LIBERTY

LIBERTY'S BRIEFING ON THE POLICE, CRIME, SENTENCING AND COURTS BILL FOR COMMITTEE STAGE IN THE HOUSE OF LORDS

OCTOBER 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.

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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, provides a basis for expansive, police-led data gathering, retention and sharing which circumvents existing safeguards, and establishes expansive new stop and search powers that threaten to entrench racial discrimination and the root causes of serious violence.

Notwithstanding the far-reaching implications that this Bill will have on people's human rights and civil liberties, the PCSC Bill has yet to be adequately and effectively scrutinised by Parliament. In response to the initial outcry accompanying the announcement of the Bill, many parliamentarians reassured the public that aspects of the Bill which had prompted profound concern inside and outside Parliament would be properly scrutinised and improved in the Public Bill Committee.[1] These hopes were ultimately not realised, as 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 – emerged from Committee Stage and Report Stage in the House of Commons entirely unamended. In Report Stage, in spite of 133 pages of new clauses and amendments being tabled, the Bill was only allotted one day for debate, prompting Conservative MP Philip Davies to criticise the Government's failure to provide sufficient time for Parliament to properly scrutinise the Bill as "an absolute abuse of this House."[2]

At Second Reading in the House of Lords, many parliamentarians commented on the size of this "omnibus"[3] or "Christmas tree"[4] Bill as well as its extensive arrogation of power to the Executive.[5] In total, the PCSC Bill contains 62 delegated powers, 24 of which allow for the affirmative procedure. The Delegated Powers and Regulatory Reform Committee has expressed its "surprise" and "concern" at the large number of "inappropriate delegations of

[1] 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).

[2] "Surely the least this House should be able to expect is to have some proper free-flowing debate and some explanation from the Government of their position on each of the new clauses, which people have taken the time and trouble to table" (Philip Davies, Police, Crime, Sentencing and Courts Bill (Programme) (No. 2), Hansard, 5 July 2021, Vol.698, Col. 528)

[3] "The suspension of civil liberties for a public health emergency was bad enough, if understandable, but now, using the language of safety, protecting citizens and fear—again, although fear of crime this time—I am worried that the Government think the new normal should be less freedom and fewer rights." (Baroness Fox of Buckley, Police, Crime, Sentencing and Courts Bill, Second Reading (Lords), Hansard, 14 September 2021, Vol. 814, Col. 1347)'

[4] Lord Falconer of Thoroton, Police, Crime, Sentencing and Courts Bill, Second Reading (Lords), Hansard, 14 September 2021, Vol. 814, Col. 1284

[5] "I am afraid that this Bill is yet another we have studied with thoroughly inappropriate delegations which seek quite wrongly to deprive Parliament of proper scrutiny—or any scrutiny in some cases—of important and contentious matters." (Lord Blencathra, Police, Crime, Sentencing and Courts Bill, Second Reading (Lords), Hansard, 14 September 2021, Vol. 814, Col. 1301)

power in this Bill."[6] That many of these powers concern contentious and substantive issues, rather than simply minor and technical matters - such as the issue of what constitutes 'serious disruption' in a public order context that will directly inform what conditions will be capable of being imposed on protests and what guidance will be issued to the police in exercising powers that will fundamentally alter Gypsy, Roma, and Traveller communities' nomadic way of life – is highly concerning, to the extent that it demonstrates the Government's increasingly blatant attempts to avoid parliamentary scrutiny, in defiance of the UK's constitutional settlement.[7] It is also likely to backfire – as noted by Lord Blencathra: "the Home Office and the police will be making a rod for their own backs if they do not let Parliament have even a cursory look at highly contentious guidance and regulations."[8]

Not only has the Bill failed to be adequately scrutinised, the Government's justifications for it—for example, that the police want more powers to restrict protest—have been continuously refuted. Shortly after a group of former police officers and chiefs wrote to the Home Secretary saying that the Bill was a "threat to democracy",[9] Liberty and Friends of the Earth revealed in July that the Police Federation and Association of Police and Crime Commissioners had not been consulted on the protest measures of the Bill.[10]

Efforts on the part of civil society to oppose the Bill have produced diverse and strong coalitions united in solidarity to defend our cherished liberties, protect our ways of life, and safeguard our democratic institutions. More than half a million people[11] and 350 organisations have written to the Home Secretary condemning the Bill,[12] and opposition has continued to swell on domestic and international fronts—from environmental and trespass groups,[13] to the violence against women and girls' sector,[14] to homelessness organisations,[15] to football

[6] §4, Delegated Powers and Regulatory Reform Committee, *6th Report of Session 2021-2022: Police, Crime, Sentencing and Courts Bill; Public Service Pensions and Judicial Offices Bill,* House of Lords, 13 September 2021, available at: https://committees.parliament.uk/publications/7279/documents/76344/default/

[7] §50, Select Committee on the Constitution, *16th Report of Session 2017-19: The Legislative Process: The Delegation of Power*, House of Lords, 20 November 2018, available at: https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/225/225.pdf

[8] Lord Blencathra, Police, Crime, Sentencing and Courts Bill, Second Reading (Lords), Hansard, 14 September 2021, Vol. 814, Col. 1302

[9] Hamilton, F., *Policing bill 'is harmful to democracy',* The Times, 5 July 2021, available at: https://www.thetimes.co.uk/article/policing-bill-is-harmful-to-democracy-ft9dg6r3x; see also: West, O., *The Policing Bill will leave officers in an impossible position*, The Times, 7 July 2021, available at: https://www.thetimes.co.uk/article/the-policing-bill-will-leave-officers-in-an-impossible-position-979fpzzbs?CMP=TNLEmail_2014964_14271412_119

[10] M. Townsend, *Priti Patel 'misled' MPs over plans for protest crackdown*, The Guardian, 18 July 2021, available at: https://www.theguardian.com/politics/2021/jul/18/priti-patel-misled-mps-over-plans-for-protest-crackdown

[11] Liberty, *Mass petition shows scale of dissent as oppressive Policing Bill returns to Parliament*, 5 July 2021, available at: https://www.libertyhumanrights.org.uk/issue/mass-petition-shows-scale-of-dissent-as-oppressive-policing-bill-returns-to-parliament/

[12] Helm, T., *Patel faces widening revolt over policing bill's restrictions on* protest, The Guardian, 12 September 2021, available at: https://www.theguardian.com/uk-news/2021/sep/12/patel-faces-widening-revolt-over-policing-bills-restrictions-on-protest; also see: Liberty, *Leading organisations join condemnation of policing bill*, 15 March 2021, available at: https://www.libertyhumanrights.org.uk/issue/leading-organisations-join-condemnation-of-policing-bill/

[13] Ramblers, *Ramblers calls on government to rethink policing bill,* 16 March 2021, available at: https://www.ramblers.org.uk/news/latest-news/2021/march/ramblers-call-on-government-to-rethink-policing-bill.aspx

[14] End Violence Against Women, *Women's Organisations Oppose the Police, Crime, Sentencing and Courts Bill*, May 2021, available at: https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Joint-briefing-on-the-PCSC-Bill-for-Committee-Stage-HoC-May-2021-final.pdf

[15] Homeless Link, *Hidden dangers of the Police, Crime, Sentencing and Courts Bill*, 22 June 2021, available at: https://www.homeless.org.uk/connect/blogs/2021/jun/22/hidden-dangers-of-police-crime-sentencing-and-courts-bill

supporters,[16] to business leaders,[17] to lawyers and legal academics,[18] to three UN Special Rapporteurs[19] and Europe's top human rights official.[20] A recent poll by nfpSynergy revealed that 62% of people are concerned about plans to criminalise protest rights.[21] In September, Civicus – an organisation that monitors the openness of civil society around the world – added the United Kingdom to a watchlist of countries including Afghanistan, Belarus, and Nicaragua due to a rapid decline in fundamental civic freedoms, warning that the PCSC Bill "poses a serious threat to the fundamental right to peaceful assembly."[22]

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 Parts must be removed, and urges parliamentarians to give notice of their intention to oppose that the following clauses stand part of the Bill:**

- **Clauses 7-22 (Part 2, Chapter 1: Serious violence duty)**
- **Clauses 55-61 (Part 3: Public order)**
- **Clauses 62-64 (Part 4: Unauthorised encampments)**
- **Clauses 140-141 (Part 10, Chapter 1: Serious Violence Reduction Orders)**

If the above amendments are not selected or passed, we would urge parliamentarians to support the following amendments that we believe will mitigate the worst harms of the Bill.

Part 2, Chapter 1 (Serious violence duty)

- **The amendments to remove the data-sharing provisions** in the names of Baroness Meacher and Lord Paddick

[16] Football Supporters' Association, *Petition calls for halt to new Policing Bill,*16 September 2021, available at: https://thefsa.org.uk/news/petition-calls-for-halt-to-new-policing-bill/
[17] Meaden, D., *If Priti Patel pitched the Policing Bill, I would loudly declare myself out*, The Times, 7 October 2021, available at: https://www.thetimes.co.uk/article/if-priti-patel-pitched-the-policing-bill-i-would-loudly-declare-myself-out-6xq322f7m
[18] Woodcock, A., *More than 700 legal scholars urge Boris Johnson to ditch plan for 'draconian' restrictions on right to protest*, The Independent, 17 March 2021, available at: https://www.independent.co.uk/news/uk/politics/police-bill-academics-letter-priti-patel-b1818695.html
[19] Voule, C.N. and Khan, I., *Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 25 May 2021, available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26447
[20] Mijatović, D., *Letter to the Speaker and Lord of the House of Commons*, Council of Europe, 1 July 2021, available at: https://rm.coe.int/letter-to-rt-hon-sir-lindsay-hoyle-mp-speaker-of-the-house-of-commons-/1680a305a3
European Center for Not-for-Profit Law, *The United Kingdom's Police, Crime, Sentencing and Courts Bill: Analysis of compliance with international rights standards*, 21 April 2021, available at: https://ecnl.org/sites/default/files/2021-04/ECNL%20SUMMARY%20%20Police%20Crime%20Sentencing%20and%20Courts%20Bill%20Briefing%2022%20April%20-%20update.pdf
[21] Liberty, *Poll: Two thirds oppose Government's protest plans*, 28 June 2021, available at: https://www.libertyhumanrights.org.uk/issue/poll-two-thirds-oppose-governments-protest-plans/
[22] Civicus Monitor, *UK added to human rights watchlist over threats to peaceful assembly,* 23 September 2021, available at: https://monitor.civicus.org/UnitedKingdom/

- **The amendments to reinstate public bodies' statutory duties** in the names of Baroness Meacher and Lord Paddick
- **The amendment to ensure depersonalisation of data and prevent individualised risk-profiling** in the names of Baroness Meacher and Lord Paddick

Part 3 (Public order)

- **The amendments to remove the ability of police to impose noise-based conditions on protest** in the names of Lord Rosser and Lord Dubs
- **The amendment to remove increases in sentences for non-violent offences by those who organise and attend protests** in the name of Lord Dubs
- **The amendments to remove the ability of the Home Secretary to define "serious disruption"** in the name of Lord Beith
- **The amendment requiring police to apply to the High Court in order to impose conditions on protest** in the name of Lord Paddick

Part 4 (Unauthorised encampments)

- **The amendment to impose a duty on local authorities to provide sites for Gypsies, Roma and Travellers** in the names of Baroness Whitaker, Lord Alton and Lord Bourne
- **The amendment to ensure that only a police officer can request a person to leave land** in the names of Baroness Whitaker, Lord Alton and Lord Bourne
- **The amendment to ensure that police do not have the power to seize a vehicle that is a person's home** in the name of Lord Paddick
- **The amendments to remove the penalty of a custodial sentence of up to three months** in the name of Baroness Bennett

Part 10, Chapter 1 (Serious Violence Reduction Orders)

- **The amendments to limit the conditions under which an SVRO can be imposed** in the names of Baroness Meacher and Lord Paddick; and **the amendment to remove the joint enterprise element** in the names of Lord Ponsonby and Lord Paddick
- **The amendments to limit the potential harms faced by those with an SVRO** in the names of Baroness Meacher and Lord Paddick
- **The amendment to establish a robust pilot for SVROs** in the names of Baroness Meacher and Lord Paddick
- **The amendment to repeal s.60 Criminal Justice and Public Order Act (CJPOA)** in the name of Lord Paddick.

