



House of Commons
House of Lords

Joint Committee on Human
Rights

Legislative Scrutiny: Public Order Bill

First Report of Session 2022–23

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 8 June 2022*

*Ordered by the House of Lords to be
printed 8 June 2022*

**HC 351
HL Paper 16**

Published on 17 June 2022

by authority of the House of Commons and the House of Lords

Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publication

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Summary

The Public Order Bill contains further significant changes to the law on public order in England and Wales, following those introduced in the Police Crime Sentencing and Courts Act 2022. While the stated intention behind the Bill is to strengthen police powers to tackle dangerous and highly disruptive protest tactics, its measures go beyond this, to the extent that we believe they pose an unacceptable threat to the fundamental right to engage in peaceful protest.

The right to peaceful protest is a cornerstone of democracy, which should be championed and protected rather than stifled. It is protected in law by the Human Rights Act 1998, as an aspect of the rights to freedom of expression and freedom of assembly, guaranteed by Articles 10 and 11 of the European Convention on Human Rights (ECHR). While restrictions on protest may be justified in the interests of preventing disorder and protecting the rights of others, a degree of tolerance towards disruption is necessary.

The Bill proposes a number of new offences: locking on and being equipped to lock on (i.e. the protest tactic of attaching oneself to something to prevent your removal); obstructing major transport works; and interfering with key national infrastructure. Each of these offences has a very wide scope, and risks criminalising individuals legitimately exercising their Article 10 and 11 rights. They also unnecessarily place the burden of proving that actions were reasonable on to the defendant, which appears inconsistent with the presumption of innocence and the right to a fair trial guaranteed by Article 6 ECHR. These offences all need amendment to ensure they are not incompatible with Convention rights.

The Bill would also significantly increase police powers to stop and search for articles connected with protest related offences. Stop and search can be an intrusive and intimidating experience, which engages the right to respect for private life under Article 8 ECHR as well as, in the context of protest, Articles 10 and 11 ECHR. There is a risk of stop and search powers being misused, including in a discriminatory manner that infringes Article 14 ECHR, and having a chilling effect on the right to protest. This risk is substantially higher in relation to powers to stop and search without the need for reasonable suspicion, which have previously been considered necessary only to protect against serious violence and terrorism. Stop and search without reasonable suspicion should be removed from the Bill.

The proposed Serious Disruption Prevention Orders, which place conditions on individuals to prevent them engaging in disruptive protest, could impose long-lasting, wide-ranging and onerous restrictions and requirements on individuals, significantly interfering with their right to respect for their private lives and their right to engage in peaceful protest. These measures could be imposed on the basis of relatively minor offending connected with protest - or even without the individual having committed any offence at all. They represent a disproportionate response to the problem of disruptive protest and should be removed from the Bill.

1 Introduction

Background to the Bill

1. The Public Order Bill was introduced in the House of Commons on 11 May 2022 and received its second reading on 23 May 2022. It is the second piece of legislation containing major changes to the law on public order in England and Wales introduced in this Parliament, following the Police Crime Sentencing and Courts (PCSC) Bill that received Royal Assent on 28 April 2022.¹ The contents of the Public Order Bill largely replicate a series of amendments to the PCSC Bill that were unsuccessfully proposed by Government at Committee Stage in the House of Lords.
2. The key proposals within the Public Order Bill, all of which would apply in England and Wales only, are:
 - a) The introduction of new offences relating to ‘locking on’ (i.e. the protest tactic of attaching oneself to something to prevent your removal), obstructing major transport works and interfering with key national infrastructure;
 - b) The introduction of new police powers to stop and search for articles connected with protest related offences—including a power to search without the need to demonstrate reasonable suspicion; and
 - c) The introduction of new powers for the courts to issue ‘serious disruption prevention orders’, which can impose conditions designed to prevent individuals engaging in protest.

Government’s policy position

3. In November 2021 our Chair wrote to Baroness Williams, Minister of State for Home Affairs, on behalf of this Committee with our concerns about the proposed additions to the PCSC Bill.² We received a reply from the Minister for Crime, Policing and Probation, which emphasised that the amendments “were developed to tackle illegitimate levels of disruption which go beyond what is rightly protected by Convention rights” and that the Human Rights Act provided an appropriate safeguard.³
4. According to the Explanatory Notes that accompany the Public Order Bill its proposals are all intended “to strengthen police powers to tackle dangerous and highly disruptive tactics employed by a minority of protesters.” They are a response to the actions of protest groups including Extinction Rebellion, Insulate Britain and Just Stop Oil (each of which are mentioned by name in the ECHR Memorandum that accompanies the Bill).⁴

1 The Joint Committee on Human Rights reported on the public order related provisions of the PCSC Bill in its Second Report of Session 2021–22, [Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 \(Public Order\)](#), HC 331, HL Paper 23

2 [Letter to Baroness Williams of Trafford, dated 29 November 2021](#)

3 [Letter from Kit Malthouse to Chair of JCHR, dated 20 December 2021](#)

4 [Public Order Bill: European Convention on Human Rights Memorandum, 11 May 2022](#)

Human rights in issue

5. The provisions of the Public Order Bill all engage the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) and the right to freedom of assembly under Article 11 ECHR, as guaranteed through the Human Rights Act. These rights together provide an enforceable right to engage in peaceful protest. Powers to stop and search and to impose conditions on where an individual can go and with whom they can meet will also engage Article 8 ECHR, which guarantees respect for private life. There is also potential for the proposed offences and powers to be used in a discriminatory way, engaging the right not to be discriminated against in the enjoyment of your rights, which is guaranteed by Article 14 ECHR.

6. Given the Committee's serious concerns about the implications of the Bill for these fundamental rights, the Appendix contains proposed amendments to the Bill.

2 The right to protest

7. As we have previously noted, the right to peaceful protest is a fundamental right in a healthy democracy, which must be championed and protected.⁵ We agree with the UN Human Rights Council’s General Comment on the right to peaceful assembly:

The fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies... it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism ... The right of peaceful assembly is, moreover, a valuable tool that can and has been used to recognize and realize a wide range of other rights, including economic, social and cultural rights. It is of particular importance to marginalized individuals and groups. Failure to respect and ensure the right of peaceful assembly is typically a marker of repression.

8. The right to gather together to participate in peaceful protest is recognised as an element of the right to peaceful assembly and given protection in a wide range of international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the ECHR.⁶ There is no express right to protest in UK law,⁷ but it is protected under the Human Rights Act 1998, which brings the rights guaranteed by the ECHR into domestic law. While the ECHR does not explicitly include the right to protest, as noted above it is recognised as an aspect of the rights to freedom of expression (Article 10 ECHR) and particularly freedom of assembly and association (Article 11 ECHR).

The right to protest under the ECHR and Human Rights Act

9. Article 10 ECHR protects the expression of opinions in the form of protest, including “not only the substance of the ideas and information expressed, but also the form in which they are conveyed”.⁸ The right to free expression extends beyond information or ideas that are favourably received or regarded as inoffensive, to those that “offend, shock or disturb the State or any sector of the population”.⁹ The European Court of Human Rights (ECtHR) has placed particular emphasis on the importance of political free expression: “in a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression.”¹⁰

10. The Article 11 right to freedom of peaceful assembly extends to gathering together for a common purpose in private or in public, and being able to choose the time, place

5 Joint Committee on Human Rights Second Report of Session 2021–22, [Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 \(Public Order\)](#), HC 331, HL Paper 23, paras 121–128

6 Article 21 of the ICCPR – see also the Universal Declaration of Human Rights (art. 20 (1)); the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (art. 11); the American Convention on Human Rights (art. 15); and the African Charter on Human and Peoples’ Rights (art. 11).

