

# **LIBERTY**

## **LIBERTY'S BRIEFING ON THE POLICE, CRIME, SENTENCING AND COURTS BILL FOR REPORT STAGE IN THE HOUSE OF COMMONS**

**JULY 2021**

## **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](https://libertyhumanrights.org.uk/policy).

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## EXECUTIVE SUMMARY

The Police, Crime, Sentencing and Courts (PCSC) Bill – with its tremendously broad scope – represents one of the most serious threats to human rights and civil liberties in recent history. 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.

During the second reading debate, many Parliamentarians noted, when voting for the Bill to proceed, that they anticipated aspects of the Bill which prompted profound concern inside and outside of Parliament would be properly scrutinised and improved when it was examined by the Public Bill Committee.<sup>1</sup> However, the Bill’s most draconian parts – which restrict protest, criminalise trespass and erode limits on police powers to collect big data, profile people in the pre-criminal space, and subject people to suspicionless stop and search – have emerged from Committee entirely unamended. At the same time, extraordinary efforts on the part of civil society to oppose the Bill have produced diverse and strong coalitions united in solidarity to guard our cherished liberties and protect our ways of life.

This briefing focuses on four elements of the Bill: the serious violence duty (Clauses 7-22), public order (Clauses 55-61), unauthorised encampments (Clauses 62-64), and Serious Violence Reduction Orders (Clauses 140 and 141). 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 continues to hold the strong opinion that each of these clauses must be removed from the Bill.**

In summary, Liberty recommends that Parliamentarians support the following amendments:

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<sup>1</sup> See Second Reading (Commons), where Sir Iain Duncan Smith MP said, “Is the Bill perfect? No, it is by no means perfect. I hope that it will be corrected as it goes through. Will that happen? Certainly.” (Iain Duncan Smith, Police, Crime, Sentencing and Courts Bill, Second Reading (Commons), Hansard, 15 March 2021, Vol. 691, Col. 90); Stephen Hammond MP said: “The Bill also makes changes to police powers over protests. I have been looking carefully at those parts of the Bill, and I know that they will be examined in greater detail in Committee” (Stephen Hammond, Police, Crime, Sentencing and Courts Bill, Second Reading (Commons), Hansard, 15 March 2021, Vol. 691, Col. 124); and Sir Robert Neill MP said, “It is reasonable to examine a Bill carefully as it goes through Committee. I have scarcely ever known a Bill that is not improved by careful examination from the time when it is brought in” (Robert Neill, Police, Crime, Sentencing and Courts Bill, Second Reading (Commons), Hansard, 15 March 2021, Vol. 691, Col. 82).

## Part 2

- Amendment 97: Page 7, line 38, leave out Clause 7.
- Amendment 98: Page 9, line 4, leave out Clause 8.
- Amendment 99: Page 10, line 31, leave out Clause 9.
- Amendment 100: Page 11, line 28, leave out Clause 10.
- Amendment 101: Page 12, line 4, leave out Clause 11.
- Amendment 102: Page 12, line 18, leave out Clause 12.
- Amendment 103: Page 12, line 39, leave out Clause 13.
- Amendment 104: Page 13, line 35, leave out Clause 14.
- Amendment 105: Page 14, line 42, leave out Clause 15.
- Amendment 106: Page 15, line 29, leave out Clause 16.
- Amendment 107: Page 16, line 17, leave out Clause 17.
- Amendment 108: Page 16, line 38, leave out Clause 18.
- Amendment 109: Page 17, line 12, leave out Clause 19.
- Amendment 110: Page 18, line 40, leave out Clause 20.
- Amendment 111: Page 19, line 5, leave out Clause 21.
- Amendment 112: Page 19, line 37, leave out Clause 22.

## Part 3

- Amendment 1: Page 46, line 25, leave out Clause 55
- Amendment 2: Page 47, line 42, leave out Clause 56
- Amendment 3: Page 49, line 21, leave out Clause 57
- Amendment 4: Page 51, line 22, leave out Clause 58
- Amendment 5: Page 52, line 36, leave out Clause 59
- Amendment 6: Page 53, line 17, leave out Clause 60
- Amendment 7: Page 54, line 18, leave out Clause 61

## Part 4

- Amendment 8: Page 56, line 23, leave out Clause 62
- Amendment 9: Page 60, line 22, leave out Clause 63
- Amendment 10: Page 62, line 6, leave out Clause 64

## Part 10

- Amendment 113: Page 128, line 30, leave out Clause 140
- Amendment 114: Page 135, line 28, leave out Clause 141

## **PART 2: NEW SERIOUS VIOLENCE DUTIES**

***Amendments 97-112 (supported by StopWatch UK, Amnesty UK, JUSTICE, Defend Digital Me, Open Rights Group, Medact, Unjust, Big Brother Watch and Fair Trials)***

### Effect

1. These amendments in Dawn Butler MP's name are supported by Liberty, StopWatch UK, Amnesty UK, JUSTICE, Defend Digital Me, Open Rights Group, Medact, Unjust, Big Brother Watch and Fair Trials. They would remove Part 2, Chapter 1 of the PCSC Bill (Clauses 7-22), which place 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.

### Briefing

2. In sum, we recommend MPs support these amendments on the basis that Clauses 7-22 risk:
  - frustrating efforts to embed a public health response to serious violence;
  - unpicking existing data protection safeguards; and
  - eroding professional obligations – such as confidentiality and safeguarding – in health, education and social care.

