

Research Briefing

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Public Order Bill: Lords amendments



Summary

- 1 Commons report stage: additions to the Bill
- 2 Lords amendments

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Summary

The [Public Order Bill](#) was introduced to the House of Commons on 11 May 2022. The aim of the Bill is to provide the police with greater powers to respond to disruptive protests. The Bill, together with its Explanatory Notes and an overview of its parliamentary progress, is available on the [Parliament website](#). Overarching documents are available on [GOV.UK](#).

The Commons and Lords Libraries have produced the following briefings on the Bill:

- [Public Order Bill, Bill 008 of 2022-23](#), which sets out the policy background to the Bill as it was introduced;
- [Public Order Bill: Progress of the Bill](#), which discusses what happened during the Commons second reading and committee stage; and
- [Public Order Bill: HL Bill 61 of 2022-23](#) which was prepared for the Lords in advance of its second reading and provides an overview of the Commons stages.

This briefing has been prepared ahead of the Bill returning to the Commons having finished its passage through the Lords. It provides an update on the main changes that have been made to the Bill, including key amendments made during [Commons report stage](#) (which took place on 18 October 2022) and Lords amendments made at [report stage](#) (which took place over two sittings on 30 January and 7 February 2023).

Note: References to clause numbers in this paper correspond to those in [HL Bill 61](#) (PDF) which is the version of the Bill as it was brought from the Commons and first printed for the Lords.

Commons report stage: additions to the Bill

There were two key additions to the Bill at Commons report stage:

- the Government successfully added new clauses to the Bill to introduce powers for the Home Secretary to apply for injunctions against protesters and for a power of arrest to be granted for breach of such an injunction.
- Labour successfully added a new clause to the Bill that would make it a criminal offence to interfere with access to, or the provision of, abortion services within 150 meters of an abortion clinic.

In the Lords: changes to the Bill

During Lords report stage there were significant changes to the Bill, including Government defeats on the definition of “serious disruption”, the removal of suspicion-less stop and search powers, protection for those monitoring or reporting on protests, and amendments to Serious Disruption Prevention Orders (SDPOs). The Government also made its own concessions on SDPOs, tabling changes to limit them following criticism received during Lords Committee stage. The Lords also agreed an updated version of the proposed offence of interfering with access to, or provision of, abortion services.

Note: references to amendment numbers are based on the [final list of agreed Lords amendments](#) (PDF). These are different to the amendment numbers used during the Lords debates.

Definition of “serious disruption”

Lord Coaker (Labour) moved **amendment 1**, which set out an overarching definition of ‘serious disruption’ for the purposes of the Bill. It was agreed on division by 243 votes to 221. Several measures in the Bill rely on a trigger of causing ‘serious disruption’ however this was not defined in the Bill which attracted criticism for its lack of clarity. The definition provided by **amendment 1** refers to “**significant harm** to persons, organisations or the life of the community”, “**significant delay** to the delivery of a time-sensitive product”, and “**prolonged disruption**” to the access of essential goods and services.

Suspicion-less stop and search

Lords **amendment 6** would remove **clause 11** of the Bill. **Clause 11** would have provided police with powers to stop and search people without suspicion for items related to protest offences. **Amendment 6** was moved by Lord Coaker and was agreed on division by 284 votes to 209.

Protections for journalists

Amendment 17 moved by Baroness Chakrabarti (Labour) was agreed to on division by 283 votes to 192. This added a new clause to the Bill that would explicitly prohibit the police from exercising their powers to prevent journalists and other people (such as legal observers and academics) from monitoring or reporting on a protest itself or on the exercise of police powers in relation to a protest.

Serious Disruption Prevention Orders

There were several amendments made to SDPOs to limit their scope, including two Government amendments tabled as an offer to the Lords to address criticisms made during committee stage:

- **Amendment 22** for the removal of electronic monitoring as an option for an SDPO was agreed to without division (alongside a series of

consequential amendments so that all references to electronic monitoring were removed from the Bill); and

- **Amendment 29** to limit SDPOs to one renewal (rather than limitless renewals as originally drafted) was also agreed to without division.

The Government also suffered two defeats on SDPOs. **Amendment 18** tabled by Lord Anderson (Crossbench) was agreed to on division by 247 votes to 192. This restricted the criteria for issuing an SDPO on conviction (**clause 19**) so that one could only be given if the individual has in the last five years received another protest-related conviction or been found in contempt of court for breaching a protest-related injunction.

Lord Ponsonby (Labour) also moved **amendment 20** to remove **clause 20** from the Bill which would have allowed for SDPOs to be issued ‘otherwise than on conviction’ (ie based on an application from the police to the courts without the need for a conviction). The amendment was agreed on division by 247 votes to 192.

Interfering with abortion services

Baroness Sugg (Conservative) successfully moved **amendment 5** which was agreed without division and replaced **clause 9** of the Bill on interference with access to, or provision of, abortion services. The updated version would still provide an offence of interfering with a person who is accessing, facilitating, or providing an abortion service if they are acting within a 150-metre boundary of an abortion clinic. However, it updated the meaning of ‘interfering with’ to narrow the scope of the offence. It also removed custodial sentences from the possible penalties for the offence and created exemptions for private dwellings, places of worship, and anyone that is accompanying a person, with their consent, to an abortion clinic. The Government took a neutral stance during the debate.

1 Commons report stage: additions to the Bill

Commons report stage for the Public Order Bill took place [on 18 October 2022](#) and was immediately followed by third reading.

There were two key changes made to the Bill during report stage:

- **Government amendments:** the Government successfully added new clauses to the Bill to introduce powers for the Home Secretary to apply for civil injunctions against protesters and for a power of arrest to be granted for breach of such an injunction.
- **Opposition amendment:** Labour successfully added a new clause to the Bill that would make it a criminal offence to interfere with access to, or the provision of, abortion services within 150 meters of an abortion clinic.

Note: References to clause numbers in this paper correspond to those in [HL Bill 61](#) (PDF) which is the version of the Bill as it was brought from the Commons and first printed for the Lords.

1.1 Government amendments: Powers to bring civil proceedings against protesters

At report stage the Government tabled **NC7** and **NC8** to be added to the Bill and one new schedule.

What would the new clauses do?

NC7 (clause 17 of the Bill as first printed for the Lords) would provide the Home Secretary with the power to bring civil proceedings against person(s) carrying out, or likely to carry out, “activities related to a protest”.¹ Bringing civil proceedings refers to making an application for a civil injunction.

¹ Subsection 7 provides that “activities” for the purposes of this clause does **not** include activities carried out wholly or mainly to further of a trade dispute.

To exercise this power, the Home Secretary would have to ‘reasonably believe’ that the protester’s actions were causing (or likely to cause):

- ‘serious disruption’ to the use or operation of any key national infrastructure;
- ‘serious disruption’ to access to essential goods and services; **or**
- a serious adverse effect to public safety.

