LIBERTY

LIBERTY'S WRITTEN EVIDENCE TO THE PUBLIC BILL COMMITTEE FOR THE POLICE, CRIME, SENTENCING AND COURTS BILL

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ABOUT LIBERTY

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

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

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

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EXECUTIVE SUMMARY

Liberty welcomes the opportunity to provide written evidence to the Public Bill Committee for the Police, Crime, Sentencing and Courts Bill 2021 (PCSC Bill).

The Police, Crime, Sentencing and Courts Bill is a fittingly unwieldy name for a piece of legislation with a tremendously broad scope. It hands the police and the Home Secretary sweeping new powers to restrict protest rights, undermines Gypsy and Travellers' nomadic way of life, establishes new stop and search powers, provides a basis for expansive, police-led data gathering, retention and sharing which circumvents existing safeguards, and paves the way for a rise in predictive policing practices. In Liberty's view, the threat this Bill poses to our rights, freedoms and way of life is so significant, that it cannot be mitigated by procedural amendments.

This briefing focuses on four elements of the Bill: the serious violence duty (Clauses 7-22), public order (Clauses 54-60), unauthorised encampments (Clauses 61-63), and Serious Violence Reduction Orders (Clauses 139 and 140). For the disproportionate negative impacts these clauses stand to have on minoritised communities already over-policed and discriminated against, for the substantial chilling effect they threaten to impose on the rights of freedom of expression and assembly, for the incredibly broad drafting that would hand untold powers to the Secretary of State to define terms and impose conditions almost at a whim, and for many more reasons outlined below, **Liberty is of the strong opinion that each of these clauses must be removed from the Bill.**

PART 2: FUNCTIONS RELATING TO SERIOUS VIOLENCE

1. Part 2, Chapter 1 of the PCSC Bill (Clauses 7-22) places a new statutory duty on specified authorities to collaborate with each other to "prevent and reduce serious violence". Specified authorities include local authorities, healthcare providers, youth services, and education providers. Clauses 9, 15 and 16 create new legal duties on specified authorities to disclose data with the police and other bodies.

2. The duties in this Bill raise a breadth of human rights concerns. As currently drafted, these provisions would embed an enforcement-led approach to preventing violence which overlooks, and risks exacerbating, its root causes, sanction the profiling of individuals as well as entire populations and risk embedding discrimination in public services and eroding professional obligations. Without careful attention to the need to take steps to prevent serious violence while upholding basic principles such as

confidentiality, non-discrimination, the presumption of innocence, and the best interests of children, there is significant scope for people's civil liberties to be breached.

3. Despite the foundation this Part provides for significant, unfounded, and potentially disproportionate, intrusions into people's lives, it received very little attention during second reading. Given the relative lack of consideration that has been afforded to this Part, it requires particularly searching scrutiny in Committee. **At Committee stage, Liberty recommends that this Part is removed from the Bill and urges MPs to give notice of their intention to oppose the question that Clauses 7–22 stand part.**

THE PROBLEMS WITH A POLICE-LED APPROACH

4. Liberty recognises that the intention of the serious violence proposals is to protect communities from harm, save lives and prevent injury. These are aims which Liberty wholeheartedly supports – serious violence is a human rights issue which devastates communities across the country, hindering many people's ability to live safe and dignified lives. It demands an evidence-based and response that works with, not against, communities that bear its brunt.

5. However, Clause 13 of the Bill effectively puts a police-led approach on a statutory footing. It gives local policing bodies the authority to monitor specified authorities' – which includes education and healthcare providers – compliance with their duties to collaborate to prevent and reduce serious violence under Clause 7 of the Bill. Establishing the police as the lead is fundamentally at odds with a public health approach. Police and welfare-based agencies and organisations have differing institutional missions and professional obligations. A police-led approach is likely to result in the prioritisation of policing objectives (including surveillance, enforcement, and punishment), at the expense of protecting people's rights and improving their well-being and economic conditions. The duties established by this Part significantly extend the reach of the police – and the regulations of people's civil liberties – to the pre-criminal or precautionary space, where it is even more important that protections for abuse are clearly-established. Information gathered by the police under these provisions may be used to identify those who are subjected to, or justify the imposition of, punitive civil orders, such as Knife Crime Prevention Orders (KCPOs).[1] Taken together with the significant data collection, retention and sharing this Part

[1] Established by Part 2 of the Offensive Weapons Act, 2019.

enables, there is a significant risk that more people, including children and young people, will come into contact with the police and be pulled into the criminal justice system.

ENABLING MASS DATA COLLECTION, RETENTION AND SHARING

6. Data collection, retention and sharing are a central tenet of the legal duty outlined in the Bill. Clauses 7 and 8 require specified authorities to collaborate to prevent and reduce serious violence. Clauses 9, 15 and 16 establish wide-ranging powers for the Secretary of State to authorise disclosure of information, for specified authorities to disclose to each other, and for the police to order disclosure if it assists with their exercising of their functions under Clause 13, which are defined broadly to include monitoring that specified authorities are complying with their duty to address serious violence.

7. An astonishing set of provisions make clear that any disclosure of information under these clauses would not breach professionals' confidentially duties or any other legal or professional obligations they may be subject to. While the Clauses 9 (5) (a), 15 (4) (a) and 16 (5) (a) state that a disclosure should not be made that would contravene data protection legislation, but that in determining whether it would do, the duties imposed under this section are to be taken into account. This Clause is worryingly vague, and the caveat could be read to circumvent the usual data protection safeguards. Further, Clauses 9 (5) (b), 15 (4) (b) and 16 (5) (b) state that disclosures cannot be made if it is *prohibited* by specific provisions of the Investigatory Powers Act 2016 (IPA). This is a vague clause, which could be interpreted to mean that, as long as the IPA allows a particular type of information to be collected – which could include the content of people's communications (such as emails or texts), people's metadata (such as search history), or even data saved on a phone (such as notes or diary entries) but not shared with anyone else – disclosures can be made without getting a warrant or complying with other safeguards the IPA provides for. If interpreted in this way, these provisions appear to provide a way for police (and other specified authorities) to amass data while circumventing the with IPA safeguards.

8. We are acutely concerned that these provisions will facilitate the expansion or creation of large databases, which is likely to include much more information than would be traditionally expected for policing. Read alongside the Home Office's plans to develop the Law Enforcement Data Services (LEDS) – a UK-wide police 'super-database' which will create a single interface to numerous databases and mix both evidential and intelligence

material – this will offer significantly enhanced capabilities for linking information together. Absent robust safeguards, information could be integrated with locally-held databases and that local police forces may build their own parallel databases.

9. Clause 16 is particularly concerning – it permits a local policing body to demand bodies, including any specified authority or educational authority in their area, to supply it with any information they specify. Clause 16 (4) makes clear it is a legal requirement to disclose any information the police request. There are no provisions – either at the stage of police request or the Secretary of State's directions or order – to make representations or appeal against a disclosure requirement. While the information can only be used for the purpose of exercising their functions under Clause 13, given how wide-ranging these are – almost any information the police collect may assist them in monitoring whether other authorities are reducing serious violence – this can hardly be considered a safeguard. Clause 17 provides that the Secretary of State can issue a mandatory order requiring compliance with a disclosure request made by a police force.