7 We recommended that an express right to protest be included in Part 3 of the PCSC Act - see Joint Committee on Human Rights, Second Report of Session 2021–22, [Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 \(Public Order\)](#), HC 331, HL Paper 23, paras 121–128

8 *Palomo Sánchez and others v. Spain* [GC], Application nos. [28955/06](#), [28957/06](#), [28959/06](#), and [28964/06](#), at 53

9 *Handyside v United Kingdom*, Application no. [5493/72](#), at 49

10 *The United Macedonian Organisation Ilinden and Ivanov v Bulgaria*, Application No [59489/00](#), at 61

and form of the gathering, within the limits established by Article 11(2).¹¹ In keeping with the protections of Article 10, Article 11 protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote.¹² However, Article 11 protects only the right to *peaceful* assembly. Violent protests and those organised with violent intentions will not receive the protection of Article 11.¹³ An individual who remains peaceful will not lose the protection of the Convention merely because other participants in a demonstration engage in sporadic violence, however.¹⁴

Lawful restrictions on the right to protest

11. As the rights guaranteed by both Articles 10 and 11 are qualified, restrictions may be lawful where justified. Articles 10(2) and Article 11(2) ECHR establish that public authorities may interfere with the right to protest for a legitimate purpose, including for “the prevention of disorder or crime” and “the protection of the rights and freedoms of others”. This latter purpose has been interpreted by the ECtHR as including matters such as “the right to move freely on public roads without restriction”.¹⁵ However, any interference with Article 10 or 11 will only be justified where it is properly prescribed by law, where there is a pressing social need for the interference and where the interference is proportionate to the aim of the measure.

12. The ECtHR has recognised that public demonstrations “may cause some disruption to ordinary life” and that “it is important to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of its substance.”¹⁶ The limits of this tolerance depend on the specific circumstances, such as the duration of the assembly and the extent of public disturbance caused by it, and on whether those involved have been given sufficient opportunity to manifest their views.¹⁷ The ECtHR has also recognised that states have a wide margin of appreciation in assessing necessity when it comes to taking action against those that

11 “Organisers’ autonomy in determining the assembly’s location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other ways, are important aspects of freedom of assembly. Thus, the purpose of an assembly is often linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact.” See *Lashmankin v Russia* (Application No.57818/09).

12 *Kudrevičius and Others v. Lithuania* [GC], Application no. 37553/05, at 145

13 *Navalnyy v. Russia* [GC], Application nos. 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14, at 98

14 *Primov and Others v. Russia*, Application no. 17391/06, at 155

15 *Barraco v. France*, no. 31684/05, at 40

16 *Kudrevičius and Others v. Lithuania* [GC], Application no. 37553/05, at 150. These conclusions are consistent with the UN Human Rights Council “[General comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\)](#)”, 17 September 2020: “Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration...assemblies are a legitimate use of public and other spaces, and since they may entail by their very nature a certain level of disruption to ordinary life, such disruptions must be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions.” Domestically, in *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23 the Court of Appeal stated, “Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them....” (para. 43). In *DPP v Ziegler* [2021] UKSC 23 the Supreme Court commented that there should be “a certain degree of tolerance to disruption to ordinary life, including disruption to traffic, caused by the exercise of the right to freedom of expression or freedom of assembly.”

17 *Frumkin v Russia*, Application no. 74568/12, at 97

deliberately disrupt traffic or other aspects of ‘normal life’,¹⁸ but even within that margin they must apply standards which are in conformity with the principles embodied in Article 11.¹⁹ This includes taking other, less intrusive, measures if they are available.

Striking the right balance

13. As the discussion above makes clear, to comply with its obligations under Articles 10 and 11 ECHR, the United Kingdom needs to strike the right balance between, on one side, the rights of protesters and the value of peaceful protest and, on the other, protection against disruption to the public and public infrastructure. The law already provides the state with considerable ability to regulate protest and the exercise of Article 10 and 11 rights. The police have powers to control assemblies and processions that seriously disrupt daily life and to take criminal action against individuals who fail to comply with them, as well as those who block roads, damage monuments or use intimidation or violence. Private companies are also able to secure injunctions against protesters preventing them from engaging in disruptive protest, breach of which can result in committal to prison for contempt of court.²⁰

14. Police powers have been further expanded by the Police, Crime, Sentencing and Courts Act 2022 (the PCSC Act), so that restrictions can now be placed on protests simply because they are noisy. We reported on the PCSC Bill and concluded that some of the restrictions it contained were inconsistent with our rights.²¹ The Public Order Bill goes even further.

15. We are concerned that the expansion of police powers to control or restrict protest can have a ‘chilling effect’, i.e. the effect of discouraging individuals from exercising their rights to free expression and assembly, as can the introduction of police powers that are uncertain in their scope. If an individual fears that they will be stopped and searched, arrested or prosecuted for organising or joining a peaceful protest, or if that individual is not sure whether their conduct is likely to meet such a response from the police, they are less likely to engage in that protest.

16. The UK is rightly proud of its history of respect for political protest and is critical of other nations who fail to show the same degree of respect for the crucial importance played by protest in a democratic society.²² Introducing our own oppressive measures could also damage the UK’s international standing and our credibility when criticising other nations for cracking down on peaceful protest.

17. The right to peaceful protest plays a crucial role in any healthy democracy. We are concerned that the Government are proposing further sweeping restrictions on peaceful protest, having already introduced measures we considered to be inconsistent with the right to protest in the Police, Crime Sentencing and Courts Act 2022. This latest raft of measures is likely to have a chilling effect on the right to protest in England

18 [Kudrevičius and Others v. Lithuania](#)

19 [Körtvélyessy v. Hungary](#), Application no. 7871/10, at 26–29

20 See, for example, [Cuadrilla Bowland Ltd v Persons unknown \[2020\] EWCA Civ 9](#)

21 Joint Committee on Human Rights, Second Report of Session 2021–22, [Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 \(Public Order\)](#), HC 331, HL Paper 23

22 See, for example, Foreign, Commonwealth & Development Office, [Human Rights and Democracy, The 2020 Foreign, Commonwealth & Development Office report](#), July 2021 and the Foreign, Commonwealth & Development Office, [Six-monthly report on Hong Kong: 1 July to 31 December 2021](#), 31 March 2022

and Wales. They threaten the overall balance struck between respect for the right to protest and protecting other parts of the public from disruption. The Bill also risks damaging the UK's reputation and encouraging other nations who wish to crack down on peaceful protest.

3 New offences

18. The criminal law already prohibits violent, threatening and abusive behaviour at protests,²³ obstructing a police officer,²⁴ obstructing the highway,²⁵ endangering road users,²⁶ aggravated trespass,²⁷ criminal damage,²⁸ and public nuisance.²⁹ It is also an offence to fail to comply with conditions lawfully imposed on assemblies and processions by the police.³⁰ The police have powers of arrest in respect of all of these offences—and to prevent ongoing or imminent breaches of the peace. The new offences proposed in the Bill cover further non-violent but disruptive behaviour.

19. The criminal law and the powers of the police already allow for action to be taken against violent protest and disruptive non-violent protest. We are unconvinced that additional offences are necessary or appropriate.

Locking on

20. The Bill would make it a criminal offence to ‘lock on’; i.e. to attach oneself or another to another person, an object or land when that act is capable of causing “serious disruption” to two or more individuals or an organisation. The offence requires the offender to intend that serious disruption would be the consequence, or to be reckless as to whether it would be.

21. While Articles 10 and 11 are likely to be engaged by any action taken to criminalise acts of non-violent protest, they do not prevent the state taking proportionate action against those who cause severe disruption to ‘ordinary life’. The proposed offence is problematic in that it offers insufficient safeguards against it being used in a disproportionate manner.

- a) Firstly, locking on is defined as “attaching” oneself, including to another person. It is unclear what would be sufficient to amount to an attachment. It could extend beyond attachments that cause difficulties such as using padlocks or glue to people simply linking arms.
- b) Secondly, the offence can be committed whenever the act of locking on is “capable of causing” serious disruption. This means that the offence could be committed without ever having caused disruption and in circumstances where easy steps could be taken by the authorities to avoid that disruption.
- c) Thirdly, the term “serious disruption” is not defined in the Bill. There is also no provision for the term to be defined by regulations, as is the case in respect of its use in the PCSC Act.³¹ It is an extremely broad term with no clear boundaries.

