

Research Briefing

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Public Order Bill



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Summary

The [Public Order Bill](#) (Bill 008 2022-23) was introduced to the House of Commons on 11 May 2022. The Bill's second reading is scheduled for 23 May 2022.

The aim of the Bill is to provide the police with greater powers to respond to protesters that “lock-on” to objects, buildings or land; obstruct major transport works; or interfere with national infrastructure.

This briefing provides background to the Bill, an overview of its main provisions, and analysis of its proposals.

What would the Public Order Bill do?

The Bill would bring in three major changes to the way protests are policed in England and Wales by:

- **Expanding protest related offences:** the Bill would introduce four new criminal offences related to disruptive protest including “locking-on”; being equipped to “lock-on”; obstructing major transport works; and interfering with key national infrastructure.
- **Extending police stop and search powers:** the Bill would provide the police with new powers to stop and search people for items connected with to specified protest-related offences.
- **Introducing a new preventative court order:** the Bill would create Serious Disruption Prevention Orders aimed at people who repeatedly engage in disruptive protest activity. The order would be issued with conditions to prevent the individual from being in particular places or with particular people or from participating in certain activities.

Background to the Bill

Several pieces of existing legislation provide a framework for policing protests, but a number of high-profile events at recent protests have attracted concern about the ability of police to respond to, and move, non-violent protests causing serious disruption. These resulted in calls to reform the policing of protests.

Kit Malthouse, Minister for Crime and Policing, said 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. The Police, Crime, Sentencing and Courts Act 2022 (the PCSC Act), which received Royal Assent on 28 May 2022, introduced reforms which strengthened police powers and will significantly change the way protests are policed.

In September and October 2021, during the passage of the Police, Crime, Sentencing, and Courts Bill (PCSC Bill), environmental campaign group Insulate Britain held a series of co-ordinated protests. The protests involved group members blocking major roads. Several protestors glued themselves to the roads to make it more difficult for police to move them.

Following these protests, in December 2021, [the Government sought to further expand the PCSC Bill](#) by tabling amendments that largely mirrored the measures now in the Public Order Bill.

The amendments were considered at the Lords report stage of the PCSC Bill’s passage and were rejected. The Government says this has left gaps in the legislative framework for policing protests. To address those gaps, it is continuing to pursue the measures that were defeated in the Lords by reintroducing them through the Public Order Bill.

Reactions to the Bill

Policing stakeholders are supportive of some legislative change to policing protests, with Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) saying that [“a modest reset of the scales” between the rights of protestors and the rights of others is needed](#).

However, the Government’s approach to protest has been highly controversial and attracted strong opposition from human rights advocates and campaign groups who have been critical of the Government’s expansion of police powers and criminal sanctions.

[Commentators](#) argue the Public Order Bill will infringe on the right to engage in peaceful protest. The penalties people could face for engaging in protest-related activity have also been criticised for being too harsh, with opponents of the new proposals arguing they could draw people into the criminal justice system unnecessarily.

1 Background: protests and police powers

1.1 Current legislation and recent changes

The [Public Order Act 1986](#) (as amended) is the main piece of legislation that provides the police with powers to restrict protests. However, there are many more pieces of legislation which contain provisions associated with protest and an array of criminal offences that could apply to protestors such as aggravated trespass and obstruction of a highway.¹

The policing of protests has also just this year (2022) undergone significant legislative reform which resulted in an expansion of police powers. The Public Order Bill follows in the footsteps of these recent reforms, by seeking to introduce further criminal law measures in relation to protest.

Human rights experts, civil liberty organisations, and campaign groups have been critical of the Government's recent approach towards protests including the increased restrictions it has put in place and its expansion of the criminal justice response to protests. However, the Government argues it is necessary to respond to what it has described as the “dangerous” and “highly disruptive” tactics used by some protesters.²

2021 inspection: resetting the balance

The Home Office asked Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) to conduct an inspection of the police response to protest, including an assessment of the legislative framework for police powers.³ HMICFRS published its report: [Getting the balance right? An inspection of how effectively the police deal with protests](#) on 11 March 2021.⁴ This included an assessment of proposals from the Home Office for legislative changes to police powers in relation to protests. The majority of these proposals were subsequently incorporated into the PCSC Act but HMICFRS also considered the proposal for “new stop, search and seizure powers to prevent serious disruption caused by protests” which now feature in the Public Order Bill.

¹ See section one of House of Commons Library briefing [Police powers: protests](#)

² Home Office, [Government cracking down on highly disruptive protest tactics](#), 2 December 2021

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

⁴ To gather a wide range of views and perspectives, HMICFRS interviewed several different stakeholders including the police (junior and senior officers), the public, protest groups and businesses affected by protests.

HMICFRS said “a modest reset of the scales” – which could too readily tip in the favour of protesters over others – was needed. HMICFRS offered its “qualified support”⁵ for most (but not all) of the proposals put forward by the Home Office and argued that after speaking to police forces, protest groups, businesses and the wider public, changes were needed to improve the effectiveness of protest policing “as long as they are applied proportionately and in line with human rights law”.⁶

Human rights advocacy groups did not agree with the Inspectorate’s assessment and many disagree that the Government’s approach is setting the right balance. Emmanuelle Andrews, policy and campaigns officer at Liberty was quoted in the Guardian saying that the Government’s plans were “a staggering assault on our right to protest as well as an attack on other fundamental rights.”⁷

There has been strong opposition from environmental campaign groups in response to the latest proposals set out in the Public Order Bill. Megan Randles, political campaigner at Greenpeace UK, said:

The right to protest is one of the safety valves of our democracy. It allows ordinary people to protect their health, families and homes from harm when all other safeguards have failed. The government’s attempt to criminalise peaceful dissent is a threat to everyone’s right to stand up for what they believe in.⁸

Police, Crime, Sentencing and Courts Act 2022

The PCSC Act, which received Royal Assent on 28 May 2022, introduced a package of reforms which strengthened police powers and will significantly change the way protests are policed.

The changes include significantly lowering the threshold at which the police could issue conditions on protests including introducing noise as a legal trigger to issue conditions where it may cause a significant impact. In addition, the PCSC Act widens the types of conditions that can be issued on static protests; allow conditions to be issued on one-person protests; and abolishes the common law offence of public nuisance, replacing it with a new statutory offence of “intentionally or recklessly causing public nuisance”.

Part 3 of the PCSC Act relating to protests proved to be amongst the most controversial provisions within the Act when it was passing through Parliament. The changes drew significant opposition and many concerns were raised by human rights experts regarding the compatibility of the provisions

⁵ HMICFRS, [Getting the balance right? An inspection of how effectively the police deal with protests](#), March 2021, page 2

⁶ HMICFRS, [Police need to find the correct balance between the rights of protesters and the rights of others](#), March 2021

⁷ The Guardian, [Civil liberties groups call police plans for demos an 'assault' on right to protest](#), 11 March 2021

⁸ The Guardian, [‘Criminalising our right to protest’: green groups’ anger over public order bill | Environmental activism](#), 10 May 2022

with human rights legislation. During the Public Bill Committee stage in the House of Commons, on every single clause, the Committee divided on the question of whether they should stand part of the PCSC Bill. Throughout its passage multiple amendments were put forward and it was protest-related clauses that were the last to be agreed by both Houses.⁹

Previous attempt to bring in the provisions in the Public Order Bill

The Public Order Bill is not the first time these measures for responding to protests have been put forward. During the PCSC Act's bill passage, on the 1 December 2021, the Government tabled amendments for the Lords report stage to add measures into the PCSC Bill that are now in the Public Order Bill.¹⁰

The Government's amendments sought to add the following to the PCSC Bill:

- the creation of 'locking on' offences;
- criminalising obstructions of major transport works and interference with operation of key national infrastructure;
- police powers to stop and search with or without suspicion of an offence; and
- the creation of serious disruption prevention orders.

1 What prompted the proposals?

The Government proposed these substantial amendments to expand the PCSC Bill in response to a series of co-ordinated protests by environmental campaign group, Insulate Britain, that took place across September and October 2021. Insulate Britain blocked several major roads, including parts of the M25 and roads around Parliament, causing significant disruption to travel. Some protestors glued themselves to roads to make it harder for the police to remove them.¹¹

⁹ House of Commons Library, [Police, Crime, Sentencing and Courts Bill: Progress of the Bill](#), 22 April 2022.

¹⁰ Home Office, [Government cracking down on highly disruptive protest tactics](#), 2 December 2021.

¹¹ BBC News, [What is Insulate Britain and what does it want?](#), 17 November 2021.

Reaction

Following a debate on 17 January 2022, the Lords rejected all of the amendments tabled by the Government that contained the new proposals for protests.

