissent.** At the Bill’s Second Reading in the House of Lords, peers across the political spectrum criticised it for being “draconian,”¹ “worr[ying]”,² “open to serious objection and in some ways misconceived,”³ a “zombie Bill that the Government have dragged out of its grave,”⁴ and a “culture wars Bill” that erodes people’s right to protest.”⁵ Even supporters of the general principles behind the Bill have expressed concerns, with Conservative peer Lord Sandhurst voicing his “serious reservations” about the proposed protest-specific suspicion-less stop and search power⁶ and Conservative peer Lord Frost stating that Serious Disruption Prevention Orders made otherwise than on conviction are “fundamentally unacceptable.”⁷
2. **Liberty continues to oppose the Public Order Bill’s overall attack on civil liberties.** We urge peers to heed Conservative peer Viscount Hailsham’s warning that “There is always a danger... that when seeking to address issues of public order Governments will go too far. Powers once given are hard to withdraw. Such powers will often be abused.”⁸ Indeed, the recent arrests of journalists reporting on Just Stop Oil protests⁹ demonstrate the risks arising from widely-drawn offences and what the Joint Committee on Human Rights (JCHR) has called an increasingly ‘hostile environment’ for dissent.¹⁰ **At Committee Stage we urge peers to support ‘clause stand part’ amendments to excise the following elements from the Bill:**
 - **Serious Disruption Prevention Orders**
 - On conviction: Clause 19
 - Without conviction: Clause 20
 - **Stop and search powers**
 - Suspicion-based stop and search: Clause 10
 - Suspicion-less stop and search: Clauses 11 to 14
 - **Locking on offences**
 - Offence of locking on: Clause 1
 - Offence of being equipped for locking on: Clause 2

¹ Lord Skidelsky, HL Deb 1 Nov 2022, vol.825, col.192.

² Lord Balfe, HL Deb 1 Nov 2022, vol.825, col.172.

³ Lord Hope, HL Deb 1 Nov 2022, vol.825, col.154.

⁴ Baroness Jones of Moulsecoomb, HL Deb 1 Nov 2022, vol.825, col.169.

⁵ Lord Paddick, HL Deb 1 Nov 2022, vol.825, col.146.

⁶ Lord Sandhurst, HL Deb 1 Nov 2022, vol.825, col.191.

⁷ Lord Frost, HL Deb 1 Nov 2022, vol.825, col.167.

⁸ Viscount Hailsham, HL Deb 1 Nov 2022, vol.825, col.159.

⁹ Ponsford, D., *Three journalists locked up for covering M25 protests – police force says the arrests were justified*, 9 November 2022: <https://pressgazette.co.uk/three-journalists-locked-up-for-covering-m25-protests-police-force-says-the-arrests-were-justified/>

¹⁰ Joint Committee on Human Rights, *Government creating hostile environment for peaceful protest, report finds*, 17 June 2022, available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>

3. **Many of the measures in the Public Order Bill have been rejected by police officers as potentially violative of human rights, not to mention ineffective and highly difficult to implement.**¹¹ With regard to protest banning orders, Her Majesty’s Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS), the police, and the Home Office said that “such orders would neither be compatible with human rights legislation nor create an effective deterrent.”¹² Further, arguing against the creation of new stop and search powers, a police officer said, “a little inconvenience is more acceptable than a police state,” a sentiment with which HMICFRS said it agreed. At Report Stage in the Commons, Wendy Chamberlain MP, a former police officer, asserted that “the police do not need this Bill to respond when protests cross the line.” She further noted: “Policing by consent is one of the greatest attributes of our country, and it is something that I am passionate about. The Bill undermines that.”
4. **There is simply no case for introducing these far-reaching new powers, in a context where there are already reams of protest legislation on the statute book, and much of it is already weighted in favour of the authorities.** Conservative MP Sir Charles Walker enumerated some of these laws during Report Stage of the Bill in the House of Commons: “obstructing a police officer, Police Act 1996; obstructing a highway, Highways Act 1980; obstruction of an engine, Malicious Damage Act 1861, endangering road users, Road Traffic Act 1988; aggravated trespass, Criminal Justice and Public Order Act 1994; criminal damage, Criminal Damage Act 1971; and public nuisance, the Police, Crime, Sentencing and Courts Act 2022.”¹³ 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... [I]t 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.”¹⁴
5. **At Second Reading of the Public Order Bill, Labour peer Lord Coaker emphasised that “the price of democracy allows people to protest – and we play with that at our peril.”**¹⁵ In a similar vein, crossbench peer and one of the UK’s leading advocates, Lord Pannick, stated in a previous debate on the PCSC Act that “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.”¹⁶ **The Public Order Bill risks pouring cement into the valve and undermining our democracy by criminalising activities with only the most tenuous links to**

¹¹ 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>

¹² *Ibid.* pg.109.