NC8 (clause 18 of the Bill as first printed for the Lords) would enable the courts to attach a power of arrest to an injunction applied for under **NC7**. To grant a power of arrest, the injunction would have to be one that was granted to prohibit conduct that is capable of causing nuisance or annoyance to a person or having a serious adverse effect on public safety. To agree to attach the power of arrest, the court would also have to think that:

- the protester’s conduct might include the use (or threatened use of) violence; or
- that there would be a ‘significant risk’ of harm to an individual or public safety.

If the court attached a power of arrest, it would allow a police officer to arrest an individual on suspicion of breaching the injunction (without the need for an arrest warrant). The new schedule would allow for a person arrested under **NC8** to be remanded in custody or be released on bail. The suspect would have to be brought before the courts within 24 hours of arrest for a decision on remand.

Debate

At report stage, the then Minister for Crime, Policing and Fire, Jeremy Quin, argued that “injunctions can play a major role in helping to constrain some of the tactics deployed [by protesters] and, as a result, can limit serious disruption.”² However he pointed out that currently only private persons (including individuals, businesses and organisations) and local authorities can apply for civil injunctions. The Minister argued that **NC7** would enable the Home Secretary to use this tool and provide them with “an additional way to act in the public interest”. He also argued it would support “better co-ordination” between the Government, landowners, local authorities, and law enforcement partners in responding to disruption and that the power of arrest in **NC8** would enable “swifter enforcement action”.³

Though Labour is supportive of using injunctions in protest cases in principle⁴ - and tabled its own amendment, **NC4**, to put civil injunctions against

² Jeremy Quin, at HC Deb, [Public Order Bill: report stage](#), 18 October 2022, c559-560

³ As above

⁴ Sarah Jones at HC Deb, [Public Order Bill: report stage](#), 18 October 2022, c578

‘persons unknown’ “on to the statue books”⁵ - Sarah Jones (Shadow Policing Minister, Labour) raised concerns about the Government’s approach in **NC7**. She argued placing the responsibility and power to apply for injunctions with the Home Secretary would shift the responsibility for injunctions from the private sector to the public sector with the cost of legal proceedings falling to the taxpayer.⁶

Caroline Lucas (Green Party) also argued against **NC7** and **NC8**. She said that while companies are using civil injunctions against protesters with “alarming frequency ... with a wider, chilling effect on the right to protest”, most don’t provide the police with powers of arrest.⁷ She argued that enabling the Home Secretary to apply for precautionary injunctions against people who might go on to carry out protest-related activities and attaching the power of arrest would have the combined effect of giving “the Government the ability to create new public order offences as and when they choose”.⁸ She accused these measures of “politicising” policing.⁹

NC7 and **NC8** were agreed to by the House without division.

1.2

Opposition amendment: new offence of interfering with abortion services

Stella Creasy (Labour) moved **NC11** to add a new clause to the Bill to create a criminal offence of interfering with access to or provision of abortion services.

Note: the clause has subsequently been replaced with an updated version following a successful amendment at the Lords report stage. See section 2.3 of this briefing for more information.

What would the new clause have done?

NC11 would have established a 150-metre boundary around all abortion clinics (or building/ site that contains an abortion clinic) called a “buffer zone”. A person would be guilty of an offence if within the buffer zone they were found to ‘interfere’ with any person’s decision to access, provide, or facilitate the provision of abortion services.

For the purposes of the proposed offence, ‘interfering’ with someone’s decision to access, provide or facilitate abortion services was defined as:

⁵ Sarah Jones at HC Deb, [Public Order Bill: report stage](#), 18 October 2022, c578. **Note:** The ability to issue civil injunctions to ‘persons unknown’ is currently provided for by case law, not legislation. NC4 was defeated on division by 313 noes to 188 yeas.

⁶ Sarah Jones at HC Deb, [Public Order Bill: report stage](#), 18 October 2022, c578

⁷ Caroline Lucas at HC Deb, [Public Order Bill: report stage](#), 18 October 2022, c596

⁸ As above, c594

⁹ As above

- seeking to influence them;
- persistently, continuously or repeatedly occupying the buffer zone;
- impeding or threatening them;
- intimidating or harassing them;
- attempting to advise or persuade them, or otherwise expressing opinion about accessing, providing, or facilitating abortion services;
- attempting to inform them about abortion services by any means, including graphic, physical, verbal or written means; or
- producing, recording or transmitting anything that represents the likeness of the individual or their personal data (without express consent) including sketches, photographs, audio, and images.

Subsection (5) provided a set of exemptions. The offence would not have applied to anything done in the course of providing medical care at the clinic or other healthcare facility within the buffer zone.

For a first conviction for this offence a person would have been liable to up to six months imprisonment, a £5,000 fine, or both. If a person was convicted again, they could have faced either:

- a summary conviction with a maximum sentence of 12 months imprisonment and/or unlimited fine; or
- a conviction on indictment with a maximum sentence of two years imprisonment and/or unlimited fine.

Debate

NC11 generated a significant amount of debate about the balance between the rights of women to access a health service and freedoms of speech, assembly, thought and religion.¹⁰

Introducing the new clause, Stella Creasy said it “upholds” the balance between the rights of everyone involved and “would not stop free speech on abortion”.¹¹ She acknowledged that “the abortion debate must continue” but argued that “there is a time and a place for it”¹² and women - often in vulnerable states - attending abortion clinics need to be protected and supported to go about their business in peace and privacy. She argued **NC11** “simply says that people should not have a right to protest in another

¹⁰ Section 2.10 of the Library briefing, [Public Order Bill: Progress of the Bill](#) provides more information on the policy background behind banning protests at abortion clinics from when Labour tabled a similar amendment to add an offence for interfering with abortion services into the Bill at Commons committee stage (which was defeated).

¹¹ Stella Creasey at HC Deb, [Public Order Bill: report stage](#), 18 October 2022, cc560-561

¹² As above, c563

person’s face ... speech is not free if 50% of the conversation feels harassed”.¹³

Stella Creasey went on to argue that the current approach of relying on local authorities to apply for a Public Space Protection Order (PSPO) to prevent anti-abortion protests outside clinics isn’t effective.¹⁴ She said that getting a PSPO is an expensive, complicated, and long-winded process that local authorities must bear the cost of. She also said that in order to be granted a PSPO there has to be proof of intimidation and harassment already having taken place, meaning this has to be allowed to happen to women before there can be intervention. She argued there needs to be a national and more preventative approach.¹⁵

Jeremy Quin said the Government believed **NC11** was a disproportionate response to the issue, stating:

bearing in mind the size, scale and frequency of those protests, it is still our view that placing a nationwide blanket ban on protests outside all abortion clinics in England and Wales would be a blunt approach¹⁶

However, the Government allowed a free vote¹⁷ for Conservative MPs on **NC11** and the amendment received cross-party support. The House divided on whether **NC11** should be added to the Bill. It was successful by 297 votes to 110 and was added to the Bill.