10. Given the broad and ambiguous nature of the underlying duty to prevent or reduce serious violence, it is difficult to determine the scope of content that could be collected, retained and shared. However, it is highly likely to engage the right to respect for private and family life, protected by Article 8 of the European Convention on Human Rights (ECHR).[2]

11. It may include highly sensitive information concerning people's health status, religious beliefs or political opinions and affiliations, which are subject to a higher degree of protection under both the Data Protection Act 2018 (DPA)[3] and the ECHR. The gathering of personal information and onward sharing with third parties under a nebulous legal duty also raises concerns about compliance with a number of other data protection principles, including whether the purposes for which partner agencies use the data are compatible with the purposes for which it was obtained[4] and data minimisation.[5] Moreover, it is not clear whether an individual will be informed that their personal information has been shared,[6] or if there will be any opportunity to challenge the accuracy of that information or any subsequent assessment that is made.[7]

[2] Catt v United Kingdom 43514/15
[3] Section 35, Data Protection Act 2018.
[4] GDPR, Principle (b)
[5] GDPR, Principle (c)
[6] GDPR, Principle (a)
[7] GDPR, Principle (d)

12. Given the explicit provisions as regards professional obligations, it will inevitably lead to the onward disclosure of confidential data, including information shared with, for example, doctors, nurses, teachers, and social workers in one context for a specific and limited purpose. Legal duties and professional obligations – such as confidentiality and safeguarding duties – are essential to protect people's dignity and privacy, fostering relationships of trust, and delivering high quality care. These duties are grounded in domestic[8] and international law,[9] and articulated in professional standards and guidance.[10] They are particularly acute where public authorities are making decisions in regard to children. It is critical that multi-agency frameworks should not serve to short-circuit these safeguards.

13. There may be instances in which the proposed public health duty may be inconsistent with, or distort, those established duties. In the context of healthcare, the common law duty of confidentiality, set out in the NHS Confidentiality Code of Practice, is founded on the principle that information confided should not be used or disclosed further, except with the data subject's subsequent permission. The General Medical Council has published Confidentiality Guidance to inform healthcare professionals' approach to their confidentiality obligations and sets out the narrow exceptions to the principle of confidentiality, for example where it may be justified in the public interest "if failure to disclose may expose others to a risk of death or serious harm".[11] This Part will permit, and in some instances require, disclosures in far more circumstances than where there is a risk of death or serious harm, which can never be understood to breach confidentiality duties.

14. Efforts to suspend or hollow out safeguarding and confidentiality duties will unravel relationships of trust between the teachers, doctors, nurses, social and youth workers who rely on trust to provide care. This has significant potential to undermine engagement with these services. For example, requiring healthcare professionals to disclose the personal information of patients who come to the emergency services with an injury they think is suspicious may deter people from seeking life-saving care. As the Royal Council of Nurses' acting Chief Executive and General Secretary commented in response to the Government's proposals, the "first duty of healthcare workers is to treat and care for patients, and it's important people aren't deterred from seeking help for fear of being

[8] Section 1, Children's Act 1989
[9] Article 3, Convention on the Rights of the Child.
[10] Department for Education, 'Working Together to Safeguard Children', 2018, https://www.gov.uk/government/publications/working-together-to-safeguard-children--2
[11] General Medical Council, 'Confidentiality: good practice in handling patient information', 25 April 2017, https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality.

reported".[12] Similarly, where students feel that they cannot confide in teachers or youth-workers, this may undermine their function as a safe space and, counter-productively, limit their ability to identify those children most in need of support.

15. In essence, these provisions provide the foundation for a significant, police-led data collection project, absent any safeguards to protect fundamental rights. It is important to distinguish between the collection and analysis of anonymised data in order to identify the problem and create an evidence base, on the one hand, and the collection of personal data to create intrusive risk profiles of individuals to justify actions that may intrude on their fundamental rights, on the other. In regard to the former, Liberty strongly advocates evidence-based policymaking, and the systematic collection of properly anonymised data – with robust safeguards to limit the risk of de-anonymisation – plays a role in providing a comprehensive evidence base for high-quality research and analytics to assess why serious violence occurs. In regard to the latter, Liberty is concerned that this will facilitate the collection, retention and sharing of large amounts of personal data, potentially without people's consent, particularly if the guidance produced requires a referral process similar to that required under the Government's counter-extremism strategy, Prevent.

IDENTIFYING 'RISKY' INDIVIDUALS

16. Duties of this nature are likely to have the effect of expecting public sector workers to gather the sensitive personal data of individuals to whom they provide care and share it with a range of authorities, including the police and criminal justice institutions. This would mirror the demands of the Prevent duty – requiring teachers, doctors, nurses and social workers to report people under their care whom they suspect of being at risk of engaging in violence or criminality in the future.

17. Liberty is concerned by what criteria or indicators might be used to identify at risk individuals, with a view to collecting information about them or planning interventions. By way of analogy, under the Prevent strategy, specified authorities are directed towards vague "indicators of extremism" which form the basis of referrals to the police and other authorities. We are concerned that similarly vague indicators – potentially based on the risk factors identified in the Government's Serious Violence Strategy, which include local deprivation, delinquent peers, low self-esteem, low intelligence, domestic abuse, truancy,

[12] Ruchira Sharma, 'What teachers and nurses think about their new legal duty to spot youth crime', *i News*, 1 April 2019, https://inews.co.uk/news/teachers-nurses-legal-duty-spot-youth-crime-home-office/

school exclusions and substance abuse – may provide a basis to identify people as risky.[13] In the absence of clear criteria, and in light of the 'risk factors' identified in the Serious Violence Strategy, Liberty is concerned that assessments under the proposed duty may be predicated on crude generalisations or profiling, which, worse still, conflate vulnerability to violence with a perceived propensity to commit it.

18. Just as the Prevent duty has disproportionately targeted Muslims and minority ethnic communities, it is likely that these human rights harms would likely be felt most acutely by those already over-policed and over-represented in the criminal justice system, such as communities of colour or deprived communities. Liberty is concerned that the operation of a serious violence prevention duty would be imbued with the assumptions and stereotypes that persist in the policing of serious violence, contrary to the right to non-discrimination[14] and the public sector equality duty.[15]

19. The fact that black men and boys are disproportionately policed is widely acknowledged and clearly established in data, and the way in which serious violence is policed is heavily fuelled by racial stereotypes, many of which centre on the ill-defined and porous concept of the 'gang'. The stark statistics on the Metropolitan Police Service's (MPS) Gangs Matrix, revealed in a report published last year by Amnesty International, lay bare the over-identification of BAME people as gang affiliated – 72 per cent of individuals on the MPS's Gangs Matrix are black, yet the MPS's own figures show that just 27 per cent of those responsible for serious youth violence are black.[16] As one equality campaigner recently commented, "this is institutionally racist policing in its purest form".[17] Last year, the Mayor's Office for Crime and Policing (MOPAC) acknowledged the disproportionality of the Gangs Matrix and called on the MPS to 'comprehensively overhaul' it, by implementing a list of recommendations and recommendations put forward by the Information Commissioner's Office (ICO).[18] Liberty is concerned that assessments of indicators of risk of engagement in serious violence will lead to similarly racially disproportionate outcomes. Moreover, given that community deprivation and family

[13] Home Office, 'Serious Violence Strategy', April 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf.
[14] Article 14, European Convention on Human Rights.
[15] Section 149, Equality Act 2010.
[16] Amnesty International, 'Trapped in the Matrix: Secrecy, stigma and bias in the Met's Gangs Database', May 2018, https://www.amnesty.org.uk/files/reports/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf.
[17] Stafford Scott, 'The Met's Gangs Matrix is racist policing in its purest form', *The Guardian*, 12 January 2019, https://www.theguardian.com/commentisfree/2019/jan/12/metropolitan-police-gangs-matrix-racist-policing
[18] MOPAC, Review of the Metropolitan Police Service Gangs Matrix, December 2018, https://www.london.gov.uk/sites/default/files/gangs_matrix_review_-_final.pdf

socio-economic status are explicitly characterised as 'risk factors' of serious violence, this invites the targeting of lower income communities.