PART 2: NEW SERIOUS VIOLENCE DUTIES

1. Part 2, Chapter 1 of the Bill (Clauses 7-22) places a new statutory duty on bodies such as healthcare authorities (Clinical Commissioning Groups in England and Local Health Boards in Wales), local authorities, education providers, prison authorities, and youth custody authorities to collaborate with each other to prevent and tackle serious violence.

KEY CONCERNS

2. Liberty recognises that the intention of the serious violence duty 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 just response that works with, not against, communities that bear its brunt.

3. **While purporting to be a public health, multi-agency approach to tackling serious violence, the proposed serious violence duty would risk further criminalising communities over addressing root causes by being police-led and enforcement-driven.** 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 also not equal partners: police are given the power to demand information from other bodies (like education authorities, healthcare bodies and local authorities) and they must acquiesce, in certain cases 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. Such an 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 and protecting wider public interests that safeguarding and data protection promote. In the words of the End Violence Against Women (EVAW) coalition, "the approach risks crude profiling, discrimination, intrusion into private life and creating a pipeline into the criminal justice system."[23] The response to serious violence should not be the exclusive domain of law enforcement; instead, addressing the root causes has been recognised – including by the Government – to be a critical element of an effective and sustainable approach.[24]

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[23] End Violence Against Women, *Police, Crime, Sentencing and Courts Bill enters Report Stage amid opposition from women's groups*, 5 July 2021, available at: https://www.endviolenceagainstwomen.org.uk/police-crime-sentencing-and-courts-bill-enters-report-stage-amid-opposition-from-womens-groups/

[24] Pg. 60, HM Government, *Serious Violence Strategy*, April 2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf [25] Lintern, S., *Plans to hand over NHS data to police sparks warning from government adviser,* The

5. **The provisions under Part 2, Chapter 1 that mandate data-sharing between different agencies with minimal safeguards have the potential to breach individuals' data rights and their right to a private life.** The National Data Guardian – an independent watchdog tasked with safeguarding patient data in healthcare – has spoken out against these measures for the specific risks they pose to clinician-patient confidentiality.[25]

6. **The creation of carve-outs for professional duties of confidentiality and other restrictions on disclosure of information will erode relationships of trust between frontline professionals and the individuals they work with, and hinder the provision of vital services such as health and social care and education.** As noted by the National Data Guardian, "If people feel that their information may be used in unexpected ways, for purposes they may not support, this greatly undermines the fundamental relationship of trust. The effect may be to deter patients from seeking treatment, or, when seeking treatment, to only disclose partial or false details, thereby denying clinicians the information they need to deliver safe and effective care."[26] More than 665 health, social, youth, and education workers have warned that the proposals in the PCSC Bill could force them to betray the hard-earned trust and relationships they have built with the young people they work with, and potentially entrench the root causes of serious violence.[27]

7. **Practices of expansive data-sharing with minimal safeguards may give rise to individual risk-profiling and targeting, which is likely to entrench racially disproportionate policing and structural inequality.[28]** The serious violence duty risks putting on a statutory footing the very same systemic failings of the London Metropolitan Police Service's Gangs Matrix that were identified following investigations by the Information Commissioner's Office (ICO) and the Mayor's Office of Police and Crime (MOPAC). For instance, one of the key problems identified in the Gangs Matrix by the ICO was that it failed to distinguish between victims of

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Independent, 11 October 2021, available at: https://www.independent.co.uk/news/health/nhs-data-guardian-police-covid-b1934912.html; National Data Guardian, *Data-driven innovation: why confidentiality and transparency must underpin the nation's bright vision for the future of health and care*, 4 October 2021, available at: https://www.gov.uk/government/news/data-driven-innovation-why-confidentiality-and-transparency-must-underpin-the-nations-bright-vision-for-the-future-of-health-and-care

[25] Lintern, S., *Plans to hand over NHS data to police sparks warning from government adviser,* The Independent, 11 October 2021, available at: https://www.independent.co.uk/news/health/nhs-data-guardian-police-covid-b1934912.html; National Data Guardian, *Data-driven innovation: why confidentiality and transparency must underpin the nation's bright vision for the future of health and care*, 4 October 2021, available at: https://www.gov.uk/government/news/data-driven-innovation-why-confidentiality-and-transparency-must-underpin-the-nations-bright-vision-for-the-future-of-health-and-care

[26] National Data Guardian, *Data-driven innovation: why confidentiality and transparency must underpin the nation's bright vision for the future of health and care*, 4 October 2021, available at: https://www.gov.uk/government/news/data-driven-innovation-why-confidentiality-and-transparency-must-underpin-the-nations-bright-vision-for-the-future-of-health-and-care

[27] Liberty, *Frontline workers warn Policing Bill puts young people at risk,* 13 September 2021, available at: https://www.libertyhumanrights.org.uk/issue/frontline-workers-warn-policing-bill-puts-young-people-at-risk/; Modin, A., and Topping A., *Policing bill will deepen racial and gender disparities, say experts*, The Guardian, 13 September 2021, available at: https://www.theguardian.com/uk-news/2021/sep/13/policing-bill-will-deepen-racial-and-gender-disparities-say-experts; Sharman, J., *Policing bill 'will put young people at risk', hundreds of experts warn,* The Independent, 13 September 2021, available at: https://www.independent.co.uk/news/uk/politics/policing-bill-2021-data-surveillance-b1918664.html; Diver, T., *Priti Patel's crime Bill will turn us into police informants, complain medics*, The Telegraph, 13 September 2021, available at: https://www.telegraph.co.uk/politics/2021/09/13/priti-patels-crime-bill-will-turn-us-police-informants-complain/;

[28] Mohdin, A. and Topping, A., *Policing bill will deepen racial and gender diaprities, say experts*, The Guardian, 13 September 2021, available at: https://www.theguardian.com/uk-news/2021/sep/13/policing-bill-will-deepen-racial-and-gender-disparities-say-experts

serious violence and perpetrators of serious violence, resulting in chronic and widespread surveillance and criminalisation of individuals, their families and their communities.[29] Similarly, the serious violence duty as currently drafted explicitly provides that victims of serious violence are to be included within the definition of people "involved in serious violence". The duty as currently drafted could result in the same forms of surveillance and criminalisation being targeted at those traditionally considered 'victims'. If the duty were truly a rights-based, public health approach, it would seek to safeguard all those at risk of violence and enable – rather than hinder – the relationships and conditions that people and communities need to be safe.

8. Liberty, working in coalition with organisations from a wide range of sectors including human rights, privacy and technology, criminal justice, public health, and racial justice, believe that the application of the serious violence duty may provide a foundation for significant, and potentially discriminatory and disproportionate, intrusions into people's private lives. **Together with StopWatch UK, the Alliance for Youth Justice, Amnesty UK, JUSTICE, Defend Digital Me, Medact, Unjust, Big Brother Watch and Fair Trials, we urge parliamentarians to give notice of their intention to oppose that clauses 7 to 22 (Part 2, Chapter 1) stand part of the Bill.**

9. **If the above amendments are not selected or passed, we would urge parliamentarians to consider and support the following amendments to mitigate the worst effects of the Bill:**
    - **The amendments to remove the data-sharing provisions (including the carve-outs from data protection safeguards)** in the names of Baroness Meacher and Lord Paddick
    - **The amendments to reinstate public bodies' statutory duties** in the names of Baroness Meacher and Lord Paddick
    - **The amendment to ensure depersonalisation of data and prevent individualised risk-profiling** in the names of Baroness Meacher and Lord Paddick

AMENDMENTS

AMENDMENTS TO REMOVE HARMFUL DATA-SHARING PROVISIONS (INCLUDING CARVE-OUTS FROM CRUCIAL DATA PROTECTION SAFEGUARDS)

In the name of Baroness Meacher and Lord Paddick

Clause 9

The above-named Lords give notice of their intention to oppose the Question that Clause 9 stand part of the Bill.

Effect

[29] Information Commissioner's Office, *ICO finds Metropolitan Police Service's Gangs Matrix breached data protection laws,* 16 November 2018, available at: https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/11/ico-finds-metropolitan-police-service-s-gangs-matrix-breached-data-protection-laws/

This amendment would remove Clause 9 from the Bill. Clause 9 gives the Secretary of State the power to make regulations conferring powers on various agencies to work together to prevent and reduce serious violence, including through the disclosure of information (clause 9 (2)). Under clause 9 (4), regulations made under this section may provide that any information disclosure taking place does not breach any obligation of confidence owed by the person disclosing information, or any other restriction on information disclosure (however imposed).

In the name of Baroness Meacher and Lord Paddick

Clause 15

The above-named Lords give notice of their intention to oppose the Question that Clause 15 stand part of the Bill.

Effect

This amendment would remove Clause 15 from the Bill. Clause 15 enacts a power to disclose information. Disclosures under this clause benefit from the same 'carve-out' in clause 9 (4) above, under clause 15 (4).

In the name of Baroness Meacher and Lord Paddick

Clause 16

The above-named Lords give notice of their intention to oppose the Question that Clause 16 stand part of the Bill.

Effect

This amendment would remove Clause 16 from the Bill. Clause 16 enables the police to request information from a wide range of agencies, including educational authorities, healthcare providers, and local authorities, to assist it in its exercise of the serious violence duty. Clause 16 (4) specifies that it is a legal requirement to disclose any information the police request.

In the name of Baroness Meacher and Lord Paddick

Clause 17

The above-named Lords give notice of their intention to oppose the Question that Clause 15 stand part of the Bill.

Effect

This amendment would remove Clause 17 from the Bill. Clause 17 allows Secretary of State the power to give directions to a specified authority to mandate compliance with the duty, including the information disclosure requirement in clause 16 (4).

Briefing

1. 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.

2. 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 orders 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",[30] this is no guarantee, and the power remains highly worrying, especially when considered in light of clauses 9 (5), 15 (4), 16 (6). These provisions, ostensibly an attempt to reinstate 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. For example, 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)* (emphasis added)."

3. The effect of the qualifying language (in italics) 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 circular, and as a result is susceptible to being interpreted in a way that will allow the serious violence duty to *supercede* the data protection legislation. It is unclear 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 of necessity and proportionality, under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA).

4. Worryingly, clauses 9 (4), 15 (3), and 16 (5) provide that disclosures of information under these provisions will not breach professional duties of confidentiality and any other restriction on disclosure "however imposed", a definition so broad as to potentially include everything from contractual restrictions, court orders, to statutory restrictions on information disclosure. From a data protection standpoint – and given the overlap between Article 8 ECHR (right to respect for one's private and family life) and the duty of confidentiality which both require a balancing act to be undertaken before they can be interfered with - a general overriding provision for confidentiality and other restrictions would seem to conflict with the strict

[30] Column 259, Police, Crime, Sentencing and Courts Bill (Sixth sitting), 25 May 2021.

considerations of proportionality and necessity that exist to protect people's human rights.

5. Perhaps more importantly, these carve-outs appear to ignore 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[31] and international law[32] and the Department for Education's policy.[33] 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[34] and the Hostile Environment.[35][36]

6. We echo the statements of the National Data Guardian (NDG) – an independent watchdog tasked with safeguarding patient data in healthcare – that the case has not been made for why these additional powers are necessary, especially given their potentially wide-ranging harmful effects. [37] The draft statutory guidance to the Bill's explanation states that "[t]he new information sharing gateways for the purposes of the duty are not intended to replace [existing powers], but to provide powers to enable the sharing of relevant data where existing powers would not be sufficient". At Committee Stage in the House of Commons, 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."[38] However, neither of these explanations is adequate or sufficient: the statutory guidance does not specifically note which existing powers are insufficient and why (nor provide a source evidencing this claim), and the Minister's statement does not actually explain why new powers are necessary.

