

Written evidence submitted by Amnesty International UK (AIUK)

Executive summary

1. Peaceful protest is a human right that arises out of the Article 10 ECHR right to Freedom of Expression and the Article 11 ECHR right to Freedom of Peaceful Assembly. It is protected by the European Convention on Human Rights, the Human Rights Act and at common law. These articles establish a basic right to peaceful protest, any interference with which must be justified on grounds of legality, necessity and proportionality in pursuit of a limited set of legitimate aims. Conversely, states have a positive obligation to facilitate peaceful protest.

2. AIUK are concerned about the clauses in this Bill that interfere with protest rights and the wider context that they are a part of, in which a major legislative crackdown has been instituted against peaceful protest activity over the last few years.

3. Clauses 86-88 of the current bill create a new framework for criminalising the simple concealment of someone's identity, whether through a face covering or any other means, during a protest. This clause is premised on a false assumption that face-covering at a protest is inherently a suspicious or criminal act. There are in fact many good reasons for protesters to conceal their identity while protesting. Furthermore, the clause is extremely broadly defined and the safeguards attached to its use are insufficient.

4. Clause 89 criminalises simple possession of a pyrotechnic (broadly defined) at a protest. Again, the use of pyrotechnics to assault or endanger others, including police officers, are already legitimate criminal offences. Pyrotechnics such as flares and sparklers are not inherently means of engaging in violence, and in a protest, context can be used as legitimate forms of peaceful expression.

5. Clause 101 would extend police powers to issue a post-arrest caution with a condition attached that a person with limited leave to remain must leave the country. While not specifically a protest-related measure, the clause will particularly impact protesters and risks chilling legitimate participation in peaceful protest. People with limited leave to remain include workers, students, refugees, victims of trafficking and people on many forms of family visa. A failure to comply with the condition to leave makes a person liable to prosecution and near certain conviction for the offence for which the caution was issued. Therefore, despite not being a formal immigration decision that invalidates the person's leave, the effect of this clause is to place a considerable immigration power in the hands of a police officer. This is an entirely inappropriate power to hand to police officers, who are by definition operating outside of the due-process and rights protections that exist within the immigration system that determines someone's lawful immigration status.

6. Taken in isolation the clauses themselves raise varying degrees of concern from a human rights perspective, with some of them raising very significant concerns and others less so. However, of perhaps greater importance for Members to consider is the wider context of this being the fourth anti-protest bill put to Parliament in four years, the mounting criminalisation of peaceful protest, the imprisonment of peaceful protesters for longer than some serious violent offenders and the mounting international alarm at what is happening in this country to the exercise of fundamental rights to expression and assembly.

7. Given our concerns, we would urge Committee members to put the following questions to the Minister:

7.1 Clause 86-88

- a. What consideration has the government given to the many legitimate reasons for wearing a face covering at a protest?
- b. Why does the clause not contain a 'reasonable excuse' defence?
- c. How will police determine what constitutes a 'likelihood' of offences?
- d. What consideration has the Minister given to narrowing the range of offences that potentially act as a trigger to crimes of violence, given the broad terms under which public order legislation is now written?
- e. Is it the government's intention that a person who is wearing a face covering for religious or health reason should be exempt from arrest at a protest where this power is in effect?
- f. If not, why not? If yes, why has the liability for the offence been expanded to include simple concealment without reasonable belief of intent and the exemption made in the form of a defence after charge, rather than the exemption of 'no crime committed' as per the clause 89 pyrotechnics offence?

7.2 Clause 89

- a. Why is political expression in the form of protest being treated more harshly and with greater suspicion than 'cultural' or 'religious' expression in this clause?
- b. Why is criminalising simple possession necessary and proportionate to the problems the government says it has identified? Why not possession with intent?
- c. How will police officers determine whether an event is a 'cultural or religious event', or a protest?