¹³ As above, c561

¹⁴ [Part 4, Chapter 2](#) of the Anti-social Behaviour, Crime and Policing Act 2014 provides local authorities with the power to make PSPOs. PSPOs can prohibit specific activities associated with anti-social behaviour within a designated area to prevent it from (re)occurring. They can also involve curfews or restrict access to a public right of way. Failing to comply with a PSPO is a criminal offence which police officers can issue Fixed Penalty Notices for. PSPOs last for up to three years but can be extended as many times as it is deemed necessary. More information on PSPOs is available in section 3.5 of the Library briefing, [Tackling anti-social behaviour](#).

¹⁵ Stella Creasey at HC Deb, [Public Order Bill: report stage](#), 18 October 2022, c561

¹⁶ Jeremy Quin at HC Deb, [Public Order Bill: report stage](#), 18 October 2022, c603

¹⁷ A free vote is a [vote that is not whipped](#). This is to allow MPs to vote as they wish and express their own independent opinion rather than support their party/Government position.

2 Lords amendments

Lords second reading took place on [1 November 2022](#) followed by Lords committee stage which took place on sittings across three days from [16 November to 13 December 2022](#). There were no significant changes made to the Bill during Lords Committee stage.¹⁸

Lords report stage took place across two sittings on [30 January 2023 and 7 February 2023](#). The Bill was extensively amended at report stage. The following section provides an overview of the key changes that were made and the debates surrounding them. The [full list of amendments](#) (PDF) is available on the Parliament website, together with the [Explanatory Notes](#) (PDF).

Lords third reading took place on [21 February 2023](#). There were some clarificatory amendments at this stage¹⁹ and consequential amendments from the Government following changes Lords had made at report stage in order for those to be reflected throughout the Bill. Otherwise, there were no further substantial changes to the content of the Bill at this stage.

The Lords amendments are due to be considered by the House of Commons on 7 March 2023.

Note: references to amendment numbers in the following section are based on the [final list of agreed Lords amendments](#) (PDF). These are different from the amendment numbers used during the Lords debates.

2.1 Government amendments

Concessions made on Serious Disruption Prevention Orders

Several concerns were raised throughout the Bill's passage that providing 24-hour location monitoring was a disproportionate and overly intrusive

¹⁸ Amendments tabled during Committee stage were designed to be 'probing' amendments ie intended to generate discussion of a specific point. For an overview of the key discussion points in Lords second reading and committee stage, see [Lords examines Public Order Bill](#) on the Parliament UK website.

¹⁹ These were in regards to the offence of interfering with abortion services.

response to protest activity.²⁰ In response, Lord Sharpe (Parliamentary Under-Secretary of State at the Home Office) moved **amendment 22** to remove the provision in the Bill that would have allowed for someone issued with an SDPO to be subjected to electronic monitoring.

Lord Sharpe also moved **amendment 29** to limit the number of times an SDPO could be renewed to just one renewal. In the original drafting of SDPOs, there was no limit to the number of times one could be renewed. Concerns had been raised that this could effectively allow an SDPO to be applied indefinitely to a person.²¹

Lord Sharpe said that the Government had recognised the concerns raised by Lords during committee stage about SDPOs and therefore tabled these amendments “to allay some of the concerns expressed” and that, in the Government’s view, these amendments “represent a substantive offer and address the main criticisms of SDPOs.”²²

Both **amendment 22** and **amendment 29** were agreed to without debate or division.²³

2.2 Government defeats

Defining ‘serious disruption’

Lord Coaker (Labour) moved **amendment 1** to introduce a new clause at the start of the Bill that would provide a definition of serious disruption for the purposes of the Bill. **Amendment 1** defines ‘serious disruption’ as:

disruption causing **significant harm** to persons, organisations or the life of the community, in particular where—

(a) it may result in a **significant delay** to the delivery of a time-sensitive product to consumers of that product, or

(b) it may result in a **prolonged disruption** of access to any essential goods or any essential service, including access to—

(i) the supply of money, food, water, energy, or fuel,

(ii) a system of communication,

(iii) a place of worship,

²⁰ See for example: Lord Skidelsky at HL Deb, [Public Order Bill: committee stage \(3rd day\)](#), 13 December 2022, c632

²¹ For example: Lord Anderson at HL Deb, [Public Order Bill: committee stage \(3rd day\)](#), 13 December 2022, c633

²² Lord Sharpe at HL Deb, [Public Order Bill: report stage \(continued\)](#), 30 January 2023, c1138

²³ A series of subsequent amendments were moved to remove all references to electronic monitoring from the Bill and amend references to renewing SDPOs to reflect the new limit.

- (iv) a transport facility,
- (v) an educational institution, or
- (vi) a service relating to health.

Lord Coaker conceded that there would also be debate on the meaning of words used in **amendment 1** such as ‘significant harm’ and ‘prolonged disruption’ which the courts would have to ultimately determine. However, he said the purpose of the amendment was to “set the threshold higher”²⁴ for the new offences and ensure that the court’s determination of the offences start from this higher point:

this Chamber should be saying to the courts that what we mean by “prolonged” is that it has to happen not just once. It has to be more than a daily activity; it has to be something that impacts on the life of the community more than once or twice ... I want the courts to realise that, when this Chamber passes these amendments, we are saying that serious means serious.²⁵

Amendment 1 was discussed alongside a group of amendments that sought to provide alternative definitions in the Bill for serious disruption. Lord Hope (Crossbench) tabled several amendments which proposed definitions of ‘serious disruption’ for the offences of locking-on, tunnelling, and being present in a tunnel which received Government support. These amendments proposed that serious disruption be defined as preventing or hindering “to more than a minor degree” individuals or organisations from carrying out their daily activities or - with regards to tunnelling - from carrying out any activities related to construction or maintenance works.²⁶

Whilst there was consensus across the House that a definition of serious disruption was needed to provide clarity for the new offences, there was disagreement on whether **amendment 1** or Lord Hope’s amendments were best suited for the Bill.

Those in favour of the definition in **amendment 1** felt that it provided greater clarity and were supportive of the higher threshold it set for triggering the offences in the Bill. Lord Paddick (Liberal Democrats) said **amendment 1** “provides greater clarity in relation to, what—with the best will in the world—will ultimately be a judgment call by the police”.²⁷ Baroness Chakrabarti agreed that compared to the amendments proposed by Lord Hope, **amendment 1** was a “single overarching and more rigorous” option.²⁸

Members argued that in contrast the threshold of ‘more than minor’ was itself unclear. For example, Lord Paddick said “Surely it begs the question, ‘Well, what is minor?’ Does the noble and learned Lord define minor as ‘less than

²⁴ Lord Coaker at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c430

²⁵ As above

²⁶ These were amendments 5, 14 and 24 during the debate. See: [HL Bill 82](#) (PDF) for detail of the amendments.