¹³ HC Deb 18 Oct 2022, vol. 720, col.581.

¹⁴ 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>

¹⁵ Lord Coaker, HL Deb 1 Nov 2022, vol.825, col.145.

¹⁶ HL Deb 17 January 2022, vol.817, col. 1405

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 tactics, while potentially decimating their trust in public institutions.

6. In the wider global context, the JCHR has argued that “[i]ntroducing... oppressive measures could... damage the UK’s international standing and our credibility when criticising other nations for cracking down on peaceful protest.”¹⁷ Labour peer Baroness Chakrabarti underscored this point at Second Reading when she asserted that the Bill “undermines us as champions of the rule of law internationally.”¹⁸ **For all the above reasons, we urge peers to oppose the Public Order Bill and support ‘clause stand part’ amendments to mitigate its worst effects.**

AMENDMENTS

AMENDMENTS TO REMOVE SERIOUS DISRUPTION PREVENTION ORDERS

Clause 19 (SDPOs made on conviction)

The above-named Lords give notice of their intention to oppose the Question that Clause 19 stand part of the Bill.

Clause 20 (SDPOs made otherwise than on conviction)

The above-named Lords give notice of their intention to oppose the Question that Clause 20 stand part of the Bill.

Effect

Clause 19 creates Serious Disruption Prevention Orders on conviction and clause 20 creates Serious Disruption Prevention Orders made otherwise than on conviction. These amendments would remove Clauses 19 and 20 (and in turn all the consequential clauses relating to SDPOs) from the Bill.

Briefing

7. Part 2 of the Bill introduces Serious Disruption Prevention Orders (SDPOs), a new civil order that can be imposed on individuals who have carried out (or contributed to someone else carrying out) activities related to at least two protests within a five-year period, whether or not they have actually been convicted of a crime (see Appendix for the full list of conditions under which an SDPO can be imposed). They can last anywhere from a week to two years, with the potential to be renewed indefinitely (clauses 25(2) and 28(7)).

¹⁷ Joint Committee on Human Rights, *Government creating hostile environment for peaceful protest, report finds*, 17 June 2022, available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>

¹⁸ Baroness Chakrabarti, HL Deb 1 Nov 2022, vol.825, col.151.

8. SDPOs are effectively ‘protest banning orders’, with the potential to ban named individuals from protesting, associating with certain people at certain times, having certain items in their possession, and even using the internet in certain ways. Those subject to SDPOs may also be subject to a range of onerous 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,¹⁹ a fine, or both.
9. SDPOs are an unprecedented and highly draconian measure that stand to extinguish named individuals’ fundamental right to protest as well as their ability to participate in a political community. They will also have the effect of subjecting individuals and wider communities to intrusive surveillance.
10. The introduction of measures akin to SDPOs are not supported by the police, Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS), or the Home Office. When consulted on plans to introduce protest banning orders that would restrict 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)”.*²⁰

11. The same report quoted senior police officers who said that protest banning orders would “unnecessarily curtail people’s democratic right to protest”, be “a massive civil liberty infringement”, and constitute “a severe restriction on a person’s right to protest and in reality... [be] unworkable.”²¹

¹⁹ 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.

²⁰ 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-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf>

²¹ 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-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf>

12. **SDPOs are extraordinary and far-reaching measures, both in terms of who they can apply to and their effects.** 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, meaning that many people could potentially be caught by this drafting.²² 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. Given the broad drafting, 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.
13. SDPOs could effectively place any activist, commentator, or politician who voices an opinion on any issue, who inspires someone else to protest in such a way as to cause ‘serious disruption’, at risk – even if this is a person they do not know and have never met. The link between a person’s past conduct and the effect of ‘serious disruption’ need only be incredibly tenuous for someone to be given an SDPO; and yet being given an SDPO can completely alter the course of a person’s life. **As Liberal Democrat peer Lord Paddick noted during Report Stage of the PCSC Act where these measures were first introduced and resoundingly rejected, “you do not even have to have been to a protest to be banned from future ones.”**²³ At Second Reading, Labour peer Lord Hendy gave an example of how SDPOs made otherwise than on conviction could impact trade unionists, particularly in the absence of a trade dispute defence: “[E]very general secretary and every member of every national executive committee which has authorised picketing that has caused disruption to an organisation, such as Network Rail or a train operating company, could be caught by these provisions and have a serious disruption prevention order made against them.”²⁴
14. **For those who are given an SDPO, the wide scope of requirements and prohibitions furthermore risk disproportionately interfering with people’s rights to liberty, respect for the private and family life (Article 8), freedom of thought, belief, and religion (Article 9), freedom of expression (Article 10), freedom of assembly and association (Article 11), among others.** Indeed, the JCHR highlights that “an SDPO imposed on a peaceful protester could contain measures akin to those imposed on high priority terrorist suspects under a Terrorism Prevention and Investigation Measure (TPIM).”²⁵ Individuals with an SDPO could be prevented from

