



BRIEFING PAPER

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Police, Crime, Sentencing and Courts Bill: Part 3 and 4, Public order and unauthorised encampments

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Summary

This briefing paper is one of a collection of Commons Library briefing papers on the Protection of the [Police, Crime, Sentencing and Courts Bill](#) (the Bill). It deals only with the provisions in **Part 3 and 4** of the Bill which concern police powers related to protests and unauthorised encampments. Briefing papers dealing with other parts of the Bill and general background, are available on the [Commons Library website](#).

Parts 3 and 4 of the *Police, Crime, Sentencing and Courts Bill* (the Bill) would amend various pieces of public order law, making significant changes to how protests and unauthorised encampments (Gypsy and Traveller sites associated with trespass) are policed.

Protests

Part 3 (clauses 54 to 60), of the Bill would make major changes to the way protests are policed in England and Wales:

- **Clauses 54 to 56 and 60** would amend police powers in the *Public Order Act 1986* so police can impose conditions on protests that are noisy enough to cause “intimidation or harassment” or “serious unease, alarm or distress” to bystanders.
- **Clauses 57 and 58** would amend provisions in the *Police Reform and Social Responsibility Act 2011* to expand the “controlled area” around Parliament where certain protest activities are prohibited. It would also add obstructing access to the Parliamentary Estate to the activities prohibited in the “controlled area”.
- **Clause 59** would abolish the common law offence of public nuisance and replace it with a new statutory offence of “intentionally or recklessly causing public nuisance”.

The Bill’s [Explanatory Notes](#) say the measures are necessary because recent

changes in the tactics employed by certain protesters, for example gluing themselves to buildings or vehicles, blocking bridges or otherwise obstructing access to buildings such as the Palace of Westminster and newspaper printing works, have highlighted some gaps in current legislation.

Unauthorised encampments

Part 4 (clauses 61 to 63) of the Bill would amend the *Criminal Justice and Public Order Act 1994* (CJPOA) to:

- create a new offence of “residing on land without consent in or with a vehicle”.
- amend the existing police powers associated with unauthorised encampments in the CJPOA to lower the threshold at which they can be used, allow the police to remove unauthorised encampments on (or partly on) highways and prohibit unauthorised encampments moved from a site from returning within twelve months.

Reaction

Parts 3 and 4 are amongst the most controversial provisions in the Bill.

Her Majesty’s Inspectorate of Constabulary, Fire & Rescue Services has given their “qualified support for.... Home Office proposals for changes in the law”. They say they “would [improve the effectiveness of protest policing](#), as long as they are applied proportionately and in line with human rights law”. Human rights advocates have not

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agreed. Gracie Bradley (the Director of *Liberty*) says the provisions concerning **protest** will "[undermine protest, which is the lifeblood of a healthy democracy](#)".

The Government's pre-legislative consultation regarding **unauthorised encampments** generated a number of organised campaigns in opposition including an [e-petition which garnered 134,932 signatures](#). The petition called the Government's proposed criminal offence "extreme, illiberal and unnecessary".

The Government says there is an "[appetite to extend powers available to the police when dealing with unauthorised encampments](#)" particularly from local authorities. It says it the new offence, in combination with its proposed amendments to the CJPOA will

give police the tools to deal with a variety of harms caused by unauthorised encampments in a proportionate, effective and efficient manner.

It says the new offence will not affect ramblers and that its intention is to "deter trespassers from setting up or residing on an unauthorised encampment."

1. Background: Part 3, public order

Part 3 (clauses 54 to 60) of the *Police, Crime, Sentencing and Courts Bill* (the Bill) would make major changes to the way protests are policed in England and Wales:

- **Clause 54 to 56 and 60** would amend police powers in the *Public Order Act 1986* so police can impose conditions on protests that are noisy enough to cause “intimidation or harassment” or “serious unease, alarm or distress” to bystanders.
- **Clause 57 and 58** would amend provisions in the *Police Reform and Social Responsibility Act 2011* to expand the “controlled area” around Parliament where certain protest activities are prohibited. It would also add obstructing access to the Parliamentary Estate to the activities prohibited in the “controlled area”.
- **Clause 59** would abolish the common law offence of public nuisance and replace it with a new statutory offence of intentionally or recklessly causing public nuisance, following recommendations made by the Law Commission in 2015.

The Bill’s Explanatory Notes say the measures are necessary:

Recent changes in the tactics employed by certain protesters, for example gluing themselves to buildings or vehicles, blocking bridges or otherwise obstructing access to buildings such as the Palace of Westminster and newspaper printing works, have highlighted some gaps in current legislation.¹

In September 2020, Kit Malthouse (the Minister for Crime and Policing) promised the House of Commons the Government would make sure the police have “exactly the tools they need, from a legal and practical point of view” to respond to challenging protests.²

The Home Office has asked Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services to conduct a new inspection of the police response to protest, including an assessment of the legislative framework for police powers.³ The Inspectorate published its [report](#) on 11 March 2021 (two days after this Bill was introduced to Parliament). HMICFRS offered their “qualified support for.... Home Office proposals for changes in the law”.⁴

¹ ENs, para 67

² HC Deb, [Birmingham Attacks and Extinction Rebellion Protests](#), 7 September 2020, c388

³ HMICFRS, [Terms of reference: inspection of the policing of protests](#), 5 October 2020

⁴ HMICFRS,

Much of the information in this section is taken from the Library briefing [police powers: policing protests](#). That briefing provides further information about the current police powers and guidance connected with protest.

1.1 Human rights

The right to freedom of expression and assembly are fundamental aspects of a liberal democratic society. These rights ensure that people have the freedom to peacefully protest. Articles 10 and 11 of the European Convention of Human Rights (ECHR) provide for these rights.

Article 10 of the ECHR provides for the right to “freedom of expression”. It states that individuals have:

freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.⁵

Article 11 provides for the “freedom of peaceful assembly and freedom of association with others”.⁶

The UK is a signatory of the ECHR and therefore obliged to ensure that ECHR rights are protected. UK citizens can take cases to the European Court of Human Rights if they think their convention rights have been breached and they have exhausted any potential domestic remedies.

The [Human Rights Act 1998](#) gave domestic effect to the ECHR. This means that individuals can bring claims based on breaches of Convention rights before the UK courts. [Schedule 1](#) of the Act sets out the Articles of the Convention. [Section 2](#) of the Act requires UK courts to ‘take account’ of judgments of the European Court of Human Rights (ECtHR) when considering a claim concerning Convention rights. However, the UK courts are not bound to follow judgments of the ECtHR.

The rights to freedom of expression and assembly guaranteed by Articles 10 and 11 are ‘qualified rights’ rather than ‘absolute rights’. This means that interference with these rights may be justified if the basis for doing so is clearly set out by the law; it is necessary in pursuit of a legitimate aim; and the interference is proportionate to that aim. Legitimate grounds for restricting these rights include national security or public safety; the prevention of crime or disorder; and, the protection of the rights and freedoms of others.

Police powers to restrict protests must therefore be exercised in a way that is proportionate to one of these aims in order to be compatible with the ECHR. This includes a positive duty to protect those exercising their right to protest peacefully.⁷

⁵ [European Convention on Human Rights](#), Article 10

⁶ *Ibid*, Article 11

⁷ *Ibid*

1.2 A case for legislative reform?

Several recent high-profile protest events have resulted in fresh calls to reform the policing of protests. Concerns have been raised with the policing of simultaneous protests, the ability of the police to move non-violent protests causing serious disruption and the police response to the use of insulting language.

Simultaneous protests

Extinction Rebellion (XR) members took part in two London “uprisings” in 2019, a “spring uprising” in April and an “autumn uprising” in October. Both uprisings lasted several days and involved multiple protest sites across central London. The existence of multiple simultaneous protest sites made the use of section 14, *Public Order Act 1986* orders complex.

