LIBERTY

LIBERTY'S WRITTEN EVIDENCE TO THE PUBLIC BILL COMMITTEE FOR THE PUBLIC ORDER BILL

JUNE 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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INTRODUCTION

1. Liberty welcomes the opportunity to provide written evidence to the Public Bill Committee for the Public Order Bill 2022.

2. The Public Order Bill marks the Government's latest move in their sustained attack on our right to protest. This Bill's passage through Parliament comes just a matter of weeks after the Police, Crime, Sentencing and Courts Act (PCSC Act) gained Royal Assent, marking a significant expansion of police powers that were roundly opposed by parliamentarians across the political spectrum, hundreds of civil society groups, former Prime Ministers and former police officers. Despite this the Government announced its intention to introduce further limitations on freedom of expression and assembly.[1]

3. This Bill regurgitates measures already rejected by Parliamentarians. When the measures in the Public Order Bill were first introduced in the debates on the PCSC Act, peers argued that these eleventh-hour additions were a dangerous power grab and a blatant attempt to sideline parliamentary scrutiny. Liberal Democrat peer Lord Beith remarked that "it seems… political considerations have taken precedence over all considerations relating to making good law and, indeed, policing protests satisfactorily and effectively."[2] Ultimately, peers voted overwhelmingly to object to their inclusion in the Act.

4. Now, before the provisions in the PCSC Act have even come into force and their effects on protest robustly scrutinised – including whether, as warned by Conservative MP David Davis and former police chiefs,[3] its measures would further politicise the policing of public order, with detrimental effects on trust in public institutions[4] - the Government is pushing forward with its plans to further restrict civil liberties.

5. **No coherent case has been made for introducing further public order measures, particularly in a context where protest legislation (including the PCSC Act) is largely already weighted in favour of the authorities.** As then-Home secretary Sajid

[1]The European Court of Human Rights has repeatedly noted that the issues of freedom of expression and freedom of peaceful assembly are closely linked. The protection of personal opinions, secured by article 10 of the Convention, is one of the objectives of freedom of peaceful assembly as enshrined in article 11 of the Convention (*Ezelin v France* (1992)).

[2] HL Deb 24 Nov 2021, vol.816, col. 980

[3] 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

[4] David Davis, Police, Crime, Sentencing and Courts Bill, Second Reading (Commons), Hansard, 5 July 2021, Vol. 698, Col. 568

Javid MP noted in 2018, citing the vast legislation that "already exists to restrict protest activities that cause harm to others" including the Public Order Act 1986 and the Protection from Harassment Act 1997: "it is a long-standing tradition that people are free to gather together and to demonstrate their views. This is something to be rightly proud of.... where a crime is committed the police have the powers to act so that people feel protected".[5] **Measures contained within the Bill are also not supported by police.** Although this Bill is purportedly a response to the recent tactics of Insulate Britain and Just Stop Oil protestors, measures such as the introduction of Serious Disruption Prevention Orders (SDPOs) had been consulted on as early as autumn 2020 by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) and rejected by police officers as potentially violative of human rights, not to mention ineffective and difficult to implement.[6]

6. **Communities that already experience overpolicing, particularly the Black community, will be most sharply impacted by this Bill.** Measures to introduce new protest-specific stop and search powers – both on and without suspicion – fly in the face of the Government's own evidence of significant racial disproportionality in use of existing stop and search powers. These plans also fail to account for research by policing bodies, community groups and academics that clearly evidences the violent, humiliating, and traumatising impact of such powers, and the recently announced police Race Action Plan.[7] Further, introduction of new protest-specific stop and search must be viewed alongside the announcement of the permanent relaxation of vital stop and search safeguards, making it easier for Section 60 suspicionless stop and search powers to be authorised, to be deployed for longer periods and implemented without informing communities affected.[8]

7. As noted by Lord Pannick during debates on the PCSC Act, "the ability to demonstrate... 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."[9] **The Public Order Bill risks pouring cement into the valve, by criminalising activities with only the most tenuous links to protest and plunging more and more people into the criminal justice system.** The Government cannot legislate and punish people into silence; as such, the ultimate effect of the Bill will be to push people towards

[5] House of Commons, Abortion Clinic Protest Review, 13 September 2018, https://hansard.parliament.uk/Commons/2018-09-13/debates/18091329000018/AbortionClinicProtestReview?contribution-974CF934-8681-4514-88EC-1A2397C66011
[6] HMICFRS, *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
[7] Police Race Action Plan: Improving policing for Black people, https://www.college.police.uk/support-forces/diversity-and-inclusion/action-plan
[8] Home Office. 2022. *Home Secretary backs police to increase stop and search.* 16 May 2022, available at: https://www.gov.uk/government/news/home-secretary-backs-police-to-increase-stop-and-search
[9] HL Deb 17 January 2022, vol.817, col. 1405

seeking more urgent routes to protest, while potentially decimating their trust in public institutions.

8. For its attack on protest rights, whatever the cause may be, and limitation of our civil liberties, **Liberty urges Public Bill Committee members to oppose the Public Order Bill by supporting stand part amendments during Committee Stage.**

SERIOUS DISRUPTION PREVENTION ORDERS (PROTEST BANNING ORDERS)

9. Serious Disruption Prevention Orders (SDPOs) are a new civil order that can be imposed on individuals who have participated in at least two protests within a five-year period, whether or not they have actually been convicted of a crime (see Appendix for the full list of conditions under which an SDPO can be imposed). They can last anywhere from a week to two years, with the potential to be renewed indefinitely (clauses 18(1) and 21(7)).

10. SDPOs are effectively 'protest banning orders', with the potential to ban named individuals from protesting, associating with certain people at certain times, and even using the internet in certain ways. Those subject to SDPOs may also be subject to a range of onerous requirements, including reporting to certain places at certain times and electronic monitoring. A person subject to a SDPO will commit a criminal offence if they fail without reasonable excuse to fulfil one of the requirements of the SDPO, violate one of the SDPO's prohibitions, or notify to the police any information which they know to be false. The consequence of committing this offence is maximum 51 weeks' imprisonment,[10] a fine, or both.