## **THE PROBLEMS WITH A POLICE-LED APPROACH**

3. Although the serious violence duty has been touted as a public health, multi-agency approach to serious violence, it is fundamentally a police-led, enforcement-driven strategy. For example, local policing bodies will be given the authority to monitor specified authorities’ – which includes education and healthcare providers – compliance with their duties to collaborate to prevent and reduce serious violence (Clause 13 (2)). As outlined below, the various bodies subject to the duty are not equal partners: police are given the power to demand information from other bodies (like education authorities, healthcare providers or social workers) and they must acquiesce, regardless of whether they determine sharing the information is in the public interest or breaches any of their other legal duties or professional obligations.
4. A police-led approach is problematic because police and welfare-based agencies and organisations have fundamentally 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 safeguarding people’s rights, improving their well-being and economic conditions and protecting other public interests.

## **BREACHING PEOPLE’S DATA RIGHTS IN RACIALLY DISPROPORTIONATE WAYS**

5. Clauses 9 and 15 establish powers on the part of a wide range of agencies to disclose information to the police (and to one another) under the duty to prevent and reduce serious violence. While the Explanatory Notes state that Clauses 9 and 15 are designed to create a “permissive gateway” for the sharing of information, when understood in the context of the duty and powers of the Secretary of State under Clauses 16 and 17 respectively, it becomes clear that the police, who are at the apex of this duty, can strongarm information from such agencies essentially whenever it so chooses.
6. Under Clause 16 (1), a wide range of agencies will be required to hand over any and all information upon request by a local policing body, for the purposes of enabling it to exercise its functions under the serious violence duty. Clause 16 (4) makes clear that this is a legal obligation, that is further backed up by the Secretary of State’s power to make directions mandating compliance under Clause 17. While a Government Minister stated at Committee Stage that she hoped that the powers under Clause 17 would be “used infrequently”<sup>2</sup>, this is no guarantee, and this power remains highly worrying, especially when considered in light of Clauses 9 (5), 15 (4), 16 (6). These provisions, ostensibly an attempt to re-instate data protection legislation, are confusingly drafted, with the effect that existing data protection legislation is to be read in line with the duties under the PCSC Bill, rather than the other way around.<sup>3</sup> Most worryingly, Clauses 9 (4), 15 (3), and 16 (5) provide that a disclosure of information under these provisions will not breach professional duties of confidentiality and other restrictions on disclosure.

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<sup>2</sup> Victoria Atkins, Police, Crime, Sentencing and Courts Bill (Sixth sitting) (Public Bill Committee), Hansard, 25 May 2021, Col. 259.

<sup>3</sup> Clause 15 (4) provides that “this section does not authorise a disclosure of information that—(a) would contravene the data protection legislation (but in determining whether a disclosure would do so, the power conferred by this section is to be taken into account)”. The effect of the qualifying language is that, in determining whether a disclosure of information would contravene the data protection legislation, the power conferred by clause 15 is to be taken into account. This drafting is evidently circular, and it is unclear from the Explanatory Notes whether any attention has been paid as to how the powers conferred by clause 15 (and clause 9 and 16, which use similar qualifying language) will actually influence assessments of whether there is a legal basis for the processing of data, not to mention issues of necessity and proportionality, under the General Data Protection Regulation and Data Protection Act 2018.

7. There already exist well-established information sharing mechanisms to enable multi-agency working on issues such as domestic abuse,<sup>4</sup> including Multi-Agency Risk Assessment Conference (MARAC) and Multi-Agency Safeguarding Hub (MASH) processes. There are also a wide range of existing statutory powers/duties to share information for specified purposes. For example, s.17 of the Crime and Disorder Act 1998 requires certain authorities, including local authorities, to have due regard to the need to prevent crime and disorder in their area. The Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007/1830 made under the CDA 1998 set out the framework under which a strategy group shall arrange to share information between responsible authorities. Importantly, these powers do not override established data protection obligations, the Human Rights Act 1998, or the common law duty of confidentiality.<sup>5</sup>
8. By contrast, Clauses 9, 15, 16, and 17 of the PCSC Bill have been drafted to override the professional and legal safeguards around personal data that exist in order to safeguard people's rights. Further, the broad drafting of the duty under Clause 7 means that any information disclosure – whether that is about individuals' health status, religious beliefs or political opinions and affiliations – could ostensibly be justified under the banner of 'preventing and reducing serious violence'.<sup>6</sup> Altogether, these provisions are likely to give rise to significant and severe breaches of individuals' data rights under the General Data Protection Regulation (GDPR) and Data Protection Act (DPA) 2018 and their right to a private life (protected under Article 8 ECHR).
9. Not only are these provisions likely to threaten people's data rights, they are also likely to lead to individual profiling. As citizens, we engage with a wide range of public bodies in our day to day lives – whether that is our school, GP practice, mental health provider, or local council. Under the provisions in Part 2, Chapter 1, our interactions with different public bodies would effectively become data points that can be shared and used by other agencies<sup>7</sup> (including the police) to glean information and potentially to make decisions about us – without our knowledge or consent.

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<sup>4</sup> For example, see: <https://www.bournemouth.gov.uk/communityliving/CrimeDisorder/DomesticAbuse/marac/marac-docs/personal-information-sharing-agreement.pdf>; <https://www.walthamforest.gov.uk/sites/default/files/marac%20information%20sharing%20agreement.pdf>.

<sup>5</sup> Other statutory duties include Police and Justice Act 2006 and the Crime and Disorder (Overview and Scrutiny) Regulations 2009 (Regulation 5) made under the Act; Section 82 of the National Health Service Act 2006; Sections 13Z3 and 14Z23 NHS Act 2006 Restrictions; s.27 and s.47 of the Children Act 1989; s.10 and s.11 of the Children Act 2004; s.175 of the Education Act 2002.

<sup>6</sup> These are subject to a higher degree of protection under both the Data Protection Act 2018 (DPA) and the ECHR.