One of the primary concerns was the late stage at which the Government had tabled the amendments, as this prevented the new clauses from being properly considered by the House of Commons. The new measures were considered to be too substantial, representing “sweeping, significant and further controversial powers” for them to be introduced without proper scrutiny.¹²

The Lords also cited concern about the impact of expanding stop and search powers, the need – and threshold – for new ‘locking on’ offences, and the impact of the proposed civil orders leading to people being effectively banned from future protests.¹³ These are explored in more detail in later sections of this briefing.

1.2 The case for further reform?

Several recent high-profile protest events have drawn concern about the ability of the police to deal with non-violent protests causing serious disruption, resulting in calls to reform the policing of protests. The Government’s position is that further changes – in addition to the PCSC Act – are needed to manage disruptive protests, in particular those that see protestors affixed to objects or land and those that disrupt infrastructure such as transport.

Difficulty moving protesters

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.

Whilst these tactics do present police with challenges, they are not particularly novel,¹⁴ and the police have previously used existing laws (like obstruction of the highway and aggravated trespass) to respond to these sorts of protests. However, the Government and policing stakeholders have said the use of locking-on tactics has increased and that responding to them requires specialist teams which takes time and significant resources.¹⁵

¹² Lord Rosser at HL Deb, [Police, Crime, Sentencing and Courts Bill](#), 17 January 2022, c1432

¹³ HL Deb, [Police, Crime, Sentencing and Courts Bill](#), 17 January 2022, c1430-1476

¹⁴ See: National Police Improvement Agency, [ACPO manual of guidance on dealing with the removal of protestors: 2006-2007](#), 2007

¹⁵ Home Office, [Government cracking down on highly disruptive protest tactics](#), 2 December 2021

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). XR had targeted the papers for failing to “report on the climate and ecological emergency”.¹⁶

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”.¹⁷ Protestors erected the bamboo structures on the evening of 4 September 2020 and the protests were cleared at all sites by the afternoon of 5 September 2020.¹⁸ Herefordshire Police said the operation required “highly specialist resources and cutting equipment in order to safely remove the protesters from their locations”.¹⁹

HS2 Euston Square protest (January/ February 2021)

Protestors objecting to the construction of the HS2 railway line tunnelled underneath Euston square.²⁰ Some then locked themselves to the structure.²¹ The protestors were knowingly trespassing and were removed on the basis of civil orders granted by the courts.²² The process of removing the protestors from the makeshift tunnels was complex. The final protester left the site on 26 February 2021.²³

Insulate Britain protests (September/October 2021)

Over multiple days across September and October 2021, members of environmental campaign group, Insulate Britain, took part in a series of co-ordinated protests that involved repeatedly blocking major roads including parts of the M25 and roads around Parliament. The protests caused major disruptions to travel. The group was calling for the Government to fund insulation of all social housing by 2025 and develop a national programme to ensure all homes are insulated to be low energy by 2030.²⁴

To make themselves harder to remove some protesters glued their hands to roads or each other, which in some cases required specially trained officers to “de-bond them”.²⁵ The protests took place in different locations and required multiple police forces to respond. Surrey police force estimated that across a

¹⁶ BBC News, [Extinction Rebellion protesters block newspaper printing presses](#), 5 September 2020; HC Deb, [Birmingham Attacks and Extinction Rebellion Protests](#), 7 September 2020

¹⁷ HC Deb, [Attacks and Extinction Rebellion Protests](#) Birmingham, 7 September 2020, c384

¹⁸ Ibid

¹⁹ BBC News, [Extinction Rebellion protesters block newspaper printing presses](#), 5 September 2020

²⁰ BBC News, [HS2 protesters dig tunnel to thwart Euston eviction](#), 26 January 2021

²¹ BBC News, [Euston tunnel protests: Father fears for children's lives](#), 6 February 2021

²² [\[2021\] EWHC 246 \(Admin\)](#), 10 February 2021

²³ *The Guardian*, [Anti-HS2 tunnel protest at Euston ends as final activist leaves](#), 26 February 2021

²⁴ BBC News, [What is Insulate Britain and what does it want?](#), 17 November 2021

²⁵ BBC News, [Insulate Britain: Arrests as protesters glue themselves to roads](#), 2 November 2021.

four-day period responding to the protests cost the force approximately £110,000.²⁶

The Government took out several court injunctions to try and prevent further action, including injunctions granted to National Highways, banning demonstrations on the M25.²⁷ Several protestors were arrested throughout the protests including for breaching these civil orders. It has been reported that over 70 people have since been charged in relation to the protests including charges of public nuisance, obstruction, and criminal damage.²⁸ Press reports indicate ten members of Insulate Britain have served prison sentences for contempt of court for breaching the injunctions and seven received suspended sentences.²⁹ It was following these protests that the Government proposed measures for new offences of locking-on and interfering with key national infrastructure.

1.3 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. In the UK this right is currently protected under Articles 10 and 11 of the European Convention on Human Rights (ECHR).

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.³⁰

Article 11 provides for the “freedom of peaceful assembly and freedom of association with others”.³¹

The UK is a signatory of the ECHR and therefore obliged to ensure that ECHR rights are protected. [The Human Rights Act 1998](#) gave domestic effect to the ECHR.

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

²⁶ BBC News, [Insulate Britain: M25 protests costs Surrey Police £110k](#), 22 November 2021.

²⁷ BBC News, [What is Insulate Britain and what does it want?](#), 17 November 2021

²⁸ The Independent, [More than 70 Insulate Britain activists charged over protests blocking M25](#), 11 March 2022.

²⁹ The Guardian, [At least 18 peaceful environmental protesters jailed in UK this year](#), 28 December 2021

³⁰ [European Convention on Human Rights](#), Article 10

³¹ *Ibid*, Article 11

prevention or 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.³²

Reforms: compatibility with human rights legislation

The Joint Committee on Human Rights (JCHR) expressed a number of concerns regarding the Government's proposals for changes to the law on protest.³³ When the Government tabled its amendments at Lords report stage to the PCSC Bill, the JCHR wrote to the Government with concern that the changes could amount to significant new restrictions on the rights guaranteed by Articles 10 and 11 of the ECHR.³⁴ The Committee highlighted three key issues with the proposals that are now in the Public Order Bill.

Excessive breadth and pre-emptive effect

A number of the provisions proposed, such as expansions to stop and search powers and the introduction of Serious Disruption Prevention Orders, involve pre-emptive action on individuals that may be intending to engage in protest. Restrictions on a disruptive protest can be justified if necessary and proportionate to the case. However, determining whether a particular restriction is necessary and proportionate is a standard that is far harder to establish when action is taken pre-emptively.

Inadequate protections against misuse

When legislation introduces new police powers or extends them, it should also introduce adequate safeguards to prevent these powers being misused. This is seen as particularly important when those powers directly target individuals seeking to speak out and demonstrate due to the potential to violate Articles 10 and 11 of the ECHR. The JCHR was concerned that many of the measures lacked adequate safeguards.

Uncertainty

The measures included many terms that the Committee said were not sufficiently precise - such as "serious disruption", "locking-on", and "protest-related" - which would make it difficult for protesters to know whether their behaviour is lawful or not. It would also leave police offices with excessive discretion, increasing the possibility of misuse of powers and challenges with enforcement.

³² Ibid

³³ See: [Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill](#)

³⁴ Rt Hon Harriet Harman MP (Chair of the Joint Human Rights Committee), [Proposed Government amendments to the Police Crime, Sentencing and Courts Bill](#), 29 November 2021.

2

The Bill

The [Public Order Bill](#) was introduced to the House of Commons on 11 May 2022. The Bill's second reading is scheduled for 23 May 2022.

What would the Public Order Bill do?

The Bill would bring in three major changes to the way protests are policed in England and Wales.³⁵

Expanding protest related offences

Clauses 1-5 of the Bill would introduce four new criminal offences of locking-on; being equipped to lock-on; obstructing major transport works; and interfering with key national infrastructure, attracting sentences of up to 6 or 12 months (depending on the offence) and unlimited fines.

Extending police stop and search powers

Clauses 6 and 7 of the Bill would give the police two new stop and search powers in respect of items related to specified protest-related offences.

The first would enable police officers to search individuals if they have 'reasonable grounds' for suspecting that someone has an object used, or intended for use, in a protest-related offence. The second would enable senior officers to pre-authorise searches of individuals. In this case, uniformed officers would not need to have suspicion that an individual has a prohibited object on them before stopping and searching them.

Introducing a new preventative court order

Clause 12 of the Bill would create a new Serious Disruption Prevention Order that could be issued to people on conviction for a protest-related offence.

