

LIBERTY

LIBERTY'S BRIEFING ON THE POLICE, CRIME, SENTENCING AND COURTS BILL FOR PING PONG: PART 3 (PUBLIC ORDER) AND PART 10 (SERIOUS VIOLENCE REDUCTION ORDERS)

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ABOUT LIBERTY

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

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

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

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EXECUTIVE SUMMARY

1. The Police, Crime, Sentencing and Courts Bill (“PCSC Bill”) has received widespread criticism for the sweeping new powers it affords to the police and the Home Secretary to restrict our protest rights, alongside other measures that will criminalise Gypsy and Traveller communities’ way of life and drastically expand the surveillance and criminalisation of already over-policed communities. From a petition of over 800,000 people, to a coalition of more than 350 civil society organisations¹, to swathes of parliamentarians (including a previous Prime Minister)² and several parliamentary committees³, to ex-police chiefs and senior advisors,⁴ to multiple UN Special Rapporteurs⁵ and the Council of Europe Human Rights Commissioner,⁶ to broader social movements, opposition to the Bill has emerged from across civil society and the political spectrum.
2. Apart from the Bill’s impact on civil liberties and human rights, its passage through Parliament has sustained significant criticism from parliamentarians for circumventing the democratic process.⁷ The Select Committee on the Constitution has referred to it as an “omnibus” Bill whose size “impedes proper legislative scrutiny,”⁸ and the Delegated Powers and Regulatory Reform Committee has criticised it for its extensive use of delegated powers, the latest in a longer trend of the Government shielding itself from scrutiny.⁹ The Bingham Centre for the Rule of Law has even criticised the Government for disregarding the rule of law: “The rule of law protects the supremacy of the legislature over the executive. To properly fulfil its function, Parliament must have sufficient time to scrutinise and debate proposed changes to the law, including and especially measures with such far-reaching impact.”¹⁰

¹ Helm, T. *Patel faces widening revolt over policing bill’s restrictions on protest*. The Guardian, 12 Sep 2021. Available at: <https://www.theguardian.com/uk-news/2021/sep/12/patel-faces-widening-revolt-over-policing-bills-restrictions-on-protest>

² HC Deb 15 March 2021 vol 691; see also Mrs Theresa May at second reading in the House of Commons: “The second is around noise and nuisance; some of the definitions do look quite wide, and I would urge the Government to look at those definitions” (HC Deb, vol. 691, col.78)

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

⁴ Smith, M. *New police law could undermine trust and exacerbate violence, ex-chiefs warn*. The Mirror, 25 Oct 2021. Available at: <https://www.mirror.co.uk/news/politics/new-police-law-could-undermine-25287863>

⁵ United Nations, Letter to the UK Prime Minister from UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on the promotion and protection of the right to freedom and expression, 25 May 2021, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26447>

⁶ Daly, P., *European human rights commissioner urges MPs and peers not to back protest curbs*, Evening Standard, 5 July 2021, available at: <https://www.standard.co.uk/news/uk/mps-police-courts-crime-european-b944100.html>

⁷ “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)

⁸ “A Christmas tree Bill of this size is not the way to deal with it. It is not possible in the time allotted either to me or to any of us to identify every single issue in relation to the Bill, but I will identify 11 issues that may be worth further consideration” (Lord Falconer of Thoroton, Police, Crime, Sentencing and Courts Bill, Second Reading (Lords), Hansard, 14 September 2021, Vol. 814, Col. 1284).

⁹ Delegated Powers and Regulatory Reform Committee, *6th Report of Session 2021-22: 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/>

¹⁰ Lines, K., *Government Amendments to the Police, Crime, Sentencing and Courts Bill: A Rule of Law Analysis*, The Bingham Centre for the Rule of Law, 14 Jan 2022, available at: <https://binghamcentre.biicl.org/publications/government-amendments-to-the-police-crime-sentencing-and-courts-bill-a-rule-of-law-analysis>

3. At report stage in the House of Lords, peers successfully defeated a slate of eleventh-hour Government amendments that would have further curtailed the right to protest and participation in public life,¹¹ and which, in the words of Lord Rosser, “ha[d] not been looked at for a single minute by the elected House, which is normal practice in relation to controversial measures”.¹² These amendments, if accepted, would have introduced a number of new and vague criminal offences related to protest (such as the offence of ‘locking on’), protest-specific stop and search powers, and a new civil order that could ban specific individuals from participating in protests. That peers voted against all of the Government’s late additions to the Bill, levying the greatest number of defeats since the House of Lords was amended in 1999, is at least in part a testament to mounting concerns that Parliament is being sidelined from its crucial role in the democratic process.¹³
4. **Ahead of Ping Pong, this briefing focuses on Part 3 (Public order) and Part 10 (Serious Violence Reduction Orders) of the PCSC Bill. Liberty urges parliamentarians to agree:**
 - Lords’ Amendment 73 which would remove the ability of the police to impose noise-based restrictions on public processions
 - Lords’ Amendment 80 which would remove the ability of the police to impose greater conditions on static demonstrations
 - Lords’ Amendment 87 which would remove the ability of the police to impose conditions on one-person protests
 - Lords’ Amendment 88 which would limit the offence of wilful obstruction of the highway to apply to the Strategic Road Network
 - Lords’ Amendments 114 and 116 which would create a more robust pilot for evaluating Serious Violence Reduction Orders
 - Lords’ Amendment 115 which would require the national roll-out of Serious Violence Reduction Orders to be subject to a parliamentary vote