11. **SDPOs are an unprecedented and highly draconian measure that stand to extinguish named individuals' fundamental right to protest as well as their ability to participate in a political community. They will also have the effect of subjecting individuals and wider communities to intrusive surveillance.**

12. The introduction of measures akin to SDPOs are not supported by the police, Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS), or the Home Office. When consulted on plans to introduce protest banning orders that would restrict individuals' right to protest, HMICFRS and the Home Office stated:

> "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*

[10] The offence provides that a person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both. If the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, the maximum sentence will be six months; (b) if the offence is committed after that time, the maximum sentence will be 51 weeks.

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 (emphasis added)".[11]

13. Further, the same report quoted senior police officers that said protest banning orders would "unnecessary 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 right to protest and in reality, is unworkable".[12]

14. **At their core, SDPOs (both with and without conviction) defy logic and common sense.** In and of itself, 'protest-related offences' – defined in clause 26 as "an offence which is directly related to a protest" – is an expansive and problematic category, given that more and more forms of protest continue to be criminalised.[13] Beyond this, the very fact that an SDPO could be imposed on a person who has not committed a criminal offence at all, but merely *contributed to* the carrying out by *another person* of activities related to a protest that *were likely to* result in serious disruption, **is simply absurd** (see Appendix). Underpinning the conditions under which an SDPO can be imposed is a likely net-widening effect given the broad terms used throughout that could potentially catch any and all forms of activity related to a protest – for example, it could cover anything from purchasing a bike lock, paint and superglue, to holding a banner, to observing a demonstration from afar. **As Liberal Democrat peer Lord Paddick noted during Report Stage of the Police, Crime, Sentencing and Court Bill (now Act) where these measures were first introduced and resoundingly rejected, "you do not even have to have been to a protest to be banned from future ones."**[14] Further, SDPOs could also place any activist, commentator, or politician who voices an opinion on any issue, that inspires someone else (who they don't know and have never met) to protest in such a way as to cause 'serious disruption'.

15. **SDPOs are based on a flawed model of preventative justice, seeking to impute a causal connection between a person's past and future activities.** The connection between the actual activities that a person given an SDPO needs to have engaged in,

[11] Pg. 16, HMICFRS, *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
[12] Pg. 137, HMICFRS, *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
[13] Analogously, Football Banning Orders (on which the 'protest banning orders' considered and criticised by HMICFRS in its March 2021 report are based) (FBOs) can be imposed on the basis of an extremely wide list of offences, including driving etc. when under the influence of drink or drugs or with an alcohol concentration above the prescribed limit. See Annex B of the CPS's guidance on FBOs: https://www.cps.gov.uk/legal-guidance/football-related-offences-and-football-banning-orders
[14] HL Deb 17 Jan 2022, vol.817, col. 1439

the impact of these activities, and the preventative aims of the order are incredibly remote – how would any of the above activities show that a person would engage in serious disruption in the future, and how could the court establish that an SDPO would be necessary to prevent a person from doing so? Restrictions imposed via an SDPO designed to stop a person from carrying out "activities related to a protest" likely to result in serious disruption are not even directed at the prevention of criminal conduct, but on preventing the facilitation of non-criminal protest-related activities from afar. This could plausibly include the sharing of particular chants or songs, placard or flag designs, or even information about where protests can lawfully and legally be held. These measures are particularly dangerous when we consider the wide definition of 'serious disruption' and the Secretary of State's discretion to redefine 'serious disruption' in the PCSC Act: it is not difficult to imagine SDPOs being used to target individuals who engage in kinds of activities related to protests that the Government of the day simply does not like or approve of.

16. **For those who are given an SDPO, the wide scope of requirements and prohibitions furthermore risk disproportionately interfering with people's rights to liberty, respect for the private and family life (Article 8), freedom of thought, belief, and religion (Article 9), freedom of expression (Article 10), freedom of assembly and association (Article 11), among others.** Individuals with an SDPO could be prevented from associating with their loved ones or community members; having certain everyday items such as a bike lock, superglue, paint, banners, or flyers in their possession; and crucially, participating in protests. They could also be barred from entering places of worship and community, for example, if they are a Quaker, for whom direct action and civil disobedience are a key part of their faith. On this, the Public Order Bill provides a limited safeguard whereby any prohibitions/requirements imposed by an SDPO must, as far as practicable, be such as to avoid any conflict with the person's religious beliefs and work or educational commitments (clause 14(8)) – however, we do not believe this is a sufficient safeguard.

17. **The introduction of SDPOs marks a significant expansion of State surveillance over those who protest.**[15] SDPOs, like other hybrid civil-criminal orders, rely on (and will therefore give rise to) far-reaching and intrusive surveillance on people's activities and behaviour, to inform the making of, and conditions and prohibitions attached to, such orders. It merits noting that the original proposal for 'protest banning orders', which was considered by HMICFRS, was based on existing football banning orders (FBOs). Research into the use of FBOs in Scotland noted the use of extensive surveillance methods such as body-worn video, increased CCTV and plain-clothed police officers and that such methods were "disproportionate and unfairly

[15] Lewis, P. and Evans, R., *Secrets and lies: untangling the UK 'spy cops' scandal,* The Guardian, 28 October 2020, available at: https://www.theguardian.com/uk-news/2020/oct/28/secrets-and-lies-untangling-the-uk-spy-cops-scandal

selective."[16] The use of even more secretive tactics such as informants in the policing of football fans[17] adds to our concerns that in the protest-context, SDPOs may create additional pretexts under which the police can interlope in protests.