²² 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>

²³ HL Deb 17 Jan 2022, vol.817, col. 1439

²⁴ HL Deb 17 Jan 2022, vol.817, col. 177

²⁵ Joint Committee on Human Rights, *Government creating hostile environment for peaceful protest, report finds*, 17 June 2022, available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>

associating with their loved ones or community members; having certain everyday items such as a bike lock, superglue, paint, banners, or flyers in their possession; and crucially, participating in protests. They could also be barred from entering places of worship and community, for example, if they are a Quaker, for whom direct action and civil disobedience are a key part of their faith. On this, the Public Order Bill provides a limited safeguard whereby any prohibitions/requirements imposed by an SDPO must, as far as practicable, be such as to avoid any conflict with the person's religious beliefs and work or educational commitments (clause 21(8)) – however, we do not believe this is a sufficient safeguard.

15. **The introduction of SDPOs marks a significant expansion of State surveillance over those who protest.**²⁶ SDPOs, like other hybrid civil-criminal orders, rely on (and will therefore give rise to) far-reaching and intrusive surveillance on people's activities and behaviour, to inform the making of, and conditions and prohibitions attached to, such orders. It merits noting that the original proposal for 'protest banning orders', which was considered by HMICFRS, was based on existing football banning orders (FBOs). 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."²⁷ The use of even more secretive tactics such as informants in the policing of football fans²⁸ adds to our concerns that in the protest-context, SDPOs may create additional pretexts under which the police can interlope in protests.

16. **Not only do SDPOs risk eroding individuals' rights, they also risk diminishing trust in the police.** Sir Peter Fahy, a retired chief constable of Greater Manchester police and Cheshire constabulary and a police officer for 34 years, noted during his Public Bill Committee session that most protests are often "very local protests about things like fracking and road developments". He said: **"If the police are involved in gathering intelligence around those people [who protest] and criminalising them in a way that those local people do not think is fair, and it destroys their confidence in what their local police force is there to do, there is absolutely a risk in that."**²⁹ Drawing on her previous experience as a police officer, Wendy Chamberlain MP voiced concerns that SDPOs might "freeze the police's relationships with a wide range of activist groups, which involve constant dialogue to balance the facilitation of protests with the rights of others to go about their daily business."³⁰

²⁶ Lewis, P. and Evans, R., *Secrets and lies: untangling the UK 'spy cops' scandal*, The Guardian, 28 October 2020, available at: <https://www.theguardian.com/uk-news/2020/oct/28/secrets-and-lies-untangling-the-uk-spy-cops-scandal>

²⁷ 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

²⁸ 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>

²⁹ Public Order Bill Deb 9 June 2022, col.51

³⁰ HC Deb 18 Oct 2022, vol. 720, col.591.

17. One of the requirements that can be imposed on an individual is **electronic monitoring (EM)** in relation to an SDPO condition or prohibition, such as a ban on seeing certain people or engaging in certain activities. **In and of themselves, electronic monitoring conditions are highly intrusive, and risk interfering with individuals’ rights to privacy, freedom of expression and assembly.** The psychological harm caused by electronic monitoring is well-documented. Tag-wearers report that tags have an impact on almost every area of life including the ability to participate in society; relationships; financial and emotional stress; sleep; feelings of dehumanisation and stigma.³¹
18. **Electronic monitoring conditions imposed as part of an SDPO are likely to be a highly disproportionate interference with people’s human rights, including and especially if they employ GPS tracking, especially given the broad and vague purposes for which they can be imposed.** Geolocation data is highly sensitive: it tells you where someone has been, which GP practice they attend, where they shop, and much more. These are intimate details of one’s private life that bear no relation to one’s protest-related activities. Once an individual is subject to a 24/7 GPS tag, all of this data is potentially laid bare to the State, with the further potential to cause people to alter their behaviour and actions. These harms are exacerbated by the potential lengthy duration of an electronic monitoring condition. Clause 25(6) limits the duration of an electronic monitoring requirement to 12 months but according to the explanatory notes “this does not preclude a further extension... if the SDPO is renewed.”³²
19. **That breach of an SDPO can attract criminal sanction compounds the harms of this oppressive measure.** Failure to comply with any of these actions is tantamount to a breach of an SDPO condition, which could result in a maximum 51 week³³ prison sentence, a fine, or both. Crucially, however, none of the breaches of requirements or prohibitions imposed via an order (for example, associating with certain people or going to a protest) would be criminal activities but for the imposition of an SDPO. As noted by Baroness Chakrabarti, SDPOs effectively create “a personal criminal code with harsh restrictions on the liberty of the individual subject.”³⁴
20. **While an SDPO lasts for between a week and 2 years, there is no limit to the number of times an SDPO can be renewed by the court - the court simply needs to be satisfied that the SDPO is necessary for one of the stated purposes.** This

³¹ See Bhatia, Monish “Racial surveillance and the mental health impacts of electronic monitoring on migrants”

³² Para 130, Public Order Bill: Explanatory Notes, May 2022, <https://publications.parliament.uk/pa/bills/cbill/58-03/0008/en/220008en.pdf>

³³ 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.