PART 3: PROTEST – OUR ASKS

5. Part 3 of the PCSC Bill would dramatically restrict not only our deeply cherished principles of freedom of assembly and expression, but also a vital tool and mechanism available to citizens of democratic countries to stand up to the State and make their voices heard. Overall, the case for these radical changes has simply not been made. The Government has not provided any data or concrete evidence to show why these specific provisions, which widen the net of criminalisation and sweep up more forms of dissent, are necessary. Former police chiefs and senior officers have also voiced their opposition to these proposals.
6. At report stage in the House of Lords, peers voted resoundingly to oppose the protest-related measures of the PCSC Bill. Previously, numerous peers had noted how the

¹¹ Monbiot, G., Jailed for 51 weeks for protesting? Britain is becoming a police state by stealth, *The Guardian*, 1 December 2021, available at: <https://www.theguardian.com/commentisfree/2021/dec/01/imprisoned-51-weeks-protesting-britain-police-state>; and Pang, J., *England and Wales’s Police Bill threatens anyone with a cause they believe in*, openDemocracy, 6 December 2021, available at: <https://www.opendemocracy.net/en/opendemocracyuk/the-uk-police-bill-now-threatens-anyone-with-a-cause-they-believe-in/>

¹² HL Deb 17 January 2022, vol 817, col 1432.

¹³ Government Defeats in the House of Lords, UCL, 2022, available at: <https://www.ucl.ac.uk/constitution-unit/research/parliament/changing-role-house-lords/government-defeats-house-lords>

Government's approach to introducing new amendments to the Bill with wide-ranging human rights impacts was inimical to effective democratic scrutiny. To this point, Lord Beith noted in committee stage: "it seems to me that political considerations have taken precedence over all considerations relating to making good law and, indeed, policing protests satisfactorily and effectively."¹⁴ **Liberty maintains our opposition to Part 3 in its entirety. We urge MPs to agree the following amendments to mitigate its worst effects.**

AGREE LORDS' AMENDMENT 73 WHICH WOULD REMOVE THE ABILITY OF THE POLICE TO IMPOSE NOISE-BASED RESTRICTIONS ON PUBLIC PROCESSIONS

7. This amendment removes subsections (2) and (3) from Clause 55 of the PCSC Bill. Clause 55 of the Bill amends s.12 of the Public Order Act (1986) (POA), allowing 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".

Liberty's view

8. **Noise stands at the heart of protest.** Making noise is how we, quite literally, make our voices heard by those in power – it is, as expressed by Lord Coaker at report stage in the House of Lords, "a fundamental part of the freedom to protest properly in a democracy,"¹⁵ and in the words of Lord Deben, taking it away from people "very seriously impugn[s]" everyone's human rights.¹⁶ Legal academic Professor David Mead has commented that the proposed power to regulate protest based on noise presents an "existential threat to protest, so closely entangled are protests with noise".¹⁷
9. **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 march¹⁸, oppose the Iraq War¹⁹, or make their voices heard on Brexit.²⁰ As noted by Lord Dubs at second reading in the House of Lords, noise-based restrictions might have the unintended impact of silencing protests with the greatest popular support: "Larger and well-supported demos are much more likely to be louder. Therefore, restrictions on noise could disproportionately impact demonstrations that have the greatest public backing, which would be a perverse outcome."²¹ At report stage, Lord Pannick went further, noting that "the ability to demonstrate while making a noise, is a very valuable safety valve in

¹⁴ HL Deb 24 Nov 2021, vol.816, col. 985.

¹⁵ HL Deb 17 Jan 2021, vol. 817, col. 1397.

¹⁶ HL Deb 17 Jan 2021, vol. 817, col.1399.

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

¹⁸ Tania Branigan '400,000 bring rural protest to London,' *The Guardian* (23 Sep 2002) <https://www.theguardian.com/uk/2002/sep/23/hunting.ruralaffairs2>

¹⁹ 'Million' march against Iraq War,' *BBC News* (16 February 2003) <http://news.bbc.co.uk/1/hi/uk/2765041.stm>

²⁰ 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>

²¹ HL Deb 24 Nov 2021, vol.816, col. 923.

our civil society. If you close off that safety valve, you are going to cause a far greater mischief than is currently the case.”²²