18. One of the requirements that can be imposed on an individual is **electronic monitoring** (EM) in relation to an SDPO condition or prohibition, such as a ban on seeing certain people or engaging in certain activities. Electronic monitoring is used in criminal justice, probation, and immigration bail contexts as a way of remotely monitoring and recording information on an individual's movements, using an electronic tag fitted to someone's ankle. In 2018, the Ministry of Justice began using location monitoring (GPS) tags, as opposed to traditional radio frequency tags, for electronic monitoring conditions. Whereas radio frequency tags work by detecting if someone has moved out of a defined vicinity past a certain curfew, GPS tags provide the State with 24/7 real-time location monitoring.[18]

19. **In and of themselves, electronic monitoring conditions are highly intrusive, and risk interfering with individuals' rights to privacy, freedom of expression and assembly.** The psychological harm caused by electronic monitoring is well-documented. Tag-wearers report that tags have an impact on almost every area of life including the ability to participate in society; relationships; financial and emotional stress; sleep; feelings of dehumanisation and stigma.[19] The Supreme Court has accepted that curfews (which are part and parcel of electronic monitoring immigration bail conditions) amount to a form of detention.[20]

20. **Electronic monitoring conditions imposed as part of an SDPO are likely to be a highly disproportionate interference with people's human rights, including and especially if they employ GPS tracking, especially given the broad and vague purposes for which they can be imposed.** While it is unclear how the Public Order Bill proposes to implement electronic monitoring, we could potentially see a 24/7 GPS tag imposed on someone to monitor their associations, whereabouts, and activities, under the auspices of preventing them from causing 'serious disruption'. Geolocation data is highly sensitive: it tells you where someone has been, which GP practice they attend, where they shop, and much more. These are intimate details of one's private life that bear no relation to one's protest-related activities. Once an individual is subject to a 24/7 GPS tag, all of this data is potentially laid bare to the State, with the

[16] Hamilton-Smith,N, McBride, M and Atkinson, C. 2019. *Lights, camera, provocation? Exploring experiences of surveillance in the policing of Scottish football,* available at: *https://dspace.stir.ac.uk/bitstream/1893/30568/1/20191003%20-%20DOC%20-%20Football%20surveillance%20revised%20-%2014th%20Octo%2019_.pdf*
[17] Atkinson, C, McBride, M and Moore, A. 2020. *Pitched! Informants and the covert policing of football fans in Scotland,* available at: https://www.tandfonline.com/doi/full/10.1080/10439463.2020.1795168?needAccess=true
[18] Privacy International, Electronic monitoring using GPS tags: a tech primer, 9 February 2022, available at: https://privacyinternational.org/explainer/4796/electronic-monitoring-using-gps-tags-tech-primer
[19] See Bhatia, Monish "Racial surveillance and the mental health impacts of electronic monitoring on migrants"
[20] The Queen (on the application of Jalloh) v Secretary of State for Home Department [2020] UKSC 4, 12 February 2020, where the Supreme Court found that unlawful curfews of this nature amounted to false imprisonment.

further potential to cause people to alter their behaviour and actions. These harms are exacerbated by the potential lengthy duration of an electronic monitoring condition. Clause 21(9) limits the duration of an electronic monitoring requirement to 12 months but according to the explanatory notes "this does not preclude a further extension… if the SDPO is renewed."[21]

21. **The Public Order Bill provides a worrying lack of safeguards for individual data collected as part of electronic monitoring conditions imposed as part of SDPOs, which risk endangering not only individuals' privacy but wider communities.** Clause 25 of the Public Order Bill states that the Secretary of State must issue a code of practice relating to the processing of data gathered in the course of EM conditions imposed by an SDPO. Worryingly, while the explanatory notes provide that the processing of such data will be subject to the requirements of the General Data Protection Regulation and the Data Protection Act 2018, they also state that the code could set out "the circumstances in which it may be permissible to share data with the police to assist with crime detection."[22] The 'crime detection' exemption in data protection legislation is already wide; in the protest-context, we are concerned that it could be used to justify even more intrusive monitoring of individuals' whereabouts and associations. Not only does this risk infringing on the privacy of the individual with the SDPO, it could also endanger their associates and loved ones by subjecting the latter to surveillance and targeting as well.

22. **That breach of an SDPO can attract criminal sanction compounds the harms of this oppressive measure.** Failure to comply with any of these actions is tantamount to a breach of an SDPO condition, which could result in a maximum 51 week[23] prison sentence, a fine, or both. **Ultimately, none of the breaches of requirements or prohibitions imposed via an order would be criminal activities but for the imposition of an SDPO.** Furthermore, while an SDPO lasts for between a week and 2 years, there is no limit to the number of times an SDPO can be renewed by the court; the court simply needs to be satisfied that the SDPO is necessary for one of the stated purposes. This risks plunging people into cycles of criminalisation and indefinite periods of not being allowed to protest.

23. **The harmful and potentially indefinite effects of SDPOs are exacerbated by the fact that they can be established on a weak procedural basis.** The SDPO regime uses a civil standard of proof, meaning that the conditions for making an SDPO only

[21] Para 130, Public Order Bill: Explanatory Notes, May 2022, https://publications.parliament.uk/pa/bills/cbill/58-03/0008/en/220008en.pdf
[22] Para 146, Public Order Bill: Explanatory Notes, May 2022, https://publications.parliament.uk/pa/bills/cbill/58-03/0008/en/220008en.pdf
[23] The offence provides that a person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both. If the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, the maximum sentence will be six months; (b) if the offence is committed after that time, the maximum sentence will be 51 weeks.

