

LIBERTY

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

MARCH 2022

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. When the PCSC Bill re-entered the House of Commons at the end of February, MPs highlighted the ongoing invasion of Ukraine and the solidarity protests that have arisen as a result – including in Russia – as demonstrating the importance of being able to stand up to state power.¹⁴ Conservative MP and former Secretary of State Robert Jenrick said, “[I] suspect that this measure is a step too far and that we are pushing up against the limits of what we as a free society should be doing, particularly in the context of what we see around the world, where we want to be a shining light for liberty and freedom.”¹⁵ In the end, however, all of the amendments proposed by peers in respect of protest were ultimately voted down.
5. In a rare and historic act of defiance, peers in the House of Lords have now insisted on crucial amendments to the PCSC Bill to defend the right to protest and protect the health of our democracy. Conservative peer Baroness Altmann summarised the sentiment of the House when she said:

“Part 3 of the Bill seems to be straying towards authoritarianism. We see at the moment how democracy is fragile and how important it is to protect it. This House is challenging what looks like an attempt to undermine the democratic right to protest, with what could be disproportionate criminalisation of peaceful protest.”
6. **We welcome the Government’s belated concession that the amorphous concept of ‘serious unease’ can never be grounds for limiting dissent. However, this concession does not go far enough, and we fear it may actually lower the threshold for restricting protest. As the Bill returns to the House of Commons, Liberty urges MPs to agree:**
 - Lords Amendment 73 to remove the police’s ability to impose noise-based restrictions on protests
 - Lords Amendment 80 to remove the ability of police to impose conditions on static demonstrations

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>

¹⁴ Bychawski, A., *UK’s Policing Bill would silence us, says Ukrainian protester*, 3 March 2022, available at: <https://www.opendemocracy.net/en/opendemocracyuk/uk-policing-bill-ukrainian-protest-criminalise/>

¹⁵ HC Deb 28 Feb 2022, vol. 709, col. 840.

PART 3: PROTEST – OUR ASKS

7. All around the world, protest has been a vital form of resistance against oppression. From protesters in Russia and Ukraine speaking out against the invasion to climate strikes, protest is how individuals can seek to achieve change. 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 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 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.
8. At every stage of the Bill’s passage, parliamentarians have voted resoundingly to oppose the protest-related measures of the PCSC Bill. Numerous parliamentarians have also noted how the Government’s approach to rushing through a Bill of this breadth and introducing new amendments to the Bill with wide-ranging human rights impacts has been 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.”¹⁶
9. With one day to go before MPs’ consideration of the House of Lords’ amendments on noise and public assemblies, the Home Secretary Priti Patel and Justice Secretary Dominic Raab tabled an amendment to remove ‘serious unease’ from the range of conditions under which the police may act to restrict protest. While this is an important concession, marking the Government’s admission that the concept of ‘serious unease’ is a nebulous concept that should never be on the statute books as a reason for why the police might impose a condition on a protest, **we fear it may actually lower the threshold for a condition on protest to be imposed.** The removal of ‘serious unease’ means that the police may now impose conditions on protest if they believe it ‘may cause such persons to suffer alarm or distress’ – in other words, **there is no need for this alarm or distress to be ‘serious’ before a condition can be imposed. For the police to be able to restrict a protest on the mere possibility that it may cause someone to feel intimidated, alarmed, or distressed is an attack on the right to freedom of expression of people across the political spectrum.**¹⁷ Crucially, under the Bill the police are still empowered to impose restrictions on protest if it is so noisy as to cause ‘serious disruption’, a term which is widely defined and which the Secretary of State can change at will; this means that the Government can, at any time, shift the goalposts and ban protests it does not like. This does not change with the Government’s concession regarding ‘serious unease’.
10. Liberty maintains our opposition to Part 3 in its entirety. We urge MPs to agree the following amendments to mitigate its worst effects.

¹⁶ HL Deb 24 Nov 2021, vol.816, col. 985.