²⁷ Lord Paddick at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c433

²⁸ Baroness Chakrabarti at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c437

serious’?”²⁹ Lord Paddick went on to argue that minor and serious “were at opposite ends of a spectrum” with a range in between. To illustrate his point, he used the analogy that “the definition of a serious injury is not ‘anything more than a minor injury’”.³⁰ Baroness Chakrabarti agreed that Lord Hope’s amendments falsely suggested “that there is a binary: there is ‘minor’ and there is ‘significant’, and therefore anything ‘more than minor’” must be “significant”.³¹

Members also argued the threshold of ‘more than minor’ in Lord Hope’s amendments could lead to disproportionate police intervention and arrest.³² Lord Coaker questioned:

If I chain myself to a traffic light, and if that hindered two or more people for 10 minutes from crossing the street to shop, would that be “more than minor”? There is no legal certainty in what is meant by “more than minor”, nor indeed in what is meant by “hinder”—remembering that “serious disruption” does not even have to happen for those offences to be committed.³³

Other members questioned how it would differentiate between large scale disruptive protests and the range of protests activities that could fall in this definition.³⁴ Lord Coaker gave an example of his local community blocking the road to protest a change in bus route³⁵ and Baroness Fox (non-affiliated) used the example of protests against local councils implementing low-traffic zones which have caused delays to communities.³⁶ They argued these examples could cause more than minor interference to people going about their business but did not necessarily constitute the seriousness of disruption that the Bill was aimed at.

Lord Hope explained that his amendments were intended to deliver on the recommendation by the Lords Constitution Committee to clarify the meaning of serious disruption “wherever it is used” in the Bill “in a proportionate way”.³⁷ Therefore, he argued that providing separate definitions tailored to each offence was more in the spirit of the Committee’s recommendation than the overarching definition in **amendment 1**. He also argued that they would provide more practical and useful guidance for police on the ground, sentencers, and the public as they would be more reflective of the specific circumstances related to the offence than a single definition. In response to concern raised that ‘more than minor’ was too low a threshold, Lord Hope argued that ‘more’ was the key word in that phrase. He also argued that once the threshold of ‘more than minor’ has been reached, the police should not

²⁹ Lord Paddick at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c433

³⁰ As above

³¹ Baroness Chakrabarti at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c440

³² Lord Coaker at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c429

³³ Lord Coaker at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c429

³⁴ Baroness Butler-Sloss (Crossbench) at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c436

³⁵ Lord Coaker at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c454

³⁶ Baroness Fox at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c435

³⁷ House of Lords Select Committee on the Constitution, [Public Order Bill](#) (PDF), 11 November 2022, p3, para 11

have to keep waiting for the disruption to escalate before being able to intervene.³⁸

Lord Faulks (non-affiliated) supported Lord Hope’s amendments, agreeing that they would be a more “useful guide to courts in determining what amounts to a serious disruption”.³⁹ He also argued **amendment 1** would set a “very high hurdle” for the offences that would “emasculate [the legislation] to such an extent that, practically, it cannot be relied upon”.⁴⁰

Home Office Minister, Lord Sharpe, said that he agreed with the purpose of **amendment 1** but did “not believe that the threshold is appropriate”. He argued it did not reflect public frustration at protesters blocking roads and the impact this causes such as making children late for school, making people miss hospital appointments, and making small businesses struggle.⁴¹ In support of Lord Hope’s amendments, Lord Sharpe cited the Court of Appeal’s judgment following the Colston statue case⁴², stating:

The court found that the right to protest does not extend to acts of criminal damage that are violent or where the damage is to more than a minor or trivial degree:

“We cannot conceive that the Convention could be used to protect from prosecution and conviction those who damage private property to any degree than is other than trivial.”

We agree with the judiciary and believe that this threshold should be consistent across the statute book.⁴³

Amendment 1 was pushed to a division and agreed to by 243 votes to 221. As a result of this vote, Lord Hope’s counter amendments could not be called (known as ‘pre-emption’).⁴⁴

Removing suspicion-less stop and search

Lord Coaker moved **amendment 6** to leave out **clause 11**, which would have provided senior officers with the power to authorise stop and search of

³⁸ Lord Hope at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c439

³⁹ Lord Faulks at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c444

⁴⁰ As above, c443

⁴¹ Lord Sharpe at HL Deb, [Public Order Bill: report stage](#), 30 January 2023, c449

⁴² On 7 June 2020, during an anti-racist protest in Bristol, four protesters toppled a statue of Edward Colston and threw it into a harbour. See: BBC News, [Edward Colston statue: Protesters tear down slave trader monument](#), 8 June 2020

⁴³ As above. For the judgment see: [Attorney General’s Reference on a Point of Law No. 1 of 2022 \(Questions of law arising from prosecution in Crown Court for allegations of criminal damage to a statue\)](#), [2022] EWCA Crim 1259 (28 September 2022); BBC News, [Bristol Colston statue toppling was ‘violent act’, say judges](#), 28 September 2022

⁴⁴ If an amendment has been pre-empted by one previously agreed to by the House, [it will not be called](#). This happens where the House has already agreed to an amendment which nullifies the second amendment proposed or where the text to be amended has already been removed from the Bill.

individuals for protest-related items without the need to have reasonable suspicion.

Lord Coaker highlighted the disproportionate impact that stop and search without suspicion can have on Black and ethnic minority communities and particularly young people. He asked the House whether it would “seriously pass into law something that will make that fragile relationship between the police and those local communities even worse?”⁴⁵ He also highlighted that suspicion-less stop and search is usually used for terrorism and serious violent crime, stating that it was not “in any sense proportionate or a reasonable response”⁴⁶ to use this type of power because “some protests may take place somewhere”.⁴⁷

Lord Paddick raised similar concerns. He argued that the search powers in the Bill would allow people to be “stopped, searched and potentially arrested for being in possession of commonplace objects”⁴⁸ and that combined with risks of police misusing this power, it could discourage Black and minority ethnic people from exercising their right to protest. He said:

Stop and search is a highly intrusive and potentially damaging tool if misused by the police. The fact that you are seven times more likely to be stopped and searched by the police if you are black than if you are white where the police require reasonable suspicion, and 14 times more likely [to be stopped and searched] where the police do not require reasonable suspicion, presents a prima facie case that the police are misusing these powers ... The powers in Clauses 10 and 11 are likely to have a significant chilling effect on black and other visible minority people’s participation in protest.⁴⁹

Lord Paddick went on to raise concerns that introducing more suspicion-less search powers could also negatively impact police officers by leaving them more likely to face complaints for the way searches are exercised but without the protection and reassurance of having had firm reasonable grounds for the search.⁵⁰

Baroness Jones (Green) also argued that the suspicion-less stop and search power could “fundamentally change the relationship between police and protesters ... for the worse”.⁵¹ Lord Deben (Conservative) highlighted that this could be a particular issue for women:

Given the present circumstances, in which the police will have to work very hard to recover confidence, a woman stopped and searched without suspicion,

⁴⁵ Lord Coaker at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1109

⁴⁶ As above

⁴⁷ As above

⁴⁸ Lord Paddick at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1098

⁴⁹ As above, c1099

⁵⁰ As above

⁵¹ Baroness Jones at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1100

and who has no suspicion of why she should be stopped and searched, will have a very considerable concern.⁵²

Baroness Meacher (Crossbench) said there is “not a strong evidence base” for the effectiveness of suspicion-less stop and search powers in preventing violent crime and argued therefore extending these powers for protest in order to search “people in case they have a placard” would be disproportionate.⁵³