need to be proven to the balance of probabilities (clauses 12(2)(a) and 13(2)), rather than beyond reasonable doubt. In terms of evidence that can be used to make an SDPO, SDPOs on conviction can be made on the basis of lower quality evidence: evidence that would not have been admissible in the current offence is admissible for the making of the SDPO, meaning that information collected via intrusive surveillance as detailed above may be admissible) (clause 12(9)); for SDPOs made without conviction, there are no requirements in respect of what evidence can be used, meaning that ostensibly any information – including that which is collected covertly or through intrusive technologies such as facial recognition technology – could be used to establish if a person was at a protest and engaged in any of the listed activities. An SDPO without conviction can be applied for by a wide range of police officers, including the chief officer of an area who simply believes that a person *intends to* come to their area (clause 13(8)(b))– a highly subjective judgment that could have drastic implications for a person's freedom of movement. On the low threshold for imposition of an SDPO, Labour MP Diane Abbott remarked during the Second Reading debate on this Bill: "The truth is that no citizen should ever be subject to the arbitrary and unsubstantiated curbing of important civil rights by the state".[24]

PROTEST-SPECIFIC POWERS TO STOP AND SEARCH ON SUSPICION

24. Clause 6 amends section 1 of the Police and Criminal Evidence Act (PACE) 1984 to expand the types of offences that allow a police officer to stop and search a person or vehicle. The police officer must have reasonable grounds for suspecting they will find an article "made, adapted or intended for use in the course of or in connection with" the offences of wilful obstruction of a highway (section 137 Highways Act 1980), intentionally or recklessly causing public nuisance (section 78 of the PCSC Act), locking-on (clause 1), obstructing major transport works (clause 3), and interfering with the use or operation of key national infrastructure (clause 4). The police may seize any prohibited item found during a search.

25. **This amendment constitutes a mass expansion of police powers through the creation of protest-specific stop and search. This is in spite of the fact that there is no consensus among the police that protest-specific stop and search is necessary or desirable.** When HMICFRS consulted police on the Home Office's proposal for a new stop and search power, one police officer stated that **"a little inconvenience is more acceptable than a police state"**[25] to which HMICFRS went on to state that they "agree with this sentiment."[26]

[24] HC Deb, 23 May 2022, vol. 715, col. 74
[25] HMICFRS, *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
[26] As above.

26. **We are concerned that this clause will give the police a new and broad power to stop and search people.** There is a potentially endless list of objects that could be 'made, adapted, or intended for use in the course of or in connection with' the listed offences, so broad are the terms in this definition; indeed, it could include such commonplace items as bike-locks, posters, placards, fliers, and banners. Arguably the police could have a reasonable suspicion that *any* person on the street would have a bike lock or any other such item on them; how would they subsequently establish if that person intended to use such an item "in the course of or in connection with" a protest – would it be based on one's vicinity to a protest site? What if there happened to be a bike shop nearby, and one simply crossed the road to see what was happening at the demonstration? **We believe that this stop and search power risks disproportionately interfering with individuals' rights to a private and family life as well as freedom of expression and assembly, and have knock-on effects for their willingness and ability to exercise their fundamental rights.**

27. The Government makes short shrift of these concerns, stating simply that the amendment to s.1 PACE to prevent people from committing the listed protest-related offences and protect people whose lives may be seriously disrupted by such offences would mean that "any interference with Article 8 rights will be proportionate."[27] The Government applies effectively the same perfunctory analysis to Articles 10 and 11, arguing that any interference arising from the exercise of these powers will be justified. At no point are the Article 10 and 11 rights of protesters robustly and meaningfully considered, as is required by the HRA and ECHR.

28. While these stop and search powers are being introduced in a protest-specific context, we are concerned that they will replicate the same harms of existing stop and search. Indeed, as HMICFRS identified in their recent report into police use of stop and search, "some of the most intrusive and contentious police powers are those that allow the police to use force and to stop and search people."[28] **In particular, we are highly concerned that the expansion of stop and search powers will entrench racial disproportionality in the criminal justice system and further erode trust in public institutions.** In November 2021, the Home Office released its annual stop and search data which showed a sharp rise in the use of s.1 PACE, and according to the most recent statistics, Black people were 7 times more likely to be stopped and searched than white people.[29] At Second Reading of the Bill,

[27] Para 30, Public Order Bill, ECHR Memorandum, https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-european-convention-on-human-rights-memorandum
[28] HMICFRS, *Disproportionate use of police powers: A spotlight on stop and search and the use of force*, February 2021, available at: https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf
[29] Home Office, *Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021,* 18 November 2021 available at: https://www.gov.uk/government/statistics/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2021

Conservative MP Richard Fuller urged the Government to "think carefully" about extending such powers given the sheer amount of evidence on how they are already used disproportionately against communities of colour, particularly the Black community.[30]

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.**[31] 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".[32] 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.[33] The impact of discriminatory stop and search on affected communities is deep and enduring. Research by Dr Patrick Williams with young people on the Metropolitan Police Service (MPS)'s 'Gangs Matrix' found that respondents identified stop and search as "the catalyst for the onset of their negative relationship with the police."[34] A report by the Criminal Justice Alliance spoke to young BAME people with first-hand experience of stop and search. They described feeling harassed, targeted, provoked, and even violated by these coercive encounters.[35] The Home Office itself acknowledges that the expansion of stop and search "would risk having a negative effect on a part of the community where trust and confidence levels are relatively low."[36]

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[30] HC Deb, 23 May 2022, vol. 715, col. 103

[31] 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

[32] 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

[33] 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

[34] Williams, P. and StopWatch, *Being Matrixed: The (Over)Policing of Gang Suspects In London*, August 2018, at p. 6. Available here: http://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf

[35] Criminal Justice Alliance, *No respect: Young BAME men, the police and stop and search.* Available here: http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617-1.pdf. The IPCC identified stop and search as the leading cause of tension between young people and the police. See the London Assembly's, *Stop and search: An investigation of the Met's new approach to stop and search*, available here: https://www.london.gov.uk/sites/default/files/14-02-06-Stop%20and%20search%20FINAL_1.pdf. Additionally, as David Lammy MP pointed out in his 2017 report on the treatment and outcomes for BAME people in the criminal justice system, this drains trust in the whole system. See: David Lammy MP, *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, September 2017, at p. 17.