10. The noise restriction constitutes a significant and unprecedented expansion of police power in relation to protest – as noted by Lord Coaker, “never ha[s] any Government of any colour sought to ban protests on the basis of noise or to put conditions on the basis of noise.”²³ **It merits noting that the police already have powers to tackle disruptive behaviour**, including the existing triggers under sections 12 and 14 of the Public Order Act 1986; Public Space Protections Orders under the Anti-social Behaviour, Crime and Policing Act 2014; offences of and relating to harassment;²⁴ and the common law power and duty to take action to prevent an ongoing or imminent breach of the peace.²⁵ Furthermore, intimidation and harassment – which would fall within the legitimate aim of preventing crime and disorder, and qualify the protections under Article 10 and Article 11 - are already criminal offences. In short, as noted by Lord Deben, the Government have produced “no good reason” for this change.²⁶
11. The Home Office has claimed that “[i]t is completely right that the police should have the powers to intervene in exceptional cases where the noise generated by a protest is such that it is injurious to others.”²⁷ However, the PCSC Bill gives the police **much broader powers** than simply the ability to intervene in “exceptional cases” where the noise generated is “injurious to others”. Under the new measures, the police will be able to impose a noise condition on any protest (i.e. both marches and static assemblies) as long as they reasonably believe that the noise may result in “serious disruption” or may have a “relevant impact” on persons in the vicinity of the march or assembly. We will take each limb in turn.
12. First, we must consider what the Government defines as “serious disruption”. After sustaining heavy criticism over its reliance on delegated powers to introduce significant and substantive measures, which in multiple committees’ and parliamentarians’ view was a way to evade democratic scrutiny, the Government was forced to table an amendment setting out its definition of “serious disruption” on the face of the Bill.²⁸

²² HL Deb 17 Jan 2021, vol. 817, col.1405.

²³ HL Deb 17 Jan 2021, vol. 817, col. 1397.

²⁴ The following offences cover more targeted noise, such as chanting or shouting directed at a particular person or organisation: Public Order Act 1986, sections 4A and 5, Protection from Harassment Act 1997, section 2, Serious Organised Crime and Police Act 2005, section 125(2)(c), and Criminal Justice and Police Act 2001, section 42A.

²⁵ A breach of the peace occurs “whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.” See: Pg. 19, 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, available at <https://committees.parliament.uk/publications/6367/documents/69842/default/>

²⁶ HL Deb 17 Jan 2021, vol. 817, col.1399.

²⁷ **Protests: Home Office – January 2022**

²⁸ See for example the Government’s definition of “serious disruption” in relation to public processions (the language of which is mirrored for static demonstrations): “The cases in which a public procession in England and Wales may result in serious disruption to the life of the community include, in particular, where— (a) it may result in a significant delay to the delivery of a time-sensitive product to consumers of that product, or (b) it may result in a prolonged disruption of access to any essential goods or any essential service, including, in particular, access to— (i) the supply of money, food, water, energy or fuel, (ii) a system of communication, (iii) a place of worship, (iv) a transport facility, (v) an educational institution, or (vi) a service relating to health. [...] In subsection (2A)(a) “time-sensitive product” means a product whose value or use to its consumers may be significantly reduced by a delay in the supply of the product to them. [...] For the purposes of subsection (1)(aa), the cases in which the noise generated by persons taking part in a public procession may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the procession include,

13. We are concerned that the Government’s definition of “serious disruption” is extremely wide: the list of examples of how a public procession or public assembly could result in “serious disruption” to the life of a community is non-exhaustive and the list of “time-sensitive products” caught by the provision is potentially limitless. With specific regard to noise, the Government provides that “the cases in which the noise generated by persons taking part in a public procession may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the procession *include*, in particular, where it may result in *persons connected with the organisation* not being reasonably able, for a *prolonged period of time*, to carry on in that vicinity the *activities or any one of them* [emphases added].” Many of the terms used in this definition – including “persons connected with the organisation”, “activities”, or “prolonged period” – are left unspecified. Yet again, this is an inclusive rather than exhaustive definition, leaving the door to interpretation wide open.²⁹
14. Second, the police will also be given the power to impose conditions on protest if they deem that the noise generated by persons taking part in the procession “may” have a “relevant impact” that is significant. A protest “may” have the “relevant impact” if it results in “the intimidation or harassment of persons of reasonable firmness with the characteristics of persons likely to be in the vicinity” or “it may cause such persons to suffer serious unease, alarm or distress.” The police will be required to consider the likely number of people who could be affected by the noise; the likely duration of the impact; and the likely intensity of that impact on those people.
15. In effect, the Government has created extremely broad and inclusive definitions of “serious disruption” and “relevant impact”, giving the police significant power to interpret these provisions and determine when the noise generated by a protest *may* result in “serious disruption” (even if it does not) and/or may have a “relevant impact” (even if it does not). These are highly subjective and hypothetical judgments, that could “easily be swayed, consciously or otherwise, by [the police’s] feelings towards the protest’s subject matter”.³⁰ The Bill also gives the Home Secretary the ability to redefine “serious disruption” by way of regulation. Former Prime Minister and Home Secretary Theresa May MP issued a word of caution regarding this specific power, which would effectively give the Government of the day the ability to stop protests that it does not like or approve of: “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.”³¹

in particular, where it may result in persons connected with the organisation not being reasonably able, for a prolonged period of time, to carry on in that vicinity the activities or any one of them.”