³⁴ Baroness Chakrabarti, HL Deb 1 Nov 2022, vol.825, col.151.

could see people being banned from protesting for an indefinite period, and also drag people into cycles of criminalisation if they repeatedly breach an SDPO. At Second Reading of the Bill in the House of Lords, crossbench peer and leading advocate Lord Anderson of Ipswich contrasted the ability for SDPOS to be renewed indefinitely with TPIMS – which are time-limited.³⁵

21. **The harmful and potentially indefinite effects of SDPOs are exacerbated by the fact that they can be established on a weak procedural basis.** The SDPO regime uses a civil standard of proof, meaning that the conditions for being given an SDPO only need to be proven to the balance of probabilities (clauses 19(2)(a) and 20(2)), rather than beyond reasonable doubt. In terms of evidence, SDPOs on conviction can be made on the basis of lower quality evidence, such that evidence that would not have been admissible in the current offence – such as information collected via intrusive surveillance or hearsay – may be admissible in the proceedings for making an SDPO (clause 19(9)). For SDPOs made without conviction, there are no requirements in respect of what evidence can be used, meaning that ostensibly any information – including that which is collected covertly or through intrusive technologies such as facial recognition technology – could be used to establish if a person was at a protest and engaged in any of the listed activities. An SDPO without conviction can be applied for by a wide range of police officers, including the chief officer of an area who simply believes that a person *intends to* come to their area (clause 20(8)(b))– a highly subjective judgment that could have drastic implications for a person’s freedom of movement. On the low threshold for imposition of an SDPO, Labour MP Diane Abbott remarked during the Second Reading debate on this Bill: “The truth is that no citizen should ever be subject to the arbitrary and unsubstantiated curbing of important civil rights by the state”.³⁶

AMENDMENT TO REMOVE PROTEST-SPECIFIC, SUSPICION-BASED STOP AND SEARCH POWER

Clause 10

The above-named Lords give notice of their intention to oppose the Question that Clause 10 stand part of the Bill.

Effect

Clause 10 creates a new suspicion-based stop and search power in relation to a specified list of protest offences. These amendments would remove Clause 10 from the Bill.

Briefing

³⁵ Lord Anderson of Ipswich, HL Deb 1 Nov 2022, vol.825, col.163

³⁶ HC Deb, 23 May 2022, vol. 715, col. 74

22. 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. 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 (section 78 of the PCSC Act), locking-on (clause 1), causing serious disruption by tunnelling (clause 3), causing serious disruption by being present in a tunnel (clause 4), obstructing major transport works (clause 6), or interfering with the use or operation of key national infrastructure (clause 7). The police may seize any prohibited item found during a search.
23. **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**”.³⁷ HMICFRS then went on to state that they “agree with this sentiment.”³⁸
24. **We are concerned that this clause will give the police a new and broad power to stop and search people.** There is a potentially 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. Arguably the police could have a reasonable suspicion that *any* person on the street would have a bike lock or any other such item on them; how would they subsequently establish if that person intended to use such an item “in the course of or in connection with” a protest – would it be based on one’s vicinity to a protest site? What if there happened to be a bike shop nearby, and one simply crossed the road to see what was happening at the demonstration? In the words of the JCHR, “a suspicion of such an offence, even a reasonable one, in the course of a protest represents an unjustifiably low threshold for a power to require a person to submit to a search.”³⁹ **We believe that this stop and search power 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.**

³⁷ HMICFRS, *Getting the balance right? An inspection of how effectively the police deal with protests*, March 2021, available at: <https://www.justiceinspectrates.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf>

³⁸ As above.