20. Recent policy and practice – such as the conviction of musicians for breaching gang injunctions,[19] police trawling of music videos on social media to identify gang affiliates,[20] or efforts to compel YouTube to remove music videos the police determine 'glamourise' gang lifestyles[21] – demonstrate the risk that aspects of BAME or working class youth culture, or forms of expression which describe violence without inciting it, will be unjustifiably viewed as a marker of future participation in violence. A duty of this nature may, therefore, lead to the monitoring and censorship of the music people listen to or share online, the clothes they wear, the language they use, the places they go to, and the friends or family with whom they associate. Academic research evidences that the Prevent duty has generated a similar dynamic, prompting young Muslims to alter their behaviour, self-censoring or disengaging from campus life or their studies for fear of being labelled an extremist and stigmatised.[22] Moreover, it may inhibit people's ability to communicate freely about their experiences in pastoral settings for fear they will be reported to the police.

SCALING UP PREDICTIVE POLICING

21. Liberty is concerned that the data collected under these provisions will be used to feed pre-criminal police practices, predictive policing and automated decision-making tools. Police-led multi-agency frameworks that already operate to identify people as 'at risk' of future participation in criminal activity provide an indication of how this might operate. People flagged or formally referred to the authorities under the Prevent duty have been subject to intrusive questioning by colleagues or the police about their political opinions or religious beliefs.[23] Liberty acted for a woman who was questioned by a uniformed officer when the primary school of her five- and seven-year-old called the police,

[19] Dan Hancox, 'Skengdo and AM: the drill rappers sentenced for playing their song', *The Guardian*, https://www.theguardian.com/music/2019/jan/31/skengdo-and-am-the-drill-rappers-sentenced-for-playing-their-song.
[20] Jen Mills, 'YouTube deletes drill music videos 'inciting violence' after requests from police', *The Metro*, 29 May 2018, https://metro.co.uk/2018/05/29/youtube-deletes-drill-music-videos-inciting-violence-after-requests-from-police-7584811.
[21] Home Office, 'Serious Violence Strategy', April 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf
[22] Jack Neenan, '"Muslims are self-censoring" Prof Scott-Baumann on the battle for free speech on campus', *SOAS Blog*, 14 September 2018, https://www.soas.ac.uk/blogs/study/muslims-are-self-censoring
[23] See Open Society Justice Initiative, Eroding Trust (October 2016) available at https://www.opensocietyfoundations.org/sites/default/files/eroding-trust-20161017_0.pdf

concerned about its obligations under the Prevent duty, because the children had been given plastic toy guns as presents.[24]

22. The increasing practice of public agencies categorising young people they suspect may be associated with gangs as 'gang nominals' is also instructive. This is institutionalised by the MPS, for example, through the Gangs Matrix. Research has revealed that people included on the MPS's Gangs Matrix are subject to high levels of police scrutiny, with some interviewees describing being stopped by police several times a day,[25] despite only minimal, uncorroborated, and undisclosed evidence being required for them to be entered into the Matrix. Liberty is concerned that the proposed legal duty may facilitate intrusive surveillance and routine over-policing in a similar fashion. The effects of such unwarranted intrusion can be deep and enduring, and may foster a long-term sense of anger and hostility towards the police,[26] ultimately undermining the aim of community safety for which it is deployed.

23. Moreover, the mere act of 'labelling' an individual – whether as an extremist, a gang member, or a future criminal – can be profoundly stigmatising, and leave people feeling isolated and marginalised. As Liberty has documented extensively, the rising use of automated risk profiling and predictive policing tools, which rely on profiling to allocate risk and ultimately inform public policy decisions, may exacerbate this dynamic, with significant consequences for labelled individuals, their families, and their social circles.[27]

24. Liberty is concerned that the data gathered and shared under these provisions may be used to feed predictive policing programmes. In 2019, Liberty revealed that at least 14 UK police forces have used or intend to use computer algorithms to predict where and when crime will happen ("mapping programs") and who will commit it ("risk assessment programs"), using historic police data. These computer programs use algorithms to analyse large quantities of data which reflects existing patterns of discrimination in policing. These programs will not necessarily follow rules a human set for them – they also "learn" and become more autonomous when making predictions, without having to be programmed.

[24] Esther Addley & Alexandra Topping, 'Council admits racially discriminating against two boys over Prevent toy gun referral', *The Guardian,* 27 January 2017, https://www.theguardian.com/uk-news/2017/jan/27/bedfordshire-local-education-authority-admits-racial-discrimination-brothers-toy-gun-school-police

[25] Patrick Williams and StopWatch, Being Matrixed (2018) available at http://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf

[26] Criminal Justice Alliance, No respect: Young BAME men, the police and stop and search. Available at: http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617-1.pdf

[27] Liberty, 'Policing By Machine', 1 February 2019, https://www.libertyhumanrights.org.uk/issue/policing-by-machine.

25. Although predictive policing simply reproduces and magnifies the same inequalities policing has long produced, filtering this decision-making process through complex software that few people understand lends unwarranted legitimacy to biased policing strategies. As our 2019 report noted, their use "provides a front of allegedly 'impartial' statistical evidence, putting a neutral technological veneer on pre-existing discriminatory policing practices."[28] Use of algorithms can and should be examined for the ways in which they can remove bias – but until the police demand and use fully tested programs that embed this by design, the Government should apply the precautionary principle to police use of algorithms.

26. From deciding if someone is likely to reoffend, through to which areas or neighbourhoods should be most frequently patrolled by police, these decisions are too important to hand over to a machine – and the risks to our civil liberties are too great. Liberty opposes policing driven by big data and "data predictions", which feeds an opaque decision-making environment and risks putting discriminatory practices further out of view. We are concerned that this Part provides a basis for amassing data to feed, and scale up the use of these programmes. **Liberty recommends that this Part is removed from the Bill and urges MPs to give notice of their intention to oppose the question that Clauses 7 – 22 stand part.**

PART 3: A RADICAL RESTRICTION OF PROTEST RIGHTS

27. Part 3 of this Bill (Clauses 54-60) constitutes a concerted attack on the right to protest, arrived at through several different means from amending previous legislation to extend the police's already extensive powers, to creating new offences, and targeting the manner, the method, the location and even the noise level of demonstrations. Taken together, these provisions would radically restrict not only our deeply cherished principles of freedom of assembly and expression, but also a vital tool and mechanism available to citizens of democratic countries to stand up to the State and make their voices heard.

28. Liberty is yet to hear a compelling case in favour of creating far-reaching new powers or expanding those already on the statute books. 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. This Bill attempts to plug non-existent gaps, while strengthening State power. Indeed, in the judicial review of the ban on Extinction

[28] Ibid p.15

Rebellion protests across the whole of London, the Commissioner of the MPS conceded that 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.[29]

29. Given the sweeping nature of these powers and the gravity of harm that they will enable, Liberty believes these measures must be excised from the Bill entirely. **Liberty urges MPs to give notice of their intention to oppose the question that Clauses 54 – 60 stand part.**

IMPOSING CONDITIONS ON PUBLIC PROCESSIONS

30. Clause 54 amends section 12 of the Public Order Act 1986 (POA) to allow the police to impose conditions on a procession if they have a reasonable belief that the noise generated by persons taking part in the procession may "result in serious disruption to the activities of an organisation which are carried on in the vicinity of the procession" or may "have a significant and relevant impact on persons in the vicinity". It confers a power on the Home Secretary to make regulations detailing the meaning of "serious disruption to the activities of an organisation carried on in the vicinity".