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[31] Section 1, Children's Act 1989
[32] Article 3, Convention on the Rights of the Child.
[33] Department for Education, 'Working Together to Safeguard Children', 2018, https://www.gov.uk/government/publications/working-together-to-safeguard-children--2
[34] 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
[35] See for example J. 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 Z. Gardner, *Migrants deterred from healthcare during the COVID-19 pandemic*, JCWI, February 2021, https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=fa346f70-cb08-46c1-b366-9a1f192ff4f3
[36] End Violence Against Women, *Police, Crime, Sentencing and Courts Bill enters Report Stage amid opposition from women's groups*, 5 July 2021, available at: https://www.endviolenceagainstwomen.org.uk/police-crime-sentencing-and-courts-bill-enters-report-stage-amid-opposition-from-womens-groups/
[37] Lintern, S., *Plans to hand over NHS data to police sparks warning from government adviser,* The Independent, 11 October 2021, available at: https://www.independent.co.uk/news/health/nhs-data-guardian-police-covid-b1934912.html; National Data Guardian, *Data-driven innovation: why confidentiality and transparency must underpin the nation's bright vision for the future of health and care*, 4 October 2021, available at: https://www.gov.uk/government/news/data-driven-innovation-why-confidentiality-and-transparency-must-underpin-the-nations-bright-vision-for-the-future-of-health-and-care
[38] Column 254, Police, Crime, Sentencing and Courts Bill (Sixth sitting)

7. Indeed, as acknowledged by the Home Office in its draft statutory guidance on the serious violence duty,[39] there already exist well-established information-sharing mechanisms to enable multi-agency working on issues such as domestic abuse,[40] 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, or the common law duty of confidentiality.[41]**

8. By contrast, Clauses 9, 15, 16, and 17 of the PCSC Bill have been drafted explicitly to override the professional safeguards around personal data that exist in order to safeguard people's human rights. The qualifying language in these clauses – that allow for the data protection legislation to be read in line with the duty (rather than the duty read in line with the data protection legislation) – gives lie to the Government's repeated claims that "information can only be shared in accordance with data protection laws."[42] 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'.[43] 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).[44]

9. The potential impact of these provisions' carve-outs from data-protection law for people's privacy and dignity warrants a strong case for why they are necessary and

[39] Home Office, *Serious Violence Duty: Preventing and reducing serious violence - Draft Guidance for responsible authorities*, May 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986086/Draft_Guidance_-_Serious_Violence_Duty.pdf

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

[41] Other statutory duties include those under the 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.

[42] Lintern, S., *Plans to hand over NHS data to police sparks warning from government adviser,* The Independent, 11 October 2021, available at: https://www.independent.co.uk/news/health/nhs-data-guardian-police-covid-b1934912.html;

[43] These are subject to a higher degree of protection under both the Data Protection Act 2018 (DPA) and the ECHR.

[44] This is particularly important in light of the British Government's recent announcements regarding developments in policy on data protection, such as its commitment to "championing international flows of data": See Department for Digital, Culture, Media and Sport, International data transfers: building trust, delivering growth and firing up innovation, 26 August 2021, available at: https://www.gov.uk/government/publications/uk-approach-to-international-data-transfers/international-data-transfers-building-trust-delivering-growth-and-firing-up-innovation

why existing powers are insufficient. Such a case has not been made. It is worth noting that the "multiple and serious breaches of data protection laws"[45] described by the Information Commissioner's Office (ICO) in its investigation into the Met Police's Gangs Matrix, had serious consequences for individuals listed on it. While the ICO said the breaches led to "damage and distress", Amnesty International described cases of people on the Matrix, many of whom were not suspected of any serious crime, receiving eviction notices or losing college places. In one devastating case a 14-year-old was shot and killed in 2017 after his details were mistakenly shared by Newham Council. Newham was subsequently fined £140,000 over this serious data breach.[46] Furthermore, in terms of the inherent racial discrimination within the Matrix databases, the ICO also concluded that a fundamental flaw of the system was "[t]he absence of a Equality Impact Assessment that would enable MPS to show it had considered in this context the issues of discrimination or equality of opportunity."[47]

10. The Met Police's Gangs Matrix remains under review after the ICO ordered the force to rectify its breaches of data protection laws. This ongoing scrutiny notwithstanding,[48] the serious violence duty in the PCSC Bill in many ways makes lawful the very same breaches the Met was criticised for and which led to multiple serious harms. **Given the similar harms that could result from the implementation of these provisions, we strongly urge parliamentarians to support the above amendments in the name of Baroness Meacher and Lord Paddick to remove the data-sharing provisions of Part 2, Chapter 1.**

AMENDMENTS TO REINSTATE PUBLIC BODIES' STATUTORY DUTIES

In the names of Baroness Meacher and Lord Paddick

Clause 7

Page 9, line 25, at end insert—

"(13) A specified authority is not subject to a duty in subsections (1) to (3) if or to the extent that compliance with the duty—

(a) would be incompatible with any other duty of the authority imposed by an enactment, or

(b) would otherwise have an adverse effect on the exercise of the authority's functions.

(14) In determining whether subsection (12) applies to an authority, the cumulative effect of complying with duties under this section must be taken into account."

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[45] Information Commissioner's Office, *ICO finds Metropolitan Police Service's Gangs Matrix breached data protection laws,* 16 November 2018, available at: https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/11/ico-finds-metropolitan-police-service-s-gangs-matrix-breached-data-protection-laws/

[46] 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.

[47] Information Commissioner's Office, *ICO finds Metropolitan Police Service's Gangs Matrix breached data protection laws,* 16 November 2018, available at: https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/11/ico-finds-metropolitan-police-service-s-gangs-matrix-breached-data-protection-laws/

[48] MOPAC, *Review of the MPS Gangs Violence Matrix – Update,* 3 February 2021, available at: https://www.london.gov.uk/mopac-publications-0/review-mps-gangs-violence-matrix-update

In the names of Baroness Meacher and Lord Paddick

Clause 14

Page 14, line 9, delete subclause 9 from Clause 14

~~(9) Subsection (7) or (8) does not apply in relation to the duty of a relevant authority to collaborate with a specified authority under subsection (3) to the extent that it relates to—~~

~~(a) the exercise by the specified authority of its function under subsection (3)(a) or (b) of section 7 of identifying the kinds or causes of serious violence in an area or its function of preparing a strategy under subsection (3)(c) of that section, or~~

~~(b) the exercise by the specified authority of its function under subsection (3)(a) or (b) of section 8 of identifying the kinds or causes of serious violence in an area or its function of preparing a strategy under subsection (3)(c) of that section.~~

Effect

As drafted, clauses 7 and 14 (9) enable obligations under the serious violence duty to 'trump' the other statutory duties that specified authorities have, for example, those imposed by safeguarding duties, data protection law, and the Human Rights Act. These amendments will ensure that public bodies are only obligated to comply with the serious violence duty to the extent it does not conflict with its other statutory duties.

Briefing

1. The wide range of public bodies included under the serious violence duty have different institutional goals and statutory duties. These duties are crucial to their functioning. One area where statutory and professional duties are particularly crucial is that of healthcare. Health professionals – who routinely collect data as part of the care they provide - have particular professional and ethical duties and obligations to their patients, including the duty of confidence. As drafted, the serious violence duty could give rise to fears on the part of such professionals that their patients' data could be collected and used in ways that their patients and service users more generally might not expect, and thereby cause them to change the way they collect and store patients' health and care records, with knock-on effects for the effective functioning of healthcare service provision. As mentioned above, the knowledge that their sensitive health and care data could be shared with the police as a matter of legal obligation might also deter people from accessing healthcare, given the context of past sensitive data handling by the NHS and broader structural inequalities.[49]

2. There is an exemption within the serious violence duty in respect of educational, prison and youth custody authorities, such that such authorities will not be subject to obligations under the serious violence duty (including those of information disclosure)

[49] Mulrine, S., Blell, M., and Murtagh, M., *Beyond trust: Amplifying unheard voices on concerns about harm resulting from health data-sharing,* Medicine Access @ Point of Care, 1 October 2021, available at: https://journals.sagepub.com/doi/full/10.1177/23992026211048421

if or to the extent that compliance with the duty would be incompatible with any other duty of the authority; would otherwise have an adverse effect on the exercise of the authority's functions; would be disproportionate to the need to prevent and reduce serious violence in the area to which the duty relates; or would mean that the authority incurred unreasonable costs (clause 14 (7)). In determining whether this exception applies, the cumulative effect of compliance with the duty must be taken into account (clause 14 (8)). This is ostensibly in recognition of the differing institutional functions and missions that such authorities have as compared to other public bodies, including the police.

3. It is unclear why other specified authorities – including health bodies, social care bodies, youth services and others – are not subject to this exemption, given that, for example, health bodies (CCGs and Health Boards) also have very different objectives to the police. **We urge parliamentarians to support the above amendments in the names of Baroness Meacher and Lord Paddick, which will reinstate the statutory duties of specified authorities, such that public bodies will not be required to comply with the serious violence duty (including information disclosure obligations) if and to the extent that they conflict.**

AMENDMENT TO ENSURE DEPERSONALISATION OF DATA AND PREVENT INDIVIDUALISED RISK-PROFILING

In the names of Baroness Meacher and Lord Paddick

Clause 16

Page 16, line 5, at end insert—

"(A1) Information provided in accordance with this Chapter—

(a) shall be depersonalised information, unless (subject to paragraph (b)) the identification of an individual is necessary or appropriate in order to enable the crime and disorder committee to properly exercise its powers; and

(b) shall not include information that would be reasonably likely to prejudice legal proceedings or current or future operations of the responsible authorities, whether acting together or individually, or of the co-operating persons or bodies.

(A2) Information is 'depersonalised' for the purposes of subsection A1(a) if it does not constitute personal data within the meaning of the data protection legislation."

Effect

This amendment will require any information collected under the serious violence duty to be depersonalised and anonymised such that individuals cannot be targeted.

Briefing

1. 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

(including the police) to glean information and potentially to make decisions about us – without our knowledge or consent. The draft Statutory Guidance to the Bill confirms that personal data is capable of being shared under the duty. [50]

2. 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. 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[51] - not to mention for the presumption of innocence that undergirds the criminal law. As noted by Sarah Jones MP in Report Stage in the House of Commons, "the [serious violence] duty risks becoming an intelligence-gathering exercise with potentially ominous consequences."[52]

3. The failings of the London Metropolitan Police Service's (MPS) 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 porous concept of the 'gang'.[53] The stark statistics on the 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.[54][55]

4. Worryingly, in spite of the well-documented nature of the harms of the Gangs Matrix – which remains under review – the Government's draft statutory guidance on the

[50] "There may be instances where information pertaining to individuals (including personal data) needs to be shared, for example if the police wish to discuss within the partnership a local gang matrix that would be difficult to assess in abstract, and where this form of data sharing would support the need to prevent and reduce serious violence locally." See: §50, Home Office, *Serious Violence Duty: Preventing and reducing serious violence - Draft Guidance for responsible authorities*, May 2021, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986086/Draft_Guidance_-_Serious_Violence_Duty.pdf

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

[52] HC Deb 5 July 2021, Vol 698, Col 563

[53] Patrick Williams, 'Being Matrixed: The (over)policing of gang suspects in London', August 2018, https://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf

[54] 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.

[55] 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/ See also: Documents ref 14122020 - EC - Agenda Item 3c - Analysis of school catchment areas and violence – proposal and 14122020 - EC - Minutes Advice For background see article: https://www.birminghammail.co.uk/news/midlands-news/fears-over-police-plan-identify-20193614

serious violence duty explicitly refers to the possibility that data collected under its auspices could be used to inform similar flawed practices:

> *"There may be instances where information pertaining to individuals (including personal data) needs to be shared, for example if the police wish to discuss within the partnership a local gang matrix that would be difficult to assess in abstract, and where this form of data sharing would support the need to prevent and reduce serious violence locally."*

5. 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[56] and the public sector equality duty.[57] We are highly concerned that the serious violence duty is likely to not only replicate but to fortify – through providing explicit carve-outs from essential data protection safeguards and restrictions on disclosure designed to protect people's privacy and dignity – the worst harms of the Gangs Matrix, by creating new powers of surveillance that may give rise to individualised risk profiling.