<sup>7</sup> The full list of 'specified authorities' under clause 10(1) is provided in Schedule 1 and the full list of 'educational, prison and youth custody authorities' under clause (11)(1) is provided in Schedule 2. The Secretary of State may by regulations amend both Schedules to add, modify, or remove entries.



10. 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. Considered in the context of Part 2, Chapter 1, where information is being shared in pursuit of a police-led approach to preventing and reducing serious violence, it is foreseeable that such sharing will result in the creation of individual risk profiles, that is, predictions about individuals’ propensity to engage in certain forms of behaviour prior to them actually doing anything. 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<sup>8</sup> - not to mention for the presumption of innocence that undergirds the criminal law.
11. Individual risk profiling is furthermore likely to exacerbate racial disproportionality in policing. The failings of the Gangs Matrix are instructive in this regard. It is well-established that the policing of serious violence is heavily fuelled by racial stereotypes, many of which centre on the ill-defined and expansive concept of the ‘gang’.<sup>9</sup> The stark statistics on the Metropolitan Police Service’s (MPS) Gangs Matrix, revealed in a report published in 2018 by Amnesty International, lay bare the over-identification of people of colour as gang affiliated – at the time of publication 72 per cent of individuals on the MPS’s Gangs Matrix were black, yet the MPS’s own figures show that just 27 per cent of those responsible for serious youth violence are black.<sup>10</sup>
12. The persistence of stereotypical assumptions as regards to people who may be involved in serious violence practically ensures that data collected, processed, and deployed in pursuit of this duty will be imbued with prejudice, contrary to the right to non-discrimination<sup>11</sup> and the public sector equality duty.<sup>1213</sup>

## **ERODING PROFESSIONAL DUTIES AND HINDERING THE PROVISION OF VITAL SERVICES**

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<sup>8</sup> Liberty, ‘Policing By Machine’, 1 February 2019, <https://www.libertyhumanrights.org.uk/issue/policing-by-machine>.

<sup>9</sup> Patrick Williams, ‘Being Matrixed: The (over)policing of gang suspects in London’, August 2018, [https://www.stop-watch.org/uploads/documents/Being\\_Matrixed.pdf](https://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf)

<sup>10</sup> 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>.

<sup>11</sup> Article 14, European Convention on Human Rights.

<sup>12</sup> Section 149, Equality Act 2010.

<sup>13</sup> The West Midlands Police Ethics Committee has raised concerns that active proposals using crime data to identify young ‘violent offenders’ in school catchment areas would create “risks of stigmatising and labelling children, areas, schools or neighbourhoods” (published February 2021). <https://www.westmidlands-pcc.gov.uk/archive/ethics-committee-february-2020/> For background, see <https://www.birminghammail.co.uk/news/midlands-news/fears-over-police-plan-identify-20193614>

13. At Committee Stage, a Government Minister noted that one of the key reasons for Clause 15 is that “information sharing between agencies is not always as full and as timely as we would like, because of concerns that they are not allowed to share information.”<sup>14</sup> This comment seemingly ignores the importance of legal duties and professional obligations – such as confidentiality and safeguarding duties – that are essential to protect people’s dignity and privacy, fostering relationships of trust, and delivering high quality care, and which are also grounded in domestic<sup>15</sup> and international law<sup>16</sup> and the Department for Education’s policy.<sup>17</sup>
14. Fundamentally, the imposition of a legal requirement on schools, health and social care providers, and youth services to share confidential information – including individuals’ personal schooling and healthcare data – to the police is likely to have a corrosive impact on hard-fought and longstanding relationships of trust, and severely damage service delivery. We have already seen the damaging consequences of such data-sharing in the context of Prevent<sup>18</sup> and the Hostile Environment.<sup>19</sup>
15. We urge MPs to support amendments 97-112 which would remove provisions that establish the Serious Violence Duty from the PCSC Bill.

### **PART 3: A RADICAL RESTRICTION OF PROTEST RIGHTS**

16. Part 3 of this Bill (Clauses 55-61) constitutes a concerted attack on the right to protest, arrived at through several different means, from amending public order legislation to extend the police’s already extensive powers, to creating expansive new criminal offences, and establishing provisions that could be used to ban protests around Parliament. Taken together, these provisions would dramatically 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. Overall, the case for these radical changes has simply not been made. The Government has not provided any data or concrete evidence to show why these specific

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<sup>14</sup> Victoria Atkins, Police, Crime, Sentencing and Courts Bill (Sixth sitting) (Public Bill Committee), Hansard, 25 May 2021, Col. 254.

<sup>15</sup> Section 1, Children’s Act 1989

<sup>16</sup> Article 3, Convention on the Rights of the Child.

<sup>17</sup> Department for Education, ‘Working Together to Safeguard Children’, 2018, <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

<sup>18</sup> Open Society Justice Initiative, ‘Eroding Trust: The UK’s Prevent Counter-Extremism Strategy in Health and Education’, October 2016, <https://www.justiceinitiative.org/publications/eroding-trust-uk-s-prevent-counter-extremism-strategy-health-and-education>

<sup>19</sup> See for example Jamie Grierson, ‘Police told not to share immigration data of domestic abuse victims’, 17 December 2020, <https://www.theguardian.com/uk-news/2020/dec/17/police-told-not-to-share-immigration-data-of-domesticabuse-victims> and Zoe Gardner, ‘Migrants deterred from healthcare during the COVID-19 pandemic’, February 2021, <https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=fa346f70-cb08-46c1-b366-9a1f192ff4f3>

provisions, which widen the net of criminalisation and sweep up more forms of dissent, are necessary. Indeed, in the judicial review of the ban on Extinction Rebellion protests across the whole of London, the Commissioner of the Metropolitan Police Service conceded that she was satisfied that the powers in the Public Order Act 1986 were sufficient to allow them to legally deal with protests that, even in design, were attempting to stretch policing to the limits.<sup>20</sup>