Clause 13 would also enable the order to be issued in certain circumstances without a conviction if an application is made to the courts by a chief police officer.

³⁵ Clause 11 would also lower the seniority needed in London to set conditions on protests, allowing a Commander to do so. The current seniority required to do this is Assistant Commissioner. The police can issue conditions on planned or ongoing protests to maintain public order. Protestors who do not comply with a police direction are committing an offence. This provision is not discussed further in this paper.

The court order would enable conditions to be placed on an individual such as preventing them from being in particular place or with particular people, or from participating in certain activities.

Where and when will the Bill take effect?

The Bill would apply only in England and Wales.

The Home Secretary would get regulation-making powers through clauses 4,9 and 16 on the Bill's Royal Assent.

- Clause 4 would provide the Secretary of States with powers to amend the list of infrastructure that applies to the offence of 'interfering with key national infrastructure'.
- Clause 9 would provide the Secretary of State with powers to determine the processes for what the police would be able to do with objects seized following a search of an individual or vehicle. This includes regulations for the retaining and safe-keeping of objects and disposal or destruction.
- Clause 16 would provide the Secretary of State with powers to determine who could be a responsible person for overseeing any electronic monitoring requirements attached to an individual's Serious Disruption Prevent Orders.

The remaining clauses of the Bill would be brought into force by commencement regulations made by the Secretary of State, which could be at any point after Royal Assent.

More on the Bill

The following supporting Government documents have been published regarding the Bill:

- [Explanatory Notes](#) (PDF)
- [Factsheet on the Bill](#)
- [Equality Impact Assessment](#)
- [Public Order Bill: European Convention on Human Rights memorandum](#)

3 New protest-related offences: Clauses 1-5

The Bill would create four new protest-related offences. The Government has said these measures have been developed “taking account of the disruptive and dangerous tactics” of some protest groups that cause significant delays to people travelling, prevent the distribution of goods, and cause costly delays to construction. Opponents to the new offences say that they will stifle peaceful and legitimate protest, arguing they will infringe people’s human rights and the right to choose how people protest and voice dissent. They have raised concerns that sentences and fines that could be imposed in response to these offences are heavy.

3.1 Locking-on

There are two ‘locking-on’ offences in the Public Order Bill: an offence of locking-on and an offence of being equipped for locking-on.

Offence of locking-on

Clause 1, subsection (1) would establish a new criminal offence for:

- an individual “attaching” themselves on to another person, an object or to land;
- an individual attaching someone else to another person, object, or land; or
- an individual attaching an object to another object or land.

Requirements: For the offence to apply, the individual’s actions must cause (or be capable of causing) “serious disruption” to either an organisation or at least two individuals. The individual must also intend for their actions to cause serious disruption or be “reckless” as to whether their actions would cause serious disruption to either an organisation or at least two individuals.

Defence: A person charged with this offence would have a defence if they could provide a “reasonable excuse” for their actions.

Penalty: The new offence would carry a maximum sentence of six months imprisonment, an unlimited fine, or both.

Offence of being equipped for locking-on

Clause 2, subsection (1) would establish a criminal offence:

- if an individual has an “object” with them and the intention is that it may be used in carrying out the above offence of locking-on (clause 1); or
- if an individual has an object with them that is connected with an offence of locking-on that has been committed by any person.

Equipment: The Bill does not specify any particular objects that qualify as equipment for the offence. The Explanatory Notes list glue and a padlock as examples.

Penalty: An unlimited fine would be the maximum penalty for this new offence.

3.2

Transport works and key infrastructure

There are two offences related to obstructing or interfering with transport works and national infrastructure in the Public Order Bill.

Offence of obstructing major transport work

Clause 3, subsection (1) would establish a criminal offence if an individual:

- obstructs an “undertaker” who is setting out the lines of any major transport works; constructing or maintaining any major transport works; or is taking “any steps that are reasonably necessary for facilitating, or in connection with, the construction or maintenance of any major transport works”; or
- interferes with, moves, or removes any apparatus that is related to the construction or maintenance of major transport works; or
- interferes with, moves, or removes any apparatus that belongs to a person conducting, in charge of, or acting under the authority of the person in charge of the works.

“Undertaker” refers to someone who is authorised to work on constructing or maintaining major transport works (eg an engineer or construction worker).

Defining “major transport works”: There is a two-part definition of what constitutes major transport works for this offence.

1. Transport infrastructure covered by Acts of Parliament which provide legislative authority for their construction and/or maintenance, such as the High Speed Rail (London-West Midlands) Act 2017.

2. Nationally significant infrastructure projects that have been granted ‘development consent orders’ under section 114 of the Planning Act 2008. For example new airports or airport extensions, major road projects, or railway works.

Defence: A person charged with this offence would have a defence if they could provide a “reasonable excuse” for their actions or if the action was in relation to furthering a trade dispute.

Penalty: This offence would also carry a maximum sentence of six months imprisonment, an unlimited fine, or both.

Offence of interfering with the use or operation of key national infrastructure

Clause 4, subsection (1) would establish a criminal offence for committing an act that interferes with the use or operation of key national infrastructure.

Requirements: For the offence to apply, the individual must intend for their actions to have the effect of interfering with key infrastructure or be “reckless” as to it causing such an effect.

Defining interference: “Interference” is defined in subsections (4) and (5) as:

1. **preventing** the infrastructure from being used or operated “to any extent” for its intended purpose; or
2. **“significantly” delaying** the infrastructure from being used or operated.

Defining key national infrastructure: Subsection (6) sets out a list of types of infrastructure that constitute “key national infrastructure”, each of which are expanded on further in clause 5. These include road, rail, and air transport infrastructure; oil, gas, and electricity infrastructure; and newspaper printing infrastructure.

The Bill also provides the Secretary of State with the power to amend the list of key national infrastructure by statutory instrument. However, this must be laid down and approved by Parliament.

Defence: As with the other new offences in the Public Order Bill, there would be a defence for someone charged with this offence if they could provide a “reasonable excuse” for the act. There would also be a defence if the action was in relation to furthering industrial action.

Penalty: This offence would be an either-way offence, which means it could be tried as a summary offence in a magistrates’ court or an indictable offence in a Crown court. The maximum penalty would be six months imprisonment in

the magistrates' court³⁶ or 12 months imprisonment in the Crown court, an unlimited fine, or both.

3.3

Analysis of proposals for new protest-related offences

Locking-on and being equipped to lock-on

Existing powers and the need for new criminal offences

Recent high-profile protests over the last few years such as the Extinction Rebellion (XR) protests in 2020 which involved “sit ins” over multiple days,³⁷ and Insulate Britain protests in 2021, which involved protestors gluing themselves to roads,³⁸ drew heightened attention and debate to tactics like ‘lock-ons’.

However, tactics where protestors affix themselves to objects or buildings or to each other are not a new feature of protests. Whilst locking-on may present practical challenges to officers in moving protesters on, the police have previously used existing laws to respond to these sorts of protests, for example wilful obstruction of the highway and aggravated trespass.³⁹

When these measures were first proposed as amendments to the PCSC Bill, the Lords questioned the necessity of the measures, noting that powers for dealing with this type of protest involving ‘locking-on’ already exist.⁴⁰

But whilst locking-on may not be a new feature of protest, the methods used for locking-on have arguably become more complex and difficult for the police to tackle. Policing stakeholders and the Government have highlighted that in some cases removing people can be a very lengthy and complicated process, requiring specially trained teams.⁴¹ The Government argues that this is costly and a drain on police time, diverting police resources from other important police work.⁴² Both HMICFRS and the Government have highlighted that in some instances it can also be a dangerous tactic with protestors

³⁶ Rising to 12 months in due course, when reforms to magistrates' court sentencing powers take effect

³⁷ BBC News, [Extinction Rebellion protesters block newspaper printing presses](#), 5 September 2020; HC Deb, [Birmingham Attacks and Extinction Rebellion Protests](#), 7 September 2020

³⁸ BBC News, [Insulate Britain: Protesters block roads leading to M25](#), 27 October 2021

³⁹ Aggravated trespass is an offence under section 68 of the Criminal Justice and Public Order Act 1994 and occurs where someone trespasses on land and does something there with the intention of disrupting or obstructing the lawful activity of someone else, or of intimidating them. The most recent judicial pronouncement on the law involved a lock-on: [Richardson v DPP \[2014\] UKSC 8](#).

⁴⁰ HL Deb, [Police, Crime, Sentencing and Courts Bill](#), 17 January 2021, c1432.