However, Lord Wolfson (Conservative) highlighted that that **Clause 11** did not provide a “general power for a constable to stop and search without reasonable suspicion, or to do it anywhere, anytime, in any circumstances.”⁵⁴ He pointed to the safeguards in the clause, noting that use of the suspicion-less search power would need to be authorised by a senior officer and for a maximum of 24 hours.⁵⁵

This was reiterated by Lord Sharpe who said “the safeguards on existing stop and search powers will apply to the use of stop and search powers in the Bill,”⁵⁶ including body-worn video, statutory codes of practice that must be followed, and publicly available data on the use of stop and search. He went on to argue that the police having search powers was necessary in a protest context and that removing them would leave the police only being “reactive to protests” rather than being able to take preventative action.⁵⁷ He said this “in turn would leave the general public more vulnerable to serious disruption”.⁵⁸

The House divided on **amendment 6** and it was agreed by 284 votes to 209. **Clause 11** providing for suspicion-less stop and search was therefore removed from the Bill.

Providing protection for journalists

Baroness Chakrabarti moved **amendment 17** to insert a new clause into the Bill to ensure “protection for journalists and others monitoring protests” including, legal observers, academics, and bystanders who observe or report on protests or the police’s use of powers related to protests.⁵⁹

⁵² Lord Deben at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1102. Note: Concern about the trust women have in police and how safe they feel when stopped by the police, have grown since the murder of Sarah Everard in March 2021 by a then serving police officer, Wayne Couzens, who stopped her on her way home.

⁵³ Baroness Meacher at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1103. For further discussion on the evidence on the effectiveness of stop and search, see section 3 of the Library briefing: [Police powers: stop and search](#).

⁵⁴ Lord Wolfson at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1108

⁵⁵ As above

⁵⁶ Lord Sharpe at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1112

⁵⁷ As above, c1113

⁵⁸ As above

⁵⁹ [Explanatory Notes](#) (PDF), p22

The new clause would explicitly state in the legislation that officers would not be able to:

Exercise any police power for the principal purpose of preventing a person from observing or otherwise reporting on a protest or the exercise of police powers in relation to—

- (a) a protest-related offence,
- (b) a protest-related breach of an injunction, or
- (c) activities related to a protest

1 Recent arrests of journalists at protests

In November 2022, shortly before Lords committee stage, three journalists covering Just Stop Oil demonstrations were arrested by Hertfordshire Police on suspicion of ‘conspiracy to commit a public nuisance’. All were detained for several hours before being released. This included the arrest of an LBC journalist named Charlotte Lynch and Rich Felgate and Tom Bowles who also both presented press cards to evidence their status as journalists.

The arrests and the period of detention the journalists experienced drew concern about freedom of the press⁶⁰ and prompted an independent review which concluded the arrests were not justified.⁶¹ During Lords committee stage, several members spoke about the incident. They raised concern about the effect of further expanding police powers over protests on press freedoms and the ability of journalists to report on protests. Baroness Boycott (Crossbench), who has had a long journalistic career including having been an editor of three national newspapers in the UK, stated:

First, the existing legal framework does not adequately protect journalists and others observing protests from spurious or speculative arrest. Secondly, the Bill’s new offences and powers would make the situation all the more perilous. Without this clause, this Bill could lead to a further increase in the arrests of those who cover or happen upon live protest sites.⁶²

During report stage, Baroness Boycott compared the arrest of LBC reporter, Charlotte Lynch, by Hertfordshire Police in November 2022 to the arrest of a BBC reporter in China covering a protest in Shanghai which she said shared similar characteristics, stating Charlotte Lynch was “held in a cell with a

⁶⁰ See for example: The Guardian, [Hertfordshire police promise inquiry into arrest of journalists at Just Stop Oil protests](#), 9 November 2022; and Big Brother Watch and others, [Letter to Suella Braverman on policing of Just Stop Oil protests](#), 11 November 2022

⁶¹ Hertfordshire Police, [M25 arrests review](#), 23 November 2022

⁶² Baroness Boycott at HL Deb, [Public Order Bill: Committee \(3rd day\)](#), 13 December 2022, c599

bucket for a toilet for five hours; she was fingerprinted and her DNA was taken, and she was not allowed to speak to anyone.”⁶³ She went on to argue:

It is more than just a fundamental right—it is a duty— of journalists to report on demonstrations, because demonstrations are where we see where society is fracturing and where people really care. I cannot believe, as a former newspaper editor, that I would now have to think that it might be more dangerous to send a journalist to Trafalgar Square than to Tahrir Square.⁶⁴

Lord Hope supported the amendment which he said was “firmly rooted” in [Article 10](#) of the European Convention on Human Rights (ECHR) which protects the freedom of expression. He said that it is “hard to overemphasise the importance” of having this protection explicitly stated in the Bill because in “the highly charged atmosphere” of a public protest “it is too big a risk to leave” it unsaid or assumed that journalists have such protection.⁶⁵

Lord Wolfson felt that **amendment 17** was unnecessary because “we are being asked to pass legislation to make illegal that which is already unlawful.”⁶⁶ He highlighted that without the amendment, arresting a journalist “for the principal purpose of preventing reporting on a protest” would be an abuse of police powers regardless.⁶⁷

Lord Hogan-Howe (Crossbench), who served as Metropolitan Police Commissioner from 2011-2017, also did not support the amendment for this reason. He argued that the only reason a journalist should be arrested at a protest would be if their behaviour was contrary to the Bill (eg if they illegally ‘locked-on’), otherwise it would be a mistake on the police’s part and a wrongful arrest.⁶⁸ He also questioned how, in practice, the group protected by the amendment would be defined for police and identified by them, stating:

how you define these other people in a way that the police will understand, particularly in a protest. An observer, somebody who is monitoring: how are the police to know who these people are? I guess that as soon as a protester is challenged, they might decide that they are a monitor, an observer or any of the groups that might be protected.⁶⁹

Baroness Fox responded that this view is why the amendment is necessary, arguing that it is a problem if “police start off suspicious that journalists are really just people pretending to be journalists to get away with locking on and being disruptive.”⁷⁰ Lord Coaker reiterated that the aim of **amendment 17** was specifically to prevent the police using their powers in way that stops someone from observing or reporting on a protest. He said it would not provide “carte blanche” for anyone observing a protest to engage in criminal

⁶³ Baroness Boycott, at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1128

⁶⁴ As above, c1129

⁶⁵ Lord Hope at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1129

⁶⁶ Lord Wolfson at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1133

⁶⁷ As above

⁶⁸ Lord Hogan-Howe at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1129

⁶⁹ Lord Hogan-Howe at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1129

⁷⁰ Baroness Fox at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1131

behaviour or prevent the police from exercising their powers to respond to criminal behaviour.⁷¹

For the Government, Lord Sharpe said that he agreed it was “absolutely not okay to arrest a journalist who is doing their job” and that “The Government are clear that the role of members of the press must be respected”.⁷² However he argued that this “is not an issue of law”. He highlighted that Hertfordshire Police had accepted the arrests described above were wrongful and pointed to an independent review into the arrests which found it was the issue was one of “training and guidance, which is already being addressed”.⁷³

Amendment 17 was pushed to a division. It was agreed by 283 votes in favour and 192 votes against it. The new clause was subsequently added to the Bill.