7.3 Clause 101

- a. How will a police officer determine whether to attach an 'immigration condition' to a caution given to someone with lawful but limited leave to remain? What training will they receive? What factors and evidence will they take into account?
- b. How will a police officer determine whether compelling someone to leave the country in these circumstances would be in accordance with the police's own duties under Section 6 HRA to comply with Convention rights?
- c. How will a police officer determine whether compelling someone to leave the country in these circumstances would be in accordance with the UK government's wider domestic and international legal obligations?
- d. What appeal right or other legal challenge will be available to a person subject to an 'immigration condition' caution? Will legal aid be made available for such challenges?
- e. What consideration has the Minister given to the chilling effect of the threat of 'immigration cautions' on the exercise of peaceful protest rights?
- f. Why should a foreign national with limited leave to remain be treated more harshly, either by being compelled to leave the country or by being compelled to refuse a caution and face prosecution, than a person with citizenship or permanent residence for the same underlying action?

1. About Amnesty International UK and reason for response

1.1 AIUK is a national section of a global movement of more ten million people. Amnesty International is the world's largest grassroots human rights organisation. We – AIUK – are one of over 50 national Amnesty sections based in countries around the world. Our purpose is to protect individuals wherever justice, freedom and truth are denied. We undertake research and action focused on preventing and ending grave abuses of all human rights enshrined in the 1948 Universal Declaration of Human Rights, its associated treaties and other international human

rights instruments. We are independent of any Government, political party, ideology, economic interest, or religion.

1.2 Peaceful protest is a right that is protected under international law and in the UK's domestic law by the Human Rights Act (HRA). Although not directly enumerated in the European Convention that the HRA brings into domestic effect, it arises out of a combination of Articles 10 and 11 of the ECHR, which protect freedom of expression and peaceful assembly respectively. These articles establish a basic right to peaceful protest, any interference with which must be justified on grounds of legality, necessity and proportionality in pursuit of a limited set of legitimate aims.

1.3 What follows from this is that a fundamental consideration in the protection of the right to protest under the Convention (and other international instruments that the UK is a party to) is that it relates to 'peaceful' rather than 'lawful' protest. The free exercise of protest rights is to be the default position, with interferences with that right (including criminalisation) being treated as inherently suspect and subject to a high burden of justification. It must be this way, or else the Convention would be unable to protect people from having their fundamental rights to expression and assembly criminalised.

1.4 Yet over the last few years, the previous UK government passed a raft of increasingly draconian legislation for England & Wales which expressly targets the exercise of peaceful protest rights.³ This crackdown, which was instigated in response to an upswing in the exercising of such rights by activists for the environmental movement, racial justice, opposition to Brexit and most recently against the actions of the Israeli military in Gaza and the West Bank, has attracted international attention from human rights monitors⁴ and considerable concern amongst domestic civil society.⁵ Over a slightly longer but similar period, the courts have contributed to this restriction on peaceful protest activity through their development of anti-protest injunctions, with sweeping application and significant consequences for those affected by them.

1.5 Measures in the Crime and Policing Bill, with some significant alterations discussed below, are largely repeated from the last government's Criminal Justice Bill and must therefore be understood in their broader context, as part of an ongoing and far-reaching legislative crackdown on the exercise of peaceful protest rights.

Introduction

1.6 The Police, Crime, Sentencing and Courts Act 2022, the Public Order Act 2023, the Serious Disruption Regulations and last year's Criminal Justice Bill all either involved or were entirely directed at curtailing the peaceful but disruptive exercise of protest rights. Despite a change of government, it is particularly disappointing to see the same policy agenda being pursued through the current bill. It must be remembered that the UK authorities have a positive obligation to facilitate peaceful protest,¹ yet legislation over the last few years, including the present bill, has all been orientated towards imposing more and more restrictions. Aside from the risks these laws pose of placing the UK in breach of its various Convention rights obligations, this whole package of laws and the political rhetoric around them risks delegitimising the act of public protest, impinging on how public protests are policed and intimidating people into not participating in one of the fundamental building blocks of free and rights-respecting societies.

¹ See *Öllinger v. Austria*, 2006; *Djavit An v. Turkey*, 2003; *Oya Ataman v. Turkey*, 2006; and *Gün and Others v. Turkey*, 2013

1.7 As will be discussed below, taken in isolation the clauses themselves raise varying degrees of concern from a human rights perspective, with some of them raising very significant concerns and others less so. However, of perhaps greater importance for Members to consider is the wider context of this being the fourth anti-protest bill put to Parliament in four years, the mounting criminalisation of peaceful protest,² the imprisonment of peaceful protesters for longer than some serious violent offenders³ and the mounting international alarm at what is happening in this country to the exercise of fundamental rights to expression and assembly.⁴