³⁹ Joint Committee on Human Rights, *Government creating hostile environment for peaceful protest, report finds*, 17 June 2022, available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>

25. 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 their 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.”⁴⁰ **In particular, we are highly concerned that the expansion of stop and search 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.⁴¹ At Second Reading of the Bill in the House of Commons, Conservative MP Richard Fuller urged the Government to “think carefully” about extending such powers given the sheer amount of evidence on how they are already used disproportionately against communities of colour, particularly the Black community.⁴² The JCHR has highlighted that the creation of suspicion-based stop and search powers could have a chilling effect, dissuading people from exercising their rights to protest and to freedom of assembly.⁴³

26. **The experience of being stopped and searched can be a mentally and physically traumatising one – for some people, it takes place frequently, even daily.**⁴⁴ 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”.⁴⁵ 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.⁴⁶ The impact of discriminatory stop and search on affected communities is deep and enduring. The Home Office itself acknowledges that the expansion of stop and search “would risk

⁴⁰ 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-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>

⁴¹ 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>

⁴² HC Deb, 23 May 2022, vol. 715, col. 103

⁴³ Joint Committee on Human Rights, *Government creating hostile environment for peaceful protest, report finds*, 17 June 2022, available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>

⁴⁴ 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

⁴⁵ Hackney Account, *Policing in Hackney: Challenges from youth in 2020*, 2020, available at: <https://static1.squarespace.com/static/5d234a046f941b0001dd1741/t/577795b9e2fdb6bf67d3c7d/1601665467995/Final+Draft+-+Report+-+Account+%28Online%29.pdf>

⁴⁶ 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

having a negative effect on a part of the community where trust and confidence levels are relatively low.”⁴⁷

AMENDMENTS TO REMOVE PROTEST-SPECIFIC, SUSPICION-LESS STOP AND SEARCH POWER

Clauses 11 to 13

The above-named Lords give notice of their intention to oppose the Question that Clauses 11 to 13 stand part of the Bill.

Effect

Clauses 11 to 13 create a new suspicion-less stop and search power in relation to a specified list of protest offences. These amendments would remove Clauses 11 to 13 from the Bill.

Briefing

27. The Public Order Bill extends suspicion-less stop and search powers – which until now, have been used to target serious violent crime and terrorism – to the protest context. Clause 11 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, 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 that one of the following offences may be committed in the area: wilful obstruction of a highway (section 137 of the Highways Act 1980), intentionally or recklessly causing public nuisance (section 78 of the PCSC Act), locking on (clause 1), causing serious disruption by tunnelling (clause 3), causing serious disruption by being present in a tunnel (clause 4), obstructing major transport works (clause 6), interfering with the use or operation of key national infrastructure (clause 7). Such authorisation can also arise if the officer reasonably believes that people in the area are carrying ‘prohibited objects’. ‘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.

28. **Arguably all protests could risk causing public nuisance; this could mean that there is a mass expansion of the use of suspicion-less stop and search in the vicinity of protests.** In our view, this could give rise to significant and disproportionate interferences with people’s Article 8, 10, and 11 rights, as noted above in relation to suspicion-based stop and search, and further deter people from exercising their right to protest. This is exacerbated by the vague wording of this power: it cannot be overstated that the so-called ‘prohibited objects’ within the

⁴⁷ 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>

offence – defined as objects either made or adapted for the use *in the course of or in connection with* one of the listed offences (in other words, not even actually in the conduct of the offence itself), or which are intended by the person who has it in their possession for such use by them *or someone else* – is extremely broad, and would furthermore not be ‘prohibited’ but for the creation of new and vague offences targeting protest.

29. During the debate over this proposed power during the passage of the PCSC Act, crossbench peer Lord Carlile of Berriew warned that “the dilution of without-suspicion stop and search powers is a menacing and dangerous measure” and that the power is “disproportionate, and the Government should think twice about it.”⁴⁸ Echoing this, the JCHR highlights that the power to stop and search without reasonable suspicion has previously been introduced only to deal with “the most serious offending”, including where “serious violence” is anticipated or where it is believed weapons are being carried; or “where it is reasonable suspected that an act of terrorism will take place. In the JCHR’s words, “It is surprising and concerning that the Bill would introduce similar powers to deal not with serious offences punishable with very lengthy prison terms, but with the possibility of non-violent offences relating to protest, most of which cover conduct that is not even currently criminal.” The JCHR has recommended that this power be removed from the Bill.

30. **The expansion of suspicion-less stop and search will have disproportionate effects on marginalised communities.** Indeed, suspicion-less stop and search powers are an even greater contributor to racial disproportionality in the criminal justice system than regular stop and search powers. In 2021, Black people were 7 times more likely to be stopped and searched under regular powers; when the reasonable grounds requirement was removed, they were 14 times more likely to be stopped and searched.⁴⁹ Multiple policing bodies (including HMICFRS⁵⁰ and the College of Policing⁵¹), former police chiefs and frontline officers,⁵² former Prime Minister and Home Secretary Theresa May,⁵³ parliamentarians,⁵⁴ and countless

⁴⁸ HL Deb 17 Jan 2022, vol.817, col. 1435

⁴⁹ 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>

⁵⁰ 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/>

⁵¹ College of Policing, *Stop and search: Transparent*, available at: <https://www.app.college.police.uk/app-content/stop-and-search/transparent/>