²⁹ The Secretary of State will also retain the ability to amend the definition of “serious disruption” to the activities of an organisation or the life of a community by way of regulation and give examples of cases in which a protest might constitute “serious disruption”, giving the Government of the day an expansive power to effectively declare the kind of protests and causes it deems inconvenient or unacceptable and provide the police with a licence to limit them.

³⁰ Pg. 15, 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, available at <https://committees.parliament.uk/publications/6367/documents/69842/default/>

³¹ Theresa May, Police, Crime, Sentencing and Courts Bill, Second Reading (Commons), Hansard, 15 March 2021, Vol. 691, Col. 77

16. Importantly, and notwithstanding existing powers to tackle harassment and intimidation, the new powers created under the Bill will enable the police to impose noise-based restrictions on protest if they would cause “serious unease, alarm or distress” – which the JCHR has argued is unlikely to ever be a legitimate aim. In practice, we can consider the case of protests outside embassies, such as the monthly protests against the ethnic cleansing of Uyghurs and other ethnic minorities in China outside the Chinese embassy.³² Lord Oates raised another example in his speech at committee stage: “Currently, a fortnightly vigil for democracy and human rights is held outside the Zimbabwe embassy on the Strand. The vigil is not normally loud, but, on occasion, when the Zimbabwe Government are involved in particularly egregious violations of human or political rights, it can be noisy and, without doubt, it has an impact on people in the vicinity.”³³ In the future and under the powers in the Bill, embassy officials may be able to put pressure on the police to impose noise-based restrictions on such protests, in order to stop people from protesting repressive state regimes, on the basis that the noise generated from such protests causes them to feel “serious unease”.
17. **It is fundamentally unclear how these provisions will work.** Unlike assessments of noise nuisance in the residential and environmental context (as is delineated in the Noise Act 1996),³⁴ it is impossible to tell how loud a protest will be – and therefore to predict its potential effects – in advance of it taking place, meaning that it may be impossible to justify imposing conditions on a protest in advance of it starting. It appears even more impracticable to expect the police to be able to assess the impacts of a noisy protest while it is taking place, so as to impose a condition. Another problem arises when considering how to establish individual liability for breach of a noise-related condition that has been imposed on a large demonstration: how loudly does one have to shout in order to cause “serious disruption” or a “relevant impact”, and how can one’s independent contribution be singled out and assessed for breach? These measures are, in the words of Lord Cormack, “not sensible... nor... practical.”³⁵
18. **It further merits noting that these measures lack support from the police.** Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) – the body whose report was relied upon to justify the measures in Part 3 of the Bill, which commented on five proposals by the Home Office and nineteen by the police – did not examine or support the establishment of a “noise” trigger. Similarly, in evidence to the Joint Committee on Human Rights, the National Police Chiefs Counsel (NPCC) lead for Public Order did not reference or advocate for a new power based on the noise protests generate.

³² The New Arab Staff, *Thousands protest for Uyghur Muslims outside Chinese embassy in London*. The New Arab, 13 Nov 2021, available at: <https://english.alaraby.co.uk/news/thousands-protest-uyghur-muslims-outside-chinese-embassy>

³³ HL Deb 24 Nov 2021, vol.816, col.941.

³⁴ The JCHR notes: “When local authorities are assessing noise nuisance, they will use trained Environmental Health Officers and decibel readers... The Noise Act 1996, which deals with excessive noise emitted from private premises, measures noise against an objective standard. The permitted level is now set at 34 dBA if the underlying level of noise is no more than 24 dBA, or 10 dBA above the underlying level of noise where this exceeds 24 dBA.” See: Pg. 14, Joint Committee on Human Rights, *Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)*, Second Report of Session 2021–22, 7 Feb 2022, available at <https://committees.parliament.uk/publications/6367/documents/69842/default/>

³⁵ HL Deb 17 Jan 2021, vol. 817, col.1400.

19. In introducing these powers, the Government will give the police a greater ability to determine which protests can and cannot go ahead. But this will also create onerous burdens on the police to exercise their discretion. The JCHR has criticised the proposed new noise trigger for involving “uncertain standards” that will place a weighty burden on police officers, who will be required to decide what (if any) conditions to impose on a protest based on a hypothetical assessment of what may happen: “[w]hat one person considers to be noise sufficiently ‘intense’ to be likely to cause ‘serious unease, alarm or distress’ may be very different to what another person would believe meets this threshold.” In report stage in the House of Commons, David Davis MP echoed the concerns voiced by former senior officers that the measures in the PCSC Bill are likely to put the police in a “politicised position,”³⁶ which will in turn have a “disproportionate impact on the most junior officers, in a context where there have already been cuts to policing and public services.”³⁷ During Public Bill Committee in the House of Commons, the Minister for Safeguarding was forced to concede that there is no minimum rank of officer who could be tasked with imposing conditions on the basis of noise – they merely need to be the most senior officer at the scene.³⁸
20. **Although the Government claims that the police will be required to consider people’s freedoms of expression and assembly and will only impose conditions on noise where necessary and proportionate, the practical effect of these measures will be to give the police greater powers to clamp down on protests and tip the scales in their balance, even before a protest has begun.** Police decision-making already often appears to prioritise the rights of those not involved in demonstrations, 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”.
21. The imposition of a vague noise restriction on a protest in advance of, or during, a protest may deter people from showing up or continuing to participate in a given protest. For those who do show up to a protest, and who are found to have somehow breached a noise-based condition and subsequently been arrested, their only recourse may be to fight this in the courts. By the time they have argued their defence and even if they succeed, the initial restriction (that is found by a court to have been unlawful) would have already occurred, scuppering that protest’s effectiveness and power.