[36] Home Office, *Public Order Bill: Equality Impact Assessment,* 2022, https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-equality-impact-assessment

PROTEST-SPECIFIC POWERS TO STOP AND SEARCH WITHOUT SUSPICION

30. The Public Order Bill extends suspicion-less stop and search powers – which until now, have been used to target serious violent crime and terrorism – to the protest context. Clause 7 creates a new suspicion-less stop and search power, such that a police officer of or above the rank of inspector may make an authorisation applying to a particular place for a specified period, which would allow police officers to stop and search someone or a vehicle without suspicion. They will be able to do this if they reasonably believe that one of the following offences may be committed in the area: wilful obstruction of a highway (section 137 of the Highways Act 1980), intentionally or recklessly causing public nuisance (section 78 of the PCSC Act), locking on (clause 1), obstructing major transport works (clause 3), or interfering with the use or operation of key national infrastructure (clause 4). Such authorisation can also arise if the officer reasonably believes that people in the area are carrying 'prohibited objects'. 'Prohibited object' is defined as an object which is either made or adapted for the use in the course of or in connection with one of the listed offences, or is intended by the person who has it in their possession for such use by them or someone else.

31. **Arguably all protests could risk causing public nuisance; this could mean that there is a mass expansion of the use of suspicion-less stop and search in the vicinity of protests.** In our view, this could give rise to significant and disproportionate interferences with people's Article 8, 10, and 11 rights, as noted above in relation to suspicion-based stop and search, and further deter people from exercising their right to protest.This is exacerbated by the vague wording of this power: it cannot be overstated that the so-called 'prohibited objects' within the offence – defined as objects either made or adapted for the use *in the course of or in connection with* one of the listed offences (in other words, not even actually in the conduct of the offence itself), or which are intended by the person who has it in their possession for such use by them *or someone else* – is extremely broad, and would furthermore not be 'prohibited' but for the creation of new and vague offences targeting protest.

32. During the debate over this proposed power in the House of Lords during the passage of the PCSC Act, crossbench peer Lord Carlile of Berriew gave an example of a time when, every year, "about 180,000 people were stopped and searched without suspicion under the Terrorism Act." Following a successful challenge to section 44 of the Terrorism Act 2000 by two people who were subject to a stop and search while protesting an arms fair, former Prime Minister Theresa May announced that police would no longer be able to carry out pedestrian searches under the TA. Highlighting the fact that the "Terrorism Act stop and search power is there for the prevention of actual acts of actual terrorism which kill actual people", Lord Carlile warned that "the dilution of without-suspicion stop and search powers is a menacing and dangerous

measure" and that the power is "disproportionate, and the Government should think twice about it.[37]

33. **The expansion of suspicion-less stop and search will have disproportionate effects on marginalised communities – in this case, people of colour exercising their right to protest.** Indeed, suspicion-less stop and search powers are an even greater contributor to racial disproportionality in the criminal justice system than regular stop and search powers. In 2021, while Black people were 7 times more likely to be stopped and searched under regular powers; when the reasonable grounds requirement was removed, they were 14 times more likely to be stopped and searched.[38] Multiple policing bodies (including HMICFRS[39] and the College of Policing[40]) and former police chiefs and frontline officers,[41] former Prime Minister and Home Secretary Theresa May,[42] parliamentarians,[43] and countless community groups[44] have highlighted issues with existing suspicion-less stop and search powers, including its ineffectiveness, contribution to racial disproportionality and erosion of trust in the criminal justice system.

34. There are additional requirements that must be satisfied before suspicion-less stop and search powers can be used. For example, the police officer must reasonably believe that the authorisation is necessary to prevent the commission of the above offences or the carrying of prohibited objects; the specified locality must be no greater than is necessary to prevent such activity; and the specified period must be no longer than is necessary to prevent such activity. The authorisation can be in force for up to 24 hours (extendable by a further 24 hours if authorised by an officer of the

[37] HL Deb 17 Jan 2022, vol.817, col. 1435
[38] Home Office, *Public Order Bill: Equality Impact Assessment*, 2022, https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-equality-impact-assessment
[39] 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/
[40] College of Policing, Stop and search: Transparent, available at: https://www.app.college.police.uk/app-content/stop-and-search/transparent/
[41] 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
[42] 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
[43] Liberal Democrats, *Ending suspicion-less Stop and Search: your questions answered*, 17 July 2020, available at: https://www.libdems.org.uk/stopandsearch-qna; Lammy, D., *Stop and search is inherently unfair, unjust and ineffectual*, The Guardian, 13 October 2018, available at: https://www.theguardian.com/law/2018/oct/13/stop-and-search-is-unjust-unfair-ineffectual-david-lammy
[44] See for example: Eugene K., *A sus law by any other name stinks as much*, Stopwatch, 19 March 2021, available at: https://www.stop-watch.org/news-opinion/a-sus-law-by-any-other-name-stinks-as-much/; 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

rank of superintendent or above).[45] **However, we do not believe these safeguards are sufficient to mitigate the harms of this power.** Further, this measure must be read alongside the announcement made by the Home Secretary to permanently relax safeguards on suspicionless stop and search powers which lowers the rank at which officers are able to authorise the deployment of stop and search from senior officer to inspector, allows the power to be deployed for longer and without informing the community affected.[46]

OFFENCE RELATING TO SUSPICIONLESS STOP AND SEARCH

35. Clause 10 creates a specific offence for intentional obstruction during the course of a suspicion-less, protest-specific stop and search. The maximum penalty for obstruction is 51 weeks' imprisonment, a fine not exceeding level 3 on the standard scale, or both.

36. We are concerned that this offence will compound the harms of the new suspicion-less stop and search power. The so-called 'prohibited objects' targeted by the suspicionless stop and search power would not be 'prohibited' but for the creation of the new offences. Furthermore, while replicating the existing offence of 'wilful obstruction' of a constable in the execution of their duty, the new offence drastically increases the penalty from one month's imprisonment, a fine, or both, to 51 weeks' imprisonment, a fine, or both.