31. This establishes a new basis for police to impose conditions on processions: noisiness. It provides that if the noise a procession creates causes serious disruption or has a significant and relevant impact on people – which may include causing people to "suffer serious unease, alarm or distress" – the police may impose any conditions as appear necessary to prevent it.

32. These proposals would constitute a gross expansion of police powers. Protests, by their very nature, are noisy. Noise is also a crucial means of expressing collective solidarity or grief and, quite literally, making 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 the countryside march,[30] oppose the Iraq War[31] or make their voices heard on Brexit[32] – which is often a central ingredient of effective protest. As legal academic Professor David Mead commented, the proposed power to regulate protests simply because it will

[29] *Jones & Ors v Commissioner of Police for the Metropolis* [2019] EWHC 2957 [76]
[30] Tania Branigan '400,000 bring rural protest to London,' *The Guardian* (23 Sep 2002) https://www.theguardian.com/uk/2002/sep/23/hunting.ruralaffairs2
[31] "'Million' march against Iraq War,' *BBC News* (16 February 2003) http://news.bbc.co.uk/1/hi/uk/2765041.stm
[32] '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

generate noise that might have certain effects is an "existential threat to protest, so closely entangled are protests with noise".[33]

33. Liberty is concerned by the wide discretion this and other powers established by Part 3 afford to the police. Broad discretion is likely to lead to the police facilitating some protests while clamping down on others, based on a range of political and structural factors. Liberty is also concerned that this type of overbroad policing power may make public order situations more difficult for frontline officers. Overbroad and disproportionate powers are not necessarily a boon for police, but can instead place an unhelpful burden on the exercise of their professional discretion. Sir Peter Fahy, the former chief constable of Greater Manchester Police, stated, people should be "really worried" about the Bill because it was "bringing in legislation on the back of the Black Lives Matter and Extinction Rebellion demonstrations, rushing that legislation through, putting in some really dodgy definitions which the police are supposed to make sense of".[34] Further, such powers may set up confrontation between protestors and the police – as former MPS Commander, John Sutherland, commented it "drives a wedge" between the police and the public.[35]

34. Clause 54 (4) allows the Secretary of State for the Home Department the power to delineate by way of secondary legislation what constitutes the "serious disruption to the life of the community" test under the POA and the new "serious disruption to the activities of an organisation which are carried on in the vicinity" test which this Bill seeks to establish. These regulations may "give examples of cases in which a public procession is or is not to be treated" as meeting these thresholds. This gives the Government of the day an expansive power – subject to limited Parliamentary scrutiny – to effectively declare the kind of protests and causes it deems inconvenient or unacceptable, and provide the police a licence to limit them. As 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 [...] I would urge the Government to consider carefully the need to walk a fine line between being popular and populist. Our freedoms depend on it."[36]

[33] David Mead 'Yes, you can... but only if you're quiet,' *Verfassungsblog* (17 March 2021) https://verfassungsblog.de/uk-silence-protest/
[34] Sophia Sleigh, 'Really dodgy definitions': Ex-police chief sounds warning over proposed powers for policing protests', *Evening Standard*, 15 March 2021 https://www.standard.co.uk/news/politics/policing-bill-protests-warning-sir-peter-fahy-b924136.html
[35] https://twitter.com/BBCNewsnight/status/1371608284352811008
[36] HC Deb 15 March 2021 vol 691

IMPOSING CONDITIONS ON PUBLIC ASSEMBLIES

35. Clause 55 replicates the power to impose conditions based on noisiness contained in Clause 54 and applies them to static assemblies. Additionally, it removes the caveat under section 14 of the POA that conditions on static assemblies may only be imposed on the place an assembly may be held, its maximum duration or the maximum number of people attending, in so far as they apply to assemblies in England and Wales. Under Clause 55 any conditions that "appear necessary" could be imposed on static assemblies, aligning sections 12 and 14 of the POA.

36. This clause largely mirrors Clause 54 and reiterates the concerns outlined at paragraphs XX.

37. Liberty is concerned by the attempt to reduce the limits on powers to regulate static assemblies. The existing distinction between sections 12 and 14 reflects the less disruptive impact of, and the relative ease with which police can facilitate, static assemblies compared to marches. These provisions erode that distinction. As then Home Secretary Lord Hurd of Westwell noted during second reading of the Public Order Act 1986, "[w]e stopped short of a power to ban because we believed that that would be an excessive limit on the right of assembly and freedom of speech. For this reason, Clause 14 does not permit the police to impose conditions changing the date and time of an assembly. They will be able only to impose conditions limiting its size, location or duration".[37]

38. If the impetus for this change is so that powers in relation to processions and assemblies are "equalised" in the interests of clarity, we query why they are being levelled down (i.e. via repeal of the limits on the nature of the conditions that can be imposed on assemblies) rather than levelled up (i.e. via imposition of limits on the nature of conditions that can be imposed on processions). It is not clear what conditions the Government are seeking to give the police the power to impose on protests beyond those which restrict the place an assembly may be held, its maximum duration or the maximum number. This subtle change, regarding the limits that can be placed on conditions imposed, could conceivably have dramatic consequences for protesters – affording the police near unfettered discretion to impose any condition they see fit including, for example, restrictions on the words or slogans that can be expressed on placards.

39. These changes may embolden the police to impose increasingly expansive restrictions which may hollow out the right to protest and amount to an effective ban. The line

[37] HC Deb 13 January 1986 vol 89 797

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.

40. 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 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 demands known at the time. It is therefore critical that police powers themselves are tightly circumscribed. The broad discretion afforded by the PCSC Bill 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.

BREACH OF POLICE-IMPOSED CONDITIONS

41. Clause 56 reduces the knowledge requirement for an offence to be committed under sections 12 and 14 of the POA, so it is no longer necessary to prove that a person actually knew of the conditions, just that they "ought to have known" a condition was in force. Sections 12 and 14 of the POA already criminalise behaviour that would not in itself be a criminal offence but for the imposition of conditions by the police. Clause 56 goes a step further and risks criminalising people who unwittingly breach conditions the police impose.

42. This places an additional undue burden on the organisers of protests to inform protestors of conditions and on protestors themselves to gather information on any conditions that might be imposed. It may disproportionately criminalise small, under-resourced and spontaneous protest groups. Furthermore, people who are digitally excluded – which disproportionately includes disabled, older, and poor people – may not have access to information that, for example, the police communicate on digital platforms. Many people may avoid organising or attending protests for fear of arrest for breaching a condition they were not aware of, while others may attend a protest but feel compelled to follow what they are told is a necessary condition but turns out is not in force or legally invalid.

43. Clause 56 is rendered more worrying by provisions which significantly increase the maximum sentence for breaching a police-imposed condition. The Bill increases the maximum sentence for an organiser who falls foul of a condition by 266%, from three to eleven months imprisonment. It also increases the maximum fines that may be imposed

on both an organiser and attendee of a protest from level 3 to level 4 on the standard scale. These changes would substantially extend the criminal sanctions that could be imposed on people for the exercise of a fundamental right when they engage in behaviour – such as simply being in a particular place at a particular time – that is not in itself a criminal offence, save for the imposition of conditions by the police.

LIMITING PROTESTS AROUND PARLIAMENT

44. Clause 57 amends section 142A of the Police Reform and Social Responsibility Act 2011 (PRSRA) to widen the geographical scope of the controlled area around Westminster where particular activities cannot take place. It also adds "obstructing, by the use of any item or otherwise, the passage of a vehicle" that is entering or exiting the Parliamentary Estate to the activities that are prohibited in the controlled area under section 143 of the PRSR.