⁴¹ HMICFRS, [Getting the balance right? An inspection of how effectively the police deal with protests](#), March 2021

⁴² Home Office, [Government cracking down on highly disruptive protest tactics](#), 2 December 2021.

affixing themselves to surfaces or objects in circumstances that present a danger to themselves.⁴³

However, in its inspection of the police response to protest and assessment of Home Office proposals for legislative change, HMICFRS interviewed a range of stakeholders from across the police, the public, protest groups and businesses affected by protest and found:

most interviewees did not wish to criminalise protest actions through the creation of a specific offence concerning locking-on.

Instead, the report noted the variation across England and Wales in specialist officers trained in protestor removal and raised issues around the need for improved guidance, consistent training, and better resources.⁴⁴

Proposed conditions and threshold too low

At the Lords report stage of the PCSC Bill, Lord Rosser (Labour) also raised concern that the threshold for triggering the offence of locking-on (ie that an offence would occur if someone's actions were capable of causing serious disruption to just two people) was "exceptionally low".⁴⁵

Human rights groups were concerned that the "broad" and "vague" nature of the proposals would lead to wide its application.⁴⁶ Human rights organisation, Liberty, argued in its analysis that the offence:

criminalises an innumerable list of activities ... constraining people's right to choose the manner and form of their expressions of dissent.⁴⁷

In particular, Liberty criticised the term "attach" for being too vague and argued that by not defining it in the Bill or how permeant an attachment had to be, it could be applied in a wide range of circumstances, for example protesters linking arms.⁴⁸

"Serious disruption" is not defined in the Bill itself. Recently the PCSC Act amended the Public Order Act 1986, providing the Secretary of State with a regulation-making power to define "serious disruption".⁴⁹ This raised significant controversy during the passing of the PCSC Act over the lack of

⁴³ HMICFRS, [Getting the balance right? An inspection of how effectively the police deal with protests](#), March 2021

⁴⁴ Ibid

⁴⁵ Lord Rosser HL Deb, [Police, Crime, Sentencing and Courts Bill](#), 17 January 2021, c1433

⁴⁶ Liberty, [Liberty's briefing on the Government's amendments to the Police, Crime, Sentencing and Courts Bill \(protest\)](#) (PDF), November 2021.

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ This power is subject to the affirmative procedure. This means that the Statutory Instrument defining serious disruption must be laid before, and actively approved, by Parliament.

clarity of what would constitute serious disruption in the context of new offences and the bar at which it would be set.⁵⁰

When the Public Order Bill measures were proposed as amendments to the PCSC Bill, the JCHR raised concern about introducing further offences regarding causing serious disruption without providing a statutory definition. It was felt this would leave both protestors and police officers unsure of where the line between lawful and non-lawful protest lies.⁵¹ At the time of the Public Order Bill being introduced to Parliament and as it goes for its second reading in the House of Commons, the Secretary of State has yet to exercise her new power to define “serious disruption”, leaving it uncertain where the threshold would lie for these proposed new offences.

Casting the net too wide: equipping to lock-on

Liberty has accused the proposed offence of being equipped to lock-on of casting “an extremely wide net”.⁵² The drafting of the offence, and its lack of specification over what objects constitute as relevant equipment for the offence, would mean that an object in someone’s possession does not have to be specifically related to a protest. Rather it could be any object if it is established that a person intended for it to be used in a certain way. Similarly, the offence would apply if the object is connected to the commission of locking-on offence by “any person”, meaning the object does not have to be used by the person who has it in their possession in order for this offence to apply to them.

Obstructing transport works and interfering with infrastructure

During the Lords report stage of the PCSC Bill when these offences were first proposed, the JCHR raised concern about their “excessive breadth”.⁵³

For example, the proposed new offence of obstructing major transport works would potentially cover a wide range of minor acts including moving any apparatus that ‘relates to’ construction or maintenance of major transport works and even moving any apparatus that belongs to a person acting under the authority of the person in charge of the works. The Bill contains no requirement that these acts are committed with any destructive or disruptive intention.

Liberty also raised concern about the broadness of this offence, noting the term “apparatus” is left largely undefined and saying the terms “interfere”,

⁵⁰ House of Commons Library, [Police, Crime, Sentencing and Courts Bill: Progress of the Bill](#), 22 April 2022.

⁵¹ Rt Hon Harriet Harman MP (Chair of the Joint Human Rights Committee), [Proposed Government amendments to the Police Crime, Sentencing and Courts Bill](#), 29 November 2021.

⁵² Liberty, [Liberty’s briefing on the Government’s amendments to the Police, Crime, Sentencing and Courts Bill \(protest\)](#) (PDF), November 2021.

⁵³ Rt Hon Harriet Harman MP (Chair of the Joint Human Rights Committee), [Proposed Government amendments to the Police Crime, Sentencing and Courts Bill](#), 29 November 2021.

“move”, and “remove” could catch a wide range of actions.⁵⁴ Further, the offence of interfering with national infrastructure would cover preventing the infrastructure from being used or operated “to any extent” however minor.

The JCHR felt this could raise issues with the proportionality and necessity of the measures and that there was potential for them to stifle peaceful and legitimate protest, which could be in breach of Article 10 and 11 of the ECHR and the Human Rights Act 1998.⁵⁵ During the debate at Lords report stage of the PCSC Bill, members of the Lords echoed these concerns, arguing that the offence for obstructing transport works and key infrastructure was “overreaching and unnecessary”.⁵⁶

Concern was also noted by Lord Rosser that the new offences would particularly target environmental protesters.⁵⁷ Since the Public Order Bill was announced in the Queen’s speech, the Bill has generated strong opposition from environmental campaign groups who have argued that the Bill is distracting from responding to a climate crisis. Megan Randles, Greenpeace UK’s political campaigner, was quoted in The Guardian saying:

Time and again, it’s activism that has dragged a reluctant UK government into confronting vital issues, whether it’s the climate crisis or women’s rights. ... [Ministers] who talk about freedoms at every turn should rethink this attack on one of the most fundamental freedoms we have.⁵⁸

A spokesperson for Insulate Britain also said “How many will be locked up until we realise there’s a problem society needs to address?”⁵⁹

In contrast, a YouGov poll of 1665 adults found that the majority of those polled supported the new tougher measures regarding protests when introduced in the PCSC Bill. Close to two thirds (64%) supported making ‘locking-on’ a criminal offence, the highest of the measures asked about.⁶⁰

⁵⁴ Liberty, [Liberty’s briefing on the Government’s amendments to the Police, Crime, Sentencing and Courts Bill \(protest\)](#) (PDF), November 2021.

⁵⁵ Rt Hon Harriet Harman MP (Chair of the Joint Human Rights Committee), [Proposed Government amendments to the Police Crime, Sentencing and Courts Bill](#), 29 November 2021.

⁵⁶ Lord Rosser at HL Deb, [Police, Crime, Sentencing and Courts Bill](#), 17 January 2021, c1434

⁵⁷ Ibid

⁵⁸ The Guardian, [‘Criminalising our right to protest’: green groups’ anger over public order bill](#), 10 May 2022

⁵⁹ Ibid

⁶⁰ You Gov, [Policing Bill: Britons support proposed new police protest powers](#), 15 March 2022.

4 New stop and search powers: clauses 6 and 7

The Public Order Bill would extend stop and search powers for police to search for and seize objects that have, or may be, used in the commission of a protest-related offence, such as devices or objects for ‘locking-on’.

[Stop and search](#) is one of the most contentious police powers and can be one of the most intrusive interactions that members of the public have with the police. It has a controversial history and there is ongoing debate over the way this power is exercised and the potentially harmful impact it can have, both on individuals when not exercised sensitively and on community relations when poorly targeted.

Those opposed to stop and search note that the long-standing disparity in the search rate by ethnicity continues to ensure that Black and Minority Ethnic (BME) people are disproportionately affected by the negative effects of stop and search. In 2020/21, Black, Asian and Minority Ethnic (BME) people were 3.5 times more likely to be stopped and searched than White people. This disparity is particularly stark for Black people who were 7 times more likely to be stopped and searched than White people.⁶¹

Over recent years, police watchdogs have raised concerns about the lawfulness and effectiveness of some searches and of the way the forces monitor and scrutinise their use of stop and search powers.

4.1 Current use of stop and search

The police have a variety of legislative powers to stop and search those they suspect have certain items. Their stop and search powers allow them to “allay or confirm” their suspicions without making an arrest.

The main types of stop and search powers are:

Reasonable ground searches

The most common type of stop and search power requires officers to have “**reasonable grounds**” to conduct the search. [Section 1](#) of the Police and Criminal Evidence Act 1984 (PACE) and [section 23](#) of the Misuse of Drugs Act

⁶¹ Home Office, [Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021 second edition](#), 18 November 2021.