37. One of the consequences of this offence is that it might be used to target legal observers, with Liberty having represented legal observers who were wrongly arrested at a protest in 2021.[47] For example, we can envision a situation whereby a legal observer on their way to a protest may be stopped and searched for carrying items such as bust cards or wearing an identifiable yellow bib, on the basis that these are 'prohibited objects' because they are made for use 'in the course of or in connection with' the conduct of others of one of the listed offences.). This will have a disempowering effect on protests and on our ability to hold the police and the State to account over unlawful violations of our rights.[48]

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[45] 319F(5)

[46] Home Office. 2022. *Home Secretary backs police to increase stop and search.* 16 May 2022, available at: https://www.gov.uk/government/news/home-secretary-backs-police-to-increase-stop-and-search

[47] For example, during protests against the very Bill that these amendments would effect, legal observers have been arrested alongside protestors - many of which have been from marginalised communities, including legal observers of colour, and LGBT+ legal observers. In March, Liberty lawyers sent a pre-action protocol letter to the Met, arguing that their arrests at a recent protest were unlawful and a dangerous attack on the right to protest. The Metropolitan Police proceeded to drop these charges. See here: https://www.libertyhumanrights.org.uk/issue/liberty-files-legal-action-over-protest-arrests/ and https://www.libertyhumanrights.org.uk/issue/case-update-police-drop-protest-fines-after-liberty-legal-action/

[48] Netpol, *Protecting protest: Why independent legal observers remain essential,* 11 May 2022, available at: https://netpol.org/2022/05/11/protecting-protest-article11/

OFFENCE OF LOCKING ON

38. Clause 1 establishes a new criminal offence targeting people who engage in one of the following activities: attach themselves to another person, an object, or land; attach a person to another person, an object, or land; or attach an object to another object or to land; if such activities cause, or are capable of causing, 'serious disruption' to two or more people or to an organisation in a public place. For the offence to apply, the person must intend the act to have this consequence or be reckless as to whether it will have this consequence. There is a defence of 'reasonable excuse'. Breach of this offence is maximum 51 weeks' imprisonment,[49] a fine, or both.

39. Case law confirms that we have a right to choose how we protest,[50] and the diversity of protest tactics throughout history demonstrates the deeply interconnected nature of free expression, creativity, and dissent.[51] For example, suffragettes from the Women's Freedom League chained themselves to the grille in the Ladies' Gallery in order to protest their exclusion from the Parliament.[52] This offence not only defies those principles, but criminalises an innumerable list of activities – not only what would typically be understood as 'lock-on protests' (where people lock themselves to one another via a 'lock-on' device or chain themselves to Parliament[53]), but also any activities involving people 'attaching' themselves to other people, an object, or land; or 'attaching' objects to other objects and land.[54]

40. Notwithstanding the Government's claim that the wording of this offence is sufficiently precise to be foreseeable and that the provisions are in accordance with the law,[55] we are concerned that it risks disproportionately interfering with individuals' Article 10 and Article 11 rights. The broad and vague nature of the word 'attach' – which is not defined in the Bill – means that this offence could potentially catch people engaged in

[49] The offence provides that a person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both. If the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, the maximum sentence will be six months; (b) if the offence is committed after that time, the maximum sentence will be 51 weeks.

[50] "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."* See Lashmankin v Russia (Application No.57818/09).

[51] Gabbatt, A., *Hundreds attend kiss-in outside John Snow pub after venue closes its doors*, The Guardian, 15 April 2011, available at: https://www.theguardian.com/uk/2011/apr/15/john-snow-kiss-in-london

[52] The Grille Incident, UK Parliament. https://www.parliament.uk/about/living-heritage/transformingsociety/electionsvoting/womenvote/parliamentary-collections/ladies-gallery-grille/grille-incident/

[53] Sisters Uncut, *"We are the suffragettes!": Sisters Uncut chain themselves to Parliament at government art launch*, 8 June 2016, available at: https://www.sistersuncut.org/2016/06/08/we-are-the-suffragettes-sisters-uncut-chain-themselves-to-parliament-at-government-art-launch/

[54] HL Deb 17 Jan 2022, vol.817, col. 1433.

[55] Para 10, Public Order Bill, ECHR Memorandum, https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-european-convention-on-human-rights-memorandum

activities such as linking arms with one another[56] and trees,[57] or locking their wheelchairs to traffic lights.[58] As it is unclear what the offence means when it refers to 'attaching an object to another object or land', we are also concerned that this measure will clamp down on the use of props in protests, further constraining people's right to choose the manner and form of their expressions of dissent.[59]

41. As well as covering a wide range of activities, the new offence of locking-on also "provides an exceptionally low threshold for a broad offence," as highlighted by Labour peer Lord Rosser, given that such activities do not have to *actually* cause, but merely have to be "capable of causing" serious disruption. Liberal Democrat peer Lord Paddick flagged the difficulties this would create in practice: "If it were on a different road or at a different time, it would be capable of causing serious disruption. But if it is 3 am on a Sunday, is that still capable of causing serious disruption?"[60]

42. **This proposal is not supported by the police.** When consulted on a similar proposal by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS), police respondents said: "most interviewees [junior police officers] did not wish to criminalise protest actions through the creation of a specific offence concerning locking-on."[61] On this, Lord Rosser noted, "The reality is that powers already exist for dealing with lock-ons. What we should be looking at is proper guidance, training and, as the inspectorate raised, improving our use of existing resources and specialist officers."[62]

43. We are highly concerned that, in criminalising activities that, but for the creation of this offence, would not be illegal activities, this offence will create a chilling effect on the right to protest and prevent people from exercising their rights. In our view, the defence of 'reasonable excuse' provides an inadequate safeguard for the exercise of Convention rights, given that it is unclear in what circumstances doing each one of these activities would constitute a 'reasonable excuse'. The potential threat posed by this offence – and indeed by many of the Government's new proposals – is