2. The Clauses

2.1 Clauses 86-88 – Concealing Identity at Protests

2.1(1) Police already have a power to require a person to remove a face covering when an officer reasonably believes that the person is wearing the covering wholly or mainly for the purposes of concealing identity. Failure to comply is a criminal offence.⁵ Clauses 86-88 of the current bill circumvent the issue of police requiring a face covering to be removed and create a new framework for criminalising the simple concealment of someone's identity, whether through a face covering or any other means, during a protest. While it is not a blanket power applicable to all protests, police will be entitled to activate the power where they determine that a protest has involved or is likely to involve the commission of offences and it would be expedient to ban the concealment of identity to prevent or limit those offences.

2.1(2) This new power is a revised version of what was proposed in last year's Criminal Justice bill.⁶ It comes from a context in which political opponents of the marches campaigning against the Israeli military's actions in Gaza sought to delegitimise those marches and compel a more draconian police response to those marches.

2.1(3) It is a common, peaceful and entirely legitimate act to wear a face covering at a protest, and there is no justification for a presumption that someone wearing a face covering or otherwise seeking to conceal their identity at a protest is intent on violence. People wear face coverings for multiple reasons, including religious and health reasons, but also out of concern for racial profiling and the increasing police reliance on deeply flawed facial recognition technology. Others may be afraid of family, community members or employers finding out about their legitimate political views or actions. Many people who Amnesty International works with wear face coverings at protests because they are political dissidents concerned for their safety or the safety of their family if their political activities are identified by agents of the state they have fled.⁷

² See e.g. Police Crime Sentencing and Courts Act 2022 s75, s78; Public Order Act 2023 ss1-7

³ As noted above, the maximum sentence for public nuisance is 10 years. Peaceful protesters have been sentenced to four years imprisonment for public nuisance.

⁴ See e.g. <https://www.ohchr.org/en/press-releases/2023/04/un-human-rights-chief-urges-uk-reverse-deeply-troubling-public-order-bill>; https://unece.org/sites/default/files/2024-01/Aarhus_SR_Env_Defenders_statement_following_visit_to_UK_10-12_Jan_2024.pdf; <https://rm.coe.int/report-on-the-visit-to-united-kingdom-from-27-june-to-1-july-2022-by-d/1680a952a5>

⁵ Criminal Justice and Public Order Act 1994, s60AA

⁶ Criminal Justice Bill 2023, Amendment Paper Gov NC96

⁷ See e.g. <https://www.amnesty.org.uk/press-releases/uk-campaigners-call-prime-minister-protect-activists-uk-long-arm-hong-kong-law>

2.1(4) Given the scale at which face coverings are routinely worn on protests, the effect of these new powers will be to turn otherwise lawful exercises of the rights to freedom of expression and assembly into mass criminal events. This will in turn necessitate a much more heavy-handed police response to protests; something that the political opponents of recent protest marches have been overtly seeking.

2.1(5) Aside from the general principle of the legitimacy of face covering at protests, the proposed safeguards attached to the new power appear entirely insufficient. The limitation that it can only be used in circumstances where criminal offences are ‘likely’, or have, occurred is undermined in circumstances where a vast array of peaceful protest acts have already been subject to overly broad criminalisation during the recent anti-protest crackdown.⁸ It is notable that the power is worded in such a way that the ‘likelihood’ of *any* quantity of offences of *any* severity would be sufficient to justify the imposition of the criminal ban. Someone alleged breaching a s12 condition, for example, would be sufficient to justify the imposition of the ban. Yet, in practical terms a large protest march in London involving tens or hundreds of thousands of people (as has been common recently) will almost inevitably bring with it a ‘likelihood’ that a small number of offences will occur. Even in circumstances, as has been the case with the Gaza protests, where the number of arrests is very small and the overwhelming majority of protesters conduct themselves peacefully and lawfully, police could justify imposing the ban. In practice, the ‘likelihood’ test means that the ban could be imposed on any large-scale demonstration, or indeed any other demonstration where a subjective judgment of ‘likelihood’ of offences is made.

2.1(6) There is a long-established principle in Article 10 and 11 jurisprudence that protesters as a whole on a demonstration should not be punished or have their rights curtailed because of the criminalised actions of individuals amongst them.⁹ The fact (discussed above) that many protesters need to wear a facial covering in order to exercise their peaceful protest rights means that this principle is risked by such a sweeping power to ban their means of protecting themselves.