45. Clause 57 extends the controlled area around Parliament where "prohibited activities" cannot take place to include Canon Row, Parliament Street, Derby Gate, Parliament Square and other roads within the district of Victoria Embankment. It also expands the list of conduct that constitutes a prohibited activity – which currently includes operating amplified noise equipment and erecting tents or other sleeping equipment – to include obstructing vehicular access using "any item or otherwise". This is a sweeping provision, which, unlike the existing prohibited activities, does not appear to require a person to have any equipment, inviting the police to target anyone in the area. A direction to desist from doing any of the prohibited activities listed above can last up to 90 days and may be given orally. Failure to comply with such a direction without reasonable excuse is a criminal offence and is liable on summary conviction to a fine of up to £5000.

46. Expanding the geographical scope where restrictions can be applied and the type of restrictions that can be imposed would be a retrograde step, which would mirror the effect of the widely criticised provisions in the Serious Organised Crime and Police Act 2005 which the PRSRA repealed. As a matter of human rights law, States have a duty not to place unnecessary obstacles in the way of people wishing to protest and a positive obligation to facilitate protest.[38] The right to freedom of assembly includes the right to choose the time, place and modalities of any protest.[39] As the Court of Appeal has held,

[38] *Ollinger v Austria*, Application No. 76900/01.
[39] *Sáska v. Hungary*, Application no. 58050/08.

protest "becomes effectively worthless if the protestor's choice of 'when and where' to protest is not respected as far as possible."[40]

47. Any legislation that will limit the scope to protest in the vicinity of Parliament gives rise to particularly acute concerns. Liberty is concerned that these provisions could create a *de facto* buffer zone around Parliament. While protests may commonly have the effect of irritating those they seek to influence and prominent protests in Westminster may cause embarrassment to the Executive, this is no justification for making protest around Parliament a criminal act.

48. Given Clause 57 extends the PRSRA provisions which prohibit rough sleeping and pitching tents in the area of Parliament Square to apply to a much wider area, Liberty notes that these clauses will not only affect protesters but also may impact upon homeless people and others in the vicinity of Parliament. With the Vagrancy Act 1824 likely to be repealed soon – a move that Liberty and homelessness organisations have long campaigned for and wholeheartedly support – we caution that other legislation might be utilised to target homeless people. There is a long history of criminalisation and enforcement against homeless people around Parliament.[41] We are concerned that these provisions may lead to the PRSRA powers being used to criminalise rough sleepers over a much wider area, which could amount to social cleansing in areas of national importance and beyond.

POWER TO SPECIFY OTHER AREAS AS CONTROLLED AREAS

49. Clause 58 gives the Secretary of State the power to list alternative areas as controlled areas under the PRSRA should Parliament relocate temporarily. Liberty considers the controlled area established by the PRSR and the powers to limit activity within it as a disproportionate interference with the rights to freedom of expression and assembly in an area which is arguably the most effective location for protest – opposite the main gates to the Palace of Westminster, the principal entrance and exit for cabinet ministers, parliamentarians and members of the public. Therefore, we cannot support its application to other areas, should Parliament temporarily relocate.

INTENTIONALLY OR RECKLESSLY CAUSING PUBLIC NUISANCE

50. Clause 59 abolishes the common law offence of public nuisance and replaces it with a wider statutory offence of intentionally or recklessly causing serious harm or risk of

[40] *Singh and ors, R (on the Application of) v Chief Constable of West Midlands Police* [2006] EWCA Civ 1118, at para 87
[41] Adam Forrest, 'Homeless people kicked out of underpass next to parliament 'so MPs can get to work,'' *The Independent* (25 March 2019) https://www.independent.co.uk/news/uk/home-news/homeless-people-westminster-tunnels-parliament-mps-police-sleep-rough-a8839076.html

serious harm to the public, or obstructing the public in the exercise or enjoyment of a right. The new statutory offence would be committed by intentionally or recklessly causing serious harm or risk of serious harm. This is interpreted broadly to include not only "serious distress, serious annoyance, serious inconvenience or serious loss of amenity" but also the *risk* of someone suffering those things. The maximum custodial sentence is ten years. While there is a "reasonable excuse" defence, this is an attenuated safeguard as it is only available once a person has been criminally charged.

51. At the level of general principle, Liberty welcomes the codification of common law criminal offences. However, the proposed statutory offence is incredibly broad. In the explanatory notes that accompany the Bill, the offence is said to be intended to target conduct "such as hanging from bridges".[42] However, the wording of the offence is far broader than this and an unacceptable basis upon which to regulate speech and protest. Given that many if not most protests may cause, or may risk causing, "serious annoyance", a vast array of protestors may fall foul of an offence that carries a sentence of up to ten years imprisonment. As the Court of Appeal held in *Tabernacle v Secretary of State for Defence*, "rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are likely to be inconvenient and tiresome, at least perceived as such by others who are out of sympathy with them".[43]

52. These provisions have been described as reviving an "almost moribund" common law offence, in that it had been rendered redundant by the establishment of environmental protection offences and offences relating to grossly offensive communications.[44] When the common law offence of public nuisance has previously been used to target protestors, the courts have quashed the use of custodial sentences on the basis they are "manifestly excessive.".[45] It is precisely this sort of "manifestly excessive" sentence that the Government is proposing to legislate, despite guidance from case law that this would be inappropriate.

53. During Second Reading, Secretary of State for Justice Robert Buckland commented that Clause 59 "amounts to no more than a reiteration of the excellent work of the Law Commission. To say anything else is, frankly, once again a confection, a concoction and a twisting of the reality".[46] Clause 59 does seek to implement the Law Commission's 2015

[42] Police, Crime, Sentencing and Courts Bill Explanatory Notes https://publications.parliament.uk/pa/bills/cbill/58-01/0268/en/200268en.pdf
[43] *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23
[44] David Mead, 'Some initial thoughts on the Police, Crime, Sentencing and Courts Bill – The New Public Order Powers in Clauses 54-60', *Protest Matters*, 12 March 2021, https://protestmatters.wordpress.com/2021/03/12/some-initial-thoughts-on-the-police-crime-sentencing-courts-bill-the-new-public-order-powers-in-clauses-54-60/
[45] *R v Roberts (Richard) [*2018] EWCA Crim 2739
[46] HC Deb 16 March 2021 Vol. 691

recommendation to codify the offence, which formed part of a larger project on simplifying the criminal law.[47] However, the 2015 report did not consider the application of public nuisance to protests. It did note that their proposed defence of reasonableness would include cases where the individual is exercising a right under Article 10 or Article 11 of the ECHR, but then noted that it is "somewhat difficult to imagine examples in which this point arises in connection with public nuisance".[48] Further, the Law Commission did not propose a maximum custodial sentence of a decade. While the Government is drawing on the Law Commission's recommendation to support their position, they are using it for purposes the Commission never intended and certainly did not advocate.

IMPOSING CONDITIONS ON ONE-PERSON PROTESTS

54. Clause 60 establishes a new police power to impose conditions on one-person protests on the basis that the noise generated will seriously disrupt the activities of an organisation or cause significant impact on people in the vicinity.