17. During second reading several Parliamentarians expressed that they hoped Part 3 would be improved as the Bill travelled through Parliament. To date, this has not happened – the sections of most concern have emerged from the Public Bill Committee entirely unchanged. At Report Stage and Third Reading, we urge MPs to subject Part 3 to particularly searching scrutiny.
18. 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. **We recommend MPs vote in favour of amendments 1-7.**

## **IMPOSING CONDITIONS ON PUBLIC PROCESSIONS**

### *Amendment 1*

#### Effect

19. This will remove Clause 55 from the Bill. Clause 55 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.

#### Briefing

20. Clause 55 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. These proposals would constitute a gross expansion of police

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<sup>20</sup> *Jones & Ors v Commissioner of Police for the Metropolis* [2019] EWHC 2957 [76]

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,<sup>21</sup> oppose the Iraq War<sup>22</sup> or make their voices heard on Brexit<sup>23</sup> – 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 generate noise that might have certain effects is an “existential threat to protest, so closely entangled are protests with noise”.<sup>24</sup>

21. Clause 55 and other Part 3 powers mark a significant expansion in informal, as well as formal, police power, in a context where protesters have limited ways to challenge a disproportionate or otherwise unlawfully imposed condition. As the Joint Committee on Human Rights noted in their report on Part 3:

...we heard evidence from protesters and their supporters that police decision-making often appears to prioritise the rights of those not involved in demonstrations and does not give due weight to the obligation on the police to facilitate protest. Yet the compatibility of conditions imposed by the police with Convention rights can often only be effectively challenged after the event, when the conditions have already had their impact.<sup>25</sup>

When the police unlawfully impose conditions that go beyond even these permissive powers, protesters will still be arrested and protests brought to an end. 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.

22. Liberty is also concerned by the wide discretion Clause 55 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.

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<sup>21</sup> Tania Branigan ‘400,000 bring rural protest to London,’ *The Guardian* (23 Sep 2002) <https://www.theguardian.com/uk/2002/sep/23/hunting.ruralaffairs2>

<sup>22</sup> ‘Million’ march against Iraq War,’ *BBC News* (16 February 2003) <http://news.bbc.co.uk/1/hi/uk/2765041.stm>

<sup>23</sup> ‘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>

<sup>24</sup> David Mead ‘Yes, you can... but only if you’re quiet,’ *Verfassungsblog* (17 March 2021) <https://verfassungsblog.de/uk-silence-protest/>

<sup>25</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)*, Second Report of Session 2021–22, 16 June 2021, at p. 11 available at <https://committees.parliament.uk/publications/6367/documents/69842/default/>

As 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”.<sup>26</sup> Further, such powers may set up confrontation between protestors and the police – as former Metropolitan Police Commander, John Sutherland, commented it “drives a wedge” between the police and the public.<sup>27</sup>

23. Liberty is also concerned that this type of overbroad policing power may make public order situations more difficult for frontline officers, by placing an unhelpful burden on the exercise of their professional discretion. As the Joint Committee on Human Rights stated:

The proposed new noise trigger involves uncertain standards that place considerable judgment in the hands of the police officer responsible for the decision whether to impose conditions...What one person considers to be noise sufficiently “intense” to be likely to cause “serious unease, alarm or distress” may be very different to what another person would believe meets this threshold.<sup>28</sup>

During the Public Bill Committee, the Minister for Safeguarding conceded that there is no minimum rank of officer who could be tasked with imposing conditions – they merely need to be the most senior officer at the scene.<sup>29</sup>

24. It merits noting that HM Majesty's Inspectors of Fire & Rescue Services (HMICFRS) – the body whose report was relied upon to justify the measures in Part 3 of the Bill, which commented on five proposals by the Home Office and nineteen by the police – did not examine or support the establishment of a “noise” trigger. Similarly, in evidence to the Joint Committee on Human Rights, the National Police Chiefs Counsel (NPCC) lead for Public Order did not reference or advocate for a new power based on the noise protests generate.<sup>30</sup>
25. Clause 55 (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

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<sup>26</sup> Sophia Sleight, ‘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>

<sup>27</sup> <https://twitter.com/BBCNewsnight/status/137160828435281008>

<sup>28</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)*, Second Report of Session 2021–22, 16 June 2021, at p. 14 available at <https://committees.parliament.uk/publications/6367/documents/69842/default/>

<sup>29</sup> “I have just been corrected regarding the briefing I received about the rank of the officer at the scene. It is the most senior officer at the scene, so there is no minimum rank...” Victoria Atkins, *Police, Crime, Sentencing and Courts Bill (Tenth sitting)* (Public Bill Committee), Hansard, 8 June 2021, Col.397.

<sup>30</sup> Joint Committee on Human Rights Oral evidence: *Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill*, HC 1324 Wednesday 28 April 2021

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. It is acutely concerning that clarification of these terms will appear in secondary legislation, rather than within the Bill where it could be subject to proper Parliamentary scrutiny. This provision gives the Government of the day an expansive power to effectively declare the kind of protests and causes it deems inconvenient or unacceptable and provide the police a licence to limit them. In their report on Part 3, the Joint Committee on Human Rights recognised this risk, stating:

The retention of powers to amend what falls within and without lawful protest where this is deemed necessary by the Secretary of State raises the risk that a future Home Secretary could respond to particular protests to which the Government objects and specify those as falling within the ‘serious disruption’ triggers. It is of course vitally important that peaceful protests are policed on the basis of the harm they cause, not their political content.<sup>31</sup>

This is a sweeping and dangerous power to hand to the Executive. 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.”<sup>32</sup>

## **IMPOSING CONDITIONS ON PUBLIC ASSEMBLIES**

### *Amendment 2*

#### Effect

26. Amendment 2 removes Clause 56 from the Bill. Clause 56 replicates the power to impose conditions based on noisiness contained in Clause 56 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

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<sup>31</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)*, Second Report of Session 2021–22, 16 June 2021, at pp. 23-24 available at <https://committees.parliament.uk/publications/6367/documents/69842/default/>

<sup>32</sup> HC Deb 15 March 2021 vol 691

in England and Wales. Under Clause 56 any conditions that “appear necessary” could be imposed on static assemblies, aligning sections 12 and 14 of the POA.