Section 14, *Public Order Act 1986*

Section 2.1 of this briefing provides a description of all of the police’s powers in the 1986 Act. [Section 14](#) of the *Public Order Act 1986* allows senior police officers to issue directions to persons taking part in, or planning, a static protest. Whilst the police can impose *any condition necessary* on a protest march, they can only impose conditions on static protests which specify where a protest can take place, for how long it can last and how many people can be involved.⁸

Senior police officers can only issue a direction on a protest under the *Public Order Act 1986* if they “reasonably believe”:

- the protest may result in serious public disorder, serious damage to property or the serious disruption to the life of the community; or,
- the purpose of the protest is to intimidate others and compel them “not to do an act they have a right to do, or to do an act they have a right not to do.”⁹

Protestors who do not comply with a police direction are committing an offence. Before arresting somebody for such an offence, the police should inform them they are in breach of the condition and give them an opportunity to follow it. Those convicted of not complying with a condition can be fined or imprisoned.¹⁰

During the spring uprising the Metropolitan Police Service (MPS) issued numerous section 14 orders on individual XR gatherings. These orders required the protestors to move to Marble Arch. They were designed to limit their ability to disrupt transport networks. The process of issuing orders and arresting those who were non-compliant was at times slow and some commentators questioned why the police were not using force to move the protestors quickly.¹¹

Following the protest, MPS Commander Adrian Usher questioned whether the 1986 Act provided them with appropriate powers to deal with this kind of protest:

⁸ s14(1), *Public Order Act 1986*

⁹ s12(1) and s14(1), *Public Order Act 1986*

¹⁰ s12(10) and s14(10), *Public Order Act 1986*

¹¹ *Financial Times*, [Climate protests unsettle police and politicians](#), 18 April 2019

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We will conduct a sober review of our tactics against recent protests, which is likely to say that the legislation associated with policing protest is quite dated, that policing and protest has moved on and that legislation should follow suit.¹²

The MPS' use of section 14 during the autumn uprising was found unlawful in the High Court. Initially the MPS issued similar orders to those during the spring uprising. However, protestors continued to move around London regrouping at different locations to avoid police action.¹³ In response the police issued an unusual section 14 order. An order issued on 14 October 2019 stated:

Any assembly linked to the Extinction Rebellion 'Autumn Uprising'... must now cease their protest(s) within London (Metropolitan Police Service, and City of London areas) by 21:00hrs [on Monday] 14th October 2019.¹⁴

The order was unusual in that this single order applied across London. This contrasts to the police's previous approach, issuing separate orders on individual XR gatherings.

The MPS lifted the October 14 order four days later stating that it was "no longer necessary". During the autumn protest the police arrested 1,832 people. Some of those arrested were charged with failing to comply with the above section 14 orders issued by the MPS.¹⁵

Human rights campaign groups were immediately critical of the section 14 order issued on the 14 October. Amnesty International and Liberty both argued that it was a disproportionate response to the XR protests.¹⁶

Several XR protestors challenged the October 14 order in the courts. On 6 November 2019 the High Court concluded the decision to impose the order had been unlawful.¹⁷

In *R. (on the application of Jones) v Commissioner of the Police of the Metropolis* [2019], the High Court found the 14 October order unlawful. There were two main reasons for this:

- Because it wrongly treated the XR demonstrations as one single protest. The court found that section 14 powers can only be used to place conditions on a specific single protest and not a group of connected protests happening in different locations at the same time.¹⁸

¹² Joint Committee on Human Rights Uncorrected oral evidence: Democracy, privacy, free speech and freedom of association, HC 1890, Wednesday 24 April 2019, Q12

¹³ [EWHC 2957](#), paragraphs 24-27

¹⁴ Metropolitan Police, [*UPDATE* Conditions imposed on Extinction Rebellion protests](#), 15 October 2019

¹⁵ Ibid

¹⁶ Amnesty International UK, [Extinction Rebellion blanket ban chilling and unlawful](#), 15 October 2019 & Liberty, [The Met's XR protest ban is 'grossly disproportionate'](#), 15 October 2019

¹⁷ [EWHC 2957](#), paragraph 72

¹⁸ [EWHC 2957](#), paragraphs 65-69

- Because it effectively enabled the MPS to prohibit future protests. A power not intended by section 14 of the *Public Order Act 1986*.¹⁹

Assistant Commissioner of the MPS Nick Ephgrave commented following the judgment. He said that the

...case highlights that policing demonstrations like these, within the existing legal framework, can be challenging.²⁰

Liberty and Amnesty International both welcomed the judgment. Liberty said the ruling would “help safeguard future protests from police overreach”.²¹ Amnesty International said there must now be “no repeats of this attempt to suppress legitimate non-violent protest”.²²

Difficulty moving protestors

Several recent protests have involved “sit ins”. Protestors make it hard for police to move them by using tactics like “lock-on”. Lock-on involves protestors affixing themselves (using a variety of techniques) to objects or buildings. These tactics do present police with challenges, but they are not particularly novel.²³ The police have been able to use existing laws (like obstruction of the highway and aggravated trespass) to respond to these sorts of protests.

XR newspaper protests (September 2020)

During Extinction Rebellion (XR) protests in September 2020, XR members erected bamboo structures, some glued themselves to these structures, outside of multiple printing presses for News Corp newspapers (the Sun and the Times). The papers were the target of XR protests for failing to “report on the climate and ecological emergency”.²⁴

Police personnel from multiple forces across the UK were involved in responding to the protests. Eighty-one protesters were arrested and charged with obstruction of the highway at protests in Broxbourne and Knowsley. Protests in Scotland resulted in no arrests because “no disruption was caused”.²⁵ Protestors erected the bamboo structures on the evening of 4 September 2020, the protests were cleared by the afternoon of 5 September 2020.²⁶ Herefordshire Police said the operation required “highly specialist resources and cutting equipment in order to safely remove the protesters from their locations”.²⁷

¹⁹ Ibid, paragraph 71

²⁰ Metropolitan Police, [Statement on judgement re Extinction Rebellion protests](#), 6 November 2019

²¹ Liberty, [Extinction Rebellion High Court win a ‘victory for protest rights’](#), 6 November

²² Amnesty International UK, [Police ban on Extinction Rebellion protests unlawful, court rules](#), 6 November 2019

²³ See: National Police Improvement Agency, [ACPO manual of guidance on dealing with the removal of protestors: 2006-2007](#), 2007

²⁴ *BBC News*, [Extinction Rebellion protesters block newspaper printing presses](#), 5 September 2020; HC Deb, [Birmingham Attacks and Extinction Rebellion Protests](#), 7 September 2020

²⁵ HC Deb, [Birmingham Attacks and Extinction Rebellion Protests](#), 7 September 2020, c384

²⁶ Ibid

²⁷ *BBC News*, [Extinction Rebellion protesters block newspaper printing presses](#), 5 September 2020

HS2 Euston Square protest (January/ February 2021)

Protestors objecting to the construction of the HS2 railway line tunnelled underneath Euston square.²⁸ Some then locked themselves to the structure.²⁹ The protestors were knowingly trespassing and were removed on the basis of civil orders granted by the courts.³⁰ The process of removing the protestors from the makeshift tunnels was complex. The final protester left the site on 26 February 2021.³¹

1.3 2021 Inspection

The Home Office has asked Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services to conduct an inspection of the police response to protest, including an assessment of the legislative framework for police powers.³² The Inspectorate published its report: [Getting the balance right? An inspection of how effectively the police deal with protests](#) on 11 March 2021 (two days after this Bill was introduced to Parliament). HMICFRS offered their "qualified support" for the provisions in the Bill.³³

The [Report's associated press release](#) summarises its content:

HMICFRS said police forces are usually good at planning for protests. They work effectively with other organisations, and make good use of equipment and technology, such as drones.