Limiting the scope of Serious Disruption Prevention Orders

The trigger for Serious Disruption Prevention Orders on conviction

Clause 19 in part 2 of the Bill provides for SDPOs to be issued by the court alongside a conviction of a relevant protest-related offence. In the Bill as brought from the Commons, in order to issue an SDPO under **clause 19**, the courts would have had to be satisfied on the balance of probabilities that within the last five years the individual had met one of the following conditions listed in subsection (3)(a):

- they were convicted of another protest-related offence;
- they were found in contempt of court for a protest-related breach of an injunction;
- they carried out protest-related activities that resulted in, or was likely to result in, serious disruption to two or more individuals, or an organisation;
- they caused or contributed to another person committing a protest-related offence or injunction breach; or
- they caused or contributed to another person’s protest-related activities that resulted in, or was likely to result in, serious disruption to two or more individuals, or an organisation.

Lord Anderson (Crossbench) moved **amendment 18** which sought to remove the final three conditions listed above from subsection (3)(a) of the clause. This would mean that an SDPO could only be issued to those on conviction where the individual had already been convicted of another protest-related

⁷¹ Lord Coaker at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1134

⁷² Lord Sharpe at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1134

⁷³ As above, c1135

offence in the past or been found in contempt of court for breaching a protest-related injunction. It would prevent SDPOs from being issued on the basis of un-convicted or non-criminal activity; activity that had the potential to cause serious disruption but did not actually do so; and for causing or contributing to the protest-related actions of others.

Speaking to his amendment, Lord Anderson said he opposed SDPOs because:

There are remarkably few ... hindrances on SDPOs themselves, even by the standards of comparable orders aimed at the prevention of knife crime, domestic violence and terrorism.⁷⁴

2 Comparison of court orders for terrorism with SDPOs

Lord Anderson, who previously served as the Independent Reviewer of Terrorism Legislation for six years from 2011-2017, compared SDPOs to Terrorism Prevention and Investigation Measures (TPIMs). These are court orders issued to individuals with the aim of preventing the risk of terrorism. He argued that despite being aimed at an issue that poses a greater threat for society, in many ways TPIMs are not as easy to issue as SDPOs or as harsh on the individual, stating:

“... A simple comparison between our treatment of terrorists, or suspected terrorists, and those suspected of protest-related offences should surely suggest that Part 2 of the Bill ... is an extraordinary overreaction.”⁷⁵

He drew out the following about TPIMs compared to SDPOs:⁷⁶

- **Higher trigger:** Lord Anderson argued TPIMs have a higher trigger as they can be imposed only when it is reasonably believed that the subject is or has been involved in terrorism-related activity and that the TPIM is necessary to protect the public.
- **More limited content:** TPIMs are limited to specific measures specified in the [Terrorism Prevention and Investigation Measures Act 2011](#) whereas for SDPOs he argued this appears to be “completely unlimited”.
- **Higher level of authority needed for imposing them:** TPIMs can only be imposed by the Secretary of State, after obtaining both the permission of the High Court and confirmation from the Crown Prosecution Service that it would not be feasible to prosecute the individual for a criminal offence.

⁷⁴ Lord Anderson at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1141. **Note:** In particular Lord Anderson compared the lack of limitations and safeguards for SDPOs compared to Terrorism Prevention and Investigation Measures, a court order for people suspected of posing a risk of terrorism. See box 2 for more detail on the comparisons he made between the two at Lords committee stage.

⁷⁵ Lord Anderson at HL Deb [Public Order Bill: committee stage \(third sitting\)](#), 13 December 2022, c633

⁷⁶ As above

- **Greater oversight:** There are quarterly reports on TPIMs and the operation of the system is reviewed by the Independent Reviewer of Terrorism Legislation in a report that the Home Secretary is required to publish. Lord Anderson notes there is not an equivalent for SDPOs.
- **Low use:** The numbers of TPIMs issued are low, which Lord Anderson said reflects their impact on liberty and the safeguards in place to prevent their abuse. He compares this to the Government’s impact assessment of SDPOs which predicts approximately 400 SDPOs will be imposed each year (200 on conviction and another 200 otherwise than on conviction).⁷⁷

In light of these concerns about the lack of limitations and safeguards for SDPOs, he said the intention of **amendment 18** was to “limit the trigger events for an SDPO”, with the following consequences:

the effect of that change is that you could not be a target of an SDPO, as you could under the Bill as it currently stands, if you drove your daughter to a demonstration in which serious disruption such as delay or hindrance was caused to two or more individuals.⁷⁸

Lord Hope agreed that the triggers addressed by **amendment 18** should be removed due to the breadth of the provisions. He particularly raised concern about the lack of certainty over the phrase protest-related “activities” in subsection (3)(a) and said that giving the power to apply an SDPO to someone for contributing to another person breaching a protest-related injunction was “an extraordinary proposition”.⁷⁹ He argued “injunctions are directed to individuals [and] not publicised in the same way as offences” are in statute.⁸⁰ Therefore, a person might have no idea that someone else’s actions would be breaching an injunction against them.

Lord Paddick referred to SDPOs as “totally unacceptable” and argued that **amendment 18** did not go far enough to address the concerns about SDPOs.⁸¹

Home Office Minister, Lord Sharpe, said the Government could not support Lord Anderson’s amendments because in its view it would be a “substantial dilution of the Bill’s effectiveness”.⁸² He argued that SDPOs were necessary because “a small group of individuals who have been arrested during disruptive protest action have reoffended soon after”⁸³ and these new orders would help “deter this group” as well as provide a “non-custodial route to prevent ... serious disruption in the name of protest”.⁸⁴ He also argued that

⁷⁷ **Note:** the provision to issue SDPOs ‘otherwise than on conviction’ (formerly clause 20) was removed from the Bill during Lords report stage.

⁷⁸ Lord Anderson at HL Deb [Public Order Bill: committee stage \(third sitting\)](#), 13 December 2022, c1142

⁷⁹ Lord Hope at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1143

⁸⁰ As above

⁸¹ As above, c1144

⁸² Lord Sharpe at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1147

⁸³ As above, c1146

⁸⁴ As above

individuals would only be subjected to “proportionate and necessary” requirements.⁸⁵

The Lords divided on **amendment 18**. It was successful by 259 votes to 200 and **clause 19** was duly amended.

Removing Serious Disruption Prevention Orders made otherwise than on conviction

Lord Ponsonby (Labour) moved **amendment 20** to remove **clause 20** from the Bill entirely. **Clause 20** would have enabled the courts to issue an SDPO on application from the police (referred to in the Bill as ‘otherwise than on conviction’). The individual would not necessarily have had to have committed a criminal offence to receive an SDPO this way, if on at least two occasions in a five-year period they had carried out protest-related activities that resulted in, or were likely to result in, serious disruption to two or more people or an organisation. It would also have been possible to issue an SDPO on the basis of contributing to another person’s protest-related disruption.