⁵² 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-ex-chiefs-warn>

⁵³ 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-and-search-powers>

⁵⁴ Liberal Democrats, *Ending suspicion-less Stop and Search: your questions answered*, 17 July 2020, available at: <https://www.libdems.org.uk/stopandsearch-qna> <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-unjust-unfair-ineffectual-david-lammy> <https://www.theguardian.com/law/2018/oct/13/stop-and-search-is-unjust-unfair-ineffectual-david-lammy>

community groups⁵⁵ have highlighted issues with existing suspicion-less stop and search powers, including their ineffectiveness, contribution to racial disproportionality and erosion of trust in the criminal justice system. **We are concerned that the introduction of protest-specific suspicion-less stop and search powers will deter people from marginalised communities – for whom protest is a vital way of challenging injustice - from exercising their fundamental rights, for fear of intimidation, harassment, arrest, and criminalisation.**

OFFENCE RELATING TO SUSPICION-LESS STOP AND SEARCH

Clause 14

The above-named Lords give notice of their intention to oppose the Question that Clause 14 stand part of the Bill.

Effect

Clause 14 creates a new offence associated with the proposed suspicion-less stop and search power in clause 10. This amendment removes clause 14 from the Bill.

Briefing

31. Clause 14 creates a specific offence of 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.
32. We are concerned that this offence will compound the harms of the new suspicion-less stop and search power. The so-called 'prohibited objects' targeted by the suspicion-less stop and search power would not be 'prohibited' but for the creation of the new offences. Furthermore, while replicating the existing offence of 'wilful obstruction' of a constable in the execution of their duty, the new offence drastically increases the penalty from one month's imprisonment, a fine, or both, to 51 weeks' imprisonment, a fine, or both.
33. Given declining trust in the police, especially among women⁵⁶ and people from racialised communities,⁵⁷ we need greater, not lesser, scrutiny of their powers. However, as highlighted by Labour peer Baroness Blower⁵⁸ and Liberal Democrat peer Lord Beith at Second Reading in the House of Lords, this clause "could

⁵⁵ 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>

⁵⁶ End Violence Against Women coalition, *Almost half o women have less trust in police following Sarah Everard murder*, 18 November 2021: <https://www.endviolenceagainstwomen.org.uk/almost-half-of-women-have-less-trust-in-police-following-sarah-everard-murder/>

⁵⁷ Yougov, *Trust in the police has fallen amongst ethnic minority Britons*, 15 December 2021: <https://yougov.co.uk/topics/politics/articles-reports/2021/12/15/trust-police-has-fallen-amongst-ethnic-minority-br>

⁵⁸ Baroness Blower, HL Deb 1 Nov 2022, vol.825, col.180.

criminalise... the kind of questioning which was encouraged after the dreadful Sarah Everard case, when people were told in such situations to question whether the police officer had the authority to approach the person at all.”⁵⁹

34. One of the other potential implications of this offence is that it might be used to target legal observers, with Liberty having represented legal observers who were wrongly arrested at a protest in 2021.⁶⁰ 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. 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.⁶¹

AMENDMENT TO REMOVE THE OFFENCE OF LOCKING ON

Clause 1

The above-named Lords give notice of their intention to oppose the Question that Clause 1 stand part of the Bill.

Effect

Clause 1 creates a new offence of locking on. This amendment would remove clause 1 from the Bill.

Briefing

35. Clause 1 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,⁶² a fine, or both.

⁵⁹ Lord Beith, HL Deb 1 Nov 2022, vol.825, col.153.

⁶⁰ 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/> and <https://www.libertyhumanrights.org.uk/issue/case-update-police-drop-protest-fines-after-liberty-legal-action/>

⁶¹ Netpol, *Protecting protest: Why independent legal observers remain essential*, 11 May 2022, available at: <https://netpol.org/2022/05/11/protecting-protest-article11/>

⁶² 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.

36. Case law confirms that we have a right to choose how we protest,⁶³ and the diversity of protest tactics throughout history demonstrates the deeply interconnected nature of free expression, creativity, and dissent.⁶⁴ 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 the Parliament.⁶⁵ This offence not only defies those principles, but criminalises an innumerable list of activities – not only 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 Parliament⁶⁶), but also any activities involving people ‘attaching’ themselves to other people, an object, or land; or ‘attaching’ objects to other objects and land.⁶⁷
37. Notwithstanding the Government’s claim that the wording of this offence is sufficiently precise to be foreseeable and that the provisions are in accordance with the law,⁶⁸ we are concerned that it risks disproportionately interfering with individuals’ Article 10 and Article 11 rights. 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 another⁶⁹ and trees,⁷⁰ or locking their wheelchairs to traffic lights.⁷¹ The JCHR further highlights that the term “serious disruption” is not defined in the Bill, nor is there provision for the term to be defined by regulations, as is the case in respect of its use in the PCSC Act. This means that it is an “extremely broad term with no clear boundaries”, with it being “unclear who or what would need to be seriously disrupted, what level of disruption is needed before it becomes serious and how these questions are meant to be determined by protesters and police officers on the ground - or even the courts. This gives rise to the risk of disproportionality and also uncertainty.”⁷²

⁶³ “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).