2.1(7) Meanwhile, the exemptions for the offence in relation to religious, health or work reasons for concealing identity leave large areas of entirely legitimate conduct unprotected. These range from wearing a scarf and hat on a cold day to holding a placard in such a way that another person’s identity in a large crowd is unknowingly concealed. The offence takes not account of the idea that a person may need a face covering in order to safely exercise their Article 10 and 11 rights, whether by means of a ‘reasonable excuse’ defence or some other wording.

2.1(8) With regards to the safeguards that do exist, if it is the case that the government intends for those who wear face coverings for religious or health reasons to be exempt from the ban, it is unclear why it has chosen the form of words that it has. Firstly, it has expanded the terms of the offence from that which the previous government proposed this time last year. In the previous bill the offence was made out when an officer ‘reasonably believed’ that a person was wearing a face covering ‘**wholly or mainly for the purpose** of concealing identity’,¹⁰ implying considerations of intent and the potential for alternative reasons for someone’s face to be covered to be considered before a person is arrested. The offence in the current bill, on the other hand, is made out simply by a person with a face covering that has the effect of concealing their identity.¹¹ Secondly, it has introduced a form of exemption for religious or

⁸ See e.g. Police Crime Sentencing and Courts Act 2022 s75, s78; Public Order Act 2023 ss1-7

⁹ See e.g. *Primov and Others v. Russia*, 2014, § 155; and *Shmorgunov and Others v. Ukraine*, 2021

¹⁰ Criminal Justice Bill 2023, Amendment Paper Gov NC96, (1)(b)

¹¹ Crime and Policing Bill 2025, Clause 86 (1)(b)

health reasons but made this a defence to a charge, which implies that a person could and would still be lawfully arrested for wearing a religious or health covering and would be required to prove their religious or health reason to the satisfaction of the CPS or a magistrate after the fact. This is to be contrasted with the wording of the exemption from the ban contained in clause 89 of the same bill for possession of pyrotechnics at a cultural or religious event. This exemption is worded in a way that makes clear that no arrest should take place in these circumstances, by stating that ‘no offence is committed’ if a pyrotechnic is possessed in the relevant circumstances.¹² The choice not to use this form of words in relation to religious, work and health reasons for concealing identity appears to be a deliberate one.

2.1(9) To be clear, the concern here is not so much about individuals being wrongly convicted of unlawfully concealing their identity when they had a religious or health reason for doing so. The concern is about police use of the power to make arrests at a protest, and then the burden of proof being on the individual to justify themselves after the fact. This would be a major interference with the Article 10 and 11 rights, and may well also constitute interference with article 14 rights not to be discriminated against in the exercise of their rights, even if the person’s **case never went to trial or conviction.**

Questions for the Minister

- **What consideration has the government given to the many legitimate reasons for wearing a face covering at a protest?**
 - **Why does the clause not contain a ‘reasonable excuse’ defence?**
 - **How will police determine what constitutes a ‘likelihood’ of offences?**
 - **What consideration has the Minister given to narrowing the range of offences that potentially act as a trigger to crimes of violence, given the broad terms under which public order legislation is now written?**
 - **Is it the government’s intention that a person who is wearing a face covering for religious or health reason should be exempt from arrest at a protest where this power is in effect?**
 - **If not, why not?**
 - **If yes, why has the liability for the offence been expanded to include simple concealment without intent and the exemption made in the form of a defence after charge, rather than the exemption of ‘no crime committed’ as per the clause 89 pyrotechnics offence?**

2.2 Clause 89 – Pyrotechnics at a Protest

2.2(1) This clause criminalises simple possession of a pyrotechnic (broadly defined) at a protest. It has been adopted from last year’s Criminal Justice Bill, but with the addition of a protection for circumstances where the person is participating in a cultural or religious event.