1971 are the most commonly used reasonable grounds stop and search powers to enable the police to search for drugs and offensive weapons.⁶²

Police watchdogs (including HMICFRS and the Independent Office for Police Conduct) have raised concerns that some searches are not conducted lawfully and effectively. In a review of 9,378 search records, HMICFRS found the “vast majority” (80%) of search records had weak recorded grounds and a further 14% had “recorded grounds that were not reasonable”.⁶³ HMICFRS has repeatedly called on forces to do more to monitor and scrutinise their use of the powers.

Suspicion-less (pre-condition) searches

[Section 60](#) of the Criminal Justice and Public Order Act 1994 (as amended) allows officers to conduct searches of individuals without reasonable grounds, sometimes known as ‘no suspicion’, ‘pre-condition’, or ‘section 60’ searches. This power can only be used when authorised by a senior officer based on certain ‘**pre-conditions**’. The power is designed to respond to serious violence so that police can confiscate weapons before a violent incident takes place or recover weapons used in a recent violent incident.⁶⁴

The College of Policing considers that the “reasonable grounds” test is “[key to fair decision making in stop and search](#).”⁶⁵ Therefore pre-condition search where reasonable suspicion is not needed is a highly controversial stop and search power. Those against its use – such as campaign group [StopWatch](#) – argue it is ineffective, open to abuse and particularly harmful to police community relations.⁶⁶ Evidence also suggests that searching without reasonable grounds is less effective at preventing and detecting crime. The ‘find rate’ for pre-condition searches over the last decade has typically been between 1% and 3%.⁶⁷

In May 2021, the Criminal Justice Alliance submitted a super-complaint (now being investigated by the College of Policing) against section 60 suspicion-less searches, calling for its repeal or for better safeguards and scrutiny over its use. The super-complaint argues that the “blanket nature of the power is leading to thousands of innocent people being unnecessarily stopped and searched every year.” It raises a number of concerns about a

⁶² In the year to March 2021, 99% of the 700,000 stop and searches recorded in England and Wales were carried out under section 1 of PACE (and associated legislation). Source: Home Office, [Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021 second edition](#), 18 November 2021.

⁶³ HMICRS, [Disproportionate use of police powers A spotlight on stop and search and the use of force](#), February 2021, p36.

⁶⁴ In the year to March 2021, 1% of all stop and searches in England and Wales were carried out under section 60 of the Criminal Justice and Public Order Act 1994. Source: Home Office, [Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021 second edition](#), 18 November 2021.

⁶⁵ College of Policing, [Authorised Professional Practice: Stop and search, legal basis](#), 25 February 2019

⁶⁶ The Guardian, [Police accused of abusing easier stop and search](#), 14 April 2019

⁶⁷ Home Office, [Police powers and procedures England and Wales \(year ending 31 March 2020\)](#), 27 October 2020.

disproportionate impact on Black people and the impact of searches on young people.⁶⁸ In 2020/21 Black people were also 14 times more likely than White people to be searched under this power.⁶⁹

Additional search powers

Section 165 of the PCSC Act introduced a new search power that will allow officers to stop and search individuals who have been issued with a **Serious Violence Reduction Order (SVROs)** by the courts without reasonable grounds or authorisation. This will be piloted in at least one police force before national rollout. The introduction of SVROs and corresponding stop and search powers was highly controversial.⁷⁰

Police officers also have a power to search those they ‘reasonably suspect’ are terrorists.⁷¹

4.2

Expanding stop and search in relation to protest

Searches on suspicion

Clause 6 of the Public Order Bill would amend section 1 of PACE to allow officers to stop and search a person or vehicle if they have ‘**reasonable grounds’ for suspecting** that they will find an article that is intended to be used in, or has been made for, relevant protest-related offences. The offences include:

- those that would be created by clauses 1, 3 and 4 of this Bill (explained in section 3 of this briefing);
- intentionally or recklessly causing public nuisance, a new offence under section 78 of the PCSC Act; and
- wilful obstruction of a highway, under section 137 of the Highways Act 1980.

The exercise of these powers would be subject to [PACE Code A](#) - statutory guidance maintained by the Home Office that officers must follow in order to exercise their search powers lawfully.

⁶⁸ Criminal Justice Alliance, [More harm than good](#), 24 May 2021; Home Office, [Police super-complaints: police use of stop and search powers](#), 24 May 2021.

⁶⁹ HMICRS, [Disproportionate use of police powers A spotlight on stop and search and the use of force](#), February 2021

⁷⁰ House of Commons Library, [Police, Crime, Sentencing and Courts Bill: Parts 10 and 11 - Management and rehabilitation of offenders](#), 12 March 2021.

⁷¹ [Part V](#), Terrorism Act 2000 [as amended]

Suspicion-less searches

Clause 7 would introduce a new power for senior police officers (above the rank of inspector) to authorise uniformed officers within a specified locality and time period to conduct stop and searches for objects intended to be used in, or that have been made for, relevant protest-related offences or objects in connection with specified protest-related offences that have been committed. Following authorisation, police officers would be able to conduct searches on individuals whether or not they have any grounds for suspecting them of having such an object on them.

When could these searches be used?

Senior officers would be able to authorise uniformed officers to exercise stop and search without suspicion if they “reasonably believe” that one of the following offences may have been committed:

- offences that would be created by clauses 1, 3 and 4 of this Bill (explained in section 3 of this briefing);
- intentionally or recklessly causing public nuisance, an offence under section 78 of the PCSC Act; or
- wilful obstruction of a highway, under section 137 of the Highways Act 1980.

Senior officers could also give authorisation if they reasonably believe that people are carrying “prohibited objects”. “Prohibited objects” in this case refers to objects which:

- are made or adapted for use in the course of, or in connection with, one of the offences outlined above; or
- are intended by the person in possession of it to be used in one of the offences outlined above.

What areas could be designated for these searches and for how long?

When the above conditions have been met, senior officers would be able to authorise these searches for **any “locality” within their police force area**. However, authorising officers should ensure the specified locality is “no greater than necessary” to prevent the commission of the above offences or the carrying of prohibited objects.

Senior officers would be able to authorise a locality for these searches for a **maximum of 24 hours** but they should ensure the specified period is “no longer than necessary” to achieve its aims (ie to prevent the commission of the above protest-related offences or the carrying of prohibited objects). Subsection (5) would enable officers above the rank of superintendent to **extend the authorisation for suspicion-less searches by a further 24 hours**.

Who could be searched using these search powers?

Within the authorised locality and time period, an officer would be able to stop and search any person they see fit to and search anything they are carrying. It would also allow officers to stop and search any vehicle and search any driver or passenger.

4.3

Analysis of stop and search proposals

Most reforms to stop and search over the last thirty years have focused on improving the proportion of searches that are carried out with ‘strong reasonable grounds’.⁷² However, the Bill marks the latest in a series of recent moves to expand police powers of stop and search.⁷³

The Government has said proposals for protest-related search powers - both on suspicion and without - will improve the police’s ability to manage protests that cause a disproportionate impact on communities and will allow the police to take a “proactive approach” to “prevent such disruption happening”.⁷⁴ However, the proposals have also raised a number of concerns amongst commentators⁷⁵ and was met with strong opposition when first put to the Lords during the passage of the PCSC Bill.⁷⁶ Concerns centre on human rights, effectiveness, and the potential for a disproportionate effect based on a protester’s ethnicity.

Human rights

It’s widely acknowledged that stop and search engages Article 8 of the ECHR, which guarantees the right to a private and family life.⁷⁷ While infringement may be justified, provided it is necessary and proportionate in pursuit of a legitimate aim, searching without reasonable grounds and without appropriate safeguards in place does risk disproportionately interfering with someone’s Article 8 rights.

Section 60 pre-condition searches (pre-authorized suspicion-less searches) were challenged in the Supreme Court on human rights grounds in 2015. The Supreme Court unanimously found that safeguards present in both legislation

⁷² See section 4 of the House of Commons Library, [Police powers: stop and search](#), 10 March 2021; and for example Theresa May reforms (2013-2019) HC Deb, [Stop and search](#), 30 April 2014, c833.

⁷³ Other recent examples include the Government’s 2019 relaxation of its [voluntary guidance on the best use of pre-condition search](#) (Home Office, [Government lifts emergency stop and search restrictions](#), 11 August 2019) and the introduction of serious violence reduction orders and associated stop and search powers (House of Commons Library, [Police, Crime, Sentencing and Courts Bill: Parts 10 and 11 - Management and rehabilitation of offenders](#), 12 March 2021)

⁷⁴ Home Office, [Public Order Bill: factsheet](#), 11 May 2022.

⁷⁵ The Independent, [New powers to stop and search protesters and make ‘locking on’ a crime added to controversial policing bill](#), 25 November 2021.