[56] Stead, J., *The Greenham Common peace camp and legacy,* The Guardian, 5 September 2006, available at: https://www.theguardian.com/uk/2006/sep/05/greenham5
[57] Topham, G., *Priest to chain herself to tree at Euston in protest against HS2 felling plans,* The Guardian, 11 January 2018, available at: https://www.theguardian.com/environment/2018/jan/11/priest-chain-tree-protest-euston-hs2-felling-plans-london
[58] Susan Archibald is a disability rights campaigner who shut down Trafalgar Square with fellow activists in 2012 when they chained their wheelchairs to traffic lights in a protest against the UK welfare assessment regime, then administered by Atos. See: Paterson, K., *WATCH: Scots wheelchair stunt activist hits out at Policing Bill,* The National, 24 November 2021, available at: https://www.thenational.scot/news/19739616.watch-scots-wheelchair-stunt-activist-hits-policing-bill/ and Liberty's series of videos showcasing the power of protest in which Susan is featured: https://www.libertyhumanrights.org.uk/fundamental/we-protest/
[59] Neary, H., *Extinction Rebellion's huge pink table torn down after Covent Garden protest,* MyLondon, 24 August 2021, available at: https://www.mylondon.news/news/west-london-news/extinction-rebellions-huge-pink-table-21390596
[60] HL Deb 24 Nov 2021, vol.816, col. 980
[61] Pg 125, HMICFRS, *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
[62] HL Deb 17 Jan 2022, vol.817, col. 1433

exacerbated by the power of the Secretary of State to determine what constitutes "serious disruption" by way of secondary legislation.

OFFENCE OF BEING EQUIPPED FOR LOCKING ON

44. Clause 2 creates a new criminal offence, targeting people who have an object with them in a public place with the intention that it will be used 'in the course of or in connection with' the commission, by any person, of the new offence of locking on. The punishment for this offence is an unlimited fine.

45. Our worries about the vague and potentially unlimited list of activities covered the offence of locking on are exacerbated by the ambiguity of the offence of being equipped for locking on. We note that the 'object' in the offence of locking on does not have to be related to a protest at all – it must simply be established that a person intended for it to be used in a certain way. Nor does the object have to be used by the person who has it in their possession; the offence refers to the commission by 'any person' of the offence. The phrase, 'in the course of or in connection with', casts an extremely wide net as to what activities might be criminalised under this offence.

46. Effectively, any person walking around with a bike lock, packet of glue, roll of tape or twine, or any number of other everyday objects could be at risk of having found to have committed this offence, so wide is the net cast by it. During debates on this amendment during the passage of the PCSC Act, Lord Paddick raised the following example: "You could buy a tube of superglue to repair a broken chair at home, then get caught up in a protest and be accused of going equipped for locking on."[63] Labour peer Baroness Chakrabarti further expressed concern for people possessing everyday items, that could be caught by these provisions: "I am worried about young people going about their business, sometimes riding to a demonstration or being in the vicinity of potential demonstrations, carrying bicycle locks."[64] The possibilities are endless: the phrase "used in the course of or in connection with" an offence of locking on by *any* person could include the provision of bottled water or food to other people "in connection with" their direct action of locking on, or potentially just having on one's person a mobile phone to livestream or record the action. This will not only have the effect of further deterring people from going to protests – or even walking in the vicinity of them – it could compound the criminalisation of people exercising their right to choose different methods of protest.

47. It is also significant that, unlike the substantive offence of locking on, there is no "reasonable excuse" defence in the wording of this offence, which means that individuals will find it even more difficult to challenge.

[63] HL Deb 24 Nov 2021, vol.816, col. 980
[64] HL Deb 24 Nov 2021, vol.816, col. 987

OBSTRUCTION OF MAJOR TRANSPORT WORKS

48. Clause 3 creates a new criminal offence, whereby a person will commit an offence if they obstruct an undertaker (e.g. a construction worker) in setting out the lines of any major transport works, constructing or maintaining any major transport works, or in taking 'any steps that are reasonably necessary for facilitating, or in connection with, the construction or maintenance of any major transport works' (clause 3(1)(a)). It will also be an offence to interfere with, move, or remove any apparatus which relates to the construction or maintenance of any major transport works, and which belongs to the undertaker (clause 3(1)(b)). There is a defence of 'reasonable excuse'. The maximum penalty for this offence is 51 weeks' imprisonment,[65] or a fine, or both.

49. The list of major transport works includes works in England and Wales relating to transport infrastructure, the construction of which is authorised directly by an Act of Parliament; or works the construction of which comprises development (defined in clause 3(7)) that has been granted development consent by an order under section 114 of the Planning Act.

50. Under human rights law, States have an obligation not to place unnecessary obstacles in the way of people wishing to protest, as well as a positive obligation to facilitate protest.[66] Any restrictions on the rights to freedom of assembly and freedom of expression must be defined in law, pursue a legitimate aim and be necessary and proportionate. Moreover, the right to freedom of assembly includes the right to choose the time, place and modalities of any protest.[67] As the Court of Appeal has held, protest "becomes effectively worthless if the protestor's choice of 'when and where' to protest is not respected as far as possible."[68]

51. Lord Rosser previously highlighted the particular impact that this offence will have on environmental protesters, remarking: "Frankly, we have reached a sorry state of affairs when we legislate still further specifically against those concerned about the proven threat of climate change and its impact on our way of life and that of our children and grandchildren, and the tardy action on environmental issues."[69] We share similar concerns, but further note that this offence criminalises a much broader range of acts – including the obstruction of not only actual construction work, but 'any steps that are reasonably necessary for *facilitating the construction or maintenance* of major transport works'. This is an extremely low threshold, and as such, we do not agree with the Home Ofice's assessment that this offence is sufficiently precise to be

[65] The offence provides that a person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both. If the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, the maximum sentence will be six months; (b) if the offence is committed after that time, the maximum sentence will be 51 weeks.
[66] *Ollinger v Austria*, Application no. 76900/01.
[67] *Sáska v. Hungary*, Application no. 58050/08.
[68] *Singh and ors, R (on the Application of) v Chief Constable of West Midlands Police* [2006] EWCA Civ 1118, at para 87
[69] HL Deb 17 Jan 2022, vol.817, col. 1433

foreseeable, and believe it risks disproportionately interfering with individuals' Article 10 and 11 rights. **As noted by Lord Beith, "[i]f you try to write legislation around an individual set of circumstances that has arisen, you get into trouble. You turn into general law attempts to deal with very specific cases."**[70] We reiterate our concerns about the heavy maximum sentence of 51 weeks' imprisonment, a fine, or both, that accompanies this offence.

