

## BRIEFING ON THE PUBLIC ORDER BILL FOR MPS AHEAD OF CONSIDERATION OF LORDS AMENDMENTS, MARCH 2023

1. The Public Order Bill will return shortly to the House of Commons with significant amendments. Notwithstanding these changes, the Bill remains a staggering escalation of the Government's attack on protest, and has been criticised throughout its passage by cross-party Parliamentarians, multiple parliamentary committees, the Council of Europe, five UN Special Rapporteurs, and 74 organisations from across UK civil society.<sup>1</sup> At Report Stage, the House of Lords blocked the Government's attempts to enable police to pre-emptively restrict protests on the basis they would cause 'more than minor' disruption and limit reasonable excuse. Peers also successfully secured the following victories (among others),<sup>2</sup> which will return to the Commons for MPs' consideration:

- **Lords Amendment 6: Removal of protest-specific, suspicion-less stop and search powers**
- **Lords Amendment 20: Removal of Serious Disruption Prevention Orders without conviction**

**We urge MPs to support Lords Amendments 6 and 20 and vote 'No' to any Government motion made to disagree with them.**

### Protest-specific, suspicion-less stop and search powers (Clause 11; Lords Amendment 6)

2. **The creation of a protest-specific, suspicion-less stop and search power will drastically expand police public order powers.** Under the Bill, an inspector will be able to make an authorisation applying to a particular place for a specified period if they reasonably believe a protest offence will be committed and people are carrying 'prohibited objects' that could be used in such an offence. This will enable police officers to stop and search an individual or a vehicle for 'prohibited objects' without suspicion. The definition of 'prohibited objects' is an object made or adapted for use in the course or connection of a protest – which could include anything from a bike lock, to a tube of glue, to a roll of tape or twine. At Report Stage, four Conservative peers voted against this measure.

3. **Expanding stop and search to the protest context will create a chilling effect for freedom of expression.** The Government has admitted that this is a preventative power: "in high-pressure, fast-paced protest environments, it is not always possible for officers to form reasonable suspicion that individuals may be about to commit an offence."<sup>3</sup> However, the breadth and low thresholds of the protest offences that will be created by the Bill (including the criminalisation of such acts as linking arms under the new locking on offence) and the category of 'prohibited objects' means that this new suspicion-less stop and search power is likely to result in severe intrusions on individuals' exercise of their fundamental rights. This will have a disproportionate impact on communities already locked out of the corridors of power, for whom protest is an urgent way of speaking out about injustice.

4. **The expansion of stop and search will further entrench racism in the criminal justice system and diminish trust in public institutions.** Review after review of police conduct has found that racism and misogyny is pervasive across the police force. Only 36% of Black children and teenagers trust the police compared with 75% of young White people,<sup>4</sup> and almost half of women had less trust in the police following the murder of Sarah Everard.<sup>5</sup> Former police officers have warned that measures in the Public Order Bill risk further diminishing trust in public institutions.<sup>6</sup> This is particularly concerning given the new offence of obstructing a protest-specific, suspicion-less stop and search, which parliamentarians have warned could criminalise the very behaviour (e.g. questioning an officer) that was recommended to women in the aftermath of Sarah Everard's murder.<sup>7</sup>

**In 2020/2021, in comparison to White people, Black people were seven times more likely to be stopped and searched under suspicion-based stop and search powers, and 14 times more likely to be stopped and searched under suspicion-less stop and search powers.<sup>8</sup>**

<sup>1</sup> Letter to the UK Government from five UN Special Rapporteurs (OL GBR 16/2022): <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27724>; Council of Europe report on the UK, Dec 2022: <https://www.coe.int/en/web/commissioner/-/united-kingdom-commissioner-warns-against-regression-on-human-rights-calls-for-concrete-steps-to-protect-children-s-rights-and-to-tackle-human-rights-issues-in-northern-ireland>; Joint briefing from 74 civil society organisations: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2019/03/Joint-civil-society-briefing-for-Report-Stage-of-the-Public-Order-Bill-January-2023-1.pdf>

<sup>2</sup> The House of Lords also secured the following victories which are likely to proceed to the Commons for MPs' consideration: establishing a definition of serious disruption in the Bill; adding protections for journalists, and narrowing who can be given an SDPO on conviction. See: <https://www.libertyhumanrights.org.uk/issue/public-order-bill-explainer-what-happened-in-the-lords-and-what-happens-next>

<sup>3</sup> Lord Sharpe of Epsom, HL Deb 22 Nov 2022, vol. 825, col. 1342.

<sup>4</sup> Russell Webster, *Just 36% Black Young People trust the Police*, 2 Dec 2022: <https://www.russellwebster.com/just-36-black-young-people-trust-the-police/>

<sup>5</sup> End Violence Against Women coalition, *Almost half of 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/>

<sup>6</sup> Evans, M. Law to curb Just Stop Oil protests 'a sledgehammer to crack a nut', say ex-police chiefs, The Telegraph, 17 December 2022: <https://www.telegraph.co.uk/news/2022/12/17/law-curb-just-stop-oil-protests-sledgehammer-crack-nut-say-ex/>

<sup>7</sup> Lord Beith, Public Order Bill HL Deb 1 Nov 2022, vol. 825, col. 153.