55. Liberty considers these clauses – designed specifically to stifle individuals protesting alone from exercising their fundamental rights – to be entirely disproportionate. They appear drafted in response to Steven Bray, the campaigner who has stood alone outside Parliament for many years to protest against Brexit, but have much wider implications.[49] We note that a one-person protestor does not need to actually know that a condition has been applied in order to be guilty of the offence, just that they *ought* to have known. Moreover, Clause 50 (11) establishes a criminal offence of inciting someone to engage in a one-person protest, should conditions be applied to them which they proceed to ignore, potentially leaving interested members of the public simply stopping to engage in conversation with an individual protestor at risk of committing an offence. **Liberty urges MPs to give notice of their intention to oppose the question that Clauses 54 – 60 stand part.**

[47] The Law Commission, 'Simplification of Criminal Law: Public Nuisance and Outraging Public Decency', 24 June 2015, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/438195/50076_Law_Commission_HC_213_print.pdf
[48] The Law Commission, 'Simplification of Criminal Law: Public Nuisance and Outraging Public Decency', p.45 24 June 2015, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/438195/50076_Law_Commission_HC_213_print.pdf
[49] Sophia Sleigh "Stop Brexit Steve' Bray could be silenced under new policing law, Sadiq Khan warns,' *Evening Standard* (19 March 2021) https://www.standard.co.uk/news/politics/stop-brexit-steve-bray-silenced-protest-policing-bill-sadiq-khan-b925183.html

PART 4: UNAUTHORISED ENCAMPMENTS

56. Gypsy, Roma and Traveller (GRT) communities are among the most persecuted and marginalised communities in the UK.[50] And yet, the hostile measures contained in Part 4 of this Bill enact a direct attack on the way of life for many in these communities. This Part creates a new offence of residing or intending to reside on land with a vehicle, establishes new vehicle seizure powers and significantly extends existing powers in the Criminal Justice and Public Order Act 1994 (CJPOA). It is essential that Part 4 is removed from the Bill entirely. **Liberty urges MPs to give notice of their intention to oppose the question that Clauses 61 – 63 stand part.**

CRIMINALISATION OF TRESPASS WITH INTENT TO RESIDE

57. Clause 61 amends Part 5 of the CJPOA to create a new offence of residing or intending to reside on land with a vehicle without the consent of the occupier of the land where it caused or is likely to cause "significant disruption, damage, or distress". This offence is punishable with a fine of up to £2500 and/or a custodial sentence of up to three months.

58. Clause 61 will plainly interfere with Gypsies and Travellers' nomadic way of life, as protected by Article 8 (right to private and family life and home) and Article 14 (right to be free from discrimination) ECHR. As the Court of Appeal recently held, "the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another."[51] Indeed, the State has a positive obligation to protect Gypsies and Travellers' traditional way of life.[52]

59. Liberty's believes these measures are likely to constitute a disproportionate and unlawful interference with Gypsies and Travellers' rights. While the Government asserts that the Bill will only be used to address encampments that cause significant damage or distress, the definitions are vague and could potentially include a very wide range of issues.[53] The offence can be committed by someone who is said to be 'likely" to cause damage or distress, which is highly subjective and may invite stereotypes and profiling based on the mere existence of an unauthorised encampment. Further, the Government note in their

[50] See: https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2018
[51] *London Borough of Bromley v Persons Unknown and Ors* [2020] EWCA Civ 12 [109]
[52] *Chapman v UK* App no. 27238/95
[53] For a full discussion of these terms see: The Community Law Partnership, The Criminalisation of Trespass, March 2021, available at: http://www.communitylawpartnership.co.uk/news/the-criminalisation-of-trespass

factsheet on this Part that it is hoped the offence "could also deter unauthorised encampments from being set up in the first instance".[54]

60. Clause 61 also establishes new vehicle seizure powers. Section 61 of the CJPOA defines a vehicle broadly, including cars and caravans. For Gypsy and Traveller communities this amounts to seizure of their homes and possessions. This may have devastating effects on nomadic families, including children. Those who have no alternative place to live may even face homelessness and/or destitution, on top of criminalisation. Further, stopping and camping with a caravan is an integral part of Gypsies and Travellers' ethnic identity and measures which effect these freedoms have an impact on Gypsies and Travellers' rights to maintain their identity as Gypsies or Travellers. It merits noting that the only justification provided by the Government during the consultation on this proposal was that it would enable "the police to remove unauthorised encampments more quickly and act as deterrent".[55]This is a weak justification for a power which may carry devastating consequences.

61. The vast majority of police forces do not want greater powers. As research from Friends, Families and Travellers (FFT) has shown, 84% of police responses to the 2018 consultation on unauthorised encampments did not support the criminalisation of unauthorised encampments and 75% indicated that their current powers were sufficient and/or proportionate.[56] In its consultation response, the National Police Chiefs Council (NPCC) and the Association of Police and Crime Commissioners (APCC) stated that, in their view, the criminalisation of trespass would likely breach human rights and equality laws.[57]

62. Unauthorised encampments are often the direct result of the chronic national shortage of site provision. As FFT note, "the case for action is flawed. An enforcement approach to addressing the number of unauthorised encampments overlooks the issue of the lack of site provision – there is an absence of places where Gypsies and Travellers are

[54] HM Government, Policy Paper, Police, Crime, Sentencing and Courts Bill 2021: unauthorised encampments factsheet, April 2021, available at: https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-unauthorised-encampments-factsheet
[55] HM Government, Government Consultation, Strengthening police powers to tackle unauthorised encampments, (2019) available at: http://data.parliament.uk/DepositedPapers/Files/DEP2019-1036/Government_Consultation.docx
[56] Billie Dolling, Victoria Gilmore and Abbie Kirkby, 'Police oppose criminalising unauthorised encampments and call for more sites', *Friends, Families and Travellers*, November 2019, https://www.gypsy-traveller.org/wp-content/uploads/2019/11/FINAL-Police-oppose-criminalising-unauthorised-encampments-and-call-for-more-sites-to-be-published-9am-13.11.19.pdf
[57] NPCC and APCC response to the Government consultation on unauthorised encampments, June 2018, available at: https://news.npcc.police.uk/releases/unauthorised-development-and-encampments-joint-policing-call-for-accommodation-provision

permitted to stop or reside."[58] Many police bodies also recognise this goes to the heart of the issue – in response to the Government's consultation 65% of police forces stated lack of site provision was the real problem and the NPCC and APCC were clear that the "lack of sufficient and appropriate accommodation for Gypsies and Travellers remains the main cause of incidents of unauthorised encampment and unauthorised development by these groups".[59] Rather than grappling with and remedying the reality that many Gypsies and Travellers simply do not have places to live in a culturally pertinent way, the Government is seeking to introduce measures which their own consultation paper acknowledged will have adverse impacts on those communities.[60]

63. In addition to concerns as regards the impact on GRT communities, criminalising trespass will also impact access to the countryside and affect the enjoyment of British land for recreational activities. This runs contrary to the Government's stated commitment in its 25 year Environmental Plan to "[open] up the natural world".[61] As a coalition of groups including the Ramblers, the Open Spaces Society, and CPRE, the countryside charity, outlined in an open letter to the Home Secretary, these proposals "would send a signal that the countryside is not an open resource accessible to all, but a place of complex rules and regulations, where stepping off a public path could lead to a criminal sentence… the exercise of recreational activities, such as walking, cycling, climbing or canoeing in the countryside, should not put you at risk of committing a crime".[62]

AMENDMENTS TO EXISTING POWERS

64. Clause 62 amends CJPOA to broaden the types of harm that can trigger powers to direct trespassers to include "disruption and distress". It also increases the period in which trespassers directed away from the land must not return to it from three months to twelve months. The already robust powers under the CJPOA do not warrant further extension. We reiterate our concerns about the inclusion of the encompassing terms "damage, disruption and distress" for use of such intrusive police powers. Further, as FFT have noted, the extension of the exclusion period from an area from three to twelve