⁷⁶ HL Deb, [Police, Crime, Sentencing and Courts Bill](#), 17 January 2022, c1434.

⁷⁷ [European Convention on Human Rights](#), Article 8

and guidance ensured pre-condition search can be compatible with the right to privacy.⁷⁸ However, this challenge did highlight the risks of human rights violations when officers deviate from legislation and guidance.⁷⁹

When the Government first tried to introduce the stop and search measures in the Public Order Bill through amendments to the PCSC Bill, the JCHR wrote to Baroness Williams, Minister of State at the Home Office. The JCHR raised the pre-emptive effect that the stop and search provisions could have on stifling legitimate protest, arguing it could be a disproportionate means of seeking to prevent minor public order offences, potentially putting them in breach of Article 10 and 11 ECHR. It stated:

the ability to take pre-emptive action against those suspected of being about to engage in protest-related offences ... would inevitably result in police officers exercising invasive and potentially intimidating control over potentially large numbers engaged in the legitimate exercise of the right to protest.⁸⁰

The Committee also highlighted the inadequate protections against misuse of the power in relation to suspicion-less search, stating that without the need for officers to justify their stop and search on any rational basis, “the potential for discrimination, arbitrariness and disproportionality in the use of it is inevitably far greater”.⁸¹ This could also impact upon the right to liberty under Article 5 ECHR⁸² and freedom from discrimination under Article 14 ECHR combined with other Convention rights.⁸³

Effectiveness

Poorly targeted and conducted stop and search is widely acknowledged to damage police community relations,⁸⁴ while evidence regarding the impact of stop and search on crime is more mixed.⁸⁵

There is little evidence to suggest stop and search provides an effective deterrent. The use of stop and search appears to cause only marginal positive effects on levels of some crime types. Stop and search may be more effective at detecting criminals, but most searches result in officers finding nothing.⁸⁶

⁷⁸ R (on the application of Roberts) (Appellant) v Commissioner of the Police of the Metropolis and another (Respondents) [2015] UKSC 79. Note: The Court did not consider whether pre-condition searches violated the right to liberty and security.

⁷⁹ Neil Papworth, [Section 60 and the Supreme Court](#), Police Journal [volume 89, issue 3, pages 174-184], 2016 (Intranet link only. Available through the Library’s subscription to Westlaw.)

⁸⁰ Rt Hon Harriet Harman MP (Chair of the Joint Human Rights Committee), [Proposed Government amendments to the Police Crime, Sentencing and Courts Bill](#), 29 November 2021.

⁸¹ Ibid

⁸² [European Convention on Human Rights](#), Article 5

⁸³ [European Convention on Human Rights](#), Article 14

⁸⁴ IOPC, [IOPC calls for stop and search law change and identifies 18 opportunities for improvement | Independent Office for Police Conduct](#), 20 April 2022.

⁸⁵ Home Office, [Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021](#), 18 November 2021.

⁸⁶ Ministry of Justice, [Statistics on race and the criminal justice system 2018](#), November 2019

Police and the Home Office acknowledge that unfair and poorly targeted stop and search creates and reinforces mistrust between those subjected to it and the police.⁸⁷ This can be counter-productive because a lack of confidence in the police can also make people less willing to report crime, undermining the police’s ability to respond to, and investigate, crime.⁸⁸ During the Lords debate on the PCSC Bill amendments, Lord Carlile of Berriew (crossbench) questioned whether the police wrongly stopping and searching people without suspicion could diminish “the respect in which they hold the law”.⁸⁹

2 Boundaries of suspicion-less searches: Section 60 of the Criminal Justice and Public Order Act 1994

Under section 60 of the Criminal Justice and Public Order Act 1994 (as amended) senior police officers can similarly authorise suspicion-less searches for offensive weapons in a specified locality within their police force area.

Some commentators have argued that the authorisation of suspicion-less searches across whole London boroughs is ineffective and risks interfering with the human rights of residents.⁹⁰ The Metropolitan Police Service (MPS) released information on the geographic extent of their authorisations for section 60 suspicion-less searches through responses to questions to the London Mayor and FOI requests. 27% of all MPS suspicion-less search authorisations between October 2019 and July 2020 applied across a whole borough (87 of 324 authorisations).⁹¹

London Mayor Sadiq Khan noted with regards to section 60 suspicion-less search, concern of offences taking place (or having taken place) or the widespread carrying of prohibited objects “might be borough-wide”.⁹²

Disproportionality

The Government’s equality impact assessment concludes:

There is no evidence to suggest that the use of stop and search powers in relation to the public order offences in scope of this Bill will have a

⁸⁷ College of Policing, APP stop and search: [professional](#), section 1; Home Office, [PACE Code A](#), para 5.1; Home Office, [Equality Impact Assessment: Relaxation of section 60 conditions in the best use of stop and search scheme](#), August 2019

⁸⁸ For more information see section 3 of the House of Commons Library briefing, [Police powers: stop and search](#)

⁸⁹ Lord Carlile of Berriew at HL Deb, [Police, Crime, Sentencing and Courts Bill](#), 17 January 2022, c1438.

⁹⁰ Sian Berry (Green London Assembly Member), [Policing by consent? Sharp rise in London borough-wide stop and search orders](#), August 2018

⁹¹ Metropolitan Police Service, Freedom of Information request: 01.FOI.20.015020, September 2020 [available through the MPS webpage [accessing information](#)]

⁹² Mayor of London, Mayor’s Question Time, [Use of borough-wide section 60 \[2018/1434\]](#), 21 June 2018

disproportionate impact on people on the grounds of race if the use of these powers is fair and based on evidence and intelligence and not based on the protected characteristics of those attending a particular protest.⁹³

However, while these powers are being introduced in relation to protest, concerns have been raised by human rights groups⁹⁴ and members of the Lords that existing disparities in search rates might be reinforced by the proposed expansion of stop and search powers. Black people and people from Minority Ethnic groups have been consistently more likely to be stopped and searched than White people.⁹⁵ This is particularly stark for Black people. Lord Rosser said this is a problem “we have not faced up to in other uses of stop and search”.⁹⁶

In 2020, when Black Lives Matter protests took place across the UK, reacting to the death of George Floyd, protesters highlighted their own experiences of racialised violence and discrimination and experiences with the police.⁹⁷ Some commentators argued that Black-led protests disproportionately faced excessive interventions by police including use of force, arrests, and use of controversial police tactics such as ‘kettling’.⁹⁸

3 Disproportionality in the use of stop and search powers

The Government states in its equality impact assessment that nobody should be stopped and searched because of their race or ethnicity and safeguards exist to ensure against this, including [PACE codes of practice \(PDF\)](#), use of body worn video and extensive data collection.⁹⁹ However, there are questions raised about the effectiveness of those safeguards.

HMICFRS has been repeatedly critical of how forces monitor their own records. They say no force “fully understands the impact of the use of [stop and search] powers” and “no force can satisfactorily explain why” ethnic disproportionality persists in search records.¹⁰⁰

⁹³ Home Office, [Public Order Bill: Equality Impact Assessment](#), 11 May 2022.

⁹⁴ Liberty, [Liberty’s briefing on the Government’s amendments to the Police, Crime, Sentencing and Courts Bill \(protest\)](#) (PDF), November 2021.

⁹⁵ Home Office, [Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021 second edition](#), 18 November 2021.

⁹⁶ Lord Rosser at HL Deb, [Police, Crime, Sentencing and Courts Bill](#), 17 January 2022, c1438.

⁹⁷ House of Commons Library, [Black Lives Matter protests: UK reaction to the killing of George Floyd](#), 4 June 2020.

⁹⁸ Independent, [Black people have been worrying about over-policed protests for decades – nobody listened](#), 16 March 2021; See section 2.2. of Library briefing, [Police powers: protest](#), 19 May 2021, p.14 for more information of use of force and “kettling” in protests.

⁹⁹ Home Office, [Public Order Bill: Equality Impact Assessment](#), 11 May 2022.

¹⁰⁰ HMICRS, [Disproportionate use of police powers A spotlight on stop and search and the use of force](#), February 2021

There is no evidence to suggest that BME people are more likely to carry items that officers have powers to search for. Nor is there evidence that suggests they are more likely to be involved in criminality associated with stop and search enforcement. Societal and institutional racism and its effects (including stereotyping and unconscious bias in some officers) appears to explain most of the disparity in stop and search rates by ethnicity.