23 See the Public Order Act 1986 as well as other offences against the person

24 [Police Act 1996 – s.89](#)

25 [Highways Act 1980 – s.137](#)

26 [Road Traffic Act 1988 – s.22A](#)

27 i.e. trespassing in a way that is intended to prevent or disrupt someone carrying out lawful activities. [Criminal Justice and Public Order Act 1994 – s.68](#)

28 [Criminal Damage Act 1971](#)

29 Now a statutory offence under the PCSC Act 2022

30 [Public Order Act 1986 ss.12 and 14](#)

31 Section 73 and 74 of the PCSC Act provide that the Secretary of State, in this case the Home Secretary, may by regulations amend the Public Order Act to make provision about the meaning of: (1) serious disruption to the activities of an organisation which are carried on in the vicinity of a public procession, and (2) serious disruption to the life of the community, for the purposes of processions and assemblies in England and Wales.

It is unclear who or what would need to be seriously disrupted, what level of disruption is needed before it becomes serious and how these questions are meant to be determined by protesters and police officers on the ground - or even the courts. This gives rise to the risk of disproportionality and also uncertainty. To comply with Article 10 or 11 ECHR any law that interferes with those rights must be sufficiently accessible and its consequences foreseeable. It is not foreseeable when a lock on that causes disruption will become criminal.

- d) Fourthly, the serious disruption need be to only two or more people. This prevents any narrowing of the offence, and greater clarity as to its scope, by reference to how many people are disrupted - unless it is a solitary individual.
- e) Lastly, the offence is punishable with up to 51 weeks in prison.³² This sanction is significantly harsher than the maximum penalties that, until recently, applied to existing 'protest-related' non-violent offences such as obstructing the highway (level 3 fine)³³ or aggravated trespass (3 months imprisonment).

22. The safeguards against misuse of the offence that do exist include the requirement for the prosecution to prove that the defendant intended to cause "serious disruption" or was reckless as to whether it would be caused. This is likely to be a low hurdle for the prosecution, however. Furthermore, both establishing and denying this intention suffer from the uncertainty of the term "serious disruption", discussed above.

Reasonable excuse

23. The other principal safeguard against disproportionate use contained within the offence is that a defendant can raise a defence by showing that he or she had a "reasonable excuse" for the action taken. Section 3 HRA imposes an obligation to read legislation compatibly with the Convention, which applies to the courts. In light of this obligation, the courts have, in other contexts (such as the offence of obstructing the highway), interpreted similar language (e.g. "lawful authority or excuse") as covering a legitimate exercise of the right to peaceful protest under Articles 10 and 11 ECHR.³⁴ Thus, under section 3 HRA as it currently stands the courts should interpret the Bill as providing anyone who 'locks-on' as part of a peaceful political protest, and does not cause excessive disturbance, with a reasonable excuse defence based on them exercising their Convention rights.

24. There are, however, a number of significant deficiencies in the defence of 'reasonable excuse' as a safeguard against breach of Articles 10 and 11:

- a) While this may protect an individual against wrongful conviction in breach of their Convention rights, it is less likely to protect them against prosecution and, particularly, arrest. Police officers are unlikely to refrain from arresting someone if all the elements of the offence are made out, meaning a protester with a 'reasonable excuse' based on exercise of Article 10 and 11 rights is likely to face arrest regardless. Arrest is likely to represent a significant interference

32 For offences committed after the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force.

33 The PCSC Act 2022 extends this penalty to up to 51 weeks imprisonment.

34 See [DPP v Ziegler \[2021\] UKSC 23](#)

with the ability to exercise Article 10 and 11 rights by engaging in protest, and the mere threat of arrest is liable to contribute to the chilling effect of this Bill on those considering lawful and proportionate action.

- b) The Government announced in the Queen’s Speech that they would be introducing a Bill to replace the Human Rights Act with a Bill of Rights. One of the Government’s proposals for the Bill of Rights is a weakening of both the section 3 HRA obligation to interpret legislation compatibly with the Convention and also the section 6 HRA obligation on public authorities to act compatibly with Convention rights.³⁵ The Bill may also require “great weight” to be given to the expressed view of Parliament when considering any question of proportionality—which could easily result in a presumption against any deliberate “locking on” having a reasonable excuse. The emphasis laid in the Government’s ECHR memo on the HRA as protecting against breaches of Articles 10 and 11 will require careful reappraisal in light of the forthcoming Bill of Rights.
- c) In contrast to an offence like obstruction of the highway, where the prosecution must prove that the defendant did not have ‘lawful authority or excuse’ for their actions, for the new ‘locking-on’ offence the burden of proof would be on the defendant to show that he or she has a ‘reasonable excuse’. Such a reverse burden of proof may be inconsistent not only with Articles 10 and 11 but also with the presumption of innocence, a central principle of criminal justice and an aspect of the Article 6 ECHR right to a fair trial. This is because requiring the defendant to prove something, even on the balance of probabilities, may result in a conviction despite there being an element of doubt.³⁶ It is hard to see why a reverse burden is necessary or appropriate in this case.

Being equipped to lock on

25. The Bill would also introduce a separate offence of being equipped to lock on, which would criminalise the carrying of any object “with the intention that it may be used in the course of or in connection with the commission by any person” of the offence of locking on. This new offence, coupled with new powers to stop and search discussed below, gives rise to a significant risk of disproportionate pre-emptive action by the police that could have a chilling effect on legitimate protest. This risk is enhanced by the wide reach of the offence, in particular it extending to an intention that an object “may be” used “in connection with” a locking on offence.

26. The proposed offences of ‘locking on’ and ‘being equipped to lock on’ risk criminalising actions that fall within the protections of Article 10 and 11 ECHR and contain inadequate safeguards against this. By imposing an unnecessary reversal of the burden of proof they also appear to be inconsistent with the presumption of innocence and the Article 6 ECHR right to a fair trial. *These offences require amendment to narrow their scope and improve safeguards against violation of Convention rights.*

35 Ministry of Justice, Human Rights Act Reform: A Modern Bill of Rights, [CP 588](#), December 2021

36 Where the constituent elements of the offence have been proved, a court may be 49% convinced that the defendant did have a reasonable excuse, but would still be required to convict.

Obstructing major transport works

27. This proposed offence encompasses any obstruction of a construction worker from “taking any steps that are reasonably necessary for the purposes of facilitating, or in connection with, the construction or maintenance of any major transport works”; as well as interfering with, moving or removing any apparatus relating to the construction or maintenance of major transport works or any apparatus that belongs to a contractor.³⁷

28. While it applies only to a limited category of works, the breadth of this offence gives rise to a clear risk of unnecessary or disproportionate criminalisation—including, but not limited to, criminalisation of protesters in breach of Articles 10 and 11 ECHR. For example, the offence would be committed by moving any apparatus that ‘relates to’ construction or maintenance of major transport works (such as a shovel, a broom or a traffic cone) or, indeed, moving any apparatus (even if unrelated to the works) that belongs to a person acting under the authority of the person in charge of the works. In contrast to the locking-on offence, there is no requirement that the offending conduct could be capable of causing significant disruption and there is no requirement that these actions be carried out with any particular intention of causing obstruction or disruption. This means that inadvertent actions could result in arrest or even a criminal penalty.

29. The principal protection for those engaged in peaceful protest is again the availability of a defence of “reasonable excuse”. While it could cover inadvertent actions, there is no guarantee that this would amount to the required reasonable excuse. Furthermore, the defence suffers from the same drawbacks as are set out above in respect of locking on, including an unnecessary reversal of the burden of proof.

30. It is notable that this offence could cover legitimate strike or other industrial action as this could, no doubt, result in obstruction to the construction or maintenance of works. Article 11 ECHR provides a qualified right to participate in industrial action.³⁸ The Bill seeks to meet the requirements of Article 11 with an additional defence, which applies if it can be shown that the act “was done wholly or mainly in contemplation or furtherance of a trade dispute”. Once again, the efficacy of this defence is undermined by an unnecessary shifting of the burden of proof.

31. The offence of obstructing major transport works is so widely drafted that it could easily criminalise peaceful exercise of Article 10 and 11 rights. It requires amendment to narrow its scope, including by introducing a requirement of intent and removing the unnecessary reversal of the burden of proof.

Interference with key national infrastructure

32. Clause 4 of the Bill would create a new offence criminalising any “act which interferes with the use or operation of any key national infrastructure in England and Wales”. Given that the ECtHR has emphasised the margin of appreciation afforded to states when considering the necessity of action that interferes with Article 10 and 11, imposing a

37 Major transport works are defined as works relating to transport infrastructure that are authorised directly by an Act of Parliament or nationally significant works granted consent under s114 of the Planning Act 2008.