6. As above, the case has not been made as to why the serious violence duty requires the sharing of individualised information. By analogy, in the healthcare context, there are existing powers that allow for the sharing of anonymous healthcare information for system wide planning. The Health and Social Care Bill (currently going through Parliament) creates a duty on health and social care organisations: 'whereby a health or social care body may require another health or social care body to provide information, other than personal information, that relates only to its activities in connection with the provision of health services or adult social care in England'. There are limited exceptions where health and care professionals can set aside the obligation of confidence on a case-by-case basis, but this is only in cases where there is a overriding public interest in preventing serious harm to the individual or a third party (for doctors, the exception to the duty of confidentiality is recognised by the General Medical Council (GMC)[58]). The Government has failed to justify why the police need new and wide-ranging powers under the proposed serious violence duty in the PCSC Bill to demand public bodies hand over confidential personal information – including health and care information – for the purposes of planning to prevent and reduce serious violence in an area.

7. Not only has the case not been made for the need for the serious violence duty to allow for the sharing of information about specified individuals – especially given the existence of legislative provisions that already allow for such data sharing to occur

[56] Article 14, European Convention on Human Rights.
[57] Section 149, Equality Act 2010.
[58] General Medical Council, *Confidentiality: good practice in handling patient information*, January 2017, available at: https://www.gmc-uk.org/-/media/documents/gmc-guidance-for-doctors---confidentiality-good-practice-in-handling-patient-information----70080105.pdf?la=en&hash=08E96AC70CEE25912CE2EA98E5AA3303EADB5D88

under specified circumstances and with the benefit of safeguards - they are likely to be ineffective and may actually be counterproductive in terms of exacerbating alienation, isolation, and exclusion – the root causes of serious violence.

PART 3: A RADICAL RESTRICTION OF PROTEST RIGHTS

KEY CONCERNS

10. Despite assurances from Policing Minister Kit Malthouse MP that the right to protest "will never be curtailed by this government"[59], this Bill seeks to do exactly that through amending public order legislation to extend the police's already extensive powers, 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 and 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.

11. Given the sweeping nature of these powers and the gravity of harm that they will enable, Liberty recommends the removal of Part 3 in its entirety, and **we urge Peers to support stand part amendments on Part 3 (Clauses 55-61) in the first instance. We also recommend Peers supporting the following amendments which aim to mitigate the worst harms it will eventuate:**
    - **The amendments to remove the ability of police to impose noise-based conditions on protest** in the names of Lord Rosser and Lord Dubs
    - **The amendment to remove increases in sentences for non-violent offences by those who organise and attend protests** in the name of Lord Dubs
    - **The amendments to remove the ability of the Home Secretary to define "serious disruption", instead requiring this to be defined on the face of the Bill** in the name of Lord Beith
    - **The amendment requiring police to apply to the High Court in order to impose conditions on protest** in the name of Lord Paddick

AMENDMENTS

AMENDMENTS TO REMOVE THE ABILITY OF POLICE TO IMPOSE NOISE-BASED CONDITIONS ON PROTEST

Clause 55

In the names of Lord Rosser and Lord Dubs

[59] Home Office, *Policing Minister Kit Malthouse's statement on Birmingham incident and Extinction Rebellion protests* (7 September 2020) https://homeofficemedia.blog.gov.uk/2020/09/07/policing-minister-kit-malthouses-statement-on-birmingham-incident-and-extinction-rebellion-protests/

Page 47, line 1, leave out subsections (2) and (3)

Page 47, line 1, leave out subsections (2) to (4) and insert—

"(2) After subsection (11) insert—

"(12) The Secretary of State may by regulations make provision about the meaning for the purposes of this section of 'serious disruption to the life of the community'.

(13) Regulations under subsection (12) may, in particular: (a) define any aspect of 'serious disruption to the life of the community' for the purposes of this section; (b) give examples of cases in which a public procession is or is not to be treated as resulting in serious disruption to the life of the community.

(14) Regulations under subsection (12)— (a) are to be made by statutory instrument; (b) may apply only in relation to public processions in England and Wales; (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.

(15) A statutory instrument containing regulations under subsection (12) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.""

Clause 56

Page 48, line 12, leave out subsection (2)

Page 48, line 14, leave out paragraph (b)

Effect

These amendments will remove Clause 55 and 56 from the PCSC Bill. Clause 55 and 56 of the PCSC Bill amends Section 12 of the Public Order Act (1986) (POA) to allow the police to impose conditions on a protest if they have a reasonable belief that the noise generated by persons taking part in the protest 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".

Briefing

1. Noise stands at the heart of protest. Making noise is how we, quite literally, make our voices heard by those in power. The noise generated by protest 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[60], oppose the Iraq War[61], or make their voices heard on Brexit[62] – which is often a central ingredient of effective protest. As legal academic Professor David Mead commented,

[60] Tania Branigan '400,000 bring rural protest to London,' *The Guardian* (23 Sep 2002) https://www.theguardian.com/uk/2002/sep/23/hunting.ruralaffairs2

[61] 'Million' march against Iraq War,' *BBC News* (16 February 2003) http://news.bbc.co.uk/1/hi/uk/2765041.stm

[62] 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

the proposed power to regulate protest based on noise presents an "existential threat to protest, so closely entangled are protests with noise".[63]

2. These provisions mark a gross expansion of police power, enabling police officers to make judgements on what constitutes noisiness. The vague and nebulous nature of these provisions afford a high degree of discretion to the police which could lead to the facilitating of some protests while clamping down on others. Further, although the police have an obligation to facilitate our right to protest, police decision-making often appears to prioritise the rights of those not involved in demonstration, as evidenced in the Joint Committee on Human Rights 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".[64]

3. Furthermore, HM Majesty's Inspectors of Fire & Rescue Services (HMICFRS) – the authors of the report used to justify the measures in Part 3 of the Bill – did not examine or support the establishment of a "noise" trigger when responding to Home Office and police proposals. Similarly, in their 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 generated by protest.[65]

4. It merits noting that police forces already have sufficient power to impose conditions on protest. Under **Section 12(1) of the Public Order Act**, a senior police officer can impose conditions on protest if they reasonably believe that:
   (a) It may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or
   (b) The purpose of the persons organising it is the intimidation of others with a view of compelling them not to do an act they have a right to do, or to do an act they have a right not to do.

AMENDMENTS TO REMOVE THE INCREASE IN SENTENCES FOR NON-VIOLENT OFFENCES BY THOSE WHO ORGANISE AND ATTEND PROTESTS

Clause 57

[63] David Mead 'Yes, you can... but only if you're quiet,' *Verfassungsblog* (17 March 2021) https://verfassungsblog.de/uk-silence-protest

[64] [64] 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/

[65] Joint Committee on Human Rights Oral evidence: Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, HC 1324 Wednesday 28 April 2021

In the name of Lord Dubs

Page 50, line 8, leave out subsection (6)

Page 51, line 6, leave out subsections (11) and (12)

Effect

As well as reducing the knowledge threshold for an offence to be committed under Section 12 and 14 of the Public Order Act, the harms of Clause 57 are compounded by sentencing provisions which increase the maximum custodial sentence for protestors who breach police-imposed conditions 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. This amendment removes the increase in sentences for non-violent offences by those who organise and attend protests, as recommended by the Joint Committee on Human Rights.

Briefing

1. The 'net-widening' effect of Clause 57, through the reduction of the knowledge requirement for an offence to be committed under Section 12 and 14 of the Public Order Act, is compounded by sentencing provisions, creating a chilling effect for both those who organise and attend protest. Sentencing provisions within Clause 57 increase the severity of criminal sanctions that could be imposed on people for exercising 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.

2. Furthermore, Government plans to increase criminal penalties for protestors are not rooted in evidence. As recently reported by the Prison Reform Trust, recent changes to sentencing have not been driven by an increase in the incidence of serious crime.[66] As well as having a significant chilling effect on prospective protestors, the sentencing provisions established in Part 3 are likely to unnecessarily add to the existing pressure on courts, prisons, and the probation service.

AMENDMENT TO REMOVE THE ABILITY OF THE HOME SECRETARY TO DEFINE "SERIOUS DISRUPTION"

In the name of Lord Beith

Clause 55

Page 47, line 33, leave out subsection (4)

Clause 61

Page 56, leave out lines 19 to 32

Effect

[66] Prison Reform Trust (October 2021) Long-term prisoners: the facts

These amendments are based on recommendations from the Delegated Powers and Regulatory Reform Committee, removing the ability of the Home Secretary to define "serious disruption" and thus requiring such terms to be defined on the face of the Bill.

Briefing

1. Part 3 of this Bill hands the Home Secretary of the day sweeping new powers to restrict our right to protest. As well as introducing the noise trigger, Clause 55 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. This affords the Home Secretary an expansive power to effectively declare the kind of protests and causes it deems inconvenient or unacceptable and provides the police with a license to limit them.

2. Former Prime Minister and Home Secretary Theresa May MP also expressed a word of caution during Second Reading in the Commons: "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."[67] Furthermore, David Davis MP summarised a letter written by a group of ex-police chiefs, warning the Commons again of the potential danger of the vague and unspecified protest provisions and the wide discretion they give rise to: "We have an apolitical police and every law we write must be written on the presumption that it will be a Government very unlike ours who oversee us at some point in the future. What if, in 20 years' time, we have an extreme right-wing or extreme left-wing Government, and this sort of vague provision is in place?"[68]

3. These provisions form part of a wider trend by the Government seeking greater delegated powers in recent years[69]. This is evidenced through the Government's reliance on Henry VIII powers (which enables delegated legislation to make changes to primary legislation) during debates over the European Union (Withdrawal) Bill – which the Select Committee on the Constitution described as "unprecedented and extraordinary"[70] - to its extensive use of delegated legislation during the coronavirus pandemic.[71] We are acutely concerned that such moves demonstrate an increasing propensity to evade parliamentary scrutiny.

[67] HC Deb 15 March 2021 vol 691
[68] David Davis, Police, Crime, Sentencing and Courts Bill, Second Reading (Commons), Hansard, 5 July 2021, Vol. 698, Col. 568
[69] Select Committee on the Constitution, *The Legislative Process: The Delegation of Power*, House of Lords, 20 November 2018, available at: https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/225/225.pdf
[70] Select Committee on the Constitution, *3rd Report of session 2017-19: European Union (Withdrawal) Bill: interim report*, House of Lords, 7 September 2017, available at: https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/19/19.pdf
[71] Select Committee on the Constitution, *3rd Report of Session 2021-2022: COVID-19 and the use and scrutiny of emergency powers,* House of Lords, 10 June 2021, available at: https://publications.parliament.uk/pa/ld5802/ldselect/ldconst/15/15.pdf

AMENDMENTS REQUIRING THE POLICE TO APPLY TO THE HIGH COURT IN ORDER TO IMPOSE CONDITIONS ON PROTEST

In the name of Lord Paddick

Clause 55

Page 47, line 14, at end insert—

"(c) after "directions" insert "approved on application to the High Court"

Clause 56

Page 48, line 27, after "directions" insert "approved on application to the High Court"

Effect

This amendment requires the police to apply to the High Court in order to impose conditions on protest in response to the vague and subjective nature of the term "serious disruption" used in Clauses 55 and 56.

Briefing

1. Part 3 of this Bill affords the police sweeping new powers to impose conditions on protest. This places a significant degree of pressure on police officers in relation to how they exercise their professional discretion, especially given that terms such as "serious disruption" are ill-defined in the Bill. The police would be required to adjudicate between different stakeholders (protestors, affected businesses etc) on the basis of broad and ambiguous criteria in deciding whether, and under what conditions, a protest would be allowed to take place. As stated above, this concern has been raised by a group of ex-police chiefs and ex-police officers in their letter to the Home Secretary in which they particularly pointed to the impact such provisions will have on junior officers who, in the face of sustained cuts to policing and public services, will face significant pressure to carry out their duties in a particular way.

2. 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.[72] This further raises doubts over how consistently such broad terms may be applied, strengthening the case for such an amendment to allow for judicial oversight.

NEW POWERS: NEW OFFENCES, TOUGHER SENTENCES, PROTEST BANNING ORDERS, AND EXPANDED STOP AND SEARCH

12. At the 2021 Conservative Party Conference, Home Secretary Priti Patel announced that the Government will be introducing a series of amendments to the PCSC Bill.[73] Although the Home

[72] "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.