52. We do not believe the 'reasonable excuse' defence is sufficient as a safeguard for the chilling effect that the offence could have on people. We also question the Home Office's superficial human rights analysis, that "the clause is proportionate as the court will take into account the specific facts". This does not actually say anything about whether the offence is necessary, nor how and the extent to which it adequately weighs individuals' fundamental rights to freedom of expression and assembly in the balance of rights.

INTERFERENCE WITH USE OR OPERATION OF KEY NATIONAL INFRASTRUCTURE

53. Clause 4 of the Bill creates an offence where a person does an act which interferes with the use or operation of key national infrastructure in England and Wales, intending or being reckless as to whether the act will interfere with the use or operation. Key national infrastructure is defined to include road transport, rail, air transport, harbour, downstream oil, downstream gas, onshore oil and gas exploration and production, electricity generating, and newspaper printing infrastructure. The maximum penalty for this offence is 51 weeks' imprisonment,[71] or a fine, or both.

54. Clause 4(4) defines 'interference' extremely broadly, as any act that "prevents the infrastructure from being used or operated *to any extent* for *any* of its intended purposes (emphasis added)." This low threshold appears to contradict with the Supreme Court's finding that deliberately obstructive protest can come under the protection of Articles 10 and 11, and risks criminalising an extremely wide range of activities. This includes where the use or operation of infrastructure is "significantly delayed" (clause 4(5)) – a term that is not defined in the offence.

55. One of the key ways that people seek to make their protests effective is to draw attention to sites of power. We echo our concerns above that the 'reasonable excuse' defence is insufficient to mitigating the harms of this offence.

[70] HL Deb 24 November 2021, vol.816, col. 986

[71] The offence provides that a person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both. If the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, the maximum sentence will be six months; (b) if the offence is committed after that time, the maximum sentence will be 51 weeks.

CONCLUSION

56. Our right to protest continues to be subject to attack by a Government intent on making it harder to stand up for a cause you believe in. Measures passed into law through the Police, Crime, Sentencing and Courts Act are yet to see the light of day and its expansive protest restrictions assessed for their effectiveness, human rights compatibility, or ability for police to manage extensive new powers yet the Government are already pushing through a Public Order Bill full of rehashed provisions that were resoundingly voted against just a matter of months ago.

57. At the same time, the Government have just passed legislation to introduce photographic voter ID and restrict judicial review, further limiting people's ability to make their voices heard at the ballot box and challenge public bodies in the courts. It hasannounced its intention to scrap the Human Rights Act and replace it with an inferior alternative that will make it harder for people to challenge violations of their rights and that will further centralise power in the hands of the executive. **Liberty urges Public Bill Committee members to oppose the Public Order Bill by supporting stand part amendments during Committee Stage.**

APPENDIX: SERIOUS DISRUPTION PREVENTION ORDERS (PROTEST BANNING ORDERS)

	On conviction	Otherwise than on conviction
How is it made?	A magistrate's court can impose an SDPO on an individual after they are sentenced or given a conditional discharge. The court can also adjourn proceedings for an SDPO until a later date.	A magistrate's court, on application by: 1) The chief police officer where P lives; 2) A chief police officer who believes that P is in, or intends to come to, their area; or 3) The chief constable of the British Transport Police Force, Civil Nuclear Constabulary, or Ministry of Defence Police
Conditions for imposing an SDPO	1) P has committed an offence. 2) The court is satisfied that the offence is "directly related to a protest" (clause 26). 3) P must have: i. Committed a 'protest-related offence'; ii. Committed a protest-related breach of an injunction for which they were found in contempt of court; iii. Carried out activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals or to an organisation in England and Wales; iv. Caused or contributed to the commission by any other person of a protest-related offence or a protest-related breach of an injunction; or v. Caused or contributed to the carrying out by any other person of activities related to a	The court is satisfied on the balance of probabilities that on at least two occasions in the last five years, P has been: i. Convicted of a protest-related offence; ii. Been found in contempt of court for a protest-related breach of an injunction; iii. Carried out activities related to a protest that resulted in or were likely to result in serious disruption to two or more individuals, or to an organisation, in England and Wales; iv. Caused or contributed to the commission by any other person of a protest-related offence or a protest-related breach of an injunction; or v. Caused or contributed to the carrying out by any other person of activities related to a protest that resulted or were likely to result in, serious

	protest that resulted in, or were likely to result in, serious disruption to two or more individuals, or to an organisation, in England and Wales.	disruption to two or more individuals, or to an organisation, in England and Wales.
Necessity	The court has to be satisfied that the SDPO is necessary to prevent P from: i. committing any 'protest-related offences' or 'protest-related' breaches of an injunction; ii. carrying out activities related to a protest that result in or are likely to result in serious disruption to two or more people or an organisation in England and Wales; iii. causing or contributing to the commission by any other person of such an offence/breaches of an injunction or the carrying out of such activities; or iv. protecting two or more people or an organisation from the risk of serious disruption arising from a protest-related offence, a protest-related breach of an injunction, or activities related to a protest.	