38 Article 11 expressly includes “the right to form and to join trade unions for the protection of [one’s] interests” and has been interpreted as covering strike action as part of trade union activity – see *Association of Academics v. Iceland (dec)*, [App No.2451/16, 2018](#), §§ 24–27. Article 8 of the International Covenant on Economic, Social and Cultural Rights also guarantees trade union rights, including the right to strike.

proportionate criminal penalty for significant obstruction to key national infrastructure could be compatible with these rights. However, the Bill goes much further and poses a clear risk of disproportionate interference with the right to peaceful protest.

33. Interfering with the use or operation of key infrastructure is defined as “prevent[ing] the infrastructure from being used or operated to any extent for any of its intended purposes”. This specifically includes being “significantly delayed” - but what amounts to a significant delay is left to the courts to decide.³⁹

34. The definition of “key national infrastructure” covers some items that do not appear to justify this categorisation. It includes transport infrastructure; oil, gas and electricity infrastructure and newspaper printing infrastructure.⁴⁰ The Secretary of State is given the power to add to the list by regulations.⁴¹ Each type of infrastructure is further defined in clause 5, which makes clear how wide the scope of this new offence would be. Transport infrastructure includes all A and B roads (part of “road transport infrastructure”), meaning that preventing the use of a B road to any extent would become an offence,⁴² as would obstructing access to a train station platform (part of “rail infrastructure”) or any harbour receiving passengers or cargo for business purposes (part of “harbour infrastructure”). “Newspaper printing infrastructure” covers national and local newspapers and periodicals or magazines, as long as they are published at least fortnightly. This means a protest that results in delays to the circulation of the Beano could be criminalised, for example.

35. The offence does require an intention that the act will “interfere with the use or operation of such infrastructure” or recklessness as to whether it will do so. Once again, the defence of reasonable excuse is available, but the burden of proof is placed on the Defendant.

36. It is also notable that much of the protection this clause provides is to infrastructure that consumes fossil fuels and thus contributes to the climate emergency. While the ECHR does not currently include an express right to a safe environment, the ECtHR has already interpreted Article 2 to include a positive obligation to protect individuals from hazardous industrial activities. It has also held that severe environmental pollution may affect individuals’ private and family life adversely in breach of Article 8. Criminalising peaceful protest against environmental harm may become harder to justify as proportionate as the effects of climate change become more acute.

37. The proposed offence of interfering with key national infrastructure in England and Wales is too widely drawn and thus risks criminalising, without justification, behaviour that falls within the protection of Articles 10 and 11 ECHR. *Once again, this offence requires amendment to narrow its scope and to remove the unnecessary reversal of the burden of proof if it is to provide adequate protection for human rights.*

39 Clause 4(5)-(6)

40 The full list is (a) road transport infrastructure, (b) rail infrastructure, (c) air transport infrastructure, (d) harbour infrastructure, (e) downstream oil infrastructure, (f) downstream gas infrastructure, (g) onshore oil and gas exploration and production infrastructure, (h) onshore electricity generation infrastructure, or (i) newspaper printing infrastructure.

41 Clause 4(7)-(9)

42 This would potentially go further than the current offence of obstructing the highway, as it would cover preventing the road being used for any of its intended purposes “to any extent”

4 Stop and search powers

38. Being singled out by the police, stopped and subjected to a search can be “highly intrusive”, as the Independent Office for Police Conduct has recognised, and an “embarrassing, intrusive and frightening” experience as Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services have documented.⁴³ The impact of stop and search on children (those people under 18) can be traumatic and can result in alienation and cynicism,⁴⁴ as well as contravening rights guaranteed by the UN Convention on the Rights of the Child.⁴⁵ Police powers to stop and search are already frequently criticised due to their disproportionate use against black people and people from other minority ethnic groups, and thus give rise to concerns regarding discrimination in breach of Article 14 ECHR.⁴⁶ Stop and search also engages the Article 8 right to respect for private life, particularly if force is used, and may in certain circumstances amount to a deprivation of liberty under Article 5 ECHR.⁴⁷ Where the individual stopped is engaged in peaceful protest, it may also amount to an interference with Articles 10 and 11 given its potential intimidatory and ‘chilling’ effect. However, if the stop and search is conducted for a legitimate purpose, is in accordance with the law and is neither arbitrary nor disproportionate, it will be a justified interference with these rights.

39. The Bill proposes two significant expansions of police powers of stop and search.

Stop and search based on reasonable suspicion

40. The first proposal is to extend a police officer’s existing power under section 1 of the Police and Criminal Evidence Act 1984 (PACE) to stop and search a person on the basis of reasonable suspicion to cover stopping and searching for articles “made or adapted for use in the course of or in connection with” a protest related offence. A protest related offence includes the existing offences of wilful obstruction of the highway and intentionally or

43 See IOPC, *National stop and search learning report*, April 2022 and HMICFRS, *Disproportionate use of police powers: A spotlight on stop and search and the use of force*, February 2021

44 The College of Policing has stated that “Children may be more likely to find the experience of stop and search traumatic. This may have long-term effects on their perceptions of the police” - College of Policing, *‘Authorised Professional Practice on Stop and Search’* accessed June 2022. The National Police Chief’s Council has also recognised that “Stop and search can be highly emotive and if misused it can be harmful to the trust and confidence of young people in the police” - National Police Chief’s Council, *‘National Strategy for the Policing of Children and Young People’*, accessed June 2022

45 Notably, Article 2 (non-discrimination), Article 3 (best interests of the child) and Article 16 (the right to privacy). The UNCRC is binding on the UK as matter of international law but, unlike the ECHR, it has not been incorporated into domestic law.

46 In the year ending March 2021, people from a Black or Black British background were seven times more likely to be stopped and searched than those from a White ethnic background. People from an Asian or Asian British background, or mixed ethnic background, were around two and a half times more likely to be stopped than those from a White ethnic background. See Home Office statistics; *‘Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021 second edition’* accessed June 2022. A recent report from HMICFRS states that no police force can satisfactorily explain this disproportionality - HMICFRS, *Disproportionate use of police powers: A spotlight on stop and search and the use of force*, February 2021

47 It should be noted that the police have the power to use reasonable force where necessary when carrying out a stop and search. HMICFRS have reported receiving “anecdotal evidence that the use of handcuffs during stop and search encounters is becoming routine in some forces” HMICFRS, *Disproportionate use of police powers: A spotlight on stop and search and the use of force*, February 2021. It should also be noted that it is a criminal offence to obstruct an officer in the course of a stop and search.

recklessly causing a public nuisance; as well as the offences proposed in the Bill of locking on; obstruction of major transport works; and interference with use or operation of key national infrastructure.⁴⁸

41. The police are already empowered to stop and search for items including offensive weapons, illegal drugs and stolen property, where they have a reasonable suspicion they are being carried. Despite concerns over the misuse of stop and search powers, there is no suggestion that they are incompatible with human rights per se. Additional powers to stop and search for other articles connected with serious offending could potentially be justified. It is questionable, however, whether additional powers targeted at the non-violent protest-related offences to which the new power to stop and search applies would amount to a proportionate interference with the right to privacy and the right of peaceful protest. This is particularly the case given that the relevant protest related offences are not particularly serious crimes. Some of these offences relate to conduct that is currently legal. In respect of pre-existing offences, obstruction of the highway, for example, was until 12 May 2022 a criminal offence with a maximum penalty of a level 3 fine. Causing a public nuisance, by way of a further example, is an extremely wide-ranging offence, which could relate to conduct causing death or serious injury, but could also cover actions that merely create “a risk” of causing “serious inconvenience” or even “serious annoyance”. A suspicion of such an offence, even a reasonable one, in the course of a protest represents an unjustifiably low threshold for a power to require a person to submit to a search.

42. While the need to have an objectively reasonable suspicion provides some protection against arbitrary use of these powers, it is a standard that can generally only be tested after the event (and even then is likely to be very difficult to challenge). It is very hard to prevent a search being conducted in the first place. Such an experience could have a “chilling effect”, dissuading people from exercising their Article 10 and 11 rights.