³⁶ “It is not just the leftie, liberal, legal fraternity that has been worried about the proposed power; there was a letter to the Home Secretary, elements of which were published in today’s edition of The Times, from a number of police chiefs, who are concerned that the effect of the provision is twofold. First, it puts the police in the position of making judgments that they should not be making; that should be specified by this House, not by the police chiefs themselves. Secondly, that puts them in a politicised position, and that is really problematic.” HC Deb 5 Jul 2021, vol.698, col. 566.

³⁷ 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>

³⁸ “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.

22. We are furthermore concerned about the ways that the noise restriction might combine with other powers established by Part 3 to restrict protest and drag people into the criminal justice system for exercising their fundamental rights. Clause 75 of the PCSC Bill (as amended at report stage in the House of Lords) reduces the knowledge requirement for an offence to be committed under sections 12 and 14 of the Public Order Act, so it is no longer necessary to prove that a person actually knew of the conditions, just that they “ought to have known” a condition was in force. In general, we are concerned that this will create a chilling effect on protest, by placing additional undue burdens on the organisers of protests to inform protestors of conditions and on protestors themselves to gather information on any conditions that might be imposed - with particularly disproportionate impacts on people who are digitally excluded who may find it difficult to access this information. These measures are rendered more worrying by provisions which significantly increase the maximum sentence for an organiser who breaches a police-imposed condition, from three months to 51 weeks imprisonment; and which increase 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.
23. As noted by the JCHR, the combination of the noise restriction and the reduction of the knowledge threshold is particularly concerning. Even if a person knows that a noise-based condition is in place for a given protest, it is unclear how that would work on an individual level. That means that people may not know how and in what circumstances they themselves could be held criminally liable for breaching a condition. By depriving people of the ability to engage in these kinds of risk assessment, fewer and fewer people may want to participate in protests in the future, resulting in a wider chilling effect. This may have a disproportionate impact on already over-policed communities, for whom protest may be a particularly important and urgent way to fight for their rights, but who do not want to risk further criminalisation and surveillance. **We urge parliamentarians to support Lords Amendment 73 to ensure that people do not face the life-altering consequences of being given a custodial sentence or other criminal sanction, simply for trying to make their voices heard.**

AGREE LORDS’ AMENDMENT 80 WHICH WOULD REMOVE THE ABILITY OF THE POLICE TO IMPOSE CONDITIONS ON STATIC DEMONSTRATIONS

24. This amendment removes Clause 56 of the PCSC Bill. Clause 56 replicates the power to impose conditions based on noisiness contained in Clause 55 and applies them to static assemblies. Additionally, it removes the caveat under section 14 of the POA that conditions on static assemblies may only be imposed on the place an assembly may be held, its maximum duration or the maximum number of people attending, in so far as they apply to assemblies in England and Wales. Under Clause 56 any conditions that “appear necessary” could be imposed on static assemblies, aligning sections 12 and 14 of the POA.

Liberty’s view

25. Liberty is concerned by the attempt to reduce the limits on powers to regulate static assemblies. The existing distinction between sections 12 and 14 reflects the less disruptive impact of, and the relative ease with which police can facilitate, static assemblies compared to marches. These provisions erode that distinction. As then Home Secretary Lord Hurd of

Westwell stated during second reading of the Public Order Act 1986, “[w]e stopped short of a power to ban because we believed that that would be an excessive limit on the right of assembly and freedom of speech. For this reason, Clause 14 does not permit the police to impose conditions changing the date and time of an assembly. They will be able only to impose conditions limiting its size, location or duration”.³⁹

26. If the impetus for this change is so that powers in relation to processions and assemblies are “equalised” in the interests of clarity, we query why they are being levelled down (i.e. via repeal of the limits on the nature of the conditions that can be imposed on assemblies) rather than levelled up (i.e. via imposition of limits on the nature of conditions that can be imposed on processions). It is not clear what conditions the Government are seeking to give the police the power to impose on protests beyond those which restrict the place an assembly may be held, its maximum duration or the maximum number. This subtle change, regarding the limits that can be placed on conditions imposed, could conceivably have dramatic consequences for protesters, affording the police near unfettered discretion to impose any condition they see fit including, for example, restrictions on the words or slogans that can be expressed on placards.
27. These changes may embolden the police to impose increasingly expansive restrictions which may hollow out the right to protest and amount to an effective ban. The line between an intrusive condition – for example that a protest cannot take place across a particular area, cannot be attended by more than ten people, or can only last for one hour – and an outright ban may make little difference in practice for people seeking to exercise their right to protest.

