



Evidence submission to the Public Order Bill Committee by the National Police Chiefs' Council

The content of this correspondence has been drawn together following consultation with key chief officer leads and police forces that have recently experienced the impact of significant protest activity and disruption.

In any discussion on the policing of public order and protest it is imperative to restate that the provisions of the Human Rights Act 1998 are the foundation of all decisions made at all ranks from the strategic command to front line officers and staff. The positive and negative duties that the Act places upon policing, that have been reiterated in judicial rulings and inspections, are incorporated at every level of training, and refreshed and tested in reaccreditation.

They form the basis of any policing response with police commanders and officers always seeking to ensure that the response to any public order incident is proportionate, necessary, and legal; balancing the often-competing human rights of those involved or affected.

All police forces acknowledge and respect the importance of the right to protest in a democracy and overall, despite some notable cases, have a good record of getting the balance right. This is reflected and emphasised in the HMICFRS inspection 'Getting the Balance Right – An Inspection of how effectively the Police deal with Protests' that was published in March 2021.

We are clear that it is the rights of all that must be considered and that there is a duty to protect the rights of those who suffer serious disruption to their daily lives.

The NPCC is clear about its political independence, and we do not declare support or opposition to Bills before Parliament. This is for MPs and Peers to debate and scrutinise, but it is essential for the NPCC to provide operational knowledge and experience to inform the debate.

It is important to stress that the dynamics of protestor behaviour has transformed in recent years and the tactics and intent of those protesting has evolved. Where previously serious disruption and criminality were peripheral or ancillary to protest, they are often central to protestor activity with the disproportionate impact on the rights of people, communities, and businesses.

Notably, it has been seen that the targeting of national infrastructure not only has a debilitating impact on communities through serious disruption but also places enormous burden to resource the policing response and denudes the capacity to prevent and tackle crime.

We welcome any legislation that is clear, up to date, and enforceable – serving the realities of the modern protest landscape.

We have considered and will provide the collective policing view of each of the proposed clauses relating to public order policing. These will be set out below. In conjunction to these, there are also four areas of significant overarching factor that require further consideration:

- Impact of proposed legislation on policing of private land in relation to maintaining public order;
- Ensuring that organisations and businesses retain the responsibility to protect their own security;
- Clarity and guidance on the term 'serious disruption';
- Ensuring any powers are practicable and capable of application by front line officers and staff.

Police responsibilities on private land - The funding and resourcing of Home Office police forces is applied primarily to ensure effective policing of public spaces. Where criminal offences take place on private property, are serious in nature and impact on members of the public, police are granted specific powers to enter and respond accordingly. Existing legislation refers to 'public order' and predominantly deals with public spaces. The proposed wording of specific clauses as currently set out could in our view lead to an expectation or duty on the police to maintain order and deal with offences on private land or in private spaces where currently this is not the case. An example being that in many clauses the only place excluded is a 'dwelling'. The NPCC view is that this could significantly change the role and responsibilities of the police and place a responsibility to maintain order on private land.

Responsibility of businesses and landowners to maintain own security - Linked to this is a risk that policing may find itself in a position where it has responsibility for the security of private land and/or businesses. It was experienced by forces during recent environmental protest that some operators did not have sufficient security measures in place and were slow to react. There is a credible role for private security to play its part with businesses and landowners ensuring appropriate protection of their sites. We want to ensure that any new legislation does not inadvertently transfer or encourage reliance on policing for security or reduce the ability or necessity of organisations to obtain injunctions. This would not only be a fundamental change in the role of policing but would create a significant capacity issue that would detract from force's wider duties to prevent and detect crime.

Serious Disruption – Within public order legislation 'serious disorder, serious damage to property and serious disruption to the life of the community or intimidation of others' is a key phrase. The elements of serious disorder, serious damage and intimidation are accepted and clear. However, the term 'serious disruption' has been subject to much discussion and debate. Within any new legislation we would welcome clarity or guidance about the threshold and interpretation of this to allow operational commanders to best apply their operational responses.

Police powers that are practical for use on the front line – It is essential that any powers or legislation are straightforward and capable of use by officers and staff at all levels. Experience has shown that unless legislation is clear and simple for use in complex and fast-moving public order situations that it can fail to have the positive impact intended and sometimes create an expectation that cannot be met or lead to unintended issues.

All three of these points are referenced in our views relating to each clause of the Bill that pertains to public order policing that are set out below.

Extend stop and search powers for police to search for and seize articles suspected to be used for protest-related offences

With the increased use of articles and equipment to maximise the disruption caused by protest we have sought the power, within a specified area within a public place, to prevent items which could be used for the purpose of locking-on from entering that area, where it is reasonably believed that the carrier intends for those items to be used to cause serious disruption. We think that a power to search for such articles and then to seize them will allow policing to better balance the rights of protestors without preventing their right to protest.

A suspicion-based stop and search would either have some deterrent effect against those planning to 'lock-on' or allow police to intervene at an early stage more easily where intelligence exists to prevent serious disruption. Although currently the wording around 'intentionally or recklessly causing a public nuisance' is open to interpretation and would require additional guidance to prevent the onus and risk being placed on an individual officer when deciding to carry out a search. It would however, evidenced by experiences from forces, be difficult for an individual officer to have the overall picture necessary to make such a decision.

The ability to stop and search in a targeted area based on intelligence and an overall assessment would be more useful in proactively targeting those intent on causing serious disruption and preventing it. Any use of this would require clear rationale by a senior officer and engagement, wherever possible, with those impacted. Any use of it would be used proportionality taking into consideration our responsibilities under the Human Rights Act. This power provides more consistency in its use than suspicion-based stop and search, with clear opportunities for scrutiny and review of its use in the courts.