43. The proposal to extend stop and search powers to cover searches for articles connected with protest related offences risks exposing peaceful protesters and other members of the public to intrusive encounters with the police without sufficient justification. Excessive or inappropriate use could dissuade people from exercising their right to engage in peaceful protest. It is imperative that the utilisation of these stop and search powers is carefully monitored for disproportionate use or use that breaches the Article 14 ECHR prohibition on discrimination.

Stop and search without the need for reasonable suspicion

44. Clause 7 of the Bill would also introduce a new power to authorise police officers to stop and search a person or vehicle for a ‘prohibited object’—i.e. an object made or adapted for use in the course of or in connection with a protest related offence⁴⁹ - whether or not the officer in question has any grounds for suspecting that the person or vehicle is carrying a prohibited object. The power to authorise officers to stop and search without suspicion for 24 hours in a particular locality would be available if a police officer of the rank of Inspector or above reasonably believes that protest related offences “may be

48 Clause 6

49 i.e. wilful obstruction of the highway, intentionally or recklessly causing a public nuisance; and the new offences of locking on; obstruction of major transport works; and interference with use or operation of key national infrastructure.

committed” or that persons are carrying prohibited objects in that locality. The officer must also reasonably believe that the authorisation, including the area and time for which it is in place, is necessary.⁵⁰

45. Powers to stop and search without even the need for reasonable suspicion are highly controversial. The Supreme Court has recognised that “[a]ny random “suspicionless” power of stop and search carries with it the risk that it will be used in an arbitrary or discriminatory manner in individual cases.”⁵¹ Without the need for reasonable suspicion there is nothing preventing an officer authorised to use these powers from doing so arbitrarily—or indeed on the basis of a suspicion that is *unreasonable*. While an officer remains subject to laws prohibiting discrimination, being able to establish after the event that the power was exercised on a discriminatory basis is extremely difficult. The risk of facing such misuse of police powers is again likely to contribute to an overall chilling effect on the legitimate exercise of the right to protest.

46. The power to stop and search without reasonable suspicion has previously been introduced only to deal with the most serious offending, which poses a substantial risk to public safety. It can currently only be authorised (a) where “serious violence” is anticipated or where it is believed weapons are being carried—generally limited to gang violence;⁵² or (b) where it is reasonably suspected an act of terrorism will take place.⁵³ It is surprising and concerning that the Bill would introduce similar powers to deal not with serious offences punishable with very lengthy prison terms, but with the possibility of non-violent offences relating to protest, most of which cover conduct that is not even currently criminal.⁵⁴ We note that the UN Human Rights Council’s General Comment on the Freedom of Peaceful Assembly has rejected ‘suspicionless’ stop and search, and called for stop and search to be used only in response to serious offences:

Powers of ‘stop and search’ or ‘stop and frisk’, applied to those who participate in assemblies, or are about to do so, must be exercised based on reasonable suspicion of the commission or threat of a serious offence, and must not be used in a discriminatory manner. The mere fact that authorities associate an individual with a peaceful assembly does not constitute reasonable grounds for stopping and searching them.⁵⁵

50 Clause 7(4)

51 [Roberts v Commissioner of Police](#) [2015] UKSC 79

52 Under section 60 of the Criminal Justice and Public Order Act 1994

53 Under section 47A of the Terrorism Act 2000. These powers have very rarely been used. They were not used from when they were introduced to replace previous powers in 2011 until 2017. According to the Independent Reviewer of Terrorism Legislation’s most recent report, section 47A “has only been used five times in the United Kingdom: once in Northern Ireland (2013) and four times in England (2017)” ([The Terrorism Acts in 2020: Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006, and the Terrorism Prevention and Investigation Measures Act 2011, April 2022](#)).

54 I.e. wilful obstruction of the highway, intentionally or recklessly causing a public nuisance; and the new offences of locking on; obstruction of major transport works; and interference with use or operation of key national infrastructure. Even when they are made criminal offences the majority are not deemed serious enough to be dealt with in the Crown Court. Of the relevant offences, wilful obstruction of the highway, locking on and obstruction of major transport works are summary only offences - and interference with use or operation of key national infrastructure will be punishable with only 12 months imprisonment even on indictment.

55 General comment no. 37 (2020) on the right of peaceful assembly (article 21): Human Rights Committee at para 83

47. In respect of compliance with the ECHR, the Supreme Court has previously upheld ‘suspicionless’ stop and search to counter serious violence on the basis that there are adequate safeguards against abuse in place in law and policy.⁵⁶ Similar safeguards will apply to the new power proposed in the Bill. Nevertheless, the use of ‘suspicionless’ stop and search in response to the listed ‘protest related offences’ raises a serious question of proportionality. Is it necessary and proportionate to introduce a power that clearly carries a risk of arbitrary or discriminatory interference with Convention rights when the aim is not to save lives but to avoid inconvenience? Given the proposal to allow stop and search based on reasonable suspicion for articles connected with protest offences, the necessity of this additional power is even less obvious.

48. Furthermore, the focus on offences related to protest means that:

- a) authorisation of the power to stop and search will almost inevitably result in interference with Article 10 and 11 ECHR (rather than raising a risk of this happening, which is the case in respect of the ‘terrorism’ and ‘serious violence’ powers). The availability and use of this power is likely to have an intimidatory ‘chilling’ effect on protest.
- b) There is little in the way of safeguards to prevent stop and search being used disproportionately against individuals with particular political views, raising another potential ground of discrimination in breach of Article 14.

49. The only other power to stop and search without reasonable suspicion that is regularly used makes it an offence punishable with up to one month imprisonment to fail to stop when required. The general offence of obstructing a police officer in the course of their duty also carries a maximum sentence of one month. The equivalent offence in the Bill, of obstructing a constable in the exercise of his stop and search powers, is punishable with up to 51 weeks.⁵⁷ There is no justification for making a significantly higher penalty apply to stop and search relating to protest than in respect of stop and search relating to serious violence or terrorism.

50. Powers to stop and search without reasonable suspicion are highly exceptional and inevitably give rise to a risk of arbitrary or discriminatory use. They have only previously been authorised in respect of serious violence and terrorism. Their introduction in response to the problems caused by disruptive protest would be disproportionate and inconsistent with the right to engage in peaceful protest.

51. *The proposal to give the police the power to stop and search for articles connected with protest related offences without the need to have a reasonable suspicion that such articles are being carried should be removed from the Bill.*

56 [Roberts v Commissioner of Police](#) [2015] UKSC 79

57 As noted above, this will only be the penalty when s281(5) Criminal Justice Act 2003 comes into force

5 Serious disruption prevention orders

52. Part 2 of the Bill introduces the serious disruption prevention order (SDPO), a new civil order which imposes conditions on individuals, breach of which is a criminal offence. It is effectively an ASBO for problem protesters.

What does the Bill provide?

53. The prosecution can apply for an SDPO against a defendant following their conviction for a protest related offence.⁵⁸ Before one can be imposed the court must be satisfied that it is more likely than not that,⁵⁹ within the past 5 years, the defendant has:

- a) been convicted of another protest-related offence; or
- b) been found to be in contempt of court for a protest-related breach of an injunction; or
- c) carried out “activities related to a protest” that “resulted in, or were likely to result in, serious disruption to two or more individuals or an organisation in England & Wales”;
- d) or caused or contributed to another person fulfilling (a),(b) or (c).

54. The court must also be satisfied that the order is necessary for the purposes of preventing the defendant from carrying out any of the above in future.

55. An SDPO can also be obtained in a stand-alone application by the police to the magistrates’ court.⁶⁰ The court must be satisfied that it is more likely than not that the subject has fulfilled the same requirements (i.e. a conviction for a protest-related offence; a finding of contempt for protest-related breach of an injunction; carrying out activities likely to result in serious disruption; or causing or contributing to another person doing the same) on two occasions in the past 5 years and that the order is necessary for the same purposes as set out above. Such an application could, therefore, result in an SDPO being made against individuals who have not committed a single criminal offence.