### Briefing

27. This clause largely mirrors Clause 55 and reiterates the concerns outlined at paragraphs 30-33.
28. 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 stated 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”.<sup>33</sup>
29. 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.
30. 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 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.

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<sup>33</sup> HC Deb 13 January 1986 vol 89 797

## **BREACH OF POLICE-IMPOSED CONDITIONS**

### *Amendment 3*

#### Effect

31. Amendment 3 removes Clause 57 from the Bill. Clause 57 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.

#### Briefing

32. 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 57 goes a step further and risks criminalising people who unwittingly breach conditions the police impose. This provision 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.
33. Once a person knows or ought to have known a condition is in place, it is essentially a strict liability offence. The Joint Committee on Human Rights’ report provides two pertinent examples of the risks this poses:

A person who attended a demonstration limited to 100 people would commit the offence if they knew or ought to know of this limit, even if they had no idea that they were the 101st person to join the assembly or procession. This is a particular concern if the condition in question relates to noise levels—how is a person who knows that a condition restricting noise levels is in place meant to know whether they personally have breached that condition?<sup>34</sup>

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<sup>34</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)*, Second Report of Session 2021–22, 16 June 2021, at pp. 23-24 available at <https://committees.parliament.uk/publications/6367/documents/69842/default/>



34. Clause 57 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 from three months to 51 weeks 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**

### *Amendment 4*

#### Effect

35. Amendment 4 removes Clause 58 from the Bill. Clause 58 amends section 142A of the Police Reform and Social Responsibility Act 2011 (PRSA) 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.

#### Briefing

36. Clause 58 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.

37. 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.<sup>35</sup> The right to freedom of assembly includes the right to choose the time, place and modalities of any protest.<sup>36</sup> As the Court of Appeal has held, protest “becomes effectively worthless if the protestor’s choice of ‘when and where’ to protest is not respected as far as possible.”<sup>37</sup>

38. In the fact sheet accompanying the Bill, the Government claim this provision is implementing a recommendation from a Joint Committee on Human Rights Report published in 2019. However, in their report on Part 3 of the Bill, the Joint Committee on Human Rights emphasised that their recommendation protecting access to Parliament does not mean there should be an outright ban on protest in the area. They note that:

“The Government has decided not to impose a specific statutory duty on the police to protect access to Parliament as the JCHR recommended. Instead, the Government has decided to secure access to the estate by making obstructing vehicular access to Parliament a prohibited activity and widening the controlled area to protect access to the Parliamentary estate.”<sup>38</sup>

39. 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.

## **POWER TO SPECIFY OTHER AREAS AS CONTROLLED AREAS**

### ***Amendment 5***

#### Effect

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<sup>35</sup> *Ollinger v Austria*, Application No. 76900/01.

<sup>36</sup> *Sáska v. Hungary*, Application no. 58050/08.

<sup>37</sup> *Singh and ors, R (on the Application of) v Chief Constable of West Midlands Police* [2006] EWCA Civ 1118, at para 87

<sup>38</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)*, 22 June 2021, <https://committees.parliament.uk/publications/6367/documents/69842/default/>

40. Amendment 5 removes clause 59 from the Bill. Clause 59 gives the Secretary of State the power to list alternative areas as controlled areas under the PRSRA should Parliament relocate temporarily.

#### Effect

41. 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**

### *Amendment 6*

#### Effect

42. Amendment 6 removes Clause 60 from the Bill. Clause 60 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 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 to include not only “serious distress, serious annoyance, serious inconvenience or serious loss of amenity” and the risk of someone suffering those things. The maximum custodial sentence is ten years.

#### Briefing

43. At the level of general principle, Liberty welcomes the codification of common law criminal offences. However, the proposed statutory offence is incredibly broad and carries heavy risks for protest rights, given the context it is being introduced in.

44. In the explanatory notes that accompany the Bill, the offence is said to be intended to target conduct “such as hanging from bridges”.<sup>39</sup> However, the wording of the offence is far broader than this, and an unacceptable basis upon which to regulate speech and protest. Protests

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<sup>39</sup> Police, Crime, Sentencing and Courts Bill Explanatory Notes <https://publications.parliament.uk/pa/bills/cbill/58-01/0268/en/200268en.pdf>

are, by their very nature, liable to cause serious annoyance and inconvenience, such that a vast array of protestors may fall foul of an offence that carries a sentence of up to ten years imprisonment. In the words of Lord Justice Laws:

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.<sup>40</sup>

45. Liberty has serious concerns about the new statutory offence being introduced in the context of provisions to manage public order. These provisions have been described as reviving an “almost moribund” common law offence in the context of protest, in that it had been rendered redundant by the establishment of environmental protection offences and offences relating to grossly offensive communications.<sup>41</sup> There are already a plethora of offences available to police in the context of protest to respond to the kind of conduct the authorities content this offence will cover (including causing criminal damage, obstructing highways and committing public order offences) and there is a real risk that this new statutory offence may be used as a catch-all to sweep up otherwise lawful protest activities because of the wide range of conduct it captures.