[73] Home Office, *Tougher penalties for protests causing disruption on motorways,* 5 October 2021, available at: https://www.gov.uk/government/news/tougher-penalties-for-protests-causing-disruption-on-motorways

Secretary introduced these measures purportedly in response to the tactics of Insulate Britain and Extinction Rebellion protesters, all were contained in HMICFRS's report wherein it considered the police's proposals to manage protest. In other words, their deployment at this particular moment is a political choice, whose implications could reach far beyond the current moment. We are highly concerned that the Home Secretary's newly announced measures will further the clampdown on protest that Part 3 of the Bill already threatens. Given that the Bill has also been criticised on multiple occasions for the size of the Bill and how that has impeded effective scrutiny of its provisions, we are troubled that the Government is trying to add even more provisions to it. The following are some of our preliminary concerns about the proposals.

13. **Criminal Disruption Prevention Orders (CDPOs)**: We are incredibly concerned by the Government's proposal to create a new criminal order which will enable courts to impose restrictions on named individuals, including preventing them from attending particular protests. This is an unprecedented and highly oppressive measure, tantamount to a ban on individuals' right to protest. We are perturbed by the Home Office's statement that these orders will be targeted at individuals "with a history of disruption or where there is intelligence suggesting they are likely to commit a criminal offence", which we fear will give rise to greater, and more intrusive, tactics of surveillance on people who attend protests.[74] Significant research on other 'pre-emptive' civil and criminal orders, including football banning orders[75] (on which the police's original proposal for 'protest banning orders' appear to be based)[76] and criminal behaviour orders, shows that such orders can impose severe limitations on people's human rights and civil liberties.[77] Indeed, we have similar concerns over Serious Violence Reduction Orders introduced by Chapter 10, Part 1 of the Bill (see below).

14. It is worth noting that in its review of a similar proposal to create 'protest banning orders' by the police, both HMICFRS and the Home Office stated that "such orders would neither be compatible with human rights legislation nor create an effective deterrent. All things considered, legislation creating protest banning orders would be legally very problematic because, however many safeguards might be put in place, a banning order would completely remove an individual's right to attend a protest. *It is difficult to envisage a case where less intrusive measures could not be taken to address the risk that an individual poses, and where a court would therefore accept that it was proportionate to impose a banning order*".[78] The

[74] Evans, R., *Judges criticise Met police after woman wins spy cop case,* The Guardian, 30 September 2021, available at: https://www.theguardian.com/uk-news/2021/sep/30/activist-duped-into-sexual-relationship-with-spy-wins-case-against-met-police

[75] James, M. and Pearson, G., *30 Years of Hurt: The Evolution of Civil Preventive Orders, Hybrid Law, and the Emergence of the Super-Football Banning Order*, Public Law, 2018, No. 1: 44-61.

[76] Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services, *Getting the balance right? An inspection of how effectively the police deal with protests,* March 2021, available at: https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf

[77] Hendry, J., *'The Usual Suspects': Knife Crime Prevention Orders and the 'Difficult' Regulatory Subject*, The British Journal of Criminology, 16 July 2021, available at: https://academic.oup.com/bjc/advance-article/doi/10.1093/bjc/azab063/6322945

[78] Pg. 16, Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services, *Getting the balance right? An inspection of how effectively the police deal with protests,* March 2021, available at: https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf

same report notes that some senior police officers stated that protest banning orders would "unnecessarily curtail people's democratic right to protest"; that such orders would be "a massive civil liberty infringement"; and that "the proposal is a severe restriction on a person's rights to protest and in reality, is unworkable".[79] In the face of such resounding opposition, we are highly concerned that the Home Secretary appears intent on proposing an amendment to establish orders of this kind.

15. **New offences of interfering with the operation of key infrastructure and obstructing the construction of authorised infrastructure:** We are highly concerned by this proposed new offence for its criminalisation of direct action tactics. Such tactics often have multiple simultaneous goals: they can be an act of protest, and they can also seek to make a direct impact at a site of power. When people are protesting against the practices of those with power, it is critical they are facilitated to meaningfully make their voices heard. As stated by the ECtHR: "organisers' autonomy in determining the assembly's location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other ways, are *important aspects of freedom of assembly.* Thus, the purpose of an assembly is often *linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact."*[80] Depending on how 'key infrastructure' is defined, we are concerned about the effect this might have on industrial action and strikes at workplaces.

16. **Tougher sentences for obstructing highways:** The police already have substantial powers to deal with obstruction of highways. Currently, section 137 of the Highways Act 1980 establishes a civil offence for a person who "without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway." A person guilty of this offence is liable for a fine. The recent case of Ziegler acknowledged that "intentional action by protesters to disrupt by obstructing others can enjoy the guarantees of Article 10 and 11 of the ECHR)".[81]

17. **New offence criminalising the act of locking-on and going equipped to lock-on whereby it causes or is likely to cause serious disruption:** We are concerned that the Government's proposal to create a new offence targeting the tactic of locking-on and going equipped to lock-on will further criminalise forms of direct action. The vague phrasing of "going equipped to lock-on" and "likely to cause serious disruption" mean that they could be operationalised in ways that criminalise people before they actually do anything.

[79] Pg. 137, Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services, *Getting the balance right? An inspection of how effectively the police deal with protests,* March 2021, available at: https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf

[80] Lashmankin v Russia (Application No.57818/09).

[81] §70, Director of Public Prosecutions v Ziegler and others [2021] UKSC 23: "[B]oth disruption and whether it is intentional are relevant factors in relation to an evaluation of proportionality. Accordingly, intentional action even with an effect that is more than de minimis does not automatically lead to the conclusion that any interference with the protesters' articles 10 and 11 rights is proportionate. Rather, there must be an assessment of the facts in each individual case to determine whether the interference with article 10 or article 11 rights was "necessary in a democratic society"."

18. New stop and search power targeting **lock-ons and items that could be used to cause serious disruption:** Given the ambiguity of the terminology used in the Home Secretary's announcement, it is unclear what would (or indeed, what wouldn't) fall under a definition of "item that could be used to cause serious disruption"); combined with our concerns about the discretion given to the Home Secretary to define what constitutes 'serious disruption', we are concerned that this will be an extremely dangerous power. We are concerned that this proposal appears to be a retrenchment of stop and search powers that were previously found to be unlawful, namely 44-47 of the Terrorism Act 2001. These powers, which were previously frequently used against protesters, were successfully challenged at the European Court of Human Rights and subsequently limited.[82][83]

19. In practical terms, communities who are already subject to systemic over-policing are likely to bear the brunt of any new police powers to manage protest. Existing stop and search powers are used against communities of colour, and Black men in particular, at staggeringly disproportionate rates.[84] Research into the policing of the Black Lives Matter protests last year found that force was disproportionately used against black and other minoritised protesters, reflecting wider patterns of institutional racism in policing.[85] Used in the context of protest, new grounds for stop and search will only mirror these disparities, and may deter people of colour from exercising their right to protest.

PART 4: UNAUTHORISED ENCAMPMENTS

KEY CONCERNS

20. Gypsy, Roma and Traveller (GRT) communities are among the most persecuted and marginalised communities in the UK.[86] 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. We believe that measures drafted in Part 4 of this Bill are likely to constitute a disproportionate and unlawful interference 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) of the 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".[87]

21. As well as presenting a grave attack on the livelihoods of Gypsies, Roma and Travellers, criminalising trespass will also impact access to the countryside and affect the enjoyment of British land for recreational activities. Through defining 'vehicle', 'reside' and 'intent to reside'

[82] *Gillan and Quinton v United Kingdom* [2009] ECHR 28 (12 January 2010)
[83] Section 47A Terrorism Act 2000
[84] Liberty, 'New figures show racism stop and search persists' https://www.libertyhumanrights.org.uk/issue/new-figures-show-racism-in-stop-and-search-persists/
[85] The Network for Police Monitoring (NETPOL), *Britain is Not Innocent*, November 2020, page 4 https://secureservercdn.net/50.62.198.70/561.6fe.myftpupload.com/wp-content/uploads/2020/11/Britain-is-not-innocent-web-version.pdf
[86] See: https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2018
[87] *London Borough of Bromley v Persons Unknown and Ors* [2020] EWCA Civ 12 [109]

so broadly, Part 4 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.[88] 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.

22. Homelessness organisations have also warned that Part 4 provisions of the PCSC Bill could criminalise wider communities.[89] Leading housing and homelessness charity, Shelter, raised concerns that any homeless person who resorts to living in a car, van, or other vehicle, including on an emergency or temporary basis – or indeed has a vehicle parked near where they may be sleeping rough – would be at risk of arrest or imprisonment if they have been asked to leave by the landowner or the police. Additionally, depending on how these terms are interpreted (and by whom), a person's very situation of homelessness could result in them being deemed to cause 'serious damage, disruption or distress'. For example, a person who is sleeping in a vehicle could be viewed by a landowner for being a disruption to their business, an eyesore to residents, or a health hazard (e.g. if they have no access to a lavatory). Shelter has also expressed concern that the provisions as drafted could also apply to vehicles parked on public roads, such that a person sleeping in a vehicle on a public road – a common occurrence, for example where families sleep in a vehicle outside the home of friends or family, who may allow them to use bathroom facilities – could commit an offence. The ultimate result would be to trap people in cycles of eviction, homelessness, destitution, and criminalisation.[90]

23. **Liberty recommends the removal of Part 4 in its entirety, and we urge Peers to support stand part amendments on Part 4 in the first instance. We also recommend Peers support the following amendments which aim to mitigate the Part's worst harms:**
    - **The amendment to impose a duty on local authorities to provide sites for Gypsies, Roma and Travellers** in the names of Baroness Whitaker, Lord Alton and Lord Bourne
    - **The amendment to ensure that only a police officer can request a person to leave land** in the names of Baroness Whitaker, Lord Alton and Lord Bourne
    - **The amendment to ensure that police do not have the power to seize a vehicle that is a person's home** in the name of Lord Paddick
    - **The amendments to remove the penalty of a custodial sentence of up to three months** in the name of Baroness Bennett

[88] https://www.cyclinguk.org/sites/default/files/document/2021/03/2102_rg_mps_police-etc-bill-commons-2nd-reading_brf.pdf
[89] Homeless Link, *Hidden dangers of the Police, Crime, Sentencing and Courts Bill*, 22 June 2021, available at: https://www.homeless.org.uk/connect/blogs/2021/jun/22/hidden-dangers-of-police-crime-sentencing-and-courts-bill
[90] Harper, A, *Briefing: Police, Crime, Sentencing and Courts Bill 2021*, Shelter, June 2021, available at: https://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/briefing_police_crime_sentencing_and_courts_bill

AMENDMENTS

AMENDMENT TO INTRODUCE A DUTY ON LOCAL AUTHORITIES TO PROVIDE SITES FOR GYPSIES, ROMA AND TRAVELLERS

In the name of Baroness Whitaker, Lord Alton and Lord Bourne

After Clause 62

Insert the following new Clause—

"Duty of local authorities to provide sites for Gypsies, Roma and Travellers

(1) It is the duty of every local authority to exercise their powers under section 24 of the Caravan Sites and Control of Development Act 1960 (power of local authorities to provide sites for caravans) so as to provide adequate accommodation for Gypsies, Roma and Travellers residing in or resorting to their area.

(2) The Minister may, if at any time it appears to them to be necessary to do so, give directions to any such local authority requiring them to provide such sites or additional sites for the accommodation of such numbers of caravans as may be specified in the Directions."

Effect

This amendment is based on a recommendation made by the Joint Committee on Human Rights, inserting a new clause that reintroduces a statutory duty on local authorities to ensure there is adequate site provision for Gypsy and Traveller communities.

Briefing

1. Clause 62 of this Bill, through introducing a new criminal offence, misdiagnoses the 'problem' of unauthorised encampments, seeking to introduce measures that will trap Gypsies and Travellers in a cycle of eviction and criminalisation. This amendment seeks to grapple with and remedy the reality that many Gypsies and Travellers simply do not have places to live in a culturally pertinent way by addressing the chronic national shortage of site provision.