In a national stop and search learning report, The Independent Office of Police Conduct (IOPC) recently called for guidelines to be introduced on how to safeguard BME people from being stopped and searched because of decision-making based upon assumptions, stereotypes and racial bias, and mitigate the risks of indirect discrimination.¹⁰¹ The IOPC also found following a review of stop and search cases by the Metropolitan Police Service, failures of officers to turn their body-worn video on at the start of a stop and search encounter as a common reason for undermining the legitimacy of stop and searches.¹⁰²

Support for stop and search expansion

In its inspection of the police response to protest and assessment of legislative proposals put forward by the Home Office, HMICFRS found broad support from the National Police Chief's Council (NPCC) and many senior officers for the Home Office proposals to expand stop and search in relation to protests. Stop and search powers were viewed as a positive preventative measure and deterrent to lock-on protest tactics.¹⁰³

However, many other interviewees from both inside and outside the police service expressed “dissenting and cautionary views”.¹⁰⁴ HMICFRS offered its qualified support for the proposals to introduce stop and search powers for protest, recognising that such powers were “controversial and stating that the measures:

must be subject to strong and effective safeguards if they are to comply with human rights as a matter of primary legislation, and their use in individual cases must be justified and proportionate ... We would wish to see appropriate legal thresholds and authority levels set for authorising the use of the power, and the use of such powers monitored in a similar way to existing stop and search powers.¹⁰⁵

¹⁰¹ IOPC, [IOPC calls for stop and search law change and identifies 18 opportunities for improvement | Independent Office for Police Conduct](#), 20 April 2022.

¹⁰² IOPC, [Review identifies eleven opportunities for the Met to improve on stop and search](#), 28 October 2020

¹⁰³ HMICFRS, [Getting the balance right? An inspection of how effectively the police deal with protests](#), March 2021, p.124.

¹⁰⁴ HMICFRS, [Getting the balance right? An inspection of how effectively the police deal with protests](#), March 2021, p.125.

¹⁰⁵ HMICFRS, [Getting the balance right? An inspection of how effectively the police deal with protests](#), March 2021, p.124.

5 Serious Disruption Prevention Orders: Clauses 12 to 27

The Public Order Bill would introduce a new court order, Serious Disruption Prevention Orders (SDPOs). The aim of these is to target protesters who are deemed to be repeatedly causing disruption.

Issuing an SDPO would enable the courts to impose conditions or requirements on individuals to prevent them engaging in further disruptive protest-related activity. It would be possible to impose an SDPO on conviction for a relevant protest-related offence or in some circumstances a chief police officer would be able to apply to the courts to issue one without a conviction. SDPOs would only be used for individuals aged 18 or over. Although SDPOs would be a civil order, breach of an SDPO would be a criminal offence.

5.1 Issuing a Serious Disruption Prevention Order

When could an SDPO be issued?

On conviction

Clause 12 would allow the prosecution to apply to the courts for an SDPO to be issued as an attachment to someone's conviction for a "protest-related" offence.

To issue an SDPO on conviction, the courts would have to be satisfied the conviction was for a "protest-related" offence and that, in addition, the individual in the last five years had either:

- been convicted of another protest-related offence, committed a protest-related breach of an injunction, or caused/contributed to another person doing so; or
- carried out activities (or caused/contributed to another person's activities) that resulted in, or was likely to result in, "serious disruption" to two or more individuals or an organisation.

The previous protest-related offence or activity cannot have occurred on the same day as the current offence.

The courts would also have to consider the purpose of the SDPO and only issue one:

- to prevent the individual from committing a further protest-related offence or carrying out activities related to protest resulting in serious disruption (or from contributing to another person doing so for example organising a protest).
- to protect an organisation, or two or more people, from the risk of serious disruption caused by a protest-related offence or activities relating to a protest.

Otherwise than on conviction

Clause 13 would enable a magistrates' court to issue an SDPO to a person without a conviction if an application is made by a chief police officer and certain conditions are met.

Again, the courts must be satisfied that on the balance of probabilities the individual within the last five years on at least two occasions had:

- been convicted of another protest-related offence, committed a protest-related breach of an injunction, or caused/contributed to another person doing so; or
- carried out activities (or caused/contributed to another person's activities) that resulted in, or was likely to result in, "serious disruption" to two or more individuals or an organisation.

The courts would also have to consider the same purposes of the SDPO as for clause 12 before issuing one.

5.2

Provisions and requirements of a Serious Disruption Prevention Order

Clause 12(6) and clause 13(5) would enable the court to impose "any requirement or prohibition" as part of the SDPO that it considers necessary to achieve one of the purposes outlined above (preventing a further protest-related offence or protecting people and organisations from serious disruption).

Clause 14 provides a non-exhaustive list of requirements and prohibitions. For example, a person may be prohibited from being in a particular place; being with particular people; or participating in certain activities.

The SDPO could also include requirements for an individual to present themselves to a particular person at a particular time or to remain at certain places for particular periods.

Under **clause 15**, the order would have to name a person responsible for supervising, and promoting, compliance with the requirements. The individual subject to the SDPO must keep in contact with that person. Clause 15(2) states

the supervisory person could be either an individual or organisation but does not otherwise specify who they must be or what organisation they must be from.

Under **clause 17**, SDPOs would also come with requirements that would require the individual to provide information to the police, for example changes in their name or address.

Electronic Monitoring Requirements

Clause 14, subsection (2)(b) would enable the courts to also require an individual issued with an SDPO to submit to electronic monitoring for up to 12 months by fitting a tag to their ankle. These tags can provide 24-hour real-time location monitoring.¹⁰⁶ Courts would be able to extend the electronic monitoring requirement if the SDPO is renewed but only for a maximum of 12 months at a time. The aim is to support the monitoring of an individual's compliance with other requirements of the order.

There would have to be a specified person responsible for the monitoring of an electronic tag. The Bill would grant the Secretary of State regulatory-making powers to specify who could be a responsible person for the electronic monitoring requirement. Any regulations would have to be laid before and approved by Parliament.¹⁰⁷

Electronic monitoring requirements were not a feature of the previous drafted version of SDPOs that were proposed to the Lords as an amendment to the PCSC Bill.

Breach of an SDPO

Clause 20 would create a criminal offence for non-compliance with an SDPO. An individual with an SDPO would commit an offence if they fail to do anything required of them by the order, do something prohibited by the order, or fail to comply with the notification requirements of the order. The offence could attract a sentence of up to six months imprisonment, an unlimited fine, or both.

Duration of an SDPO

Clause 18 provides that a court would be able to issue the SDPO to an individual for anywhere between one week to two years.

¹⁰⁶ The Ministry of Justice have begun using GPS location monitoring tags for electronic monitoring conditions. The radio frequency tags that were traditionally used worked by detecting when someone moved out of a defined vicinity outside of a specified curfew. Whereas new GPS tags provide constant real-time location monitoring.

¹⁰⁷ Note the Secretary of State would only have powers to define who could be responsible for electronic monitoring requirements, not people responsible for broader compliance with an order where there is no electronic monitoring involved.

5.3

Changing or appealing a Serious Disruption Prevention Order

Clause 21 would enable the person subject to the SDPO or a chief officer of police to apply to a court for the SDPO to be varied, renewed, or discharged. It would be for the court to determine whether, and how, to do so as it sees fit. This could include renewing the SDPO, extending the requirements or prohibitions, or adding additional ones if the court is satisfied it will prevent an individual from engaging in further protest-related offences or disruptive protest-related activities.

Under **clause 22** it would be possible for an individual issued with an SDPO to appeal the order. For those who received an SDPO on conviction, they would be able to appeal as they would appeal against a sentence. For those who have an SDPO issued outside of a conviction, they would be able to appeal to the Crown Court. Similarly, if a chief police officer were to make an application for an SDPO and it was rejected, they would be able to appeal the decision.

5.4

Analysis of Serious Disruption Prevention Orders

The Government has stated SDPOs are necessary to “tackle protesters who are determined to repeatedly cause disruption to the public”¹⁰⁸ and are one of the measures it says “backs the police to take proactive action” to prevent “disruption happening”.¹⁰⁹ However the proposals drew opposition from many commentators, with concern arising about the implications for human rights.¹¹⁰

Pre-emptive restrictions on the right to engage in protest-related activity

The purpose for which a court could issue an SDPO is not just to prevent offending but also to prevent an individual from “carrying out activity related to protest” that would likely cause disruption to two or more individuals or to protect two or more individuals from “activity related to a protest”.

SDPOs therefore represent a potentially substantial pre-emptive restriction on the right to protest. The JCHR argued that for individuals issued with SDPOs, the prohibitions and requirements placed on them as a condition of the SDPO

¹⁰⁸ Home Office, [Government cracking down on highly disruptive protest tactics](#), 2 December 2021.

¹⁰⁹ Home Office, [Public Order Bill: factsheet](#), 11 May 2022.