While similar in operation to powers under Section 60 of the Criminal Justice and Public Order Act 1994 we are clear that the desire is to have this as a standalone power given s60's specific use for preventing serious violence.

Importantly we recognise the intrusive nature of stop and search and the need to ensure the power is used proportionately and only in specific circumstances and under the provisions of both the Human Rights Act and Code 'A' of the Police and Criminal Evidence Act Codes of Practice.

Introducing new criminal offences of locking-on and going equipped to lock-on

The use of this tactic is deliberate and is designed to prolong any protest and causes significant disruption to the public and affected businesses. Often the sophistication of equipment not only takes hours to defeat but places the public and police personnel at risk.

We believe that an offence will act as a deterrent to some who may consider this tactic, and reduce the number of occurrences, or the complexity and numbers involved in any single event. We believe it would enable police to remove people more quickly and better balance the rights of protesters and those impacted by them.

However, we have some concerns about this offence applying on private land and believe there is a need for this to be tightly defined and restricted to public places.

In addition, we believe using the definition of "serious disruption to the community" may be preferable to "two or more people, or an organisation", as the former is more widely understood and will allow more effective application consistent with human rights legislation.

Introducing a new offence of obstructing major transport works and interference with key national infrastructure

With the recent activity around key national infrastructure such as roads and fuel we can see the utility of these offences for use in public spaces due to the potential for disproportionate disruption from direct action taken.

Currently there is no mechanism in law to recognise the additional negative impact that unlawful acts can have when focused directly on these key locations. Having a clear offence could also reduce the burden on other services of drafting and obtaining civil injunctions.

However, we believe that the question of the responsibility for policing of private land is key. There is a question about the definition of 'key national infrastructure', and we would have concern about an explicit duty being placed on policing to deal with activity on private land.

We would be concerned about the impact to our operational response were the responsibility, risks, and costs for securing these sites to be moved from private sector organisations to the police. The impact on police resources, especially for the forces where much of this key infrastructure resides, could be substantial. We believe there is potential for other agencies and organisations to have the powers which would go some way to prevent this.

We believe that there needs to be a strong rationale behind what is considered key national infrastructure, taking into consideration the potential impact of any disruption taking place, so that there is no risk to confidence in policing in being seen to protect private business interests or placing an unreasonable burden on policing that will detract from our core mission.

Introducing Serious Disruption Prevention Orders (SDPO), a new preventative court order targeting protestors who are determined to repeatedly inflict disruption on the public

Given the impact of recent events and the willingness of individuals to repeatedly engage in disruptive but low-level criminal behaviour we consider that there could be merit in these to deal with those most persistently causing disruption if the process is effectively and rigorously overseen by the courts. Ensuring that this is done via court order will give an additional layer of accountability and assurance to all.

While the additional monitoring of those receiving a SDPO could help provide opportunities for intervention, it may have significant costs in terms of monitoring and responding to, processing and prosecuting breaches. Electronic monitoring specifically would have a substantial infrastructure and ongoing monitoring cost.

We do have concerns about the potential impact that introduction of this kind of order could have on discouraging the use of injunctions, were the expectation to become that police will apply for SDPOs, which could have a significant resource implication on policing.

Make causing serious disruption by tunnelling, by being present in a tunnel, or being equipped for tunnelling, an offence

Whilst forces have experienced tunnelling in recent operations, we do not believe that a specific offence around tunnelling will add anything above and beyond our current available powers. A specific offence would likely not change how these are operationally handled as whatever the offence the practical safety considerations of dealing with people in tunnels would remain.

There is current legislation, such as that contained in the Criminal Damage Act 1971, that creates offences of damaging property and having article to damage property. With the associated powers of search these allow the Police to find articles or equipment intended to cause damage.

An additional significant concern is that any specific offence relating to tunnelling would apply to private land. This again could place a significant responsibility on policing. We ask that if considered that this offence is restricted to public places.

Provision for BTP and MOD Police to exercise certain powers in Part 2 of the Public Order Act 1986 in relation to assemblies and one-person protests

This would enable non-Home Office forces to impose conditions on assemblies, one person protests or to prohibit trespassory assemblies in the circumstances in which they have jurisdiction, as set out in s31(1) of the Railways and Public Safety Act 2003 or under s2 of the Ministry of Defence Police Act 1987 respectively. The view seems to have been taken that these powers are not available for these forces at present and would ensure all forces have appropriate powers to deal with assemblies.

Buffer zones around abortion clinics

UK police have a long history of facilitating peaceful protest and upholding the right to protest, while balancing it with the rights of others to keep the public safe, prevent crime and disorder. Policing will defend the right of women and girls to go about their business safely.

The impact from the perspective of operational policing of protests at abortion clinics is relatively limited, primarily affecting a small number of forces. However, where they do occur, they can be challenging to manage when an offence has been committed due to the high bar of proof under existing legislation (Public Order Act).

Public Space Protection Orders (PSPOs) exist and have been used to positive effect to prevent certain behaviour within specific areas, including in a few instances around abortion clinics. These additionally have the benefit of allowing those with concerns to raise them with a relevant body (i.e., the Council) without becoming involved in any potential criminal proceeding were it to be reported to the police or courts.

Processions, assemblies and one- person protest: delegation of functions

Amendment of Section 15 of the Public Order Act 1986 to allow Commissioners in London to delegate their powers to a Commander are in keeping with the delegation to Assistant Chief Constable in other forces.

The NPCC are committed to maintaining trust and confidence in this emotive and highly visible area of policing whilst ensuring that policing and respective forces continue to get the balance right between the rights of those who wish to protest alongside the rights of people, communities and businesses who directly or indirectly suffer serious impact to their daily lives.

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