However, HMICFRS found that when police forces do not accurately assess the level of disruption caused, or likely to be caused, by a protest, the balance may tip too readily in favour of protesters.

After speaking to police forces, protest groups, businesses and the wider public, the inspectorate said a modest reset of the scales is needed.

The inspectorate was asked by the Home Office to comment on proposed changes to legislation. HMICFRS concluded that, with some qualifications, changes to the law – such as widening the conditions police can impose on static protests – would improve the effectiveness of protest policing, as long as they are applied proportionately and in line with human rights law.³⁴

Human rights advocacy groups have not agreed with the Inspectorate's assessment. Emmanuelle Andrews, policy and campaigns officer at Liberty is quoted in the *Guardian*:

These plans are a staggering assault on our right to protest as well as an attack on other fundamental rights.

²⁸ *BBC News*, [HS2 protesters dig tunnel to thwart Euston eviction](#), 26 January 2021

²⁹ *BBC News*, [Euston tunnel protests: Father fears for children's lives](#), 6 February 2021

³⁰ [\[2021\] EWHC 246 \(Admin\)](#), 10 February 2021

³¹ *The Guardian*, [Anti-HS2 tunnel protest at Euston ends as final activist leaves](#), 26 February 2021

³² HMICFRS, [Terms of reference: inspection of the policing of protests](#), 5 October 2020

³³ [Getting the balance right? An inspection of how effectively the police deal with protests](#), March 2021, p2

³⁴ HMICFRS, [Police need to find the correct balance between the rights of protesters and the rights of others](#), March 2021

Police already have extensive powers to restrict protests, and frequently go beyond them even though it is their duty to facilitate the exercise of this right.

We are still in the grip of a pandemic that has changed all our lives, handed enormous powers to the government and dramatically restricted our protest rights. The proposals in the policing bill are an opportunistic bid from the government to permanently erode our rights.

We must reject the politics of division that the government is exploiting through this bill, and protect each other and our ability to stand up to power.³⁵

³⁵ [Guardian, Civil liberties groups call police plans for demos an 'assault' on right to protest | UK civil liberties](#), 11 March 2021

2. Amending the *Public Order Act 1986*

2.1 1986 Act police powers

[Part II](#) of *Public Order Act 1986* provides police with powers to manage protests. The Act classifies two types of protest: a 'public procession' and a 'public assembly'.

A 'public procession' is a **protest march** intended to demonstrate support or opposition for a particular view, publicise a campaign or commemorate an event.³⁶ Processions that are "commonly or customarily" held in a certain area are excluded from the definition.

A 'public assembly' is a gathering of "two or more people that is wholly or partly open to the air" (essentially, gatherings which are outside).³⁷ This briefing will use the term **static protest** when referring to the concept of 'public assembly' as defined in the *Public Order Act 1986*.³⁸

Police powers associated with protest marches and static protests are similar. However, there are stronger powers to police protest marches. The 1986 Act provides the police with three powers:

- It requires individuals to notify the police when they are planning a protest march.
- It allows the police to request a protest march is prohibited if they have a serious public order concern. The police have more limited powers to request certain types of static protests are prohibited.
- It allows the police to impose conditions on any protests they suspect will cause serious damage to property, serious disruption or will incite unlawful behaviour. The Bill would amend these condition powers.

Notifications

[Section 11](#) of the *Public Order Act 1986* requires those organising a protest march to notify the police. The notice must specify the date, time and route of the proposed march and provide the police with the details of those who are organising it. The 1986 Act requires the notice to be given six days prior to the march unless it is "not reasonably practicable".³⁹

There is no requirement to notify the police of plans to conduct a static protest.

It is an offence to organise (not to take part in) a protest march without notifying the police. It is also an offence for the organiser to change the

³⁶ s11(1), *Public Order Act 1986*

³⁷ s16, *Public Order Act 1986* [as amended by s57, *Anti-social Behaviour Act 2003*]

³⁸ The term static protest is used frequently in official guidance documents. The consistent use of the term 'static protest' is used in this paper to avoid confusion.

³⁹ s11(2) and s11(6), *Public Order Act 1986*

route, date and time of a march once the police have been notified. Those convicted of these offences can be fined.⁴⁰

Prohibiting protests

The police can request that the relevant local authority ban a planned protest march. They can only do so if they have a serious concern about their ability to safely police the proposed march.⁴¹ Local authorities must seek the consent of the Home Secretary before prohibiting a march.⁴² In London, the Metropolitan Police (and City of London Police) must apply directly to the Home Secretary for a march to be prohibited.⁴³

It is an offence to organise (not to take part in) a protest march that has been prohibited. Those convicted of this offence can be fined or imprisoned.

Powers in practice: Prohibiting protest marches

The Home Office signed 12 'banning orders' on protest marches between 2005 and 2012.⁴⁴ Of these 10 were associated with far-right political groups (The English Defence League and the National Front) and 2 were associated with anti-capitalist and anti-globalisation groups. In 2011, in a high-profile case, the then Home Secretary Theresa May agreed to ban a planned march of the English Defence League (EDL) in Tower Hamlets.⁴⁵ There had been concerns about the 'public order implications' of the EDL march and the demonstrations that were planned to oppose it.⁴⁶

The Home Office has not received a request to ban a march since the proposed protest in Tower Hamlets in 2011.⁴⁷

Unlike protest marches, static protests cannot be prohibited because of a general concern for public order. The police can only request a static protest is banned if they have a serious public order concern **and** they think it is likely to be held on private land without the permission of the land's owner.⁴⁸ The police have powers to stop and search those they believe are on their way to a 'static protest' which has been prohibited.⁴⁹

Conditions

The police can issue conditions on planned or ongoing protests to maintain public order. Their powers to issue conditions on protest marches are more wide-ranging than those for static protests.

[Section 12](#) of the *Public Order Act 1986* allows senior police officers to issue a direction to individuals taking part in a protest march. These

⁴⁰ s11(7) and s11(10), *Public Order Act 1986*

⁴¹ s13(1), *Public Order Act 1986*

⁴² s13(2), *Public Order Act 1986*

⁴³ S13(4), *Public Order Act 1986*

⁴⁴ Home Office, [FOI release: Applications for a banning order under section 12 of the Public Order Act 1986](#), 6 June 2014

⁴⁵ Home Office, Home Secretary agrees march ban, 21 August 2011

⁴⁶ Ibid

⁴⁷ Home Office, Freedom of information request reference: 53776, 14 June 2019 [information provided upon request]

⁴⁸ s14A, *Public Order Act 1986* [as inserted by [s70](#), *Criminal Justice and Public Order Act 1994*]

⁴⁹ s14C, *Public Order Act 1986* [as inserted by [s71](#), *Criminal Justice and Public Order Act 1994*]

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directions can impose *any* condition on the protest march that is “necessary to prevent disorder, damage, disruption or intimidation”. This could include proscribing what route the march must take.⁵⁰

[Section 14](#) of the *Public Order Act 1986* allows senior police officers to issue directions to persons taking part in, or planning, a static protest. Whilst the police can impose *any condition necessary* on a protest march, they can only impose conditions on static protests which specify where a protest can take place, for how long it can last and how many people can be involved.⁵¹

Senior police officers can only issue a direction on a protest under the *Public Order Act 1986* if they “reasonably believe”:

- the protest may result in serious public disorder, serious damage to property or the serious disruption to the life of the community; or
- the purpose of the protest is to intimidate others and compel them “not to do an act they have a right to do, or to do an act they have a right not to do.”⁵²

Protestors who do not comply with a police direction are committing an offence. Before arresting somebody for such an offence, the police should inform them they are in breach of the condition and give them an opportunity to follow it. Those convicted of not complying with a condition can be fined or imprisoned.⁵³

Powers in practice: Conditions on protests

The Metropolitan Police issued numerous conditions on the ‘Extinction Rebellion’ (XR) protests that took place across central London in April 2019. The XR demonstrations were calling for the Government to take stronger action to combat climate change. The protests were non-violent but caused disruption to transport networks. Protestors gathered across central London. The Metropolitan Police issued several conditions under section 14 of the *Public Order Act 1986* requiring the protestors to restrict their activity to Marble Arch. The police said that the orders were necessary to “prevent ongoing serious disruptions to communities”.⁵⁴ During the protest the police arrested over a thousand people, many of those arrested have since been charged. Criminal trials took place at London Magistrates Court over the summer of 2019.⁵⁵

The use of section 14 powers at a similar XR protest in October 2019 was subsequently challenged in the courts. This legal challenge and the High Court’s findings are discussed in section 1.2 of this briefing.