[58] Friends Family Travellers, Briefing on new police powers for encampments in Policing, Crime, Sentencing and Courts Bill: Part 4, April 2021, available at https://www.gypsy-traveller.org/wp-content/uploads/2021/03/Briefing-on-new-police-powers-PCSCBill-and-CJPOA-24th-March-FINAL.pdf
[59] NPCC and APCC response to the Government consultation on unauthorised encampments, June 2018, available at: https://news.npcc.police.uk/releases/unauthorised-development-and-encampments-joint-policing-call-for-accommodation-provision
[60] Home Office, 'Strengthening police powers to tackle unauthorised encampments', 5 November 2019, https://www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments
[61] Government Policy Paper, '25 Year Environment Plan' https://www.gov.uk/government/publications/25-year-environment-plan
[62] CPRE, Ramblers et al., 'Letter to the Home Secretary', 18 January 2021, https://mk0ossociety9jn92eye.kinstacdn.com/wp-content/uploads/2021/01/Dont-criminalise-trespass-joint-letter-to-Home-Office-18th-Jan-2021-1.pdf

months makes it "nearly impossible for families without a site to live on to, for example, keep their places at school or to attend medical appointments."[63]

GUIDANCE ON THE EXERCISE OF POWERS

65. Clause 63 requires the Secretary of State to issue guidance for police forces relating to the how the new powers established by Clause 61 should be exercised. Given that Liberty considers that Clause 61 should be removed from the Bill, Clause 63 is rendered unnecessary. **Liberty urges MPs to give notice of their intention to oppose the question that Clauses 61 – 63 stand part.**

PART 10: SERIOUS VIOLENCE REDUCTION ORDERS

66. Part 10, Chapter 1 (Clauses 139 and 140) establishes a new civil order, the SVRO, which would be imposed on an individual on the basis of their conviction for an offensive weapons offence. It would amend the Sentencing Code to confer a new power on the police to stop and search anyone subject to an SVRO whenever they are in a public place, without needing to form reasonable suspicion. This would hand the police a highly oppressive tool, unlike anything currently on the statute books. It effectively creates an individualised, suspicionless stop and search power, entirely untethered to a specific and objectively variable threat. It erodes essential safeguards in the criminal justice system, will have a discriminatory impact, raises profound enforcement issues and is likely to be ineffective and may trap people in a cycle of criminalities. **Liberty urges MPs to give notice of their intention to oppose the question that Clauses 139 and 140 stand part.**

ERODING ESSENTIAL SAFEGUARDS

67. As it stands, previous convictions cannot be used alone, or in conjunction with other factors, as grounds to conduct a stop and search. The Code of Practice for statutory powers of stop and search, PACE Code A, states that "reasonable suspicion can never be supported on the basis of personal factors" noting that police cannot use, alone or in conjunction, a person's "physical appearance with regard, for example, to any of the 'relevant protected characteristics' set out in the Equality Act 2010... or the fact that the person is known to have a previous conviction" as a basis for a stop and search.[64] These

[63] https://www.gypsy-traveller.org/wp-content/uploads/2021/03/Briefing-on-new-police-powers-PCSCBill-and-CJPOA-24th-March-FINAL.pdf
[64] Police and Criminal Evidence Act 1984 (PACE) Code: A Code of Practice for the exercise by: Police Officers of Statutory Powers of stop and search (December 2015), available at:

constraints seek to tie reasonable suspicion to factors which are relevant to the likelihood that a person has committed a specific offence, rather than stereotypes, vague hunches or attempts to reduce people to their past behaviour. As the College of Policing recognises, requiring that objective reasonable grounds be established before police can exercise their stop and search powers is "key to fair decision making".[65]

68. Clause 139 permits a court to impose an SVRO where it is satisfied, on the balance of probabilities, that a bladed article or offensive weapon was used during the offence, or they had a bladed article or offensive weapon with them. An SVRO may also be imposed in response to an incident in which the person in question not only did not use an offensive weapon, but simply that "another person who committed the offence" had such a weapon on them, and they "ought to have known that this would be the case". This means that an extraordinary power to stop and search someone anywhere at any time can be imposed on a person despite no evidence of their ever having handled a weapon before. These orders can be set to have effect for between six months and two years, and can be renewed indefinitely, in which time they run continuously whenever the person is in a public place. Even existing suspicionless powers provided for by Section 60 of the Criminal Justice and Public Order Act (CJPOA) – which Liberty has long objected to as unduly invasive and discriminatory – can only be lawfully exercised during a set time period and over a defined geographical area to provide an exceptional response to violence that has or is anticipated to occur.[66] Although it can be extended, the time period provided for in the CJPOA for suspicionless stop and search is 24 hours, not the 24 months Clause 139 provides for. The limited temporal and geographic scope of the already-existing powers reflects that they are exceptional and were never intended to be exercised routinely.[67]

69. Clause 139 also creates a new offence of breaching an SVRO, for example by failing to do anything required by the order, doing anything prohibited by it, or obstructing a police officer in the exercise of any power relating to it. This would carry a maximum sentence of 12 months imprisonment on summary conviction, two years imprisonment on conviction on indictment, and/or a fine in either case. Liberty is concerned that this could be interpreted broadly, to criminalise people requesting that police provide the legal authority for subjecting them to a stop and search or failing to provide an answer to a

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903810/pace-code-a-2015.pdf

[65] College of Policing, Authorised Professional Practice, available at https://www.app.college.police.uk/app-content/stop-and-search/legal/legal-basis/#powers-requiring-reasonable-grounds-for-suspicion

[66] Section 60, Criminal Justice and Public Order Act 1994.

[67] Though evidence attests that, in practice, police regularly use Section 60 for reasons other than its stated purpose.

question put by a police officer, which may fall foul of the privilege against self-incrimination.[68] Further, making a refusal to cooperate a criminal offence may lead to people being fined or criminalised in circumstances where they do not understand the instructions given by a police officer and therefore fail to comply. This may also detrimentally impact disabled people or people with mental health needs, some of whom may find it difficult to follow directions.

70. It is of course already an offence to carry an offensive weapon. The creation of this extra criminal offence is worrying, not least because Clause 139 allows the Secretary of State to impose by regulation any "requirement or prohibition on the offender for the purpose of assisting constables to exercise the powers conferred" by the Bill, as long as the court considers it "appropriate". This is remarkably broad. The orders can impose both positive and negative obligations and neither we, nor Parliament, know what they will be, as they will be made in the future by the Secretary of State. This is made more concerning by the lower standard of evidence needed for a court to impose an SVRO. Liberty has long-standing concerns that civil orders – including Public Spaces Protection Orders (PSPOs), Criminal Behaviour Orders (CBO), Knife Crime Prevention Orders (KCPO) and Gang Injunctions – which carry criminal penalties for their breach unjustifiably blur the civil and criminal justice systems. The Bill makes clear that "it does not matter" whether the evidence considered in deciding to make an SVRO "would have been admissible in the proceedings in which the offender was convicted". And yet despite this, a person subject to an SVRO may face criminal penalties should they breach it – even if what they breach is the as yet unknown requirements made by the Secretary of State through regulation.

71. The custodial experience often exacerbates and compounds the early life disadvantage many of the people who come into contact with the criminal justice face. There are serious concerns as regards the impact of imprisonment on the welfare of prisoners and the suitability of transition arrangements as they leave custody. Between 2010/11 and 2018/19, a total of 2,297 people died whilst under post-release supervision by probation services in the community following a custodial sentence.[69] Against this backdrop, these measures may reinforce negative stereotypes and trap people in a cycle of criminalisation and harm, rather than diverting them from returning to the criminal justice system. SVROs severely risk undermining the potential for rehabilitation and people's chances of being re-integrated into society.