56. An SDPO may last for a minimum of a week to a maximum of 2 years (although they can be renewed for up to 12 months when they expire).⁶¹ The Bill imposes virtually no limit on the requirements and prohibitions that can be included in an SDPO as long as the court considers that they are necessary for the purposes set out above.⁶² It does list potential requirements and prohibitions, including reporting requirements; curfew requirements; and electronic tagging;⁶³ prohibitions on entering particular places or areas; prohibitions on being with particular individuals; and prohibitions on participating in particular

58 Clause 12

59 I.e. the civil standard of proof rather than the criminal standard of “beyond reasonable doubt”

60 Clause 13

61 Clause 18 and 21

62 Clause 14(1). An electronic monitoring requirement cannot be imposed if such arrangements are not available in the relevant area. If any requirements beyond a notification requirement are imposed, an individual or organisation must be appointed to supervise them – and the court must not impose them until they have heard evidence as to the suitability and enforceability of the requirements. See Clause 15.

63 Clause 14(2)

activities and on carrying particular articles.⁶⁴ Breaching any of these prohibitions or requirements without reasonable excuse is a criminal offence punishable with up to 51 weeks imprisonment.⁶⁵

Human rights issues

57. Requirements and prohibitions imposed under an SDPO are very likely to engage the recipient's right to respect for their private lives under Article 8 ECHR, particularly if they are restricted in where they can go and who they can meet. Plainly, given that these orders are directly related to protest activities, there also is a significant likelihood that they will interfere with Article 10 and 11 rights by restricting or even prohibiting the subject's participation in lawful protest activity.⁶⁶

58. Measures that interfere with Article 8, 10 or 11 rights can only be legally justified if they are imposed for a legitimate purpose, which includes preventing public disorder and protecting the rights of others, and they must also be "in accordance with the law" and "necessary in a democratic society".⁶⁷

In accordance with the law

59. The requirement that measures be "in accordance with the law" means that measures must not merely have a lawful basis but also must be accessible and their application foreseeable. A number of aspects of the SDPO regime appear to lack the clarity required to meet these standards.

- a) The key phrase "serious disruption" is not defined in the Bill. The Secretary of State may issue guidance to the police on the use of SDPOs, which must be laid before Parliament, but it is not clear whether this guidance is intended to provide more detail on what "serious disruption" means.
- b) "Activities related to a protest", can result in an SDPO, yet this term is also vague and uncertain. This could extend to fundraising in advance of a protest, photographing or documenting a protest or even taking action *against* a protest. The same could be said for the terms "caused or contributed" to such activities. Would dropping a friend or family member off at a protest be sufficient to amount to a "contribution"? The Bill is not clear.
- c) The regime also relies on the terms "protest-related offence" and "protest-related breach of an injunction", but defines these only by saying that the offence or breach must be "directly related to a protest". The disturbances at the event held in Clapham Common in memory of Sarah Everard in March 2021 provide a recent example of how problematic even the use of the term "protest" could be—

64 Clause 14(4)

65 Clause 20. An application to court for variation, renewal or discharge can be made by the individual subject and by the police - see clause 21. The subject also has a right of appeal to the Crown Court against the SDPO - see clause 22.

66 For example, in *Kudrevičius and Others* the ECtHR expressly noted that "a refusal to allow an individual to travel for the purpose of attending a meeting amounts to an interference".

67 See Article 8(2), Article 10(2) and Article 11(2) ECHR

while the police may have described that event as a “protest” the participants considered it a “vigil”. The addition of “related” substantially increases the uncertainty over what particular actions may give rise to and justify an SDPO.

Necessary in a democratic society

60. Measures that interfere with Article 8, 10 or 11 rights must also be “necessary in a democratic society”, which incorporates the requirement of proportionality. In terms of necessity, it is important to recall the wide-ranging powers already available to the police and private business to restrict and police protest. In particular, the Public Order Act 1986 already allows the police to impose conditions on assemblies and processions in the interests of preventing public disorder, damage to property and serious disruption to the life of the community.

61. The SDPO regime has a very low threshold for imposing the orders, particularly if they are based not on offending or even breach of injunction but on activities that resulted in serious disruption. For example, an SDPO could be imposed on an individual where the court is satisfied on the balance of probabilities that they have on two occasions in the past 5 years “contributed to the carrying out” by another person of “activities related to a protest” that “were likely to result in serious disruption” to two people. While there is also a necessity requirement, that could be met by an assessment that the SDPO is necessary to protect against similar contributions in future. This is an unacceptably low threshold at which to authorise the imposition of conditions, backed by criminal penalties, that interfere with Convention rights.⁶⁸

62. Even if an SDPO were to be granted with the intention of preventing criminal offending, the offences that the SDPO are designed to prevent are non-violent and attract relatively minor penalties if committed (and indeed are largely non-criminal at the present time).

63. There is a clear risk that any substantial interference with an individual’s rights by the conditions in an SDPO will be disproportionate. For example, an SDPO could impose a year-long prohibition on attending any protest related to fossil fuels, on the basis that it is necessary to prevent an individual without any convictions from causing disruption by ‘locking on’ as part of that protest. While this might lower the risk of a locking on offence being committed, it would stop that individual being able to exercise their Article 10 and 11 rights by engaging in peaceful political protest. This would not be proportionate.

64. Indeed, if a court considered it necessary, an SDPO imposed on a peaceful protester could contain measures akin to those imposed on high priority terrorist suspects under a Terrorism Prevention and Investigation Measure (TPIM). Given that the Bill envisages the imposition of curfew requirements, backed up with electronic tagging there is even

68 Also relevant to the necessity of the SDPO regime is the fact that the Public Order Act 1986 already allows the police to impose conditions on assemblies and processions where a senior police officer reasonably believes that the procession ‘may result in serious public disorder, serious damage to property, or serious disruption to the life of the community’, or where the purpose of organisers is the intimidation of others. The PCSC Act 2022 will shortly increase these powers to cover situations where officers believe the noise of protests will cause serious disturbance. The existence of these extensive powers, coupled with enhanced penalties and easier prosecution introduced through the PCSC Act, makes the need for individualised orders less clear.

a risk that an SDPO could deprive an individual of their liberty in breach of Article 5 ECHR.⁶⁹ It seems unlikely that a curfew imposed within an SDPO would include such severe restrictions—but there is nothing within the Bill preventing this.

Does the HRA provide adequate protection?

65. The Government’s ECHR memorandum, which accompanies the Bill, states that the Human Rights Act will provide effective protection against the prospect of SDPOs disproportionately interfering with Convention rights. The HRA places a legal obligation on all public authorities, including the police and the courts, to act compatibly with Convention rights. As discussed above, this reassurance is, however, significantly weakened by the Government’s own proposals to water down human rights protections in the Bill of Rights announced in the Queen’s Speech but not, at time of writing, yet introduced to Parliament. We have already reported our profound concerns about the Government’s plans to reform the Human Rights Act and we will carefully scrutinise the Bill of Rights as soon as it is published.⁷⁰

66. Even without any changes to the current protections provided by the Human Rights Act, placing reliance on every public authority involved in the SDPO process to carry out an effective and accurate assessment of the proportionality of its actions in light of the Article 8, 10 and 11 rights of the individual they are dealing with is not a reliable way of ensuring that overly broad powers are used lawfully. Instead, the powers in question should be constrained to ensure that violations of the Convention are prevented.

67. Serious Disruption Prevention Orders represent a disproportionate response to the disruption caused by protest. They are likely to result in interference with legitimate peaceful exercise of Article 10 and 11 rights. The police already have powers to impose conditions on protests and to arrest those who breach them. Other provisions of this Bill, if passed, will provide the police with even greater powers to restrict or prevent disruptive protest. *Part 2 of the Bill, which introduces SDPOs, poses an unjustified threat to the right of peaceful protest and should be removed.*

69 The courts have held that a curfew requiring an individual to remain in their home for most of the day (e.g. for 16–18hrs per day) could amount to a deprivation of liberty under Article 5 if it was coupled with other conditions that were destructive of normal life (such as restrictions on contacts with others and on using the internet). See *Secretary of State for the Home Department v JJ* [2008] 1 AC 385.