2.2 Clause 54 to 56 and clause 60

Clauses 54 to 56 and **clause 60** would make significant changes to the police powers, contained in the *Public Order Act 1986*, to respond to protests. The clauses would:

- **Significantly lower the legal test that must be met for the police to issue conditions on protests.** Under the Bill the police

⁵⁰ s12(1), *Public Order Act 1986*

⁵¹ s14(1), *Public Order Act 1986*

⁵² s12(1) and s14(1), *Public Order Act 1986*

⁵³ s12(10) and s14(10), *Public Order Act 1986*

⁵⁴ Metropolitan Police, [Update: Extinction Rebellion - arrests & condition extension](#), 18 April 2019

⁵⁵ *BBC News*, [First Extinction Rebellion protesters appear in court](#), 12 July

would be able to issue conditions on protests when they are noisy enough to cause “intimidation or harassment” or “serious unease, alarm or distress” to bystanders.

- **Widen the types of conditions police can issue on static protests to match their powers relating to protest marches.** Under the Bill police would be able to issue any condition they think is necessary on static protests to prevent “disorder, damage, disruption, impact or intimidation”.
- **Amend the offence of failing to comply with a condition issued by the police on a protest.** It would remove the legal test that requires protestors “knowingly” breach a condition to commit an offence. People would commit the amended offence if they disobeyed a condition they ‘ought to have known’ was in force.
- **Allow the police to issue conditions on one-person protests.** Currently protests must involve at least two people to engage police powers.

Taken together the amendments to the 1986 Act would significantly expand the types of protests the police could impose conditions on. They would also widen the types of conditions the police could issue on static protests.

The Inspectorate of Constabulary gave its view on two of these proposals (and a proposal to expand stop and search powers that has not made it into the Bill) in their [2021 inspection of the policing of protests](#). They said the current test for imposing conditions is “too high”.⁵⁶ They agreed with the Government that the distinction the 1986 Act currently makes between protest marches and static protests is “is an unjustified inconsistency in the current law”.⁵⁷

Lowering the legal test for police conditions on protests

Clause 54 would amend section 12 of the *Public Order Act 1986* so police officers can issue conditions on protest marches which generate noise that may *have* “significant relevant impact on persons in the vicinity” or may result in “serious disruption to the activities of an organisation” in the vicinity.⁵⁸

Under **clause 54** noise would have a “relevant impact” if it may result in the “intimidation or harassment” or “serious unease, alarm or distress” to bystanders.

Before using their amended section 12 powers to issue conditions on a protest the police would have to consider:

- the likely number of persons affected by the protest;
- the likely duration of the impact; and
- the likely “intensity” of the impact.

⁵⁶ HMICFRS, [Getting the balance right? An inspection of how effectively the police deal with protests](#), March 2021, p116

⁵⁷ Ibid, p111

⁵⁸ ENs, para 516

Clause 54 would also give the Secretary of State regulatory powers to further define the meaning of “serious disruption to the activities of an organisation” in the amended section 12. These regulations would be made using the affirmative procedure.

Clause 55 would amend section 14 of the 1986 Act in the same way as clause 54 amends section 12.⁵⁹ This would allow officers to issue conditions on static protests that are noisy enough to cause “intimidation or harassment” or “serious unease, alarm or distress” to bystanders.

Clause 55 would also amend section 14 so police can issue any condition they think is necessary on static protests to prevent “disorder, damage, disruption, impact or intimidation”. This would bring the law regarding conditions static protests in line with that on protest marches.⁶⁰

Amending the offence

Clause 56 would amend the offence associated with failure to comply with a police condition issued on a protest. It would remove the need to prove a defendant “knowingly” disobeyed a direction. The court would only need to find a defendant failed to be comply with a condition they “ought to have known” had been imposed to find them guilty.⁶¹

Giving police powers to place conditions on one-person protests

Clause 60 would insert a new a new section 14ZA into the 1986 Act. This would allow the police to impose conditions on a one-person protest which they “reasonably believe” may be noisy enough to cause “intimidation or harassment” or “serious unease, alarm or distress” to bystanders. The police would have to follow similar rules when issuing conditions on a one-person protest under section 14ZA as they will have to under the amended section 12 and 14.⁶² At present, the police cannot issue conditions on one-person protests because they do not meet the definition of “static protest” provided for in the 1986 Act. Under the 1986 Act “static protests” must involve at least two people.

⁵⁹ ENs, para 520

⁶⁰ ENs, 521

⁶¹ ENs, para 523

⁶² ENs, paras 545- 555

3. Protests around Parliament

The background information provided here is taken from the Library's briefing [Protests around Parliament](#). That briefing provides further information relevant to **clauses 57 and 58** of the Bill.

3.1 Current legislation

Protests around parliament are, for the most part, policed like any demonstration in the rest of the country. However, there are two special provisions for protests around parliament.

- Provisions in the [Police Reform and Social Responsibility Act 2011](#) create a 'controlled area' area around parliament where the unauthorised use of loudspeakers, the erecting of tents and the use of 'sleeping equipment' is prohibited.
- [Byelaws of the Greater London Authority](#) (GLA) require protestors to seek written permission from the GLA to hold a demonstration on Parliament Square Garden.

Police Reform and Social Responsibility Act 2011

The 2011 Act introduced a "controlled area" around Parliament; this was then extended by the [Anti-social Behaviour, Crime and Policing Act 2014](#) to include a wider area. The full "controlled area" now comprises:

- Parliament Square garden;
- the footways immediately adjoining the central garden of Parliament Square; and
- highways and gardens next to the Palace of Westminster.

Activities prohibited in the "controlled area" include:

- unauthorised use of amplified noise equipment, like loudspeakers or loudhailers (applications for authorisation can be made to the relevant authorities);
- erecting or using tents or structures for facilitating sleeping; and
- using or intending to use sleeping equipment, like sleeping bags or mattresses.

The police or authorised officers can direct people to stop these activities and leave the area; if they do not, police can use reasonable force to seize property.

The Home Office has issued [guidance](#) on these provisions which provides an overview of the relevant legislation and explains how it should be implemented.⁶³

⁶³ Home Office, Police [Reform and Social Responsibility Act 2011: Guidance on the provisions relating to Parliament Square and the area surrounding the palace of Westminster](#), 2014

Byelaws of the Greater London Authority

In 2012, the GLA revised its [Parliament Square Garden Byelaws](#). The byelaws aim to secure the management of the Square, preserve order and prevent abuse. They require those wishing to protest on Parliament Square Garden to obtain prior permission to do so from the GLA. It is a criminal offence to contravene the byelaws, punishable by fine.