2.2(2) The use of pyrotechnics to assault or endanger others, including police officers, are already legitimate criminal offences. Pyrotechnics such as flares and sparklers are not inherently means of engaging in violence, and in a protest context can be used as legitimate forms of peaceful expression; presumably hence the acknowledgment that they can be appropriate in a ‘cultural or religious’ event. In a protest context, they can add vibrancy and visual potency to an event and a campaigning message that protesters are trying to get across. There is no reason why, for example, a flare used peacefully in pursuit of communicating a political message should be regarded as so inherently criminal that simple possession of one (even without any intent, let alone any actual use in a violent or dangerous way) should

¹² Crime and Policing Bill 2025, Clause 89 (2)

criminalised, while the same flare used to communicate a cultural or religious message should not be. Political expression attracts a high degree of protection within Article 10 ECHR case law.

2.2(3) It is also not immediately apparent how police are to be expected to determine what constitutes a cultural or religious event in a way that distinguishes it from a protest. Cultural or religious events frequently include elements that would be regarded as expressing a protest, while protests frequently occur during or against the backdrop of cultural or religious events.

Questions for the Minister

- **Why is political expression in the form of protest being treated more harshly and with greater suspicion than ‘cultural’ or ‘religious’ expression in this clause?**
- **Why is criminalising simple possession necessary and proportionate to the problems the government says it has identified? Why not possession with intent?**
- **How will police officers determine whether an event is a ‘cultural or religious event’, or a protest?**

2.3 Clause 90 & Schedule 11– Climbing on War Memorials

2.3(1) This clause criminalises climbing on war memorials that feature in the Historic England National Heritage Category 1 list. While in isolation this may not raise significant human rights concerns, it bears repeating that restrictions such as this come as part of an ongoing legislative crackdown on protest rights. This crackdown risks having the effect, if not the aim, of chilling and suppressing participation in protest by creating an environment in which peaceful protest is regarded as a suspect activity and those that engage in it appropriate targets for aggressive policing.

2.4 Clause 101 – Issuing Cautions with Immigration Conditions

2.4(1) This clause would extend police powers to issue a post-arrest caution with a condition attached that the person must leave the country. At the moment such ‘immigration condition’ cautions are only applicable to people with no valid leave to be in the UK or people who are already subject to removal directions or a deportation order.¹³ Clause 101 would extend ‘immigration condition’ cautions to someone with valid, limited leave to remain in the UK.

2.4(2) People with limited leave to remain in the UK include:

- students,
- recognised refugees,
- people on working visas
- recognised victims of trafficking
- people whose family life rights require their lawful presence in the UK
- people who are at risk of persecution or trafficking but who are lawfully resident with another visa

2.4(3) A failure to comply with the condition to leave makes a person liable to arrest and prosecution for the offence for which the caution was issued. The person’s ‘admission’ of the offence, which is necessary for the caution to be issued, may be relied upon in any prosecution, making conviction a near certainty. Therefore, despite not being a formal immigration decision that invalidates the person’s leave, the effect of this clause is to place a considerable immigration power in the hands of a police officer. This is because the officer will be requiring

¹³ s134, Legal Aid, Sentencing and Punishment of Offenders Act 2012

someone to leave the UK on pain of prosecution, even though the person is lawfully here, is not legally liable to be removed from the country and there is no decision by the immigration authorities that they should be required to leave.

2.4(4) This is an entirely inappropriate power to hand to police officers, who are by definition operating outside of the due-process and rights protections that exist within the immigration system that determines someone's lawful immigration status. These include within the Home Office's own immigration determination system, and the independent appeals mechanism of the Tribunal system. As the list of people potentially caught by this power demonstrates, there are a myriad of considerations that go into determining a person's continued immigration status in the UK which a police officer is simply not capable of determining. A custody sergeant issuing a caution cannot possibly know, for example, whether a person is at real risk of persecution or modern slavery, or if a person has caring responsibilities for a UK national family member that cannot be sufficiently met by someone else. Likewise, the Custody Sergeant cannot possibly know whether their decision, if it were actioned, would place the UK in breach of its domestic and international legal obligations. Even aside from the risks to the rights of the individual being cautioned, a Custody Sergeant cannot possibly know the wider implications of requiring someone's carer, or employee or even student to leave the country.