AGREE LORDS’ AMENDMENT 87 WHICH WOULD REMOVE THE ABILITY OF THE POLICE TO IMPOSE CONDITIONS ON ONE-PERSON PROTESTS

28. This amendment removes Clause 61 of the PCSC Bill. Clause 61 establishes a new police power to impose conditions on one-person protests on the basis that the noise generated will seriously disrupt the activities of an organisation or cause significant impact on people in the vicinity.

Liberty’s view

29. Liberty considers this unprecedented clause – designed specifically to stifle individuals protesting alone from exercising their fundamental rights – to be entirely disproportionate. They appear drafted in response to Steven Bray, the campaigner who has stood alone outside Parliament for many years to protest against Brexit, but have much wider implications. All the concerns set out above in regard to the noise trigger also apply to this power. Moreover, the new clause establishes a criminal offence of inciting someone to engage in a one-person protest, should conditions be applied to them which they proceed to ignore, potentially leaving interested members of the public simply stopping to engage in conversation with an individual protestor at risk of committing an offence.

³⁹ HC Deb 13 January 1986 vol 89 797

AGREE LORDS' AMENDMENT 88 WHICH WOULD LIMIT THE OFFENCE OF WILFUL OBSTRUCTION OF THE HIGHWAY TO APPLY TO THE STRATEGIC ROAD NETWORK

30. Lords' Amendment 88 would limit the offence of wilful obstruction of the highway to apply only to the Strategic Road Network. The sentence associated with this offence is increased from a fine to maximum 51 weeks' imprisonment or a fine (maximum level 3 on the standard scale, or both).

Liberty's view

31. Echoing the concerns of civil society organisations and parliamentarians, we believe that raising the maximum sentence for the offence of wilful obstruction of the highway will create a chilling effect on people's exercise of their right to protest and their right to choose the manner and form of their protest. Indeed, as noted by Lord Dubs in committee stage in the House of Lords: "An overly severe penalty may have a chilling effect on those considering exercising their right to protest."⁴⁰ Therefore, we support this amendment which will limit the application of this offence to only the Strategic Road Network, which will mitigate the effects of this newly elevated offence.
32. We note that provisions that increase maximum sentences 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.⁴¹ In the protest context, the increase in sentences may well deter some people from engaging in these activities; but for those who deliberately choose to break the law as a tactic of protest, this is not likely to have a significant effect.

PART 10: SERIOUS VIOLENCE REDUCTION ORDERS – OUR ASKS

33. Apart from measures clamping down on protest, the PCSC Bill establishes a range of new police powers to tackle serious violence, which civil society groups, former senior police chiefs and policy advisors, organisations working in the Violence Against Women and Girls (VAWG) sector, and others have argued are likely to exacerbate the root causes of serious violence by exacerbating racial disproportionality in the criminal justice system and fomenting injustice, exclusion, and alienation. In particular, Part 10, Chapter 1 of the PCSC Bill creates a new civil order, the Serious Violence Reduction Order ('SVRO'), which can be imposed on an individual with a previous conviction. Those given an SVRO will be subject to a range of conditions and prohibitions (such as reporting requirements), breach of which is a criminal offence with a maximum two year prison sentence. The police will be given the power to stop and search anyone subject to an SVRO whenever they are in a public place, without needing to have 'reasonable suspicion' that they have done anything wrong.
34. We recognise that the aim of SVROs is to protect communities from harm. These are aims which we wholeheartedly support – serious violence is a human rights issue which devastates communities across the country. It demands an evidence-based and just response that works

⁴⁰ Lord Dubs, Police, Crime, Sentencing and Courts Bill, Committee Stage (Lords), Hansard, 24 November 2021, Vol. 816, Col. 924

⁴¹ Prison Reform Trust (October 2021) Long-term prisoners: the facts

with, not against, communities that bear its brunt. However, we oppose SVROs given they are entirely unsubstantiated by evidence, will sanction injustice and discrimination, and risk fracturing public trust in public services and the authorities. We echo the concerns voiced by former senior police officers⁴² and parliamentarians that SVROs will:

- **Entrench the harms of ineffective and racially disproportionate suspicion-less stop and search**, which the police,⁴³ the Home Office,⁴⁴ and HMICFRS⁴⁵ acknowledge is not conducive to reducing crime and exacerbates mistrust in public institutions. Just 1% of suspicion-less stop and searches resulted in an arrest for possession of weapons (i.e. their intended aim) in the year ending March 2020.⁴⁶
- **Expand the injustice of the doctrine of joint enterprise**, given that SVROs can be imposed on people who knew or merely *ought to have known* that someone else involved in an offence had or used a knife in the commission of the offence.⁴⁷ ‘Ought to have known’ is not an actual state of knowledge and evidence shows that racial stereotypes and prejudices about purported criminality – including taste in music and fashion – is likely to inform what someone is deemed to have ‘ought to have known’.⁴⁸
- **Disproportionately affect over-policed and marginalised groups**, including young women experiencing domestic abuse and criminal exploitation,⁴⁹ who are deemed to have ‘ought to have known’ that a family member or intimate partner had a knife.
- **Drag more people into the criminal justice system**, as while SVROs are a civil order, breach of a condition under SVROs will be a criminal offence attracting a maximum two year prison sentence. SVROs can also be renewed indefinitely, meaning that those given an SVRO could be subject to continual surveillance and monitoring and be trapped in a ‘revolving door’ of offending.
- **Have far-reaching, unintended effects**, given that SVROs as drafted are much wider than the Conservative Party manifesto promise to create a civil order targeting those “convicted of knife crime”.

⁴² ITV News, *Policing bill 'disproportionately impacts black men' and 'exacerbates violence', ex-chiefs warn*, 25 October 2021, available at: <https://www.itv.com/news/2021-10-25/policing-bill-could-undermine-trust-and-exacerbate-violence-ex-chiefs-warn>

⁴³ College of Policing, *Stop and search: Transparent*, available at: <https://www.app.college.police.uk/app-content/stop-and-search/transparent/>

⁴⁴ 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

⁴⁵ HMICFRS, *Disproportionate use of police powers - A spotlight on stop and search and the use of force*, 26 February 2021, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/disproportionate-use-of-police-powers-a-spotlight-on-stop-and-search-and-the-use-of-force/>

⁴⁶ Pg. 10, 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

⁴⁷ Liberty, *Policing Bill will increase discredited 'joint enterprise' warn campaigners*, 8 January 2022, available at: <https://www.libertyhumanrights.org.uk/issue/policing-bill-will-increase-discredited-joint-enterprise-warn-campaigners/>

⁴⁸ 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%20associations%20Joint%20Enterprise%20gangs%20and%20racism.pdf>

⁴⁹ Agenda briefing for the Police, Crime, Sentencing and Courts Bill – Report Stage in the House of Lords, January 2022, available at: <https://weareagenda.org/wp-content/uploads/2022/01/Agenda-PCSC-Bill-HoL-Report-Stage-Briefing.pdf>

Liberty maintains our opposition to Serious Violence Reduction Orders in their entirety. We urge MPs to agree the following amendments to mitigate their worst effects.

AGREE LORDS' AMENDMENTS 114 AND 116 WHICH WOULD CREATE A MORE ROBUST PILOT FOR EVALUATING SERIOUS VIOLENCE REDUCTION ORDERS

35. Lords' Amendment 114 and 116 would create a more robust pilot for evaluating Serious Violence Reduction Orders. The amendment identifies contentious issues within the SVRO measures that require further scrutiny, for example, the provisions that enable an SVRO to be given to someone with a conviction on the basis that they *ought to have known* that someone else involved in the offence had a knife, which Agenda⁵⁰ and 21 other VAWG organisations⁵¹ have warned will disproportionately affect young women experiencing domestic abuse and criminal exploitation.

Liberty's view

36. During the debate, the Minister noted "the general point is that it is not necessary to include... a list [of matters to be considered in the pilot] in the Bill." Apart from a passing remark that this is not how things have been done in the past, at no point has the Minister provided sufficient reasons or justifications for why in principle it is inappropriate for Parliament to set out an inclusive list of factors for the pilot to consider. This is particularly concerning given the significant issues that have been raised in respect of the ways that SVROs may have disproportionate and unintended consequences for already over-policed and marginalised communities. In particular, the impact of SVROs on young women experiencing criminal exploitation and domestic abuse must be robustly scrutinised. To this point, at report stage in the House of Lords, the Lord Bishop of Gloucester asked the Minister to consider the relationship between SVROs and the Government's female offenders strategy to limit the number of women serving short sentences and prevent reoffending, to which she did not respond apart from saying that the pilot would consider "basic data on the age, sex, and ethnicity of people subject to SVROs."⁵²

AGREE LORDS' AMENDMENT 115 WHICH WOULD REQUIRE THE NATIONAL ROLL-OUT OF SERIOUS VIOLENCE REDUCTION ORDERS TO BE SUBJECT TO A PARLIAMENTARY VOTE

37. Lords' Amendment 115 would require the national roll-out of Serious Violence Reduction Orders to be subject to a parliamentary vote.