3.2 Previous legislation

Previously, sections 132 to 138 of the [Serious Organised Crime and Police Act 2005](#) (SOCPA) meant that demonstrations within a “designated area” of one kilometre from Parliament required prior authority from the Metropolitan Police. The police could impose conditions and loudspeakers and loudhailers were banned. The 2011 Act repealed sections 132 to 138 of SOCPA.

Before SOCPA, additional provisions for protests around Parliament took the form of Sessional Orders (in the House of Commons) and Stoppage Orders (in the House of Lords). These Orders instructed the police to make regulations to ensure MPs could access Parliament unobstructed. However, the police had no powers to arrest those who did not comply with these regulations. Therefore, legal advice given to Parliament and the Metropolitan Police was that the Orders had no legal effect.

3.3 Recent concerns

In recent years there has been increased protest activity in the area surrounding Parliament. Pro-Brexit and pro-remain protesters have regularly gathered near Parliament; climate change activists *Extinction Rebellion* have also made Parliament a key focus of their demonstrations.

Some are concerned that these protests are obstructing access to Parliament. There have been calls for the police to take stronger action against those who heckle MPs outside Parliament and for legislative reform to protect access to the Palace of Westminster.

The harassment of MPs outside Parliament

There has been increasing concern that MPs and their staff are subject to harassment and abuse by protesters as they enter and exit Parliament.

In January 2019 John Bercow, then Speaker of the House of Commons, wrote to the Commissioner of the Metropolitan Police, Cressida Dick, to raise the issue.⁶⁴ He asked her to “increase security for Members, journalists and visitors to the parliamentary estate, and ensure there is safe access to and from Abingdon Green”.⁶⁵

The Speaker reported to the House that he had:

⁶⁴ HCDeb, [Speaker’s Statement](#), 8 January 2019, c171

⁶⁵ Speaker’s House, [Letter dated 8th January 2019 to the Commissioner of the Metropolitan Police](#) [last accessed 30/04/19]

...received a very full and encouraging reply from Cressida Dick. I will not read it out to the House, but she, while quite properly explaining how seriously she and her officers take their responsibilities, went on to seek to assure me of an increased police presence and, to some degree, a changed mindset in terms of the importance of proactive measures.⁶⁶

In February 2019 the Joint Committee on Human Rights (JCHR) launched an inquiry into [Democracy, free speech and freedom of association](#). In evidence to the JCHR, Metropolitan Police Commander Adrian Usher discussed the intimidation of MPs outside Parliament by protestors. He said that officers had not engaged in situations because “the criminal threshold had not been reached”. He went on to say that the briefing to officers has now changed:

The officers outside Parliament have come from other duties all over London in order to be deployed there. They receive a briefing every day when they are deployed on the ground, and that briefing changed to include this exact point: they can step in even if it does not constitute a crime at that point, engage with the individual and tell them to calm down, just as any other human being would. We put a system in place to provide some security for MPs as they step across the road to College Green.⁶⁷

In their subsequent report for the inquiry the JCHR concluded that there should be a “zero tolerance approach to obstruction and intimidation around Westminster”.⁶⁸

Protecting access to the Palace of Westminster

In their inquiry report into [Democracy, free speech and freedom of association](#) the JCHR recommended that new legislation should be introduced to place a statutory duty on the police to protect the right of access to the parliamentary estate.⁶⁹

A new statutory duty for the police to protect access to Parliament would have a similar effect to the Sessional and Stoppage Orders which fell out of use following the passing of the *Serious Organised Crime and Police Act 2005*. The Committee argued those Orders gave a “clear signal that the right of access to Parliament, for everyone who has business there, was important” and expressed “regret” that they had been discontinued.⁷⁰

The Committee also recommended that the Metropolitan Police should convene a joint group, with representation from all parties involved in security around Parliament, to “consider and report on the framework for control” of the area around Parliament.⁷¹ The Committee argued that there is a case for “considering both legislative change in control of

⁶⁶ HCDeb, [Points of Order](#), 16 January 2019 c1166

⁶⁷ Joint Committee on Human Rights Uncorrected oral evidence: [Democracy, privacy, free speech and freedom of association](#), HC 1890, Wednesday 24 April 2019, Q16

⁶⁸ House of Commons Joint Committee on Human Rights, [Democracy, freedom of expression and freedom of association: Threats to MPs](#), First Report of Session 2019–20, 19 October 2019, paragraph 76

⁶⁹ *Ibid*, paragraph 72

⁷⁰ *Ibid*

⁷¹ *Ibid*, paragraph 78

the area... and whether physical security should be enhanced by measures such as pedestrianisation".⁷²

3.4 Clause 57 and 58

Clause 57 would amend *Police Reform and Social Responsibility Act 2011* (PRSRA) to:

- Expand the "controlled area" around Parliament to include Canon Row, Parliament Street, Derby Gate, Parliament Square and part of Victoria Embankment.⁷³ The amended area would still be far smaller than the "designated area" under SOCAP.⁷⁴
- Add "obstructing of the passage of a vehicle into or out of the Parliamentary Estate" to the prohibited activities in the controlled area.⁷⁵ "Obstructing a highway" is already a criminal offence under [Section 137](#) of the *Highways Act 1980*. This amendment would ensure prohibiting access to the Parliamentary Estate was prohibited but would not give the police powers to arrest those who contravene it.

Clause 58 would provide the Secretary of State regulatory powers to make similar powers relating to an area other than the Palace of Westminster if the Houses of Parliament are located there whilst building works are carried out on the Palace.⁷⁶ The clause appears to help ensure similar rules regarding protest can be imposed around the temporary home for Parliament during the [Restoration and Renewal](#) of the Palace of Westminster.

⁷² Ibid, paragraph 77

⁷³ ENs, para 531

⁷⁴ See: Home Office, [The Governance of Britain: Managing Protest around Parliament](#), October 2007, Annex F

⁷⁵ ENs, para 532

⁷⁶ ENs, para 536

4. Public nuisance

Clause 59 would replace the common law offence of causing a public nuisance with a new statutory offence of “intentionally or recklessly causing public nuisance”.

4.1 The common law offence

Public nuisance is an offence at common law. The practitioners’ text Archbold sets out the following definition, as developed by the courts:

A person is guilty of a public nuisance (also known as common nuisance), who –

(a) does an act not warranted by law, or

(b) omits to discharge a legal duty,

if the effect of the act or omission is to endanger the life, health, property or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all her Majesty’s subjects.⁷⁷

Archbold notes that this definition was approved by the House of Lords in [Rimmington; Goldstein \[2005\] UKHL 63](#),

in which the House of Lords held that the definition was clear, precise, adequate and based on a rational and discernible principle so that it had the certainty and predictability necessary to meet the requirements of the common law and of art.7 of the ECHR that the citizen should be able to foresee, if need be with appropriate advice, the consequences which a course of action might entail.⁷⁸

In terms of fault – *mens rea* – the offence is committed where the defendant knew or ought to have known of the risk of the kind of nuisance that in fact occurred. This test is one of negligence. There is no requirement for the prosecution to prove intent or recklessness, which are higher thresholds.

The House of Lords made clear in *Rimmington* that where the conduct in question is criminalised by a particular statutory provision, then “good practice and respect for the primacy of statute” would normally require prosecutors to use that provision rather than public nuisance “unless there is good reason for doing otherwise”.⁷⁹

The Law Commission has noted that the offence has been used to prosecute a wide range of conduct, beyond that which was “traditionally” thought of as public nuisance:

The offence of public nuisance was traditionally used to deal with obstructing the public highway (including rivers) and activities causing a loss of amenity in the neighbourhood (for example by noises and smells). Today, however, these activities are largely covered by other offences and procedures. Obstructing the highway is an offence under section 137 of the Highways Act 1980. Other local nuisances are largely covered by a very

⁷⁷ Archbold Criminal Pleading, Evidence & Practice, 2020 edition, para 31-40

⁷⁸ Ibid

⁷⁹ [Rimmington; Goldstein \[2005\] UKHL 63](#), at 30

comprehensive and detailed regime of “statutory nuisance” procedures operated by local authorities; local authorities also have the power to make bye-laws to suppress nuisances.