Several members of the Lords were particularly concerned about this power to issue SDPOs to people with no conviction and who may not ever have done anything criminal or caused serious disruption. Lord Ponsonby said:

It is simply not proportionate, necessary, Human Rights Act-compliant or good value for money to introduce a power to allow serious disruption prevention orders to be given without a conviction being made.⁸⁶

He highlighted the conclusions of the Joint Committee on Human Rights that the provision would significantly interfere with the “legitimate peaceful exercise of Article 10 and 11 rights”.⁸⁷ He also argued that the police already have sufficient powers to manage disruptive protesters through their powers to impose conditions on protests they consider could pose a risk to public order and to arrest those who breach those conditions.⁸⁸

Lord Paddick also argued that SDPOs issued otherwise than on conviction were unworkable and would not be an effective deterrent in practice. He cited concerns from His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) that there would be a reluctance to make use of them:

As His Majesty’s Inspectorate of Constabulary and Fire & Rescue Services reported in its review of public order policing, the police’s view was that courts would be reluctant to deprive individuals of their right to protest by granting protest banning orders in the first place, and even more reluctant to impose any significant penalty should someone breach an order by peacefully participating in a future protest. If they caused serious disruption, they would

⁸⁵ As above

⁸⁶ Lord Ponsonby at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1145

⁸⁷ As above. See: Joint Human Rights Committee, [Legislative Scrutiny: Public Order Bill](#) (PDF), 8 June 2022, p21

⁸⁸ Lord Ponsonby at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1145

be convicted of a substantive public order offence. As a result, SDPOs were seen as unworkable and having no real deterrent effect.⁸⁹

For the Government, Lord Sharpe continued to argue that SDPOs were a necessary provision that would be an important deterrent for further disruptive protest activity. To try and address concerns raised that SDPOs (particularly those issued otherwise than on conviction) were a disproportionate and overly intrusive measure, he said:

it is important to make it clear that a prohibition or requirement of a preventive order is much less intrusive than a prison sentence, which is a potential consequence of some of the protest-related offences that can lead to an SDPO.⁹⁰

Lord Sharpe concluded that in the Government's view, the extent of the amendments put forward by members of the Lords would limit the effectiveness of SDPOs and therefore it could not support them.⁹¹

Amendment 20 to remove **clause 20** from the Bill was pushed to a division and was agreed to by 247 votes to 192.

2.3

Additional changes to the Bill

Changing the offence of interference with access to or provision of abortion services

Baroness Sugg (Conservative) moved **amendment 5** which sought to replace **clause 9** with an alternative version of the offence of interfering with access to or provision of abortion services.⁹²

What's different about the updated version of the clause?

The amendment would still create a criminal offence 'of interference with access to or provision of abortion services'. Under the version of the offence proposed by **amendment 5**, it would be an offence for a person who is within a 'safe access zone' (previously referred to as a 'buffer zone') to act in a way that they intend will:

- influence a person's decision to access, provide or facilitate the provision of abortion services;

⁸⁹ Lord Paddick at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, c1144. See also: HMICFRS, [Getting the balance right? An inspection of how effectively the police deal with protests](#), 11 March 2021, p137

⁹⁰ Lord Sharpe at HL Deb, [Public Order Bill: report stage \(2nd day\)](#), 7 February 2023, cc1146-1147

⁹¹ As above, c1146

⁹² Clause 9 was added to the Bill at Commons report stage. See section 1.2 of this paper for further details.

- obstruct or impede a person from accessing, providing, or facilitating the provision of abortion services; or
- cause harassment, alarm or distress to someone in connection with a decision to access, provide, or facilitate the provision of abortion services.

A person could also be guilty of the offence if they act in a way that is reckless to having one of the above the effects on a person.

This is different to the list of activities provided in the original version of the clause that constituted ‘interfering’ with a person accessing or providing abortion services. It no longer explicitly refers to activities such as repeatedly occupying the safe access zone; advising or persuading; informing; or producing/transmitting photographs, personal data, etc of people.

The meaning of ‘safe access zone’ in **amendment 5** is the same as the definition provided for ‘buffer zone’ in the version brought from the Commons, which involves a 150-metre boundary around an abortion clinic or building containing an abortion clinic.

Amendment 5 would also provide (where the previous version did not) that no offence would be committed by a person if they are inside a dwelling or a place of worship **and** the person affected is also inside the same place.

In addition, **amendment 5** expands the exclusions provided in subsection 5 of the clause to also exclude from the offence anyone who is accompanying a person accessing an abortion service if they are doing so with that person’s consent.

The new version of the clause would also reduce the penalty for the offence from a maximum of two years imprisonment and unlimited fine to a maximum fine of £5,000. It removes the possibility of a custodial sentence entirely from the offence.

Debate

Amendment 5 was a cross-party proposal that was put forward following a range of concerns that were raised about **clause 9** during Lords committee stage, including concerns about:

- restrictions on freedoms of assembly, speech, thought and religion;⁹³

⁹³ See for example: Baroness Fox (non-affiliated) at HL Deb, [Public Order Bill: Committee \(2nd day\)](#), 22 November 2022, c1290-1293; and Baroness O’Loan (Crossbench), at HL Deb, [Public Order Bill: Committee \(2nd day\)](#), 22 November 2022, c1308

- the offence being a disproportionate response to protests that some have argued are generally passive and peaceful in nature;⁹⁴
- the breadth of the proposed offence, particularly the use of phrases such as “attempting to advise” or “attempting to inform” and “seeking to influence” casting the net too wide;⁹⁵
- the implications for people who express their views in places of worship or their home if it falls within the 150-metre boundary of an abortion service;⁹⁶
- those accompanying people accessing abortion services inadvertently being caught be the offence;⁹⁷ and
- the sanction of up to two years imprisonment being harsh and disproportionate to the offence.⁹⁸

Speaking to **amendment 5**, which she co-signed, Baroness Sugg explained that it was intended to address these concerns:

We have removed custodial sentences from the clause; private dwellings and places of worship have been exempted, as long as activity there is not designed to impact women outside that space trying to access healthcare; and we have included an exemption for those “accompanying, with consent”, to ensure that conversations that women wish to have will not be captured.⁹⁹

She also described **amendment 5** as “a more legally robust clause” that “is compliant with human rights” but still “delivers the intent to protect women when they are accessing their legal right to healthcare.”¹⁰⁰ The Lord Bishop of Manchester agreed, stating:

Women must be able to access lawful medical interventions without facing distressing confrontations, directed at them personally, when they are identifiable by their proximity to the clinic or hospital. At the same time, anyone who wishes to protest in general about abortion law must be able to do so lawfully, with the least restriction on where and when they may do so ... what we now have in Amendment [5] is, I believe, something that strikes a