Liberty's view

38. Pilots are useful insofar as their findings are properly considered and used to inform decisions about whether certain proposals should be implemented more widely. As drafted, the provisions enacting SVROs would commence after a report of the pilot is laid before Parliament by the Secretary of State, regardless of whether SVROs have been proven to be effective at their intended purpose. The original provisions also did not require the

⁵⁰ Agenda briefing for the Police, Crime, Sentencing and Courts Bill – Report Stage in the House of Lords, January 2022, available at: <https://weareagenda.org/wp-content/uploads/2022/01/Agenda-PCSC-Bill-HoL-Report-Stage-Briefing.pdf>

⁵¹ Joint briefing for House of Lords ahead of Report Stage of the Police, Crime, Sentencing and Courts Bill, Serious Violence Duty and Serious Violence Reduction Orders, December 2021, available at: <https://rightsofwomen.org.uk/wp-content/uploads/2021/12/Joint-VAWG-sector-briefing-on-SVD-and-SVROs-for-HoL-ahead-of-report-stage-Dec-2021-1.pdf>

⁵² HL Deb 10 Jan 2021, vol. 817, col. 847.

Government to report on whether the SVRO regime is proportionate, fair, and compliant with human rights. **Relegating pilots to a tick-box exercise erodes principles of democratic scrutiny and undermines the credibility and effectiveness of legislation and policy.**

39. **This is particularly important given that the Government has a track record of rolling out policies while evading transparency and accountability over the impacts of pilots.** In 2019, the Government launched a pilot which removed the Best Use of Stop and Search safeguards for s.60 suspicion-less stop and search, originally introduced by former Home Secretary Theresa May to address stop and search powers' liability for misuse and contributions to racial disproportionality in the criminal justice system. In July 2021, despite failing to publish any assessment of the impact of the pilot, the Government announced its 'Beating crime plan', which would permanently relax the BUSSS safeguards. Legal action on the basis of equalities concerns eventually forced the Government to u-turn on its decision.⁵³ The Government has continued to refuse to publish its evaluation of the pilot. In a long over-due response to an FOI request – on which the Information Commissioner's Office also intervened⁵⁴ – the Government insisted it needs a “safe space” to discuss changes.⁵⁵ **This has been criticised for demonstrating a “disturbing but unfortunately unsurprising lack of transparency and accountability” by the Criminal Justice Alliance.**⁵⁶
40. **It is logical that if a pilot demonstrates that a particular intervention is ineffective or disproportionate, further roll-out should not proceed, and Parliament should have the final say as to whether the scheme should stand.** This is particularly important given the lack of evidence to show that SVROs will be effective at reducing knife crime and the abundance of evidence that shows that existing suspicion-less stop and search powers are ineffective and racially disproportionate. Indeed, the Home Office has acknowledged that both in terms of who is given an SVRO and who is stopped and searched under SVRO provisions, Black males are likely to be disproportionately affected.⁵⁷
41. **Further, Parliament should be given the ability to scrutinise substantive elements of SVROs that will be introduced via secondary legislation, such as the powers that will be given to constables in relation to SVROs and the conditions and requirements that SVROs will impose, particularly given that breach of these conditions is a criminal offence**

⁵³ White, N., *Home Office sued over 'racially disproportionate' new stop and search rules*, The Independent, 3 November 2021, available at: <https://www.independent.co.uk/news/uk/home-news/home-office-sued-stop-search-b1950653.html>
Liberty, *Home Secretary u-turns on stop and search decision after legal action by Liberty and Stopwatch*, 29 November 2021, available at: <https://www.libertyhumanrights.org.uk/issue/home-secretary-u-turns-on-stop-and-search-decision-after-legal-action-from-liberty-and-stopwatch/>

⁵⁴ Criminal Justice Alliance, *Government fails to produce evidence behind expansion of stop and search*, 1 November 2021, available at: <https://www.criminaljusticealliance.org/blog/government-fails-to-produce-evidence-behind-expansion-of-stop-and-search/>

⁵⁵ Dearden, L., *Home Office refuses to reveal impact of expanded powers to stop and search people without suspicion*, The Independent, 5 January 2021, available at: <https://www.independent.co.uk/news/uk/home-news/police-stop-and-search-section-60-suspicion-b1978317.html>

⁵⁶ Criminal Justice Alliance, *Government refuses to release findings of section 60 stop and search pilot*, 5 January 2022, available at: <https://www.criminaljusticealliance.org/blog/government-refuses-to-release-findings-of-section-60-stop-and-search-pilot/>

⁵⁷ 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>

attracting a maximum two-year prison sentence. This accords with the strong recommendation of the Secondary Legislation Scrutiny Committee and Delegated Powers and Regulatory Reform Committee that the balance between Parliament and Government should be “re-set afresh” by re-instating Parliamentary scrutiny over significant policy developments and changes.⁵⁸

CONCLUSION

42. For the disproportionate negative impacts the PCSC Bill stands to have on minoritised communities already over-policed and discriminated against, for the substantial chilling effect it threatens to impose on the rights of freedom of expression and assembly, for the incredibly broad drafting that would hand expansive powers to the Secretary of State to define terms and impose conditions almost at a whim, Liberty continues to oppose the Bill. We urge MPs to support the above Lords’ amendments to mitigate its worst effects.

⁵⁸ Secondary Legislation Scrutiny Committee, *Government by diktat: A call to return power to Parliament*, 24 November 2021, available at: <https://publications.parliament.uk/pa/ld5802/ldselect/ldsecleg/105/105.pdf>