¹¹⁰ See for example: I News, [stuffing even more punitive anti-protest powers into the policing bill](#), 25 November 2021.

could make it highly challenging to participate in any other further protests.¹¹¹ Critics argue this would potentially prevent future legitimate exercise of their convention rights and criminalise behaviour that would otherwise be legal for others. During the previous Lords debate on the PCSC Bill, Lord Rosser accused SDPOs of being “in effect, essentially protest banning orders”.¹¹² The Bill does not include any restriction on how many times an SDPO can be renewed and therefore how long the restrictions in an SDPO could be imposed on someone.

Liberty has also argued that the wide scope of conditions, requirements and prohibitions (such as where and when a person can go and who with), and monitoring requirements, are disproportionate and risk infringing on other ECHR rights for example the right to respect for private and family life and freedom of assembly and association.¹¹³

4 Metropolitan Police Service proposals: protest banning orders

In 2019, 19 proposals for legislative change regarding protests were put forward by the Metropolitan Police Service (MPS) to the then Minister of State for Policing and the Fire Service, the Rt Hon Nick Hurd. This included a proposal to create “protest banning orders (similar to football banning orders) where evidence of persistent disobedience and disruption is provided”. The MPS did qualify that such an order would need to be carefully considered against human rights legislation. It is also important to note that this original proposal was based on football banning orders not the currently proposed SDPOs. However, there are some parallels with the purpose and drafting of the new SDPOs.

The Home Office reviewed the proposals, as did HMICFRS as part of its inspection on protests and the legislative framework. The Home Office rejected the proposal stating:

This proposal essentially takes away a person’s right to protest and we believe banning people from attending peaceful protests would very likely to lead to a legal challenge. Furthermore, regardless of the maximum sentence set down for breaching an order, the court imposing the sentence would still need to consider the person’s rights to freedom of expression and assembly and impose a sentence that is proportionate. It therefore appears unlikely that a court would issue a high penalty to someone who is peacefully protesting. Consequently, we believe it unlikely the measure would work as hoped.¹¹⁴

¹¹¹ Rt Hon Harriet Harman MP (Chair of the Joint Human Rights Committee), [Proposed Government amendments to the Police Crime, Sentencing and Courts Bill](#), 29 November 2021.

¹¹² Lord Rosser at HL Deb, [Police, Crime, Sentencing and Courts Bill](#), 17 January 2021, c1434.

¹¹³ Liberty, [Liberty’s briefing on the Government’s amendments to the Police, Crime, Sentencing and Courts Bill \(protest\)](#) (PDF), November 2021.

¹¹⁴ HMICFRS, [Getting the balance right? An inspection of how effectively the police deal with protests](#), March 2021.

HMICFRS supported the Home Office’s position on the proposals, stating that “It is difficult to envisage a case where less intrusive measures could not be taken to address the risk that an individual poses.”¹¹⁵

Lack of certainty

SDPOs have also attracted criticism from the JCHR and Liberty for having wide and vague conditions for imposing one. For example, what constitutes a “protest-related” offence is defined only as “an offence which is directly related to a protest”.¹¹⁶ The term “protest” itself is not further defined.¹¹⁷ It is therefore uncertain from the face of the Bill what range of offences could prompt an SDPO.

SDPOs also rely upon the phrase “serious disruption”, which as of yet does not have a statutory definition. The PCSC Act amended the Public Order 1986 Act, providing the Secretary of State with a regulation-making power to define “serious disruption” but this power has not yet been exercised. As highlighted in section 3.3 of this briefing, during the passage of the PCSC Bill there was significant criticism raised over the lack of clarity of what would constitute serious disruption and the bar at which it would be set.¹¹⁸

Threshold for issuing SDPOs

There is potential for an SDPO to be imposed on the basis of relatively minor acts. For example, to impose an SDPO on conviction, the court would only have to be satisfied that in the last five years an individual had carried out another “activity” (or caused or contributed to another person’s activity) that was likely to result in serious disruption to two or more people. For a stand-alone SDPO issued other than on conviction, the individual could receive the SDPO having committed no criminal offences and having no criminal record. An SDPO in this case could be imposed if the individual on more than one occasion carried out non-criminal activities related to a protest that were likely to result in serious disruption to two or more people.

There are also concerns that in some cases just two people being required to experience serious disruption sets too low a bar to trigger an SDPO in response.¹¹⁹

¹¹⁵ Ibid

¹¹⁶ Rt Hon Harriet Harman MP (Chair of the Joint Human Rights Committee), [Proposed Government amendments to the Police Crime, Sentencing and Courts Bill](#), 29 November 2021.

¹¹⁷ Liberty, [Liberty’s briefing on the Government’s amendments to the Police, Crime, Sentencing and Courts Bill \(protest\)](#) (PDF), November 2021.

¹¹⁸ House of Commons Library, [Police, Crime, Sentencing and Courts Bill: Progress of the Bill](#), 22 April 2022.

¹¹⁹ See section 3.1 of this briefing for similar concerns in relation to the proposed locking-on offences in clause 1 and 2 of the Bill

Electronic monitoring requirements

Electronic monitoring requirements were not a feature of the previous version of SDPOs proposed to the Lords as an amendment to the PCSC Bill. In their assessment of the SDPO, Liberty calls plans to introduce electronic monitoring requirements as part of SDPOs “highly intrusive”. It argues the geolocation data that tags provide is highly sensitive and including the requirement as part of an SDPO would likely be “a highly disproportionate interference with people’s human rights.”¹²⁰

5 The impact of electronic monitoring

A 2018 study found the experiences of people ‘on tag’ varied. Most regarded it favourably in comparison to a term in custody and participants were found to generally comply with requirements primarily because they feared being punished with imprisonment.

However, the participants also reported a range of negative impacts including stigma and shame from wearing a tag and that the pressure of the monitoring led to anxiety, stress, fear and nervousness. Some reported struggling to fulfil certain roles or responsibilities such as caring responsibilities and found it affected finding or accessing employment (such as overtime).¹²¹

Some participants also talked about having a “confined type of freedom” because of electronic monitoring and reported “that home became a prison”.¹²² The Supreme Court has previously acknowledged that curfews can amount to a form of detention.¹²³

Civil order and criminal sanction

Objections have been raised previously by third sector organisations and activists with regards to the introduction of some controversial hybrid civil orders that operate in a similar way and where breach results in a criminal offence.¹²⁴ One criticism is the lower quality of evidence needed to issue the

¹²⁰ Liberty, [Liberty briefing on the Public Order Bill](#), 17 May 2022.

¹²¹ Fitzalan Howard, F., [The experience of electronic monitoring and implications for practice: a qualitative research synthesis](#), 12 July 2018.

¹²² Ibid

¹²³ *The Queen (on the application of Jalloh) v Secretary of State for Home Department* [2020] UKSC 4, 12 February 2020, where the Supreme Court found that unlawful curfews of this nature amounted to false imprisonment

¹²⁴ See for example Knife Crime Prevention Orders, civil orders that can result in criminal sanction if breached. These received criticism from charity sector organisations over its risks of criminalising people who have not been proven to have committed an offence. Concern was raised that these could be issued on the basis of probability rather than a criminal standard of proof and could

order. As a civil order, imposing an SDPO is on the basis of a civil standard of proof. This means the court only needs to be satisfied that the conditions for issuing an SDPO have been proven on the balance of probabilities. This is lower than the criminal standard of proof, beyond reasonable doubt.¹²⁵

Attention was drawn to this issue during the PCSC Bill debate in the Lords and it was noted with concern that SDPOs could be made using inadmissible evidence and without a conviction.¹²⁶ With previous controversial civil orders, there has been criticism that they have net-widening effects and risk unnecessarily criminalising people¹²⁷ because if not for the order, actions that constitute breaches of its conditions would not otherwise have met the threshold for criminal sanction.¹²⁸

attract “severe, lengthy and potentially unlimited restrictions” that could result in “punitive criminal sanctions for breach. Alliance for Youth Justice, [Response: Consultation on Knife Crime Prevention Orders \(KCPOs\) guidance](#).

¹²⁵ Liberty, [Liberty’s briefing on the Government’s amendments to the Police, Crime, Sentencing and Courts Bill \(protest\)](#) (PDF), November 2021.

¹²⁶ HL Deb, [Police, Crime, Sentencing and Courts Bill](#), 17 January 2021, c1434.

¹²⁷ Alliance for Youth Justice, [Response: Consultation on Knife Crime Prevention Orders \(KCPOs\) guidance](#).

¹²⁸ Liberty, [Liberty’s briefing on the Government’s amendments to the Police, Crime, Sentencing and Courts Bill \(protest\)](#) (PDF), November 2021.

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