[68] *Saunders v United Kingdom* Application No. 43/1994/490/572.
[69] https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=4ffc0329-5088-4708-b0e2-8d76444c92d7

DISCRIMINATORY IMPACT

72. The proposals would invite discrimination against ethnic minority and low-income communities, exacerbating existing disparities throughout the criminal justice system. The initial consultation document recognised that a disproportionate number of black men may be impacted by SVROs;[70] indeed, black people are 8.9 times more likely to be subject to a stop and search than white people, and other people of colour are 4.1 times more likely to be targeted by the power.[71] Crucially, these disparities widen dramatically when the reasonable grounds requirement is removed.[72] Studies also show that Gypsies, Roma and Travellers (GRT),[73] Muslims,[74] young adults[75] and people from low income backgrounds[76] are also substantially over-represented in the criminal justice system – though official data collection for some of these groups is lacking. It is self-evident SVROs are likely to be imposed disproportionately against people from these groups, subjecting them to significant interferences with their civil liberties. Additionally, there is a significant risk that the people the individual associates with – their friends, families or wider communities – may also be the subject of heightened policing. This means people are more likely to be picked up and charged with minor offences, dragging them yet deeper into the criminal justice system.

73. As a matter of law, this disadvantage may only be justified if it is a proportionate means of achieving a legitimate aim.[77] While Liberty accepts protecting public safety is a legitimate aim, we do not consider these measures a proportionate means of achieving it given the (i) significant and damaging police intrusions they would sanction into people's everyday lives; (ii) risk that existing disparities will become further entrenched (iii)

[70] Home Office, 'Serious Violence Reduction Orders: A new court order to target known knife carriers', 14 September 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/917277/SVRO_consultation.pdf, p.15.
[71] Home Office (2020), *Police powers and procedures, England and Wales, year ending 31 March 2020*, https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2020
[72] Ibid.
[73] Traveller Movement (2020), *Overlooked and Overrepresented: Gypsy, Traveller and Roma children in the youth justice system*, available at: https://travellermovement.org.uk/phocadownload/userupload/criminal-justice/Overlooked-and-Overrepresented-Gypsy-Traveller-and-Roma-children-in-the-youth-justice-system.pdf
[74] Maslaha (2020), *Time to End the Silence: the experience of Muslims in the prison system, available at:* https://www.maslaha.org/Project/Time-to-End-the-Silence
[75] Prison Reform Trust (2012), *Old Enough to Know Better? A briefing on young adults in the criminal justice system in England & Wales*, available at: http://www.prisonrformtrust.org.uk/portals/0/documents/oldenoughtoknowbetter.pdf
[76] HM Ministry of Justice, The pre-custody employment, training and education status of newly sentenced prisoners, (2012), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/278832/newly-sentenced-prisoners.pdf
[77] Section 19, Equality Act 2010.

paucity of evidence that SVROs would have any crime-reducing effects; and (iv) risks that they would actually exacerbate the conditions conducive to serious violence.

ENFORCEMENT

74. Liberty has serious concerns as regards the means by which SVROs would be enforced. In the Government's response to the consultation on SVROs, they noted that "several responses from police forces and officers noted potential challenges around identifying individuals subject to an SVRO".[78] In Liberty's view, these challenges may lead to additional rights infringements over and above the interference caused by the exercise of the stop and search power itself.

75. There is a clear risk that people will be profiled by the police as someone they consider likely to have a recent criminal conviction for an offensive weapon. Given the significant inequalities in terms of who is marked out – evidenced, for example, by the stark race disproportionality in tools like the MPS's Gangs Matrix – Liberty is concerned this may lead to people of colour, particularly young black men, being subject to unlawful stops on the mistaken belief they are subject to an SVRO.

76. People subject to, or who police believe are subject to, an SVRO are likely to face intrusive monitoring of their daily lives. Similar tactics to those used to police people on the Gangs Matrix may be used – continually patrolling and surveilling the same postcodes and thereby subjecting people to chronic over-policing. This kind of monitoring not only interferes with people's right to private and family life, but may alter where they associate (for example, not leaving home or attending events because they know they will attract police attention) or who they associate with (for example, not meeting with particular friends or family) and impact their ability to work or access education. They may also lead to an escalation in the use of intrusive forms of technology, including facial recognition and mobile fingerprinting technology.

INEFFECTIVE AND COUNTER-PRODUCTIVE

77. The proposals turn the established rules on the disclosure of previous convictions in the course of criminal proceedings on their head. In general, a person's previous convictions are not referred to in any criminal proceedings until after conviction and then are only relevant to the sentence that is imposed. Evidence of previous convictions may be

[78] HM Government, Summary of consultation responses and conclusion, March 2021 available at: https://www.gov.uk/government/consultations/serious-violence-reduction-orders/outcome/summary-of-consultation-responses-and-conclusion-accessible-version

admitted at trial in certain circumstances, in accordance with the rules of bad character and similar fact evidence.[79] This is a carefully calibrated rule, designed to recognise the patently prejudicial effects of a jury knowing of people's previous criminal history, while at the same time enabling that information to be admitted in certain controlled circumstances. Stop and search is often the first encounter people have with the police and can be an – often unwarranted – gateway into the criminal justice system. Liberty considers it illogical that a tightly regulated scheme would exist in one part of the criminal process to safeguard against the obvious risk of prejudice, only to be overridden at an earlier stage, when it is used as the sole basis for the initial police contact.

78. Finally, given the proposed new measures pose significant human rights impacts, it is crucial that they are supported by unequivocal evidence that they will meet their stated aim of breaking the "cycle of offending and [protecting] our communities from harm".[80] Liberty supports this aim, so we are concerned that no evidence has been provided to justify claims of effectiveness. The Home Office's own research found that in a previous surge in stop and search during Operation Blunt 2 there were "no discernible crime-reducing effects".[81] Similarly, an independent, peer-reviewed study drawing on ten years of London-wide data found stop and search has "only a very weak and inconsistent association with crime" and drew no statistically significant links between stop and search and levels of violence.[82] In Liberty's view, the proposals are not only likely to be ineffective, but may also be directly counter-productive. By fomenting injustice, alienation and social exclusion – conditions which have been found to correlate to levels of serious violence – they may deepen the very problem they seek to address.[83] **Liberty urges MPs to give notice of their intention to oppose the question that Clauses 139 and 140 stand part.**

[79] Evidence that falls within the definition of 'bad character' will only be admissible if it is captured by section 101 of the Criminal Justice Act 2003.
[80] Home Office, 'Serious Violence Reduction Orders: A new court order to target known knife carriers', 14 September 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/917277/SVRO_consultation.pdf, p.15.
[81] McCandless, R., Feist, A., Allan, J., Morgan, N. *Do initiatives involving substantial increases in stop and search reduce crime? Assessing the impact of Operation BLUNT 2* (2016) Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/508661/stop-search-operation-blunt-2.pdf, p. 3.
[82] Matteo Tiratelli, Paul Quinton, Ben Bradford, *Does Stop and Search Deter Crime? Evidence From Ten Years of London-wide Data*, The British Journal of Criminology, 58 (5) pp. 1212–1231.
[83] On links between violence and public health factors in London, see Greater London Authority, *A Public Health Approach to Serious Youth Violence: Supporting Evidence,* (2019) available at https://data.london.gov.uk/dataset/a-public-health-approach-to-serious-youth-violence

CONCLUSION

79. This 300-page Bill is tremendously significant, in length, scope and the potential effects it may have on us all. It risks stifling dissent, criminalising Gypsy and Traveller communities, and subjecting marginalised communities to profiling and even more disproportionate policing. The harms it gives rise to are so great, they cannot be remedied by procedural amendments. At Committee stage, Liberty urges MPs to oppose the question that Clauses 7-22, Clauses 54-60, Clauses 61-63 and Clauses 139 and 140 stand part of the Bill.

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