46. During second reading, Secretary of State for Justice Robert Buckland commented that Clause 60 “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”.<sup>42</sup> Clause 60 does seek to implement the Law Commission’s 2015 recommendation to codify the offence, which formed part of a larger project on simplifying the criminal law.<sup>43</sup> 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”.<sup>44</sup> While the Government is drawing on the Law

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<sup>40</sup> *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23

<sup>41</sup> 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/>

<sup>42</sup> HC Deb 16 March 2021 Vol. 691

<sup>43</sup> 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](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/438195/50076_Law_Commission_HC_213_print.pdf)

<sup>44</sup> 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](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/438195/50076_Law_Commission_HC_213_print.pdf)

Commission’s recommendation to support their position, they are applying it a context the Law Commission did not properly consider when making their recommendation.

47. While there is a “reasonable excuse” defence. The extent to which the exercise of fundamental rights would constitute a reasonable excuse is not clear on the face of the Bill. In any event, it is an attenuated safeguard, as it is only available once a person has been criminally charged and, as the Joint Committee on Human Rights point out:

...the term is subjective and would give significant discretion to the police to decide when peaceful and otherwise lawful protest would amount to public nuisance.<sup>45</sup>

## **IMPOSING CONDITIONS ON ONE-PERSON PROTESTS**

### *Amendment 7*

#### Effect

48. Clause 61 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.

#### Briefing

49. Liberty considers this unprecedented clause – 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.<sup>46</sup> All the concerns set out above in regard to the noise trigger also apply to this power. Moreover, the new clause 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.

## **PART 4: UNAUTHORISED ENCAMPMENTS**

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<sup>45</sup> Joint Committee on Human Rights, *Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)*, Second Report of Session 2021–22, 16 June 2021, at pp. 32 available at <https://committees.parliament.uk/publications/6367/documents/69842/default/>

<sup>46</sup> 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>

50. Gypsy, Roma and Traveller (GRT) communities are among the most persecuted and marginalised communities in the UK.<sup>47</sup> 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).
51. In Liberty's view, Part 4 should be removed from the Bill entirely and we urge MPs to support amendments 8, 9 and 10 in the name of Ian Byrne MP, which do this. We also recommend MPs support amendments 11-21 in the name of Andy Slaughter MP, which aim to mitigate the worst harms it will eventuate.

## **CRIMINALISATION OF TRESPASS WITH INTENT TO RESIDE**

### *Amendment 8*

#### Effect

52. Amendment 8 removes Clause 62 from the Bill. Clause 62 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.

#### Briefing

53. The powers established by Clause 62 will capture and potentially criminalise a wide array of behaviour – that which causes or is likely to cause "*significant disruption, damage or distress*". None of these terms are properly defined in the Bill and it is not clear what kind of evidence will be required to satisfy them. They are vague and potentially expansive. For example, "distress" is a nebulous term which may, in this context, also be informed by stereotypes and prejudices against Gypsy and Traveller communities. The "distress" the presence of camps alone may cause – and the discrimination and harm Gypsies and Travellers often face as a result of this "distress" – is well-documented.<sup>48</sup> Moreover, as the

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<sup>47</sup> See: <https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2018>

<sup>48</sup> Traveller Movement *'The last acceptable form of racism? The pervasive discrimination and prejudice experienced by Gypsy, Roma and Traveller communities'* (2017) available at <https://www.travellermovement.org.uk/phocadownload/userupload/reports/last-acceptable-form-of-racism-traveller-movement-report.pdf>

National Police Chief's Council (NPCC) stated in their evidence to the Joint Committee on Human Rights: "whose distress? Is it the landowner's? Is it a perception?".<sup>49</sup>

54. Not only is the offence committed when these vague criteria are met, but it can be committed if significant disruption, damage or distress is "*likely*" to be caused. This runs the risk that Gypsy and Traveller communities may be pre-emptively criminalised based on the mere presence of roadside camps and their potential future conduct, rather than having in fact caused criminal damage or any other harm. Further, the Government note in their factsheet on the Bill that they hope the provisions "could also deter unauthorised encampments from being set up in the first instance".<sup>50</sup>
55. Clause 62 also establishes new vehicle seizure powers. Section 62 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".<sup>51</sup> This is a weak justification for a power which may carry devastating consequences.
56. Clause 62 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."<sup>52</sup> Indeed, the State has a positive obligation to protect Gypsies and Travellers' traditional way of life.<sup>53</sup>
57. As a matter of law, any interference with these rights must be a necessary and proportionate means of achieving a legitimate aim. Liberty believes these measures are likely to constitute

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<sup>49</sup> <https://committees.parliament.uk/oralevidence/2211/pdf/>

<sup>50</sup> 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>

<sup>51</sup> 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](http://data.parliament.uk/DepositedPapers/Files/DEP2019-1036/Government_Consultation.docx)

<sup>52</sup> *London Borough of Bromley v Persons Unknown and Ors* [2020] EWCA Civ 12 [109]

<sup>53</sup> *Chapman v UK* App no. 27238/95

a disproportionate and unlawful interference with Gypsies' and Travellers' rights for the following reasons.

- **Misdiagnosing the problem.** 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 permitted to stop or reside.”<sup>54</sup> 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 will simply trap people in a cycle of eviction and criminalisation.
- **Not necessary.** There are already ample powers on the statute books to respond to roadside camps and remove people from land, including section 61, section 62A and section 77 of the Criminal Justice and Public Order Act 1994. 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.<sup>55</sup> Many police bodies also recognise the lack of site provision 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”.<sup>56</sup> The NPCC lead for Gypsies and Travellers, Deputy Chief Constable Janette McCormick, noted in her evidence to the JCHR that frontline police officers are “often in an unenviable position. Where you have an unauthorised encampment, you have a family or families looking for somewhere to stay, you have no sites within that local authority area and, to use the legislation and move them on, in essence, you are going to just push them down the

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<sup>54</sup> 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>

<sup>55</sup> 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>

<sup>56</sup> 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>



road to another area.”<sup>57</sup> In other words, given the lack of sites, these provisions risk trapping many people into a cycle of trespass, eviction and criminalisation.