<sup>8</sup> Home Office, *Public Order Bill: Equality Impact Assessment, 2022*, <https://www.gov.uk/government/publications/public-order-billoverarching-documents/public-order-bill-equality-impact-assessment>

5. **This power would put protest on a par with “the most serious offending”.** The JCHR has highlighted its concerns that comparable suspicion-less stop and search powers are only available where serious violence is anticipated or where it is believed weapons are being carried; or where it is reasonably suspected that an act of terrorism will take place.<sup>9</sup> **Expanding stop and search to the protest context must be opposed. We urge Parliamentarians to remove protest-specific, suspicion-less stop and search from the Bill by supporting Lords Amendment 6.**

#### **Serious Disruption Prevention Orders made otherwise than on conviction (Clause 20; Lords Amendment 20)**

6. **SDPOs are an unprecedented, far-reaching and highly draconian civil order,** that could extinguish named individuals’ right to protest, subject them to extensive surveillance, and criminalise them for failing to comply with conditions including curfews, reporting requirements, and even restrictions on internet usage. At Report Stage in the House of Lords, the Government was forced to make concessions on the SDPO regime, so that SDPOs can no longer include a condition of 24/7 GPS monitoring and can only be renewed once. However, these minimal changes are inadequate to mitigating the harms of SDPOs, **especially SDPOS made otherwise than on conviction which can be given to people even if they have not committed an offence.**
7. **Similar measures to SDPOs have been widely criticised by the police, the Home Office, His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), and former senior police advisors for being “unworkable”, an ineffective deterrent, and incompatible with human rights.**<sup>10</sup> The Director of Public Prosecutions Max Hill KC has also said that both prosecutors and the police “have the legal tools [they] need” to deal with disruptive protest.<sup>11</sup> The Prime Minister himself admitted in January that “we have seen new tactics emerge, evolve — in part because of the tougher powers we’ve introduced.”<sup>12</sup>
8. **SDPOs are more restrictive than the equivalent – and highly contested – measures for terror suspects.** The former Independent Reviewer of Terrorism Legislation Lord Anderson of Ipswich has drawn parallels between SDPOs and Terrorism Prevention and Investigation Measures (TPIMs) - “the most extreme forms of restriction known to our law, short of imprisonment”. In both cases, failure to adhere to a condition can result in a prison sentence. However, SDPOs without conviction far surpass TPIMs in their severity: they can be imposed without conviction by a magistrate’s court if a person has merely participated in two protest-related activities in the past five years, are “completely unlimited” in their content, lack robust scrutiny, and could affect up to 400 people per year (by contrast, only two TPIMs are currently in force).<sup>13</sup>
9. **The SDPO regime risks undermining the operational independence of the police.** Clause 30 of the Bill gives the Home Secretary the power to make regulations identifying individuals to be given an SDPO. The Delegated Powers and Regulatory Reform Committee (DPRRC) warned that this was “an extreme example of a power to issue guidance on the exercise of statutory functions”, recommending its excision from the Bill.<sup>14</sup> The Government rejected the DPRRC’s recommendation with minimal justification.
10. **SDPOs sideline parliamentary scrutiny.** In response to concerns voiced by the DPRRC over the Home Secretary’s significant powers to make regulations impinging on the police’s statutory functions, the Government said that Clause 30 already provides “exceptionally” for a negative procedure (as opposed to the general precedent that there is no procedure for guidance issued in relation to orders such as Domestic Abuse Protection Notices and Domestic Abuse Protection Orders).<sup>15</sup> Crucially, however, protest is a fundamental right – perpetrating domestic abuse is not. It is self-evident that there should be greater scrutiny over powers that could be used to deprive people of their civil liberties on the basis that they have previously engaged in protest-related activities (including if they have never committed a crime). **SDPOs must be opposed in their entirety. We urge Parliamentarians to remove SDPOs made otherwise than on conviction from the Bill by safeguarding Lords Amendment 20.**

<sup>9</sup> JCHR, Government creating hostile environment for peaceful protest, report finds, 17 June 2022: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>

<sup>10</sup> HMICFRS, Getting the balance right? An inspection of how effectively the police deal with protests, March 2021: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf>

<sup>11</sup> Dearden, L., *Human rights laws ‘not stopping protest prosecutions’, CPS chief says after Braverman attacks*, 2 January 2023: <https://www.independent.co.uk/news/uk/home-news/protest-arrests-just-stop-oil-braverman-b2243678.html>

<sup>12</sup> Dathan, M., *New powers for police to curb road activists after Just Stop Oil’s street protests*, 10 January 2023: <https://www.thetimes.co.uk/article/new-powers-for-police-to-curb-road-activists-after-just-stop-oils-street-protests-7qtdwrtmc>

<sup>13</sup> HL Deb 13 Dec 2022, vol. 826, col. 633

<sup>14</sup> Delegated Powers and Regulatory Reform Committee, Public Order Bill, 3 November 2022: <https://committees.parliament.uk/publications/31504/documents/176700/default/>

<sup>15</sup> Pg. 12, Delegated Powers and Regulatory Reform Committee, Public Order Bill: Government response, 3 November 2022: <https://committees.parliament.uk/publications/31859/documents/179130/default/>