In current practice the offence of public nuisance is mainly used for various forms of misbehaviour in public. Anecdotal evidence from the College of Policing gives, as typical examples, obstructing the highway, hanging from bridges, lighting flares or fireworks at football matches, extinguishing floodlights at matches, littering forests with excrement and hosting acid house parties.

[Other] common examples are hoax telephone calls, aggressive behaviour in public and causing a police siege by attempting or threatening to blow up or set fire to oneself or a house. In 2009 a group of men pleaded guilty to conspiracy to commit public nuisance by making videos threatening bombings.⁸⁰

The common law offence is triable either way – meaning it can be tried in either the magistrates’ court or the Crown Court. There are no specific limits on the sentence that can be passed for this offence.

4.2 The Law Commission’s review

In 2008 the Law Commission embarked on a project to “simplify” the criminal law to reflect “changing political and social conditions”.⁸¹ It identified public nuisance as an example of “a common law offence which arguably has outlived its utility”.⁸²

The Law Commission published a consultation paper in 2010, followed by formal recommendations in 2015.⁸³ It reached the following conclusions on public nuisance:

The offence of public nuisance should be replaced by a statutory offence. This, like the existing offence, should cover any conduct which endangers the life, health, property or comfort of a section of the public or obstructs them in the exercise of rights belonging to the public.

This offence should require that the defendant either intended, or was reckless as to the risk of, the adverse effect on the public caused by that conduct. The defendant should not be guilty of the offence if his or her conduct was reasonable in the circumstances as he or she knew or believed them to be.⁸⁴

The Law Commission proposed that the new statutory offence should be triable either way, as the common offence is. It noted that the sentencing powers for public nuisance are currently “unlimited”. It made no specific recommendation about what the sentencing powers for the new offence should be, other than to note that

⁸⁰ Law Commission, [Simplification of Criminal Law: Public Nuisance and Outraging Public Decency](#), Law Com No 358, June 2015, paras 2.21-2.23

⁸¹ Law Commission, [Tenth Programme of Law Reform](#), Law Com No 311, 2008, para 1.19

⁸² *Ibid*, para 2.32

⁸³ Law Commission, [Project: Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency](#) [last accessed 10 March 2021]

⁸⁴ Law Commission, [Simplification of Criminal Law: Public Nuisance and Outraging Public Decency](#), Law Com No 358, June 2015, para 1.13. See paras 4.1 to 4.8 for a more detailed formulation of the proposals.

as the offence is intended to address serious cases for which other offences are not adequate, if a maximum sentence is set it should be high enough to cover these cases.⁸⁵

4.3 Clause 59

Clause 59 of the Bill would implement the Law Commission's recommendations by abolishing the common law offence of public nuisance and replacing it with a new statutory offence of intentionally or recklessly causing public nuisance.

A person would commit the new offence if:

- (a) the person—
 - (i) does an act, or
 - (ii) omits to do an act that they are required to do by any enactment or rule of law,
- (b) the person's act or omission—
 - (i) causes serious harm to the public or a section of the public, or
 - (ii) obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large, and
- (c) the person intends that their act or omission will have a consequence mentioned in paragraph (b) or is reckless as to whether it will have such a consequence.

An act or omission would be considered to have caused serious harm where a person:

- (a) suffers death, personal injury or disease,
- (b) suffers loss of, or damage to, property,
- (c) suffers serious distress, serious annoyance, serious inconvenience or serious loss of amenity, or
- (d) is put at risk of suffering anything mentioned in paragraphs (a) to (c).

There would be a defence of "reasonable excuse" for the act or omission concerned. The Explanatory Notes provide further details:

The burden of proof is placed on the defendant as the facts as to whether they have a reasonable excuse will be within their knowledge. The prosecution will still need to have proved all the elements of the offence to the criminal standard of proof, including the serious harm or obstruction that arises as a result of the act or omission, and the defendant intended or was reckless as to serious harm or obstruction. Although not explicit [sic] set out, the standard to which the defendant will be required to prove the defence is the balance of probabilities.⁸⁶

The offence would be triable either way and would be subject to the following maximum penalties:

⁸⁵ Ibid, para 3.68

⁸⁶ [Explanatory Notes](#), para 540

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- six months' imprisonment⁸⁷ and/or an unlimited fine on summary conviction; and
- 10 years' imprisonment and/or an unlimited fine on conviction on indictment.

The Government anticipates that the new statutory offence will cover "the same conduct as the existing common law offence":

The new statutory offence of public nuisance will cover the same conduct as the existing common law offence of public nuisance.

The offence captures conduct which endangers the life, health, property or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to the public.

Conduct captured will include nuisances such as producing excessive noise or smells, or offensive or dangerous behaviour in public, such as hanging from bridges.⁸⁸

⁸⁷ This will increase to 12 months as and when paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 (increase in magistrates' court power to impose imprisonment) is brought into force

⁸⁸ Home Office, [Police, Crime, Sentencing and Courts Bill 2021: protest powers factsheet](#), updated 10 March 2021

5. Part 4, unauthorised encampments

Part 4 (clauses 61 to 63), of the Bill would amend the *Criminal Justice and Public Order Act 1994* (CJPOA) to:

- create a new offence of “residing on land without consent in or with a vehicle”; and
- amend the existing police powers in the CJPOA associated with unauthorised encampments, to lower the threshold at which they can be used, allow the police to remove unauthorised encampments on (or partly on) highways and prohibit unauthorised encampments moved from a site from returning within twelve months.

Part 4 is associated with a [2019 Conservative Party Manifesto](#) commitment to “tackle unauthorised traveller camps” by giving the police new “powers to arrest and seize the property and vehicles of trespassers who set up unauthorised encampments” and “make intentional trespass a criminal offence”. The manifesto commitment was included in [2019 Queen’s Speech](#).⁸⁹

The Government ran a consultation on [strengthening police powers to tackle unauthorised encampments](#) between November 2019 and March 2020. The consultation was prompted when a majority of respondents to a 2018 consultation on the [powers for dealing with unauthorised development and encampments](#) supported a new criminal offence.⁹⁰ The Government published its [response](#) to 2019-20 consultation on 8 March 2021. In it the Government said this Bill would include amendments to the CJPOA, including a new criminal offence associated with unauthorised encampments.⁹¹

Much of the background in this section has been taken from the Library’s briefing [police powers: unauthorised encampments](#) (published December 2020). That briefing provides further discussion about the policing unauthorised encampments and the debate during the Government’s *strengthening police powers* consultation. It **has not** been updated to account for the Government’s consultation response. The Government’s consultation response is discussed in section 3.3 of this briefing.

5.1 What are unauthorised encampments?

Unauthorised encampments occur when trespassers occupy land belonging to private landowners or public authorities. The term is associated Gypsy and Traveller sites.

As at January 2020, **3% of Gypsy and Traveller caravans in England were on unauthorised encampments (694 caravans)**. 419 of those

⁸⁹ HM Govt, [The Queen’s Speech 2019](#), December 2019, p73

⁹⁰ HM Govt, [Government response to the consultation on powers for dealing with unauthorised development and encampments: A summary of consultation responses and the way forward](#), February 2019, p23

⁹¹ Home Office, [Government Response to the Consultation ‘Strengthening Police Powers to Tackle Unauthorised Encampments’ A Summary of Consultation Responses and the Way Forward](#), March 2021, p29-30

caravans were on sites “not tolerated” and 275 were on tolerated sites.⁹²

5.2 Existing public order powers

[Sections 61-62E](#), *Criminal Justice and Public Order Act 1994* provides the police with powers to direct those in unauthorised encampments to leave land based on their behaviour.