- **Draconian powers.** These powers are extreme in nature – allowing police to impound Gypsy and Traveller families’ homes – and may lead to serious hardship for entire families, including children. Evidence is clear that Gypsies and Travellers who have nowhere to lawfully stop face particularly high problems in terms of low life expectancy, high maternal mortality rates and low educational attainment.<sup>58</sup>

58. 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. Part 4 defines 'vehicle', 'reside' and 'intent to reside' so broadly, it could criminalise cyclists going wild camping or people who have driven to access green space, and deter people from accessing the countryside. As Cycling UK have noted, a vehicle does not have to be suitable for use on the road and/or even have wheels.<sup>59</sup> When the Bill was first introduced, a coalition of 250 organisations – including the Ramblers, Right to Roam Coalition, British Mountaineering Council, Cycling UK, CPRE, the countryside charity, alongside Liberty and FFT – joined forces to condemn the Bill. It is an extreme and unnecessary attack on ancient freedoms that may have a negative effect on how people can access and enjoy the countryside and green spaces.

## **AMENDMENTS TO EXISTING POWERS**

### *Amendment 9*

#### Effect

59. Amendment 9 removes Clause 63 from the Bill. Clause 63 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.

#### Briefing

60. 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

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<sup>57</sup> <https://committees.parliament.uk/oralevidence/2211/pdf/>

<sup>58</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/360/360.pdf>

<sup>59</sup> [https://www.cyclinguk.org/sites/default/files/document/2021/03/2102\\_rg\\_mps\\_police-etc-bill-commons-2nd-reading\\_brf.pdf](https://www.cyclinguk.org/sites/default/files/document/2021/03/2102_rg_mps_police-etc-bill-commons-2nd-reading_brf.pdf)

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 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.”<sup>60</sup>

## **GUIDANCE ON THE EXERCISE OF POWERS**

### *Amendment 10*

#### Effect

61. Amendment 10 removes Clause 64 from the Bill. Clause 64 requires the Secretary of State to issue guidance for police forces relating to the how the new powers established by Clause 63 should be exercised.

#### Briefing

62. Given that Liberty considers that Clause 63 should be removed from the Bill, Clause 64 would be rendered unnecessary.

## **PART 10: SERIOUS VIOLENCE REDUCTION ORDERS**

### *Amendments 113-114*

#### Effect

63. Amendments 113 and 114 in the name of Dawn Butler MP remove Clauses 140-141 from the Bill and are supported by Liberty, StopWatch UK, Amnesty UK, JUSTICE, Defend Digital Me, Open Rights Group, Medact, Unjust, Big Brother Watch and Fair Trials. Clauses 140-141 establishes a new civil order, the Serious Violence Reduction Order (SVRO), which would be imposed on an individual on the basis of their conviction. 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.

#### Briefing

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<sup>60</sup> Friends, Families, Travellers, Briefing on new police powers for encampments in Policing, Crime, Sentencing and Courts Bill: Part 4, (March 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>

64. Clauses 140-141 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 verifiable threat. We recommend MPs support amendments to remove it from the Bill, in the name of Dawn Butler MP, on the basis that:

- They are oppressive by design and unpick essential safeguards;
- They risk compounding discrimination in the criminal justice system; and
- They are not supported by evidence.

## **OPPRESSIVE BY DESIGN**

65. Existing stop and search powers are already problematic and yet, in recognition of their ability for harm, have certain safeguards applied to them. SVROs fundamentally undermine these safeguards in substantial ways by – creating an individualised stop and search power that allows the police to stop someone without suspicion whenever they are in a public place.

66. 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 police cannot use “the fact that the person is known to have a previous conviction” as a basis for a stop and search. Such a constraint seeks to tie reasonable suspicion to factors which are relevant to the likelihood that a person has committed a specific offence, rather than attempts to reduce people to their past behaviour. SVROs on the other hand, are tied precisely to a person’s previous conviction, which the court can impose via a low standard of evidence. 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.” Nonetheless, a person subject to an SVRO may face criminal penalties should they breach it.

67. 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 was aptly illustrated by a 2018 report by the organisation StopWatch, which explores the experiences of young people of colour arbitrarily included on the Gangs Matrix, for whom being stopped and searched is as normal as “putting your clothes on”.<sup>61</sup> 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

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<sup>61</sup> [https://www.stop-watch.org/uploads/documents/Being\\_Matrixed.pdf](https://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf)

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.

68. At Committee Stage, the Government sought to reassure the Opposition that the establishment of SVROs by way of a pilot across 4 police forces, would enable them to collect robust data on their use.<sup>62</sup> We are concerned that pilots and other exercises such as these, do not achieve their purported aims of safeguarding and establishing agreed standards to base further roll out of policy from, but are instead a mere buffer zone between introduction of a policy and its wider roll out.<sup>63</sup> The only safeguard available to counter the harms that SVROs are likely to cause, is for them not to be created at all.