⁶⁴ 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>

⁶⁵ The Grille Incident, UK Parliament. <https://www.parliament.uk/about/living-heritage/transformingsociety/electionsvoting/womenvote/parliamentary-collections/ladies-gallery-grille/grille-incident/>

⁶⁶ 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/>

⁶⁷ HL Deb 17 Jan 2022, vol.817, col. 1433.

⁶⁸ Para 10, Public Order Bill, ECHR Memorandum, <https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-european-convention-on-human-rights-memorandum>

⁶⁹ 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>

⁷⁰ 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>

⁷¹ 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/>

⁷² Joint Committee on Human Rights, *Government creating hostile environment for peaceful protest, report finds*, 17 June 2022, available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>

38. As well as covering a wide range of activities, the new offence of locking-on also “provides an exceptionally low threshold for a broad offence,” as highlighted by Labour peer Lord Rosser, given that such activities do not have to *actually* cause, but merely have to be “capable of causing” serious disruption. Liberal Democrat peer Lord Paddick flagged the difficulties this would create in practice: “If it were on a different road or at a different time, it would be capable of causing serious disruption. But if it is 3 am on a Sunday, is that still capable of causing serious disruption?”⁷³
39. **This proposal is not supported by the police.** When consulted on a similar 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.”⁷⁴ On this, Lord Rosser noted, “The reality is that powers already exist for dealing with lock-ons. What we should be looking at is proper guidance, training and, as the inspectorate raised, improving our use of existing resources and specialist officers.”⁷⁵
40. **The maximum penalty for this offence is extremely severe.** The JCHR notes that the maximum term of imprisonment for this offence is significantly harsher than the maximum penalties that, until recently, applied to existing ‘protest-related’ non-violent offences such as obstructing the highway (level 3 fine) or aggravated trespass (3 months imprisonment).⁷⁶
41. **The defence of ‘reasonable excuse’ provides an inadequate safeguard for the exercise of Convention rights, given that someone would have to be arrested before being able to plead the defence of reasonable excuse.** In other words, as explained by the JCHR, “while this defence may protect an individual against wrongful conviction in breach of their Convention rights, it is less likely to protect them against prosecution and, particularly, arrest. Police officers are unlikely to refrain from arresting someone if all the elements of the offence are made out, meaning a protester with a ‘reasonable excuse’ based on exercise of Article 10 and 11 rights is likely to face arrest regardless.” The very threat of arrest would be an interference with individuals’ human rights, while also contributing to a wider chilling effect.
42. As highlighted by the JCHR, the requirement on the defendant to show that they had a ‘reasonable excuse’ for locking on is also notable for its reversal of the presumption of innocence, a central principle of criminal justice and an aspect of the Article 6 ECHR right to a fair trial. In contrast to an offence like obstruction of the highway, where the prosecution must prove that the defendant did not have ‘lawful authority or excuse’

⁷³ HL Deb 24 Nov 2021, vol.816, col. 980

⁷⁴ 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-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf>

⁷⁵ HL Deb 17 Jan 2022, vol.817, col. 1433

⁷⁶ Joint Committee on Human Rights, *Government creating hostile environment for peaceful protest, report finds*, 17 June 2022, available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>

for their actions, for the new ‘locking-on’ offence the burden of proof would be on *the defendant* to show that he or she has a ‘reasonable excuse’, to a balance of probabilities. Where the constituent elements of the offence have been proved, a court may be 49% convinced that the defendant did have a reasonable excuse but would still be required to convict. What this means in practice is that defendants may find it more difficult to rely on this defence. This is exacerbated by the fact that it is unclear in what circumstances doing each one of these activities would constitute a ‘reasonable excuse’, which again is likely to deter people from protesting for fear of the risk of arrest, conviction, and imprisonment.⁷⁷

AMENDMENT TO REMOVE THE OFFENCE OF BEING EQUIPPED FOR LOCKING ON

Clause 2

The above-named Lords give notice of their intention to oppose the Question that Clause 2 stand part of the Bill.

Effect

Clause 2 creates a new offence of locking on. This amendment would remove clause 2 from the Bill.