¹⁷ Igunnbole, J., *The Policing Bill will leave free speech in tatters*, Spiked, 23 March 2022, available at: <https://www.spiked-online.com/2022/03/23/the-policing-bill-will-leave-free-speech-in-tatters/>

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

11. 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

12. **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,”¹⁸ and in the words of Lord Deben, taking it away from people “very seriously impugn[s]” everyone’s human rights.¹⁹ 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”.²⁰
13. **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 march²¹, oppose the Iraq War²², or make their voices heard on Brexit.²³ 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.”²⁴ At report stage, Lord Pannick went further, noting that “the ability to demonstrate while making a noise, is a very valuable safety valve in our civil society. If you close off that safety valve, you are going to cause a far greater mischief than is currently the case.”²⁵
14. 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.”²⁶ **It merits noting that the police already have powers to tackle disruptive behaviour**, including

¹⁸ HL Deb 17 Jan 2021, vol. 817, col. 1397.

¹⁹ HL Deb 17 Jan 2021, vol. 817, col.1399.

²⁰ David Mead ‘Yes, you can... but only if you’re quiet,’ *Verfassungsblog* (17 March 2021) <https://verfassungsblog.de/uk-silence-protest>

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

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

²³ 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>

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

²⁵ HL Deb 17 Jan 2021, vol. 817, col.1405.

²⁶ HL Deb 17 Jan 2021, vol. 817, col. 1397.

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;²⁷ and the common law power and duty to take action to prevent an ongoing or imminent breach of the peace.²⁸ 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.²⁹

15. 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.”³⁰ 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.
16. 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.³¹
17. 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

²⁷ 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.

²⁸ 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/>

²⁹ HL Deb 17 Jan 2021, vol. 817, col.1399.

³⁰ Protests: Home Office – January 2022

³¹ 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, 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.”

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.³²

18. 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 alarm or distress,” with the Government conceding and removing ‘serious unease’ from this formulation at the eleventh hour.³³ 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.

19. 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”.³⁴ **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.”³⁵ Steve Baker MP voiced the same concern during ping pong when he said: “I had then [March 2021], and I have now, considerable concerns about what we are doing on protest...**we cannot condemn protesters because we happen to disagree with them politically.**”³⁶

20. 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 “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,

³² 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.

³³ https://publications.parliament.uk/pa/bills/cbill/58-02/0291/amend/police_rm_cclm_0325.pdf

³⁴ 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/>

³⁵ HC Deb 15 March 2021, Vol. 691, Col. 77

³⁶ HC Deb 28 February 2022, vol.709, col. 847.

such as the monthly protests against the ethnic cleansing of Uyghurs and other ethnic minorities in China outside the Chinese embassy.³⁷ 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.”³⁸ 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 “alarm or distress”.³⁹ As Baroness Wheatcroft said, “The right to protest and to cause a degree of annoyance to a few people is surely something that Ukrainians would be amazed we were even thinking of curtailing.”⁴⁰

21. **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),⁴¹ 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.”⁴²

22. **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.

³⁷ 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>

³⁸ HL Deb 24 Nov 2021, vol.816, col.941.

³⁹ Champion, S., *The UK government: bastion of freedom – but wants to clamp down on protest?*, 28 February 2022, available at: <https://labourlist.org/2022/02/the-uk-government-bastion-of-freedom-but-wants-to-clamp-down-on-protest/>

⁴⁰ HL Deb 22 March 2022, vol.820, col.837.

⁴¹ 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/>

⁴² HL Deb 17 Jan 2021, vol. 817, col.1400.

23. 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,”⁴³ 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.”⁴⁴ 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.⁴⁵

24. **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”.

25. 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.

⁴³ “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.

⁴⁴ 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>

⁴⁵ “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.

26. 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.
27. 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

28. 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

29. 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”.⁴⁶

30. 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.
31. 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.

CONCLUSION

32. 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.

⁴⁶ HC Deb 13 January 1986 vol 89 797