⁹⁴ Lord Farmer (Conservative) at HL Deb, [Public Order Bill: Committee \(2nd day\)](#), 22 November 2022, c1297. **Note:** In 2018, the Government conducted a review into protests at abortion clinics. The Government said it had found that “predominantly, anti-abortion activities are more passive in nature.” See: Savid Javid, [Written statements: Outcome of the Abortion Clinic Protest Review](#), 13 September 201

⁹⁵ See for example: Lord Beith at HL Deb, [Public Order Bill: Committee \(2nd day\)](#), 22 November 2022, c1301

⁹⁶ As above, c1300-1301

⁹⁷ See for example: Baroness O’Loan (Crossbench), at HL Deb, [Public Order Bill: Committee \(2nd day\)](#), 22 November 2022, c1308

⁹⁸ See for example: Lord Bishop of Manchester at HL Deb, [Public Order Bill: Committee \(2nd day\)](#), 22 November 2022, c1303

⁹⁹ Baroness Sugg at HL Deb, [Public Order Bill: report stage \(continued\)](#), 30 January 2023, c511

¹⁰⁰ As above, c534

more exact balance. It meets human rights requirements and contains sensible limits.¹⁰¹

Concerns were raised by some members of the Lords that **amendment 5** still includes “influencing” a person’s decision to access, provide or facilitate abortion services within the actions covered by the offence. Baroness Morrissey (Conservative) said that seeking to prohibit ‘influencing’ was a “vague proposal”.¹⁰² She criticised it for being “indiscriminate” in its approach, stating that it could be used to “criminalise anyone who prays silently”.¹⁰³ Lord Jackson (Conservative) also agreed that “When compared with [the original] Clause 9, this is still extraordinarily broad and could potentially cover a whole range of innocuous activities.”¹⁰⁴

Baroness Sugg acknowledged that **amendment 5** still contained the contested word “influence” within the offence and highlighted that this is language which has been used in a Bill for ensuring ‘safe access zones’ in Northern Ireland. She cited a Supreme Court judgment in December 2022, which ruled that the use of the term ‘influence’ in that Bill was “not only relevant but necessary to deliver on the introduction of safe access zones” because “sole reliance on ‘harassment, alarm and distress’ or ‘impeding’ provisions would leave women” facing continued breaches of their rights¹⁰⁵ (see box 4 overleaf for more information).

For the Government, Lord Sharpe said, “The Government have decided to step back and take a neutral stance”¹⁰⁶ during the debate related to **clause 9** on interfering with the access or provision of abortion services.¹⁰⁷ He did, however, clarify the Government’s position on the compatibility of **clause 9** with human rights legislation. At the time of introducing the Bill to the House of Lords, the Government believed **clause 9** was likely to be incompatible with ECHR, but it has since revised its position and Lord Sharpe said, “We now believe that Clause 9 is more likely than not to be compatible with the convention.”¹⁰⁸

Amendment 5 was agreed to without division¹⁰⁹ and replaced the wording of clause 9.

¹⁰¹ Lord Bishop of Manchester at HL Deb, [Public Order Bill: report stage \(continued\)](#), 30 January 2023, c518

¹⁰² Baroness Morrissey at HL Deb, [Public Order Bill: report stage \(continued\)](#), 30 January 2023, c507

¹⁰³ As above

¹⁰⁴ Lord Jackson, at HL Deb, [Public Order Bill: report stage \(continued\)](#), 30 January 2023, c516

¹⁰⁵ Baroness Sugg at HL Deb, [Public Order Bill: report stage \(continued\)](#), 30 January 2023, c512

¹⁰⁶ Lord Sharpe at HL Deb, [Public Order Bill: report stage \(continued\)](#), 30 January 2023, c531

¹⁰⁷ As above, c530

¹⁰⁸ As above, c530

¹⁰⁹ Initially a division on amendment 45 was called. However, the division was then called off after three minutes due to lack of support for the Not-Contents when the Question was put a second time.

3 The Northern Ireland Abortion Services (Safe Access Zones) Bill

In March 2022, the Northern Ireland Assembly passed the [Abortion Services \(Safe Access Zones\) Bill](#). The legislation proposes to create “safe access zones” by banning anti-abortion protests outside certain health settings. The Bill was then referred by the Attorney General for Northern Ireland to the UK Supreme Court (before it could receive Royal Assent). She wished to clarify whether the legislation would be compatible with the ECHR, in particular clause 5(2)(a) of the Bill which would make it a criminal offence to:

do an act in a safe access zone with the intent of, or reckless as to whether it has the effect of... influencing a protected person, whether directly or indirectly.

The persons that would be protected by clause 5(2)(a) include patients, persons accompanying them, and staff who work at the premises where abortion services are provided. The Attorney General was concerned that the clause did not provide any defence of reasonable excuse. She questioned whether this would disproportionately interfere with anti-abortion protesters’ rights to freedom of thought, conscience and religion, freedom of expression, and freedom of assembly (protected by articles 9, 10 and 11 of the Convention respectively).¹¹⁰

A hearing took place in July 2022, and the Supreme Court issued its judgment on 7 December 2022. This case was significant not just for devolution settlements, but more broadly across the UK as to the lawfulness of restrictions on freedom of expression, assembly, and thought under the Human Rights Act.¹¹¹

The Supreme Court said it considered the following factors:

- that in in this highly sensitive context the protection of the private lives and autonomy of women is of particular importance;
- women wishing to access lawful abortion services should have a reasonable expectation of being able to do so without being confronted “by protest activity designed to challenge and diminish their autonomy and undermine their resolve”;
- the Bill only prevents anti-abortion protestors from exercising their rights within designated safe access zones and they are free to protest elsewhere;

¹¹⁰ [Abortion Services \(Safe Access Zones\)](#), REFERENCE by the Attorney General for Northern Ireland, [2022] UKSC 32

¹¹¹ Commons Library, [What happens when a devolved bill is referred to the UK Supreme Court?](#), 4 July 2022

- women and staff are “a captive audience” who have no choice but to witness anti-abortion activity when they attend an abortion service; and
- the maximum penalty for the offence would be a fine of up to £500.¹¹²

The Supreme Court unanimously held that clause 5(2)(a) of the Bill would be compatible with the Convention rights of those who seek to express their opposition to the provision of abortion treatment services in Northern Ireland.¹¹³ The Court found that the clause was “not unduly restrictive: rather, it is rational and necessary if the Bill is to achieve its intended aims” and “strikes a fair balance between competing rights”. It also said that a defence of reasonable excuse would make the provision “less effective”.¹¹⁴

¹¹² The Supreme Court, [Press Summary: Reference by the Attorney General for Northern Ireland - Abortion Services \(Safe Access Zones\) \(Northern Ireland\) Bill](#), 7 December 2022

¹¹³ [Abortion Services \(Safe Access Zones\), REFERENCE by the Attorney General for Northern Ireland](#), [2022] UKSC 32

¹¹⁴ The Supreme Court, [Press Summary: Reference by the Attorney General for Northern Ireland - Abortion Services \(Safe Access Zones\) \(Northern Ireland\) Bill](#), 7 December 2022

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