2. The prioritising of criminalisation over addressing the shortage of site provision has been widely criticised by both the police and Gypsy, Roma and Traveller (GRT) groups and organisations. As reported by Friends, Families and Travellers (FFT), "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."[91]

3. Such a statutory duty was previously in practice under the Caravan Sites 1968 which provided local authorities with funding from central Government to establish

[91] 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

authorised sites. This was deemed largely successful with 184 of 285 authorised sites in operation today built under the 1968 Act.[92]

AMENDMENT TO ENSURE THAT ONLY A POLICE OFFICER CAN REQUEST A PERSON TO LEAVE LAND FOLLOWING A REQUEST BY THE OCCUPIER OF THE LAND

In the names of Baroness Whitaker, Lord Alton and Lord Bourne

Clause 62

Page 57, leave out line 7 and insert— "(d) a constable, following a request of the occupier or a representative of the occupier,"

Effect

Clause 62 places power in the hands of landowners, or those representing landowners, to determine whether people on their land had committed a criminal offence. This amendment is based on a recommendation made by the Joint Committee on Human Rights and would amend Clause 62 to provide that, as part of the conditions for the new offence of criminal trespass, only a police officer could request a person to leave land and only following a request by the occupier of the land.

Briefing

1. The powers established by Clause 62 will have a net-widening effect, capturing and potentially criminalising a wide array of behaviour – that which causes or is likely to cause *"significant disruption, damage or distress"*. Such terms are not properly defined in the Bill, nor is the evidence required to satisfy them. The vague nature of the terms leave open the possibility of being 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. Moreover, as stated by the National Police Chief's Council (NPCC) in their evidence to the Joint Committee on Human Rights: "whose distress? Is it the landowner's? Is it a perception?".

2. 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 further harm. Furthermore, 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 place".[93]

[92] Joint Committee on Human Rights (JCHR), Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Part 4): The criminalisation of unauthorised encampments, June 2021, available at: https://committees.parliament.uk/publications/6554/documents/70980/default/

[93] 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

3. Both the Police and Gypsy, Roma and Traveller (GRT) campaigners and organisations have expressed concern about the role of landowners as proposed in Clause 62. In evidence to the Joint Committee on Human Rights (JCHR), Deputy Chief Constable Janette McCormick reported that some landowners may be motivated by "prejudices around Gypsies and Travellers in circumstances where there may be heightened emotions".[94] Combined with the lack of clarity in the language of the Bill, the role of landowners in the criminalisation of travellers is likely to contravene Article 7 (principle of no punishment without law), Article 8 (the right to private and family life) and Article 14 (freedom from discrimination in the enjoyment of rights) of the ECHR.

AMENDMENT TO ENSURE THAT POLICE DO NOT HAVE THE POWER TO SEIZE A VEHICLE THAT IS A PERSON'S HOME

In the name of Lord Rosser

Clause 62

Page 59, line 20, at end insert ", but does not include any property that is, or forms part of, P's principal residence."

Effect

Clause 62 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, especially children. Those who have no alternative place to live may even face homelessness and/or destitution, on top of criminalisation. 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 a deterrent".[95] This is a weak justification for a power which may carry devastating consequences. This amendment would amend vehicle seizure provisions in Clause 62 to ensure that police do not have the power to seize a vehicle that is a person's home. This amendment is based on a recommendation made by the Joint Committee on Human Rights (JCHR).

Briefing

1. Proposed vehicle seizure powers, as drafted in Clause 62, 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 severe hardship in terms of low life expectancy, high maternal mortality rates and low educational attainment.[96] Further, stopping and camping with a caravan is an integral part of Gypsies and

[94] Joint Committee on Human Rights (JCHR), Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Part 4): The criminalisation of unauthorised encampments, June 2021, available at: https://committees.parliament.uk/publications/6554/documents/70980/default/

[95] 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

[96] Women and Equalities Committee, Tackling inequalities faced by Gypsy, Roma and Traveller communities. March 2019, available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/360/360.pdf

Travellers' ethnic identity and measures which effect these freedoms have an impact on Gypsies and Travellers' rights to maintain their identity.

2. As well as Clause 62 powers constituting interference with Gypsies and Travellers' Article 8 and Article 14 rights under the ECHR, it merits noting that the UK is a signatory to the UN Convention on the Rights of the Child (UNCRC) and therefore the Government have an obligation to ensure that the best interests of children must be a priority in all decisions and actions that affect children. Given that Clause 62 powers would contribute to children becoming homeless, the Government would be acting in conflict with their obligations under the UNCRC.[97]

AMENDMENTS TO REMOVE THE PENALTY OF A CUSTODIAL SENTENCE OF UP TO THREE MONTHS

In the name of Baroness Bennett

Clause 62

Page 57, line 37, leave out "imprisonment for a term not exceeding three months or
Page 57, line 38, leave out ", or both"

Effect

The new offence, as established in Clause 62, carries a punishment of a fine up to £2500 and/or a custodial sentence of up to three months. This amendment would remove the penalty of a custodial sentence for up to three months whilst maintaining the penalty of a fine not exceeding level 4.

Briefing

1. As stated above, Clause 62 will capture and potentially criminalise a wide array of behaviour with *"significant disruption, damage or distress"* not properly defined in the Bill, nor what evidence is required to satisfy them. Combining the catch-all nature of this offence with the threat of a custodial sentence presents a huge threat to the livelihoods of Gypsy and Traveller communities through the separation of families through imprisonment.

2. It is important to recognise the impact of tougher sentencing measures on dependent children. Sentencing a person to prison affects their life and that of their family, especially when considering the imprisonment of caregivers and the impact of this on their children, as recently reported by the Joint Committee on Human Rights[98]. Article 8 of the ECHR states that a child's right to a family life should only be interfered with to the extent that it is both necessary and proportionate. Measures seeking to

[97] Joint Committee on Human Rights (JCHR), Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Part 4): The criminalisation of unauthorised encampments, June 2021, available at: https://committees.parliament.uk/publications/6554/documents/70980/default/

[98] Joint Committee on Human Rights (JCHR), Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill, May 2021, available at: https://committees.parliament.uk/publications/5846/documents/66463/default/

increase the severity of punishment, combined with the vague and nebulous nature of the offence established under Clause 62 are likely to constitute a disproportionate and unlawful interference with Gypsies' and Travellers' rights, especially children.

PART 10: SERIOUS VIOLENCE REDUCTION ORDERS

24. Part 10, Chapter 1 of the Bill provides for the creation of a new civil order, the Serious Violence Reduction Order ('SVRO'), which would be imposed on an individual on the basis of a previous conviction. Such an order could potentially include a range of requirements and prohibitions, that the Secretary of State can specify by way of regulation. Part 10, Chapter 1 would further amend the Sentencing Code in order 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. **The following concerns are shared by StopWatch, the Criminal Justice Alliance, Amnesty UK, JUSTICE, Defend Digital Me, Unjust, Big Brother Watch and Fair Trials.**

KEY CONCERNS

25. **The Bill hands the police a highly oppressive tool, unlike anything on the statute books.** Existing stop and search powers are already problematic and yet, in recognition of their ability for harm, have certain safeguards applied to them. 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."

26. **The Bill seriously compounds the discrimination faced by marginalised communities – particularly Black men – and exacerbates the disparities that already exist throughout the criminal justice system.** 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. By the Government's own admission, SVROs are likely to be disproportionately meted out to racialised people, particularly Black men: "there may be a disproportionate impact of the orders on the black adult population because they are sentenced and become victims of

serious violence at a higher rate… *we can therefore expect that black males will receive an SVRO at a higher rate*."[99]

27. **Part of the reason for this racial disproportionality may be that SVROs will be able to be imposed on people on the basis of a *de facto* joint enterprise or guilt by association measure.** As drafted, an SVRO could be imposed on someone convicted of an offence who *ought to have known* that someone else involved in the offence used a knife when in the commission of the offence, or had a knife in their possession. We are concerned that the current tendency for evidence about people's associations – based on racist stereotypes and prejudices – to be used to support joint enterprise prosecutions, will be replicated in the context of SVROs.[100]

28. **Of those on whom an SVRO is imposed, the Government has acknowledged that "people from Black, Asian and ethnic minority groups, in particular Black people, who are subject to an SVRO *are more likely to be searched in practice*."**[101] Home Office data shows clear racial disparities in terms of who is affected by stop and search: as of 2021, Black people are nine times more likely to be stopped and searched than white people; 'Asian' people and people of 'mixed ethnicity' are three times more likely; and 'other White' people are twice as likely. [102] The racial disparity is even more acute when the 'reasonable suspicion' pre-requisite is removed. Recent Home Office data on s.60 stop and search shows that Black people are now 18 times more likely to be stopped and searched than white people; people of 'mixed ethnicity' are four times more likely; and 'Asian' people and 'other White' people are three times more likely.[103]

29. The experience of being stopped and searched can be a mentally and physically traumatising one – for some people, it takes place frequently, even daily.[104] Hackney Account – a youth-led social action project – conducted participatory research with young people in Hackney, and found that the practice of stop and search can have "a damaging impact on mental wellbeing, causing feelings of embarrassment, humiliation or anger". In particular, stop and search can constitute an attack on young people's dignity: "Whether being stereotyped as a gang member or treated in a dehumanising manner Stop and Search could be seen as a way

[99] Home Office, *Home Office measures in the Police, Crime, Sentencing and Courts Bill: Equalities Impact Assessment,* 13 September 2021, available at: https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-equality-statements/home-office-measures-in-the-police-crime-sentencing-and-courts-bill-equalities-impact-assessment
[100] Gov.uk, *The Lammy Review*, 8 September 2017, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf
[101] Home Office, *Home Office measures in the Police, Crime, Sentencing and Courts Bill: Equalities Impact Assessment,* 13 September 2021, available at: https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-equality-statements/home-office-measures-in-the-police-crime-sentencing-and-courts-bill-equalities-impact-assessment
[102] *No respect: Young BAME men, the police and stop and search*, Peter Keeling, 2017 http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617.pdf as at 17 September 2021
[103] Ibid. at fn16
[104] Ali A. and Champion, N. for the Criminal Justice Alliance, *More harm than good - A super-complaint on the harms caused by 'suspicion-less' stop and searches and inadequate scrutiny of stop and search powers*, May 2021, available at: https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf

that *young people are made to feel they do not 'matter*."[105] This is further exacerbated by the fact that the police are empowered to use reasonable force to carry out a stop and search if necessary, including using taser, firearms, batons, and handcuffs – which significantly aggravates the physical harms faced by those who constantly face the brunt of such powers. The SVRO measures in the PCSC Bill will only entrench these inequalities further by expanding stop and search powers that can have long-lasting, traumatising effects.[106]

30. It is worth noting that the Home Office has recently announced its 'Beating Crime Plan', which will, among other things, permanently relax the 'Best Use of Stop and Search Scheme' ('BUSSS') voluntary safeguards relating to Section 60 Criminal Justice and Public Order Act 1994 (CJPOA) stop and search powers (which currently gives the police a right to stop and search people without reasonable suspicion subject to strict requirements).[107] BUSSS was introduced by ex-Home Secretary Theresa May due to the recognition that police use of stop and search was liable to be "misused" with the resulting impact of this power being "counter-productive," "a waste of police time," and "hugely damaging to the relationship between police and the public."[108] Following research commissioned to Her Majesty's Inspectorate of Constabulary (HMIC) which found that black people and other ethnic minorities were up to seven times more likely to be stopped and searched than white people, the former Home Secretary acknowledged that it was possible to "reduce the number of stops, improve the stop-to-arrest ratio and still cut crime."[109] By way of example, in 2012, the Metropolitan Police reduced no-suspicion stop and search by 90% and stabbings and shootings fell by a third and 40% respectively.[110] We are extremely concerned that the Government is trying to reduce transparency and accountability in an area where more scrutiny, rather than less, is needed – including about whether such police powers are proportionate and fundamentally necessary in the first place.