70 Joint Committee on Human Rights, Thirteenth Report of Session 2021–22, [Human Rights Act Reform](#), HC 1033, HL Paper 191

Conclusions and recommendations

The right to protest

1. The right to peaceful protest plays a crucial role in any healthy democracy. We are concerned that the Government are proposing further sweeping restrictions on peaceful protest, having already introduced measures we considered to be inconsistent with the right to protest in the Police, Crime Sentencing and Courts Act 2022. This latest raft of measures is likely to have a chilling effect on the right to protest in England and Wales. They threaten the overall balance struck between respect for the right to protest and protecting other parts of the public from disruption. The Bill also risks damaging the UK's reputation and encouraging other nations who wish to crack down on peaceful protest. (Paragraph 17)

New offences

2. The criminal law and the powers of the police already allow for action to be taken against violent protest and disruptive non-violent protest. We are unconvinced that additional offences are necessary or appropriate. (Paragraph 19)
3. The proposed offences of 'locking on' and 'being equipped to lock on' risk criminalising actions that fall within the protections of Article 10 and 11 ECHR and contain inadequate safeguards against this. By imposing an unnecessary reversal of the burden of proof they also appear to be inconsistent with the presumption of innocence and the Article 6 ECHR right to a fair trial. *These offences require amendment to narrow their scope and improve safeguards against violation of Convention rights.* (Paragraph 26)
4. The offence of obstructing major transport works is so widely drafted that it could easily criminalise peaceful exercise of Article 10 and 11 rights. *It requires amendment to narrow its scope, including by introducing a requirement of intent and removing the unnecessary reversal of the burden of proof.* (Paragraph 31)
5. The proposed offence of interfering with key national infrastructure in England and Wales is too widely drawn and thus risks criminalising, without justification, behaviour that falls within the protection of Articles 10 and 11 ECHR. *Once again, this offence requires amendment to narrow its scope and to remove the unnecessary reversal of the burden of proof if it is to provide adequate protection for human rights.* (Paragraph 37)

Stop and search powers

6. The proposal to extend stop and search powers to cover searches for articles connected with protest related offences risks exposing peaceful protesters and other members of the public to intrusive encounters with the police without sufficient justification. Excessive or inappropriate use could dissuade people from exercising their right to engage in peaceful protest. *It is imperative that the utilisation of these stop and search powers is carefully monitored for disproportionate use or use that breaches the Article 14 ECHR prohibition on discrimination.* (Paragraph 43)

7. Powers to stop and search without reasonable suspicion are highly exceptional and inevitably give rise to a risk of arbitrary or discriminatory use. They have only previously been authorised in respect of serious violence and terrorism. Their introduction in response to the problems caused by disruptive protest would be disproportionate and inconsistent with the right to engage in peaceful protest. (Paragraph 50)
8. *The proposal to give the police the power to stop and search for articles connected with protest related offences without the need to have a reasonable suspicion that such articles are being carried should be removed from the Bill.* (Paragraph 51)

Serious disruption prevention orders

9. Serious Disruption Prevention Orders represent a disproportionate response to the disruption caused by protest. They are likely to result in interference with legitimate peaceful exercise of Article 10 and 11 rights. The police already have powers to impose conditions on protests and to arrest those who breach them. Other provisions of this Bill, if passed, will provide the police with even greater powers to restrict or prevent disruptive protest. *Part 2 of the Bill, which introduces SDPOs, poses an unjustified threat to the right of peaceful protest and should be removed.* (Paragraph 67)

Appendix: Proposed amendments

Offence of locking on

Amendment 1 (to be read with amendments 3 and 5)

Clause 1, Page 1, line 6, after “they” insert: “, without reasonable excuse, and using a device or substance that impedes detachment”

Explanation: This amendment, together with amendment 3, would take the burden of proving ‘reasonable excuse’ away from the Defendant and make it an element of the offence. It would also narrow the meaning of “attach” to focus on the use of devices or substances that make removing the protester difficult.

Amendment 2 (to be read with amendment 5)

Clause 1, Page 1, line 11, leave out paragraph (1)(b) and insert: “that act causes, or is likely to cause, serious disruption to the life of the community, and”

Explanation: This amendment would replace the current threshold of serious disruption with a higher threshold based on serious disruption to the life of the community (defined in amendment 5).

Amendment 3 (to be read with amendment 1 and 5)

Clause 1, Page 1, line 16, leave out subsection (2)

Amendment 4

Clause 1, Page 1, line 20, leave out “the maximum term for summary offences” and insert “three months”

Explanation: This amendment would reduce the maximum penalty for the offence.

Amendment 5 (to be read with amendments 1 and 2)

Clause 1, Page 2, line 1, leave out subsections (4) and (5) and insert:

“(4) For the purposes of subsection (1)(a), in determining whether a person has a reasonable excuse, particular regard must be had to the importance of the right of peaceful protest in a democracy by virtue of Article 10 and Article 11 of the European Convention on Human Rights.

“(5) For the purposes of subsection 1(b), “serious disruption to the life of the community” means a prolonged disruption of access to any essential goods or any essential service, including, in particular, access to—

- (i) the supply of money, food, water, energy or fuel,
- (ii) a system of communication,

- (iii) a place of worship,
- (iv) a transport facility,
- (v) an educational institution, or
- (vi) a service relating to health.”

Explanation: This amendment would insert an express requirement to have particular regard to the right to peaceful protest when considering whether an individual has a “reasonable excuse” for their actions. It also provides detail on the meaning of serious disruption to the life of the community. As a result of amendment 2 the definition of “dwelling” is no longer relevant to this clause, but it will be necessary to make a consequential amendment to insert the definition into clause 2 of the Bill.

Offence of being equipped for locking on

Amendment 6

Clause 2, Page 2, line 13, leave out “may be used in the course of or in connection with” and replace with “will be used in”.

Explanation: This amendment would narrow the scope of this offence.

Obstruction etc of major transport works

Amendment 7

Clause 3, Page 2, line 21, leave out subsection (1) and insert:

“(1) A person commits an offence if—

(a) the person obstructs the undertaker or a person acting under the authority of the undertaker—

(i) in setting out the lines of any major transport works,

(ii) in constructing or maintaining any major transport works, or

(iii) in taking any steps that are reasonably necessary for the purposes of facilitating the construction or maintenance of any major transport works,
or

(b) the person interferes with, moves or removes any apparatus which—

(i) relates to the construction or maintenance of any major transport works,
and

(ii) belongs to a person within subsection (5), and

(c) that act causes, or is likely to cause, significant disruption to setting out the lines of, the construction of or the maintenance of the major transport works affected, and

(d) the person intends their act:

(i) to obstruct the undertaker or person acting under the authority of the undertaker as mentioned in paragraph (a) or to interfere with or remove the apparatus as mentioned in paragraph (b), and

(ii) to have a consequence mentioned in paragraph (c) or are reckless as to whether it will have such a consequence.”

Explanation: This amendment would narrow the scope of this offence to ensure it criminalises only conduct that would cause or be likely to cause serious disruption to major transport works. It would also introduce a requirement of intention or recklessness.

Amendment 8

Clause 3, Page 2, line 33, leave out “It is a defence for a person charged with an offence under subsection (1) to prove that” and replace with “A person does not commit an offence under subsection (1) if”

Explanation: This amendment would take the burden of proving “reasonable excuse” or that the act was part of a trade dispute away from the Defendant and make it an element of the offence.

Amendment 9

Clause 3, Page 2, line 38, at end insert—

“(2A) For the purposes of subsection (2)(a), in determining whether a person has a reasonable excuse, particular regard must be had to the importance of the right of peaceful protest by virtue of Article 10 and Article 11 of the European Convention on Human Rights.”

Explanation: This amendment would insert an explicit requirement to have particular regard to the right to peaceful protest when considering whether an individual has a “reasonable excuse” for their actions.

Interference with use or operation of key national infrastructure

Amendment 10

Clause 4, Page 4, line 34: leave out “It is a defence for a person charged with an offence under subsection (1) to prove that” and replace with “A person does not commit an offence under subsection (1) if”

Explanation: This amendment would take the burden of proving “reasonable excuse” or that the act was part of a trade dispute away from the Defendant and make it an element of the offence.