[Section 61](#) allows senior officers to direct those in an unauthorised encampment to leave land if:

- their encampment consists of six or more vehicles; or
- the landowner has taken reasonable steps to ask them to move and they have caused damage to the land/ property or have used threatening, abusive or insulting behaviour to the landowner, their family or employees.

[Section 62A](#) of the 1994 Act allows a senior officer to direct those in an unauthorised encampment to leave land if:

- their encampment consists of at least one vehicle and caravan;
- the landowner has asked the police to move the encampment; and
- the local authority can provide a suitable pitch for the caravans elsewhere within their local authority area.

Failure to comply with a direction issued by the police under section 61 or 62A of the 1994 Act is an offence. It is also an offence for someone who has been issued a direction to return to the relevant site within three months. Those convicted of these offences can be imprisoned for up to three months or fined. The police also have powers under [section 62](#) and [62C](#), of the 1994 Act to seize their vehicles.

Use of police powers

The National Police Chiefs Council (NPCC- the coordinating body for UK police forces) has issued operational guidance on [policing unauthorised encampments](#). This guidance has been agreed by all chief officer’s in England, Wales and Northern Ireland. It is kept under review by the NPCC’s [Diversity, Equality & Inclusion Coordination Committee](#).

The guidance emphasises (as is standard for police powers) that officers *must* consider the human rights and *Equality Act 2010* protections of those in unauthorised encampments.⁹³ It says the “mere presence of an encampment without any aggravating factors should not normally create an expectation that police will use eviction powers”.⁹⁴ It says the police should “consider becoming involved” in the removal of unauthorised encampments” when:⁹⁵

⁹² Ministry of Housing Communities & Local Government, [Traveller caravan count: January 2020](#), June 2020, table 1a

⁹³ NPCC, [Operational Advice on Unauthorised Encampments](#), 2018, p5

⁹⁴ *Ibid*, p9

⁹⁵ *Ibid*

- Local amenities (for example parks, school fields and village greens) are affected.
- There is a “significant” impact on the environment.
- There is local disruption to the economy. For example, the encampment is on a shopping centre car park, industrial estate or agricultural land.
- The behaviour of those in the encampment causes a “significant disruption to the local community”.
- There is a danger to life. For example, the encampment is on a motorway.
- There is a need to take action to prevent anti-social behaviour.

Working with local authorities

The NPCC guidance says:

The lead role for decision making should rest with the local authority and the use of police powers should not normally be considered as a first response.⁹⁶

It says officers should make an early site visit to a new unauthorised development with a representative from the local authorities to assess what action is required. It also says forces should develop ‘Joint Agency Protocols’ with local authorities (and other partners) for the management of unauthorised encampments.⁹⁷

5.3 Pre-legislative consultation

The Government received 26,337 responses to its [strengthening police powers consultation](#). More than 16,000 responses were connected to campaigning by *Friends Families and Travellers* (FFT- a charity which represents the interests of Gypsies and Travellers) and *Liberty* (a human rights advocacy group). The Government reported the responses associated with these campaigns separately in their consultation response document.⁹⁸

Criminalising unauthorised encampments

The Government’s consultation asked for views on a new offence associated with entering or occupying land subject to certain conditions being met. The consultation also asked for views on what those conditions could be.⁹⁹

The Home Office suggested a new offence similar to one that exists in the Republic of Ireland.¹⁰⁰ Under [Part IIA](#) of the Republic of Ireland’s *Housing (Miscellaneous Provisions) Act 2002*, people commit an offence if they occupy land or bring an object onto land when likely to cause

⁹⁶ NPCC, [Operational Advice on Unauthorised Encampments](#), 2018, p8

⁹⁷ Ibid, p8

⁹⁸ Home Office, [Government Response to the Consultation ‘Strengthening Police Powers to Tackle Unauthorised Encampments’ A Summary of Consultation Responses and the Way Forward](#), March 2021, p12

⁹⁹ Home Office, [Strengthening police powers to tackle unauthorised encampments](#), November 2019, p10

¹⁰⁰ Ibid

substantial damage or prevent people from accessing/ utilising the land.¹⁰¹ Garda can require those who commit the offence to provide their name or issue them a direction requiring them to leave. Failure to comply with such a Garda instruction is an offence for which people can be arrested without warrant. Those guilty of these offences are liable to a fine of €3,000 or one-month imprisonment.

A small majority (55%) of direct responses to the Government consultation disagreed that “intentional trespass” should be a criminal offence.¹⁰² The Liberty and FFT campaigns opposed criminalising intentional trespass.¹⁰³ An e-petition, which garnered 134,932 signatures, also opposed the proposal. It called the idea “extreme, illiberal and unnecessary” and raised concerns with how a new criminal offence would impact ramblers. The House was scheduled to debate the e-petition, but the debate was postponed when sittings of Westminster Hall were suspended at the start of the third coronavirus lockdown.¹⁰⁴

The Government says there is an “appetite to extend powers available to the police when dealing with unauthorised encampments” particularly from local authorities.¹⁰⁵ It says the new offence, in combination with its proposed amendments to the CJPOA will...

give police the tools to deal with a variety of harms caused by unauthorised encampments in a proportionate, effective and efficient manner.¹⁰⁶

It says the new offence will not affect ramblers and that its intention is to “deter trespassers from setting up or residing on an unauthorised encampment.”¹⁰⁷

Strengthening police powers

The Government’s consultation asked for views on:¹⁰⁸

- Amending section 62A to allow the police to direct those in unauthorised encampments to authorised sites in neighbouring local authority areas. At present the police can only move unauthorised encampments to authorised sites **within** the local authority area.
- Amending sections 61 and 62A to prohibit those directed from land from returning within twelve months. At present those directed to leave land under the 1994 Act cannot return within three months.

¹⁰¹ [Part IIA](#), s19C, *Housing (Miscellaneous Provisions) Act, 2002* [Republic of Ireland statute book]

¹⁰² Home Office, [Government Response to the Consultation ‘Strengthening Police Powers to Tackle Unauthorised Encampments’ A Summary of Consultation Responses and the Way Forward](#), March 2021, p13

¹⁰³ *Ibid*, p25 & p28

¹⁰⁴ UK Parliament, [Closed petition: Don’t criminalise trespass](#), last updated 13 January 2020

¹⁰⁵ Home Office, [Government Response to the Consultation ‘Strengthening Police Powers to Tackle Unauthorised Encampments’ A Summary of Consultation Responses and the Way Forward](#), March 2021, p23

¹⁰⁶ *Ibid*, p7

¹⁰⁷ *Ibid*, p24

¹⁰⁸ Home Office, [Strengthening police powers to tackle unauthorised encampments](#), November 2019, p6

- Amending section 61 to lower the number of vehicles needing to be involved in an unauthorised encampment before it can be used from six to two.
- Amending section 61 to enable the police to remove trespassers from land that forms part of the highway.

Consultation responses to these ideas were mixed but in total 94% of direct respondents supported at least one of the proposed changes to the CJPOA. The FFT and Liberty campaigns were opposed to any change of the CJPOA. They argued the police powers are strong enough already.¹⁰⁹

The Government decided not to amend the CJPOA to allow the police to move unauthorised encampments to a neighbouring local authority area. It said this could be “counter-productive” because it could “deter local authorities from developing more authorised site provision”.¹¹⁰

The Government also decided not to amend section 61 to lower the number of vehicles involved in an unauthorised encampment before powers can be used. Instead the Bill includes amendments to section 61 that the Government did not consult on. The Government is proposing to amend section 61 to broaden the types of harm that can be caught by the power.¹¹¹ It says this change will be “fairer and more proportionate” and ensure the measures are “compliant with human rights law”.¹¹²

The Government is proposing CJPOA amendments which would allow the police to move unauthorised encampments on highways. Amendments would also stop unauthorised encampments returning to any site they have been moved from within twelve months.¹¹³

Discrimination

Gypsy and Travellers are protected under the [Equality Act 2010](#) as a recognised ethnic group.