## **COMPOUNDING DISCRIMINATION**

69. In the initial consultation document, the Government recognised that whilst “most people who are sentenced for knife or offensive weapon offences are White [...] adults from some ethnic minority backgrounds are disproportionately more likely to be sentenced for a knife or offensive weapon offence. It is therefore likely that most people who are made subject to SVROs will be White, adult males, although it may be that a disproportionate number of Black people are impacted, Black males in particular.”<sup>64</sup> Further, the Government conceded that “people from an ethnic minority who are subject to an SVRO are more likely to be searched in practice.”<sup>65</sup> As is apparent from official data, there already exist extreme racial disparities in the rates of stop and search in this country. Communities of colour are already searched at significantly higher rates, with black people 8.9 times more likely to be subject to a stop and search than white people.<sup>66</sup> Both in terms of who they are applied to and who bears the brunt of their enforcement, SVROs will reflect, deepen and compound the discrimination marginalised communities face at every juncture of the criminal justice system.

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<sup>62</sup> “We have announced that the SVROs will be piloted in four areas, namely by the Merseyside, Thames Valley, Sussex and West Midlands police forces... The pilot will allow us to build an understanding of these new orders before making a decision about whether they should be rolled out nationally to other force areas.” Victoria Atkins, Police, Crime, Sentencing and Courts Bill (Fifteenth sitting), 17 June 2021, Col.591.

<sup>63</sup> For example, the Home Office collects annual data on stop and search. This data has repeatedly shown the disproportionality inherent in these police powers, but the Government is yet to make substantial efforts to rectify these problems. Similarly, the Home Office has delayed their pilot of Knife Crime Prevention Orders – the findings from which may have substantially aided the decision to implement SVROs in the first place.

<sup>64</sup> 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](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/917277/SVRO_consultation.pdf), p.15

<sup>65</sup> *Ibid.*

<sup>66</sup> House of Commons Library. 2020. Police powers: stop and search.

70. The Bill also allows for an SVRO to be made on any person aged over 18, regardless of whether the person themselves used a weapon. This introduces a *de facto* joint enterprise or guilt by association measure. As the Lammy Review established “thousands of people are estimated to have been prosecuted under Joint Enterprise over the last decade” and “up to half of those convicted under Joint Enterprise identify as BAME.”<sup>67</sup> In the case of *R v Jogee*, the Supreme Court strengthened the burden of proof required for joint enterprise to limit the police use of this doctrine, such that it was required beyond reasonable doubt that a secondary party intended to encourage or assist a principal in, for example, carrying out a knife attack.<sup>68</sup> However, no strengthened burden of proof would exist in relation to SVROs, effectively reviving the expansive joint enterprise doctrine, even in circumstances where people may have been acquitted in joint enterprise proceedings in relation to the main offence, as long as they have been convicted of some other offence.

## **INEFFECTIVE AND COUNTER-PRODUCTIVE**

71. 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”.<sup>69</sup> We support 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”.<sup>70</sup> 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.<sup>71</sup>

72. In addition, the use of SVROs would risk breaching Article 8 ECHR – the right to respect for private and family life, home and correspondence. In *Gillan and Quinton v United Kingdom*,<sup>72</sup>

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<sup>67</sup> The Lammy Review, ‘An Independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System,’ September 2017 p.19  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/643001/lammy-review-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf)

<sup>68</sup> *R v Jogee* [2016] UKSC 8

<sup>69</sup> 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](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/917277/SVRO_consultation.pdf), p.15

<sup>70</sup> 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/stopsearch-operation-blunt-2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/508661/stopsearch-operation-blunt-2.pdf), p. 3.

<sup>71</sup> Matteo Tiratelli, Paul Quinton, Ben Bradford, Does Stop and Search Deter Crime? Evidence From Ten Years of Londonwide Data, *The British Journal of Criminology*, 58 (5) pp. 1212–1231.

<sup>72</sup> *Gillan and Quinton v United Kingdom* (App. No. 4158/03) (Judgment of 12 January 2010) ECtHR.

the ECtHR found that the stopping and searching of a person in a public place without reasonable suspicion of wrongdoing could violate Article 8 ECHR, where such powers are not sufficiently circumscribed and contain inadequate legal safeguards to be in accordance with the law. In particular, the ECtHR determined that the lack of reasonable suspicion rendered an individual “extremely vulnerable to an arbitrary exercise of power” and represented a lack “of any practical and effective safeguards”. We consider that the proposed framework could therefore risk violating Article 8 ECHR and be open to challenge in the courts.

73. In our view, the proposals are not only likely to be ineffective, but may also be directly counter-productive. The custodial experience often exacerbates and compounds the early life disadvantage many of the people who come into contact with the criminal justice face. Against this backdrop, these measures may reinforce negative stereotypes and trap people in a cycle of criminalisation and harm, rather than diverting them from the criminal justice system. SVROs also severely risk undermining the potential for rehabilitation and people’s chances of being re-integrated into society. 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.

## **CONCLUSION**

74. That a 308-page bill covering as diverse a range of areas as protest, trespass, serious violence, and criminal justice has managed to inspire sustained and united opposition in the streets and in Parliament (a total of 127 pages of amendments have been tabled for Report Stage)<sup>73</sup>, is a clear sign that its proposals are unpopular and unsupported by vast swathes of the public. Indeed, when polled two-thirds of the public said they were concerned by Government plans to criminalise protest.<sup>74</sup> Any attack on human rights and civil liberties is felt hardest by those already minoritised, marginalised, and criminalised – and the clauses mentioned above demonstrate precisely how these attacks will proceed in step if the PCSC Bill passes in its current form. The PCSC Bill – for its extraordinary expansion of police powers, clampdown on Gypsy, Roma, and Traveller communities’ way of life, and draconian restrictions on protest – must be opposed. Liberty strongly urges Parliamentarians to support the above amendments.

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<sup>73</sup> Police, Crime, Sentencing and Courts Bill, As Amended (Amendment paper), Report Stage, 1 July 2021.

<sup>74</sup> ‘Two thirds of public concerned by plans to ‘criminalise protest’, polling shows’, Dearden L, The Independent, 29 June 2021.