Amendment 11

Clause 4, Page 4, line 39, at end insert—

“(2A) For the purposes of subsection (2)(a), in determining whether a person has a reasonable excuse, particular regard must be had to the importance of the right of peaceful protest by virtue of Article 10 and Article 11 of the European Convention on Human Rights.”

Explanation: This amendment would insert an explicit requirement to have particular regard to the right to peaceful protest when considering whether an individual has a “reasonable excuse” for their actions.

Amendment 12

Clause 4, Page 5, line 5, leave out “to any extent” and insert “to a significant extent”

Explanation: This amendment would narrow the scope of the offence to prevent it sweeping up minor interference.

Amendment 13

Clause 4, Page 5, line 9, after “means” insert “an essential element of”

Explanation: This amendment would narrow the meaning of “key national infrastructure” to exclude inessential elements of infrastructure.

Amendment 14

Clause 5, Page 6, line 13, leave out “or B”

Explanation: This amendment would narrow the meaning of “road transport infrastructure” to focus on major roads.

Amendment 15

Clause 5, Page 6, line 16, after “Act)” insert “, but excludes infrastructure that is not essential for the purposes of transporting goods or passengers by railway”

Explanation: This amendment would narrow the meaning of “rail infrastructure” to ensure the offence does not extend to interference with inessential elements.

Amendment 16

Clause 5, Page 6, line 28, after “Act)” insert—

“(c) but excludes infrastructure that is not essential for the purposes of transporting goods or passengers by air”

Explanation: This amendment would narrow the meaning of “air transport infrastructure” to ensure the offence does not extend to interference with inessential elements.

Amendment 17

Clause 5, Page 6, line 30, leave out “or in connection with”

Amendment 18

Clause 5, Page 6, line 36, leave out “or in connection with”

Amendment 19

Clause 5, Page 7, line 10, leave out “or in connection with”

Amendment 20

Clause 5, Page 7, line 25, leave out “or in connection with”

Amendment 21

Clause 5, Page 7, line 34, leave out “or in connection with”

Explanation: Amendments 17 to 21 would narrow what amounts to key national infrastructure and reduce uncertainty.

Amendment 22

Clause 5, Page 8, line 8, leave out ““newspaper” includes a periodical or magazine.”

Explanation: This amendment would narrow the meaning of “newspaper” so that it does not extend to any periodical or magazine.

Powers to stop and search without suspicion

Amendment 23

Page 8, line 28, leave out clauses 7 to 10

Explanation: This amendment would remove the proposed power for the police to stop and search for articles connected with protest-related offences without the need for reasonable suspicion.

Serious disruption prevention orders

Amendment 24

Page 12, line 7, leave out clauses 12 to 27

Explanation: This amendment would remove the proposed serious disruption prevention orders.

Formal minutes

Wednesday 8 June 2022

Hybrid Meeting

Members present:

Harriet Harman MP, in the Chair

Joanna Cherry MP

Lord Dubs

Lord Henley

Baroness Ludford

Baroness Massey of Darwen

Dean Russell MP

David Simmonds MP

Lord Singh of Wimbledon

Legislative Scrutiny: Public Order Bill

Draft Report (*Legislative Scrutiny: Public Order Bill*), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 67 read and agreed to.

Summary agreed to.

Resolved, That the Report be the First Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Adjournment

[Adjourned till 22 June 2022 at 3.00pm.]

Declaration of interests

Baroness Chisholm of Owlpen

- No relevant interests to declare

Lord Dubs

- No relevant interests to declare

Lord Henley

- No relevant interests to declare

Baroness Ludford

- No relevant interests to declare

Baroness Massey of Darwen

- No relevant interests to declare

Lord Singh of Wimbledon

- No relevant interests to declare

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2021–22

Number	Title	Reference
1st	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill	HC 90 HL 5
2nd	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)	HC 331 HL 23
3rd	The Government's Independent Review of the Human Rights Act	HC 89 HL 31
4th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Part 4): The criminalisation of unauthorised encampments	HC 478 HL 37
5th	Legislative Scrutiny: Elections Bill	HC 233 HL 58
6th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People	HC 451 HL 73
7th	Legislative Scrutiny: Nationality and Borders Bill (Part 1) – Nationality	HC 764 HL 90
8th	Proposal for a draft Bereavement Benefits (Remedial) Order 2021: discrimination against cohabiting partners	HC 594 HL 91
9th	Legislative Scrutiny: Nationality and Borders Bill (Part 3) – Immigration offences and enforcement	HC 885 HL 112
10th	Legislative Scrutiny: Judicial Review and Courts Bill	HC 884 HL 120
11th	Legislative Scrutiny: Nationality and Borders Bill (Part 5)— Modern slavery	HC 964 HL 135
12th	Legislative Scrutiny: Nationality and Borders Bill (Parts 1, 2 and 4) – Asylum, Home Office Decision Making, Age Assessments, and Deprivation of Citizenship Orders	HC 1007 HL 143
13th	Human Rights Act Reform	HC 1033 HL 191
1st Special Report	The Government response to covid-19: fixed penalty notices: Government Response to the Committee's Fourteenth Report of Session 2019–21	HC 545
2nd Special Report	Care homes: Visiting restrictions during the covid-19 pandemic: Government Response to the Committee's Fifteenth Report of Session 2019–21	HC 553

Number	Title	Reference
3rd Special Report	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill: Government Response to the Committee's First Report	HC 585
4th Special Report	The Government response to covid-19: freedom of assembly and the right to protest: Government Response to the Committee's Thirteenth Report of Session 2019–21	HC 586
5th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order): Government Response to the Committee's Second Report	HC 724
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report	HC 765
7th Special Report	Legislative Scrutiny: Elections Bill: Government Response to the Committee's Fifth Report	HC 911
8th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People: Government Response to the Committee's Sixth Report	HC 983
9th Special Report	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing: Government Response to the Committee's Third Report of Session 2019–21	HC 1198
10th Special Report	Legislative Scrutiny: Nationality and Borders Bill: Government Responses to the Committee's Seventh, Ninth, Eleventh and Twelfth Reports	HC 1208

Session 2019–21

Number	Title	Reference
1st	Draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019: Second Report	HC 146 HL 37
2nd	Draft Human Rights Act 1998 (Remedial) Order: Judicial Immunity: Second Report	HC 148 HL 41
3rd	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing	HC 343 HL 59
4th	Draft Fatal Accidents Act 1976 (Remedial) Order 2020: Second Report	HC 256 HL 62
5th	Human Rights and the Government's response to COVID-19: the detention of young people who are autistic and/or have learning disabilities	HC 395 (CP 309) HL 72
6th	Human Rights and the Government's response to COVID-19: children whose mothers are in prison	HC 518 HL 90
7th	The Government's response to COVID-19: human rights implications	HC 265 (CP 335) HL 125
8th	Legislative Scrutiny: The United Kingdom Internal Market Bill	HC 901 HL 154

Number	Title	Reference
9th	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill	HC 665 (HC 1120) HL 155
10th	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill	HC 847 (HC 1127) HL 164
11th	Black people, racism and human rights	HC 559 (HC 1210) HL 165
12th	Appointment of the Chair of the Equality and Human Rights Commission	HC 1022 HL 180
13th	The Government response to covid-19: freedom of assembly and the right to protest	HC 1328 HL 252
14th	The Government response to covid-19: fixed penalty notices	HC 1364 HL 272
15th	Care homes: Visiting restrictions during the covid-19 pandemic	HC 1375 HL 278
1st Special Report	The Right to Privacy (Article 8) and the Digital Revolution: Government Response to the Committee's Third Report of Session 2019	HC 313
2nd Special Report	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill: Government Response to the Committee's Tenth Report of Session 2019–21	HC 1127
3rd Special Report	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill: Government Response to the Committee's Ninth Report of Session 2019–21	HC 1120
4th Special Report	Black people, racism and human rights: Government Response to the Committee's Eleventh Report of Session 2019–21	HC 1210
5th Special Report	Democracy, freedom of expression and freedom of association: Threats to MPs: Government Response to the Committee's Third Report of Session 2019	HC 1317
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report	HC 765
7th Special Report	Legislative Scrutiny: Elections Bill: Government Response to the Committee's Fifth Report	HC 911