31. **People subject to, or who police believe are subject to, an SVRO are likely to face intrusive monitoring of their daily lives.** With the establishment of a statutory duty on public bodies to prevent and reduce serious violence in Part 2, Chapter 1 of the PCSC Bill, it is likely that similar tactics to those used to police people on the Metropolitan Police Service's Gangs Matrix may be used to target individuals and communities for chronic over-policing, such as through the continual patrolling and surveillance of the same postcodes. 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

[105] Hackney Account, *Policing in Hackney: Challenges from youth in 2020,* 2020, available at: https://static1.squarespace.com/static/5d234a046f941b0001dd1741/t/5f77795b9e2fdb6bf67d3c7d/1601665467995/Final+Draft+-+Report+-+Account+%28Online%29.pdf

[106] Ali A. and Champion, N. for the Criminal Justice Alliance, *More harm than good - A super-complaint on the harms caused by 'suspicion-less' stop and searches and inadequate scrutiny of stop and search powers*, May 2021, available at: https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf

[107] Home Office, *Beating Crime Plan*, 27 July 2021, available at: https://www.gov.uk/government/publications/beating-crime-plan#:~:text=The%20Beating%20Crime%20Plan%20sets,with%20fraud%20and%20online%20crime

[108] Home Office and The Rt Hon Theresa May MP, *Oral Statement to Parliament: Stop and Search: comprehensive package of reform for police stop and search powers*, 30 April 2014, available at: https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers

[109] Ibid.

[110] Ibid.

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.

32. **SVROs may also plunge people into cycles of criminalisation. A person subject to an SVRO may face criminal penalties should they breach its requirements, for example, if they fail to comply with reporting requirements.** This has the potential to impact people experiencing insecure housing or homelessness. A person subject to an SVRO may also commit an offence if they "intentionally obstruct" a police officer in the exercise of their powers. The criminal penalties for failing to comply with the requirements of an SVRO have a maximum sentence of two years. Given that there is no limitation on the number of times that an SVRO can be renewed, those who are given an SVRO could potentially be perpetually at risk of breaching the order.

33. 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".[111] **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".[112] 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.[113]

34. 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 system 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.

35. **We urge Peers to join Lord Ponsonby and Lord Paddick in giving notice of their intention to oppose that clause 140 stand part of the Bill.**

36. **If the above amendments are not selected or passed, we would urge parliamentarians to consider and support the following amendments, we urge Peers to support the following amendments to mitigate the worst effects of the Bill:**

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[111] Pg. 15, 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

[112] Pg. 3, 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

[113] 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.

- **The amendments to limit the conditions under which an SVRO can be imposed** in the names of Baroness Meacher and Lord Paddick; and **the amendment to remove the joint enterprise element** in the names of Lord Ponsonby and Lord Paddick
- **The amendments to limit the potential harms faced by those with an SVRO** in the names of Baroness Meacher and Lord Paddick
- **The amendment to establish a robust pilot for SVROs** in the names of Baroness Meacher and Lord Paddick

37. **We also urge parliamentarians to support the amendment to repeal s.60 Criminal Justice and Public Order Act (CJPOA)** in the name of Lord Paddick.

AMENDMENTS

AMENDMENTS TO LIMIT THE CONDITIONS UNDER WHICH AN SVRO CAN BE IMPOSED

Marshalled amendments, as seen in clause 140, new clause 342A (Full list of amendments below)

342A Power to make serious violence reduction order

(1) This section applies where—
(a) a person aged 18 or over ("the offender") is convicted of an offence which was committed on or after the first appointed day, and
(b) the prosecution makes an application to the court for a serious violence reduction order to be made in respect of the offender

(2) Subject to subsection (6), the court may make a serious violence reduction order in respect of the offender if—
(a) the condition in subsection (3) ~~or (4)~~ is met, and
(b) the condition in subsection (5) is met.

(3) The condition in this subsection is that the court is satisfied **beyond reasonable doubt** ~~on the balance of probabilities~~ that—
(a) a bladed article or offensive weapon was used by the offender in the commission of the offence, or[1]
~~(b) the offender had a bladed article or offensive weapon with them when the offence was committed.~~ (AMENDMENT A)

~~(4) The condition in this subsection is that the court is satisfied on the balance of probabilities that—~~
~~(a) a bladed article or offensive weapon was used by another person in the commission of the offence and the offender knew or ought to have known that this would be the case, or~~
~~(b) another person who committed the offence had a bladed article or offensive weapon with them when the offence was committed and the offender knew or ought to have known that this would be the case.~~ (AMENDMENT B)

(5) The condition in this subsection is that the court ~~considers~~ **is satisfied beyond reasonable doubt** that it is necessary to make a serious violence reduction order in respect of the offender to— **(AMENDMENT C)**
(a) protect the public in England and Wales from the risk of harm involving a bladed article or offensive weapon,
(b) protect any particular members of the public in England and Wales (including the offender) from such risk, or
(c) prevent the offender from committing an offence involving a bladed article or offensive weapon.

(6) The court may make a serious violence reduction order in respect of the offender only if it—
(a) does so in addition to dealing with the offender for the offence, and
(b) does not make an order for absolute discharge under section 79 in respect of the offence, **and**
(c) concludes that it the order is proportionate to one or more of the aims in (5) above. (AMENDMENT D)

(7) For the purpose of deciding whether to make a serious violence reduction order the court may only consider evidence which would have been admissible in the proceedings for the offence in subsection 1(a). (AMENDMENT E)

~~(8) It does not matter whether the evidence would have been admissible in the proceedings in which the offender was convicted.~~

(9) On making a serious violence reduction order the court must in ordinary language explain to the offender—
(a) the effects of the order, and
(b) the powers that a constable has in respect of the offender under section 342E while the order is in effect.

(10) In subsection (1)(a) "the first appointed day" means the first day appointed by regulations under section 176(1) of the Police, Crime, Sentencing and Courts Act 2021 for the coming into force to any extent of section 140 of that Act.

~~(11) In subsection (4) the references to the offence include references to any offence arising out of the same facts as the offence.~~

Amendment A: Narrowing the offences for which an SVRO can be imposed
In the names of Lord Paddick and Baroness Meacher
Clause 140
Page 129, line 30, leave out from "offence" to end of line 32

Effect

This amendment would limit those on whom an SVRO can be imposed to those who have been convicted of criminal offences involving knives and bladed articles, and prevent an SVRO from being applied on a person who simply had a knife on them when they committed the offence.

Briefing

1. Carrying a knife or offensive weapon, is not per se, a criminal offence; the criminal offence is only committed when the knife is carried without reasonable excuse or lawful authority. For example, an individual may lawfully carry a knife in self-defence provided an imminent attack is anticipated (Evans v Hughes (1972) 56 Cr. App. R. 813). The clause as currently drafted would enable a court to impose an SVRO on someone who was convicted of driving over the speed limit when on her way to a picnic, at which point she was lawfully carrying a knife for the purpose of cutting cheese at the picnic.

2. The 2019 Conservative Party Manifesto stated a commitment "to create a new court order to target known knife carriers, making it easier for officers to stop and search those convicted of knife crime". Limiting the SVRO to those who have been convicted of criminal offences involving knives and bladed articles would be consistent with the manifesto promise.

Amendment B: Removing the joint enterprise trigger for an SVRO

In the names of Lord Ponsonby and Lord Paddick

Clause 140

Page 129, leave out lines 33 to 41

Effect

This amendment would ensure that only a person who used a knife in the commission of an offence could be given an SVRO.

Briefing

1. This is a *de facto* joint enterprise measure as it criminalises people for the actions of others. Moreover, it potentially criminalises people for the actions of others that they simply *ought to have known* about, rather than what they actually knew.

2. Thousands of people are estimated to have been prosecuted using the joint enterprise doctrine.[114] A survey of prisoners suggests that up to half of those convicted on a joint enterprise basis identify as people of colour.[115] Research suggests

[114] McCleneghan, M., McFadyean, M., and Stevenson, R., *Revealed: Thousands prosecuted under controversial law*, Bureau of Investigative Journalism, 31 March 2014, available at: https://www.thebureauinvestigates.com/stories/2014-03-31/revealed-thousands-prosecuted-under-controversial-law-of-joint-enterprise

[115] Pg. 19, The Lammy Review: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

that the proportion of Black/Black British people serving custodial sentences for joint enterprise offences is 11 times greater than the proportion of the general population who are Black/Black British (37.2% compared to 3.3%).[116] Campaigners and experts have highlighted how evidence about people's associations – based on racist stereotypes and prejudices – has been used to support joint enterprise prosecutions, in ways that have resulted in significant racial disproportionality in the criminal justice system. In particular, there is a prevalent public discourse that stereotypes young people of colour, associating them with violence and other criminal activities, including 'gang' involvement. These stereotypes are racist and inaccurate. A 2016 study showed that in Manchester 81% of people identified by the police as involved in gangs were Black; whereas only 6% of people involved in serious youth violence were Black. In London 72% of people on the Metropolitan Police Service's Gangs Violence Matrix were Black; whereas only 27% of people involved in serious youth violence were Black.[117]

3. Nonetheless, weak 'evidence' that people are part of a gangs is frequently used in joint enterprise prosecutions, particularly in those brought against of people of colour. According to one survey of prisoners, where gang narratives have been used in court, 69% of those which resulted in convictions and custodial sentences involved BAME prisoners, whereas only 30% involved white British prisoners.[118] In essence, in Andrew Mitchell MP's words, "young people from ethnic communities have been, essentially, hoovered up for peripheral and in some cases even non-existent involvement in serious criminal acts."[119]

4. The ongoing misuse of the joint enterprise doctrine – particularly with respect to evidence relating to people's associations - endangers the right to a fair trial. Highlighting the ways that joint enterprise creates miscarriages of justice and erodes trust in the justice system, the Lammy Review into the over-representation of Black, Asian, and Minority Ethnic individuals in the criminal justice system has recommended a review of how the Crown Prosecution Service and the police approach gang prosecutions.[120]

5. In the context of SVROs, it is unclear how the court will establish if someone ought to have known that someone else had a knife or would use a knife in the commission of

[116] Williams, P. and Clarke, B., *Dangerous associations: Joint enterprise, gangs and racism,* Centre for Crime and Justice Studies, January 2016, available at: https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Dangerous%20assocations%20Joint%20Enterprise%20gangs%20and%20racism.pdf
[117] Williams, P. and Clarke, B., *Dangerous associations: Joint enterprise, gangs and racism,* Centre for Crime and Justice Studies, January 2016, available at: https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Dangerous%20assocations%20Joint%20Enterprise%20gangs%20and%20racism.pdf
[118] To the best of our knowledge, no state agency keeps a centralised record of the use of joint enterprise prosecutions and race.
[119] HC Deb, 25 January 2018, Vol.635, Col. 450
[120] Gov.uk, *The Lammy Review*, 8 September 2017, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

the offence. We are concerned that the same racist and inaccurate stereotypes of young Black people, and other people of colour, in particular their involvement in alleged 'gangs', will be used as evidence for establishing the basis of an SVRO on a de facto joint enterprise basis.

Amendment C: Raising the standard of proof for imposing an SVRO

In the names of Baroness Meacher and Lord Paddick

Clause 140

Page 129, line 27, leave out "on the balance of probabilities" and insert "beyond reasonable doubt"

Page 130, line 1, leave out "considers" and insert "is satisfied beyond reasonable doubt that it is

Effect

This amendment would raise the threshold for the standard of proof required to impose an SVRO, from a civil standard (the balance of probabilities) to the criminal standard (beyond reasonable doubt).

Briefing

This amendment should be tabled alongside a series of other amendments that will clarify and narrow the scope of the harmful SVRO clauses. There is precedent for the use of a criminal standard in other similar injunctions. Under s.22 ASBCP Act 2014 (now repealed by the SA 2020), criminal behaviour orders could only be imposed if the court was satisfied beyond reasonable doubt that the offender had engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person; and that the court considered making the order would help in preventing the offender from engaging in such behaviour.

Amendment D: Strengthening the requirements before an SVRO can be made

Clause 140

In the names of Lord Paddick and Baroness Meacher

Page 130, line 15, at end insert— "(c) concludes that it the order is proportionate to one or more of the aims in subsection (5) above."

Effect

This amendment would provide that an SVRO can only be imposed if the order is proportionate to one or more of the aims identified in subsection (5).

Briefing

The addition of the proportionality test would require the Courts to consider whether there would be less restrictive measures that could put in place, before having to resort to making an SVRO. This would make sure an SVRO is ultimately a proportionate case of action.

Amendment E: Strengthening the evidentiary requirements before an SVRO can be made

In the names of Lord Paddick and Baroness Meacher

Clause 140

Page 130, line 17, after "may" insert "only"

Page 130, line 17, leave out from "evidence" to end of line 18 and insert "which would have been admissible in the proceedings for the offence in subsection (1)(a).