FFT and Liberty argue strengthening the existing legal framework for unauthorised encampments will put Gypsy and Travellers at risk of further discrimination. Over 70% of direct responses to the Government’s consultation expressed the view that the polices would have a negative impact on Gypsies and Travellers.¹¹⁴

The Government acknowledged its proposals “could have an adverse impact on some members” of the Gypsy and Traveller community. However, it also “recognise(s) the distress that local communities and businesses face as a result of unauthorised encampments”.¹¹⁵

¹⁰⁹ Home Office, [Government Response to the Consultation ‘Strengthening Police Powers to Tackle Unauthorised Encampments’ A Summary of Consultation Responses and the Way Forward](#), March 2021, see Chapter 4, 9, 10 and 11

¹¹⁰ Ibid, p31

¹¹¹ Ibid, p30-31

¹¹² Ibid

¹¹³ Ibid, p29

¹¹⁴ Home Office, [Government Response to the Consultation ‘Strengthening Police Powers to Tackle Unauthorised Encampments’ A Summary of Consultation Responses and the Way Forward](#), March 2021, p21

¹¹⁵ Home Office, [Strengthening police powers to tackle unauthorised encampments](#), November 2019, p20

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The Government says it wants “all communities to be able to live as they deem best, without harming others” but that it is “clear that there needs to be rules and fair boundaries to achieve this”.¹¹⁶ It says it has been “mindful of its duty to comply with the ECHR and the Equality Act 2010”.¹¹⁷ It says the use of the new powers will be...

...predicated on the basis that enforcement action must be exercised where it is proportionate and necessary to do so and should be taken in conjunction with the local authority, who would need to offer assurance that they have relevant measures in place to meet the welfare and safeguarding needs of those affected by the loss of their accommodation.¹¹⁸

Site availability

Everyone enjoys a right to a family and private life under Article 8 of the [European Convention on Human Rights](#) (ECHR. In *Bromley LBC v Persons Unknown* [2020] Lord Justice Coulson noted that a lack of site availability could breach the Art 8 rights of Gypsy and Travellers:

I consider that there is an inescapable tension between the article 8 rights of the Gypsy and Traveller community and the common law of trespass. The obvious solution is the provision of more designated transit sites for the Gypsy and Traveller community. It is a striking feature of many of the documents that the court was shown that the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue. The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention.¹¹⁹

FFT obtained police submissions to the *strengthening police powers* consultation via a Freedom of Information request. They say the FOI responses show that many senior police officers are not in favour of criminalising trespass and think the current police powers framework is sufficient.¹²⁰ FFT quote the NPCC as saying:

The lack of sufficient and appropriate accommodation for Gypsies and Travellers remains the main cause of incidents of unauthorised encampment and unauthorised development by these groups.¹²¹

FFT argue that the problems caused by unauthorised encampments are more effectively tackled by providing more authorised space for nomadic Travellers.¹²²

The Government says the number of transit pitches has “increased by 41% (356 pitches) across England and Wales over the last 10 years”. It

¹¹⁶ Home Office, [Government Response to the Consultation ‘Strengthening Police Powers to Tackle Unauthorised Encampments’ A Summary of Consultation Responses and the Way Forward](#), March 2021, p27

¹¹⁷ Ibid, p26

¹¹⁸ Ibid, p23

¹¹⁹ [2020] EWCA Civ 12, para 100

¹²⁰ FFT, [Police repeat calls for more sites, rejecting Home Office proposals to criminalise trespass](#), 9 September 2020

¹²¹ *The Guardian*, [Revealed: police oppose Traveller and Gypsy camp crackdown](#), 14 November 2020

¹²² FFT, [Police repeat calls for more sites, rejecting Home Office proposals to criminalise trespass](#), 9 September 2020

“reminded local authorities of the importance of providing sites in their local plans” but said ultimately it was up to them to identify land for sites.¹²³

5.4 Clauses 61 to 63

Clause 61 would insert section 60C, 60D and 60E into the *Criminal Justice and Public Order Act 1994* (CJPOA). This would create a new offence of “residing on land without consent in or with a vehicle” and give the police seizure and forfeiture powers associated with that offence. The Government described the new offence in plain English in the “next steps” section of its [response to the Strengthening police powers consultation](#).

Under the new section 60C CJPOA people over the age of 18 would commit an offence if they reside or intend to reside on land without consent and:

- they intend to have or have at least one vehicle with them;
- one or more of the conditions in subsection 60C(4) are met; and
- they fail “as soon as reasonably practicable” to move when directed to by the owner, someone representing them or the police.

The conditions in subsection 60C(4) are that they cause or are “likely to cause” “significant damage or disruption” as a result of either residing/ intending to reside on the land or their conduct/ potential conduct whilst on the land. This is a higher threshold than what is needed to use the amended section 61 CJPOA powers.¹²⁴ In accordance with subsection 60C(8) “damage” includes damage to land, the environment or any property not belonging to the trespassers. “Disruption” means an interference with a person’s ability to access any services/ facilities on the land, the water/ energy/ fuel supply, agricultural buildings or monuments/ archaeological areas.

Under the new section 60C CJPOA it would be an offence to re-enter the land without a “reasonable excuse” within twelve months of being asked to move.

The fact that landowners (or someone representing them) can ask trespassers to leave land means an offence could be committed before a police direction is issued. This would give the police the power to arrest trespassers as soon as they arrive to a scene where landowners had asked trespassers to move in accordance with the new section 60C.¹²⁵ The offence therefore has the potential to capture more people than the Republic of Ireland (RoI) offence the Government referenced in its *Strengthening police powers* consultation. In the RoI an offence is only committed once someone has failed to comply with a police direction.

¹²³ Home Office, [Government Response to the Consultation ‘Strengthening Police Powers to Tackle Unauthorised Encampments’ A Summary of Consultation Responses and the Way Forward](#), March 2021, p24

¹²⁴ ENs, para 560

¹²⁵ ENs, para 559

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The new section 60C offence would be summary only. This means it would only be triable at a Magistrate's court. On conviction the punishment would be a term of imprisonment not exceeding three months, a fine not exceeding level four on the scale (£2,500) or both.

The new section 60D CJPOA would give officers the power to seize and remove any relevant property, including vehicles, from those they "reasonable suspect" have committed an offence under section 60C (a similar evidential test as officers have to meet to arrest). Property seized by the police under section 60D could be kept for up to three months.

The new section 60E CJPOA would allow the court to issue forfeiture orders relating to items seized under section 60D when people are convicted of a section 60C offence.

Clause 62 would amend the existing police powers in the CJPOA associated with unauthorised encampments.

Section 61 of CJPOA would be amended so it could be used when those in unauthorised encampments cause "damage, disruption or distress". This damage, disruption or distress would not have to be "significant" (as it does under the new offence). Damage and disruption have the same definition as in the new section 60C.¹²⁶

Section 61 would also be amended so police can direct trespassers to move if they are on land that forms part of a highway.

Clause 62 would amend section 62 of the CJPOA so that police can seize vehicles in the same way as they can under the new section 60D when they use their amended section 61 powers.

Clause 63 would introduce a new section 62F into the CJPOA requiring the Secretary of State to issue guidance to police on their powers in the CJPOA related to unauthorised encampments. It would confer a power on the Secretary of State to revise this guidance when they see fit. There are no statutory rules about how this guidance should be drafted and published.

¹²⁶ ENs, para 572-574

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