Briefing

43. Clause 2 creates a new criminal offence, targeting people 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 new offence of locking on. The punishment for this offence is an unlimited fine.
44. Our worries about the vague and potentially unlimited list of activities covered by the offence of locking on are exacerbated by the ambiguity of the offence of being equipped for locking on. We note that the ‘object’ in the offence of locking on does not have to be related to a protest at all – it must simply be established that a person intended for it 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 as to what activities might be criminalised under this offence.
45. Effectively, 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 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

⁷⁷ Joint Committee on Human Rights, *Government creating hostile environment for peaceful protest, report finds*, 17 June 2022, available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>

get caught up in a protest and be accused of going equipped for locking on.”⁷⁸ Baroness Chakrabarti further expressed concern for people possessing everyday items, that could be caught by these provisions: “I am worried about young people going about their business, sometimes riding to a demonstration or being in the vicinity of potential demonstrations, carrying bicycle locks.”⁷⁹ The possibilities are endless: the phrase “used in the course of or in connection with” an offence of locking on by *any* person could include the provision of bottled water or food to other people “in connection with” their direct action of locking on, or potentially just having on one’s person a mobile phone to livestream or record the action. This will not only have the effect of further deterring people from going to protests – or even walking in the vicinity of them – it could compound the criminalisation of people exercising their right to choose different methods of protest.

46. It is also significant that, unlike the substantive offence of locking on, there is no “reasonable excuse” defence in the wording of this offence, which means that individuals will find it even more difficult to challenge.

CONCLUSION

47. The Public Order Bill undertakes its passage through Committee Stage in the House of Lords at the same time as COP27 is unfolding in Sharm El Sheikh, Egypt, where international and civil society delegates are negotiating what action needs to be taken in the face of climate crisis. All around the world, and across the UK, people and communities are taking action to hold power to account, and it is their tireless advocacy that has put demands for climate justice – and its impact on all of our rights – at the forefront of the global conversation, demonstrating the significance of protest as a vehicle for achieving transformative social change.
48. In the face of social, political, and economic upheaval, the right to protest remains a crucial way for all of us – regardless of political affiliation or party – to make our voices heard. This is particularly important given escalating attempts by the Government to clamp down on avenues of accountability, including its plan to repeal and replace the Human Rights Act 1998 with an inferior Bill of Rights Bill. **We urge peers to continue to oppose the Public Order Bill and support amendments to remove the clauses creating Serious Disruption Prevention Orders, protest-specific stop and search powers, and locking on offences, to mitigate its worst harms and to defend our cherished civil liberties.**

⁷⁸ HL Deb 24 Nov 2021, vol.816, col. 980

⁷⁹ HL Deb 24 Nov 2021, vol.816, col. 987

APPENDIX: SERIOUS DISRUPTION PREVENTION ORDERS (PROTEST BANNING ORDERS)

	On conviction	Otherwise than on conviction
How is it made?	A magistrate’s court can impose an SDPO on an individual after they are sentenced or given a conditional discharge. The court can also adjourn proceedings for an SDPO until a later date.	A magistrate’s court, on application by: <ol style="list-style-type: none"> 1) The chief police officer where P lives; 2) A chief police officer who believes that P is in, or intends to come to, their area; or 3) The chief constable of the British Transport Police Force, Civil Nuclear Constabulary, or Ministry of Defence Police
Conditions for imposing an SDPO	<ol style="list-style-type: none"> 1) P has committed an offence. 2) The court is satisfied that the offence is “directly related to a protest” (clause 26). 3) P must have: <ol style="list-style-type: none"> i. Committed a ‘protest-related offence’; ii. Committed a protest-related breach of an injunction for which they were found in contempt of court; iii. Carried out activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals or to an organisation in England and Wales; iv. Caused or contributed to the commission by any other person of a protest-related offence or a protest-related breach of an injunction; or v. Caused or contributed to the carrying out by any other person of activities related to a 	<p>The court is satisfied on the balance of probabilities that on at least two occasions in the last five years, P has been:</p> <ol style="list-style-type: none"> i. Convicted of a protest-related offence; ii. Been found in contempt of court for a protest-related breach of an injunction; iii. Carried out activities related to a protest that resulted in or were likely to result in serious disruption to two or more individuals, or to an organisation, in England and Wales; iv. Caused or contributed to the commission by any other person of a protest-related offence or a protest-related breach of an injunction; or v. Caused or contributed to the carrying out by any other person of activities related to a protest that resulted or were likely to result in, serious

	<p>protest that resulted in, or were likely to result in, serious disruption to two or more individuals, or to an organisation, in England and Wales.</p>	<p>disruption to two or more individuals, or to an organisation, in England and Wales.</p>
Necessity	<p>The court has to be satisfied that the SDPO is necessary to prevent P from:</p> <ul style="list-style-type: none"> i. committing any ‘protest-related offences’ or ‘protest-related’ breaches of an injunction; ii. 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; iii. 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 iv. 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. 	