Page 130, leave out lines 19 and 20

Effect

Amendment E would strengthen the evidentiary requirements prior to an SVRO being made.

Briefing

Under the current clause, evidence that would not have been admissible in the proceedings for the offence would be admissible in the proceedings to impose an SVRO. What this means is that a lower standard of evidence than would be allowed in the proceedings in the original offence, would be allowed to be considered in the court's decision as to whether to make an SVRO. This amendment would ensure that only evidence that was admissible in the original proceedings could be used in the court's decision on an SVRO.

AMENDMENTS TO LIMIT THE HARMS EXPERIENCED BY THOSE WHO ARE GIVEN AN SVRO

Narrowing the criminal sanctions for breach of an SVRO

In the names of Lord Paddick and Baroness Meacher

Clause 140

Page 133, line 17, after "order" insert "unless the offender has a reasonable excuse for so doing,

Page 133, leave out lines 18 and 19

Effect

The terms of 342G(1)(d) have been modified to restrict the offence to circumstances where an offender is directly asked by a constable whether they are under an SVRO; and to create a defence of reasonable excuse. The offence at 342(1)(e) has been removed.

Briefing

1. The purpose of this amendment is to avoid situations where an offender is prosecuted for this offence in circumstances where they have not been directly asked the question of whether they are subject to an SVRO. It also creates a reasonable excuse defence for example, for an offender who had an honest belief, and reasonable grounds for such belief, that they were not or no longer subject to an order, or those who may not have English as a first language and misunderstand the question in the absence of adequate interpretation.

2. The offence of intentionally obstructing a constable has been removed. The existing offence under s.89(2) Police Act 1996 adequately provides for this offence. This provision would otherwise elevate an existing summary only criminal offence to being either way and carrying a higher ultimate sentence.

Limiting who can apply to renew, vary, or discharge an SVRO

In the names of Lord Paddick and Baroness Meacher

Clause 140

Page 133, leave out lines 39 and 40

Page 133, leave out lines 44 and 45

Effect

This amendment will limit who can apply for variation, renewal, or discharge of an SVRO.

Briefing

Under the current provisions, a range of people can apply for variation, renewal, or discharge of an SVRO, including the chief police officer for where a person lives; and a chief officer who believes that the person subject to an SVRO is in, or intending to come to, that officer's area. As drafted, these provisions are potentially highly restrictive of a person's freedom of movement. The requirement that someone simply need to 'intend to' come to an area is furthermore highly unclear and subjective.

Limiting how many times an SVRO can be renewed

In the names of Lord Paddick and Baroness Meacher

Clause 140

Page 134, line 36, at end insert— "(8A) The court may renew a serious violence reduction order on no more than one occasion."

Effect

This amendment will limit the number of times an SVRO can be renewed to no more than once.

Briefing

Under the current provisions, an SVRO can last for a maximum of two years (clause 342D(2)), however it can potentially be renewed indefinitely as there is no limitation on the number of times an SVRO can be renewed. The more time has passed since the making of an SVRO, the more remote the original offence becomes, rendering the measure arguably less and less proportionate. SVROs risk trapping people in perpetual cycles of potential criminalisation, given the fact that breach of an SVRO is a criminal offence.

Strengthening the requirements for the variation, renewal, and discharge of an SVRO

In the names of Lord Paddick and Baroness Meacher

Clause 140

Page 134, line 36, at end insert— "(c) concludes that it the order is proportionate to one or more of the aims in subsection (7) above"

Page 134, line 21, leave out "considers" and insert "is satisfied beyond reasonable doubt"

Effect

These amendments would require a consideration of proportionality and raise the standard of proof from the civil standard to the criminal standard for the variation, renewal, and discharge of an SVRO.

Briefing

See above.

AMENDMENT TO ESTABLISH A ROBUST PILOT FOR SVROS

In the names of Baroness Meacher and Lord Paddick

Clause 141

Add new clause 3A to clause 141 – pilot for SVROs

(3A) Before making the report under subsection (3), the Secretary of State must obtain, record and publish all reasonably available data, which is relevant to the effect of the operation of Chapter 1A, Part 11 of the Sentencing Code under section 141(2) over a period of no less than 12 months, including:

1. *its impact on the extent to which knives or weapons are carried;*
2. *its impact on the rate of serious violence;*
3. *the age, race, and sex (within the meaning of section 5, 9 and 11 of the Equality Act 2010) of each person:*
    i. *in respect of whom an application is made under section 342A(1)(b);*
    ii. *in respect of whom a serious violence reduction order is made by a court;*
    iii. *in respect of whom action is taken pursuant to sections 342C, 342E, 342F, and/or 342H; and*
    iv. *who is convicted of an offence within section 342G;*
4. *any action which was taken pursuant to sections 342C, 342E, 342F, and/or 342H, by reference to the age, race and sex of the offender;*
5. *the nature of, and reasons recorded, for any such action;*
6. *any complaint arising the exercise of powers under Clause 342E, the nature and outcome of that complaint, and the age, race and sex of the person who made it;*
7. *the offence within section 342G for which any person by convicted and the sentence imposed, by reference to the age, race and sex of that person;*
8. *for each serious violence reduction order made:*
    i. *the offence identified in section 342A(1)(a); and*
    ii. *whether the order was imposed under subclause 342A(3)(a), (3)(b), (4)(a) or 4(c)*

9. *whether that operation of Chapter 1A had a discriminatory, disproportionate and/or other adverse impact on people sharing the protected characteristic of age, race or sex.*

(3B) The report under subsection (3) must include:

1. *an analysis of the effect described in (3A), by reference the data identified in (3A);*
2. *an equality impact assessment of the operation of Chapter 1A as described in (3A); and*
3. *a description of any guidance or codes of practice, to which the operation of Chapter 1A described in (3A) was subject.*

(3C) The any action which was taken pursuant to sections 342C, 342E, 342F, and/or 342H

Effect

This provision establishes a framework for a robust pilot to the SVRO programme.

Briefing

1. 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.[121] 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.[122] The only safeguard available to counter the harms that SVROs are likely to cause, is for them not to be created at all.

2. In the event that the SVRO provisions are passed, we believe that there must be a robust pilot that evaluates, among other factors, the equalities impacts of the SVRO regime.

AMENDMENT TO REPEAL S.60 CJPOA

New clause

In the name of Lord Paddick

Insert the following new Clause—

"Criminal Justice and Public Order Act 1994: repeal of section 60 Section 60 of the Criminal Justice and Public Order Act 1994 is omitted."

[121] HC Public Bill Committee 17 June 2021

[122] 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.

Effect

This provision will repeal section 60 of CJPOA, which allows police officers to stop and search individuals in a given area for a set time without needing reasonable grounds to suspect that they have committed a crime.

Briefing

1. Given the ways that the PCSC Bill expands suspicion-less stop and search powers for those who are given an SVRO, a wider debate on s.60 CJPOA could not be more timely. The Criminal Justice Alliance (CJA) has recently lodged a super-complaint against s.60 on the basis that it is a "sweeping, draconian and ineffective powers, disproportionately used against Black and ethnic minority communities."[123]

2. **Section 60 stop and search has a disproportionate, detrimental impact on racialised communities.** As noted above – and recognised by successive former Home Secretaries,[124] there are clear racial disparities in terms of who is affected by stop and search, with Black communities suffering the brunt of these powers. The act of being stopped and search is frequently a traumatic and dehumanising[125] experience – for many people (including young people), such experiences can be a daily reality.

3. **Not only is s.60 CJPOA highly oppressive, there is also a lack of evidence as to its effectiveness.[126]** Recent Home Office data shows that, only 13% of 'suspicion-based' stop and searches (i.e. not s60 stop and searches), result in an arrest. [127] It is understood that this figure includes arrests for offences which do not relate to the object of the search (such as 'assault/ resist/ obstruct PC', Public Order Act offences, etc.) and so the percentage of these stop and searches that results in an arrest linked to the object of the search will be even lower than 13%. The detection rate is even lower for s.60 stop and searches, with 4% resulting in an arrest, and just 1% in an arrest for possession of weapons (i.e. the object of a s60 stop and search).[128]

4. **Notwithstanding the extent of racial disproportionality and ineffectiveness of s.60 stop and search, use of these powers is on the rise.** Between April and June 2020,

[123] Criminal Justice Alliance, *CJA calls for government to repeal section 60 stop and search power,* 20 May 2021, available at: https://www.criminaljusticealliance.org/blog/cja-calls-for-government-to-repeal-section-60-stop-and-search-power/
[124] Then Home-Secretary Sajid Javid, in his 15 April 2019 speech, said "*there is concern that in enforcing* [stop and search] *powers, BAME communities will be affected disproportionately*". See: Home Office and The Rt Hon Sajid Javid MP, *Home Secretary speech on protecting young people's futures*, 15 April 2019, available at: https://www.gov.uk/government/speeches/home-secretary-speech-on-protecting-young-peoples-futures
[125] Kyle, *The way they searched me was dehumanising,* Y-Stop, 2020, available at: https://y-stop.org/stories/way-they-searched-me-was-dehumanising
[126] Townsend, M., *Black people '40 times more likely' to be stopped and searched in UK*, The Guardian, 4 May 2019, available at: https://www.theguardian.com/law/2019/may/04/stop-and-search-new-row-racial-bias
[127] Ali A. and Champion, N. for the Criminal Justice Alliance, *More harm than good - A super-complaint on the harms caused by 'suspicion-less' stop and searches and inadequate scrutiny of stop and search powers*, May 2021, available at: https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf
[128] Ali A. and Champion, N. for the Criminal Justice Alliance, *More harm than good - A super-complaint on the harms caused by 'suspicion-less' stop and searches and inadequate scrutiny of stop and search powers*, May 2021, available at: https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf

stop and search was used 104,914 times, equating to more than 1,100 times a day.[129] Home Office data reveals that from 2016/17 to 2019/20 there was a 2800% increase in the number of people stopped and searched under s.60.[130] As noted by the Criminal Justice Alliance in its recent super-complaint regarding s60, the proliferation in the use of this tactic, which restricts the liberties of thousands of people each year, *"is highly questionable given the given the very low percentage success rate in finding weapons."*[131]

5. The Government has failed time and time again to justify why s.60 CJPOA remains necessary, and is now actively trying to expand suspicionless stop and search powers under the SVRO provisions of the Bill. **We believe this is an opportune moment to bring a debate on s.60 CJPOA – including consideration of its well-documented harms – to Parliament, and thereby urge parliamentarians to support Lord Paddick's amendment to repeal this provision.**

CONCLUSION

38. That the PCSC Bill – with its extensive scope and level of technical detail – has managed to galvanise sustained opposition among all quarters of civil society in the streets and in Parliament demonstrates that there is widespread recognition of the ways that it threatens everyone's human rights and civil liberties. Rather than heeding the chorus of voices opposed to the Bill, the Home Secretary has persisted with its most draconian measures and announced new powers to further clamp down on our ability to stand up to power.

39. At the same time as the PCSC Bill is progressing through the House of Lords, a range of other legislative proposals threatening our human rights and civil liberties are beginning their passage through the House of Commons, including the Elections Bill and the Judicial Review and Courts Bill. What these three bills have in common is that they all stand to make it harder for members of the public to hold the Government to account: in the polling booth through the Elections Bill; in the courts through proposed changes to judicial review; and in the streets with the weakening of the right to protest through this Bill.

40. 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

[129] Beckford, M., *Stop-and-search use in London rose 40% in lockdown, figures shoe,* The Guardian, 25 August 2020, available at: https://www.theguardian.com/uk-news/2020/aug/25/stop-and-search-use-in-london-rose-40-in-lockdown-figures-show
[130] Ali A. and Champion, N. for the Criminal Justice Alliance, *More harm than good - A super-complaint on the harms caused by 'suspicion-less' stop and searches and inadequate scrutiny of stop and search powers*, May 2021, available at: https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf
[131] Ali A. and Champion, N. for the Criminal Justice Alliance, *More harm than good - A super-complaint on the harms caused by 'suspicion-less' stop and searches and inadequate scrutiny of stop and search powers*, May 2021, available at: https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf

Traveller communities' way of life, and draconian restrictions on protest – must be opposed. Liberty believes the sections of the Bill commented on above must be resisted.