2.4(5) It may be said that the person does not have to accept the caution, or may simply choose not to abide by its conditions, but these possibilities provide no defence for the power. They simply mean that there are three possible scenarios that arise from its use, all of which are discriminatory:

- i) A person whose culpability has been assessed as only meriting a caution, is compelled to reject it simply because being required to leave the country is so unreasonably threatening that they cannot accept it. They are therefore subject to a full prosecution when someone else in the same circumstances would not have been.
- ii) Another person in a similar situation, who accepts the caution but still cannot leave, is put in a position where their offence is effectively escalated to full prosecution and almost certain conviction by the consequence of not leaving.
- iii) A third person is additionally penalised by being menaced out of the country in circumstances that may be harmful to them or others, including family, for reasons that have nothing to do with the seriousness of any offence.

2.4(6) While this power is not inherently a public order or protest power, one of its further discriminatory effects will be a significant interference and chilling effect on the peaceful protest rights of foreign nationals lawfully present in this country.

2.4(7) It is relatively common practice for police to make arrests at protests that ultimately only result in a caution. This may be because of varying levels of evidential justification for those arrests, or it may be because of the effect of Article 10 and 11 protections for peaceful protest, which still attach to some forms of low-level criminal offences allegedly committed at protests and require proportionate penalties.¹⁴ Meanwhile, students, for example, are well known as frequent participants in protest, but alongside them can also be put international political

¹⁴ Article 10 and 11 ECHR protect peaceful, rather than non-criminal protest. Within this system, some actions may be legitimately criminalised, but still subject to a level of human rights protections which require that the punishment attached to the action takes into account the fact of them being peaceful exercises of expression and assembly rights. For further discussion of these principles, see the recent Court of Appeal judgment in *Hallam & Ors v Rex* <https://www.judiciary.uk/wp-content/uploads/2025/03/R-v-Hallam-and-Others-Judgment.pdf>

dissidents protesting the regimes of their home countries¹⁵ or international professionals such as medics and others protesting the foreign policies of the UK government or the actions of foreign governments.¹⁶ If subject to arrest and caution, such protesters will be faced with the discriminatory choices set out above. Alternatively, they may decide not to participate in peaceful protest at all out of fear of police propensity to arrest and then caution protesters, and therefore suppress their Article 10 and 11 rights for fear of being put in the position described above.

Questions for the Minister

- **How will a police officer determine whether to attach an ‘immigration condition’ to a caution given to someone with lawful but limited leave to remain? What training will they receive? What factors and evidence will they take into account?**
- **How will a police officer determine whether compelling someone to leave the country in these circumstances would be in accordance with the police’s own duties under Section 6 HRA to comply with Convention rights?**
- **How will a police officer determine whether compelling someone to leave the country in these circumstances would be in accordance with the UK government’s wider domestic and international legal obligations?**
- **What appeal right or other legal challenge will be available to a person subject to an ‘immigration condition’ caution? Will legal aid be made available for such challenges?**
- **What consideration has the Minister given to the chilling effect of the threat of ‘immigration cautions’ on the exercise of peaceful protest rights?**
- **Why should a foreign national with limited leave to remain be treated more harshly, either by being compelled to leave the country or by being compelled to refuse a caution and face prosecution, than a person with citizenship or permanent residence for the same underlying action?**

2.5 Reports of Religious Buildings Restrictions

2.5(1) The government has briefed the media to expect further government amendments to this bill, which would give police powers to impose conditions on protests that would ‘change the route or timing of protest marches planned outside places of worship’ on the basis that this will ‘give greater protection against intimidation’.¹⁷ At the time of writing these amendments have not yet been tabled and so it is not possible to analyse the detail of the proposals. They appear likely to be amendments to sections 12 and 14 of the Public Order Act 1986, which are the underlying legal powers for police to impose conditions on protests.

2.5(2) We will provide a further briefing on this proposal once the amendments are published. For now, we will simply note that the Section 12 and 14 powers are already extremely broad and were made broader still by the legislative crackdown described earlier in this briefing. We would therefore have concerns if these proposals expand them even further.

¹⁵ See e.g. <https://www.amnesty.org.uk/press-releases/uk-campaigners-call-prime-minister-protect-activists-uk-long-arm-hong-kong-law>

¹⁶ See e.g. <https://www.amnesty.org.uk/press-releases/uk-mass-solidarity-protest-outside-st-thomas-hospital-detained-palestinian-medics>

¹⁷ <https://www.theguardian.com/uk-news/2025/mar/27/police-to-block-intimidating-protests-near-places-of-worship-says-home-office>