



House of Commons

House of Lords

Joint Committee on Human  
Rights

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**Legislative Scrutiny:  
Public Order Bill:  
Government Response  
to the Committee's First  
Report**

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**Second Special Report of Session  
2022–23**

*Ordered by the House of Commons  
to be printed 7 September 2022*

## 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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### Committee staff

The current staff of the Committee are Andrea Dowsett (Lords Clerk), Busayo Esan (Inquiry Manager), Liam Evans (Committee Specialist), Alexander Gask (Deputy Counsel), Samantha Granger (Deputy Counsel), Natalia Janiec-Janicki (Committee Operations Manager), Lucinda Maer (Commons Clerk), Aimal Nadeem (Committee Operations Officer), George Perry (Media Officer), and Thiago Simoes Froio (Committee Specialist)

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# Second Special Report

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The Joint Committee on Human Rights published its First Report of Session 2022–23, [Legislative Scrutiny: Public Order Bill](#) (HC 351 / HL Paper 16) on 17 June 2022. The Government response was received on 11 August 2022 and is appended below.

## Appendix: Government Response

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### The right to protest

The Government welcomes the Joint Committee on Human Rights' (JCHR) scrutiny of the Public Order Bill. The Government has carefully considered the conclusions and recommendations in the committee's First Report of Session 2022–23, published on 8 June 2022.

The Police, Crime, Sentencing and Courts Act 2022 introduced new public order powers to improve the police's ability to manage large scale protests, such as those by Extinction Rebellion, to ensure a fair balance between the rights of the public and the rights of protesters. Since the conception of those powers, Just Stop Oil and Insulate Britain protesters have engaged in guerrilla style tactics, holding some of our roads and the supply of fuel at ransom. Further powers are needed to improve the police's ability to prevent and respond to such acts and to punish those who disrupt our key infrastructure.

**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)**

This Government fully supports the right of individuals to engage in peaceful protest. The rights to freedom of expression and of assembly do not extend to disorder, crime, or infringing the rights of others.

This Bill targets acts that cause serious disruption. Peaceful protests which cause disruption to an extent that is proportionate with the rights granted by the ECHR will continue to be lawful.

This Government has been clear that the measures in the PCSC Act and this Bill are compatible with the ECHR.

Any chilling effect on the right to protest, damage to the UK's reputation, or encouragement of other nations seeking to crack down on peaceful protest is more likely to arise from the misleading commentary on the PCSC Act and this Bill.

## 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)

Although existing criminal offences exist, these are not always fit for purpose. Currently the police use broad offences such as aggravated trespass and obstructing the highway. Some protesters, however, have evaded conviction on technicalities arising from these broad offences.

Therefore, we are introducing specific offences such as locking-on with a view to cause serious disruption and interference with key national infrastructure to provide greater clarity on what is, and is not, lawful behaviour at a protest. Furthermore, the maximum sentences provided for the new offences introduced by this Bill, including the locking-on, obstructing major transport works and interfering with key national infrastructure offences are proportionate to the levels of damage and risk to life created by the protesters.

**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)

As detailed above, the offence of locking-on is only committed when such an act causes, or can cause, serious disruption. The perpetrator must also intend for this consequence or be reckless as to allow such a consequence. We believe that when over the threshold of serious disruption Articles 10 and 11 are not absolute rights and so the action exceeds the protection of the two articles. We believe, therefore, that this offence is not inconsistent with Articles 10 and 11 of the ECHR.

One of the aims of this Bill is to prevent serious disruption from occurring in the first place. As well as reactive criminal offences, the police must have the ability to pro-actively intervene. It is entirely right that there be an associated offence of going equipped to lock-on.

Placing the burden of proof on the prosecution would water down the ability to deal effectively with those who cause disruption by 'locking on'. It is not unusual for the burden of proof to fall on the defendant. There are multiple offences where this is the case, including sections 23, 24 and 28 of the Sexual Offences Act 2003.

**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)

The transport works protected by this offence are of strategic importance to the UK and must have been approved by an Act of Parliament or a Development Consent Order. Given their benefit to the national economy they must be provided greater protections.

We recognise that despite this, some will oppose their construction. There are appropriate democratic means to object to, and oppose, these works. Some of the tactics we have seen to oppose HS2, for example, go way beyond this, adding significant costs to the project, and endangering lives.

The suggested requirement of intent is unnecessary in this case. The offence is not committed if the individual has a reasonable excuse and the decisions as to what is 'reasonable' are for the courts. This will be based on the individual circumstances of the incident and the onus would sit with the defendant to prove whether, on the balance of probabilities, their actions were reasonable. Accordingly, it is appropriate that it is for the defendant to prove that they had a reasonable excuse for obstructing major transport works.

In addition, placing the burden of proof on the prosecution would water down the ability to deal effectively with those who cause disruption by obstructing major transport works. It is not unusual for the burden of proof to fall on the defendant. There are multiple offences where this is the case, including sections 23, 24 and 28 of the Sexual Offences Act 2003 as mentioned earlier, and also section 6 of the Offensive Weapons Act 2019, which provides for the offence of possessing a corrosive substance in a public place.

**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)**

The offence reflects the importance to the country of the continued operation of our key national infrastructure. Where protests causing serious disruption to our infrastructure have occurred, there has been bipartisan and public support for the police and Government to put an end to them. This is what this measure seeks to achieve. We have assessed that the threshold presented in the offence is both appropriate to meet this aim and compatible with the ECHR.

In addition, as stated in the previous two responses, the burden of proof should not lie on the prosecution as this would water down the ability to deal effectively with those who cause disruption by obstructing major transport works or by interfering with key national infrastructure. Decisions around arrests and prosecutions are for the police and Crown Prosecution Service, and they must act compatibly with an individual's Convention rights, including those under Articles 10 and 11.

## **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)**

As detailed above, this Bill is not only about responding to guerrilla style protest tactics, but also preventing them from occurring in the first place. Therefore, it is absolutely necessary that the police have stop and search powers to achieve this aim.

Chief Constable Chris Noble, the lead for protest on the National Police Chiefs' Council explained that "We can see greater risk of harm to communities and protesters if things are left to run" without additional pre-emptive police powers to handle disruptive protests. He explained that having spoken to one of the senior commanders of the G7 operation "they described a lack of powers around stop and search for people with items that could only have been used for generating a lock-on device. They had to intervene later in the day, with more significant powers, on a wider group of protesters, therefore interfering with more people's rights."

We expect the police to use their stop and search powers in a focused, legitimate, proportionate and necessary manner and encourage forces to continue scrutinising their use.

Existing safeguards for the stop and search powers that are already in place, such as body worn video and PACE codes of practice will apply to stop and search powers provided for in this Bill. As the Inclusive Britain report set out, we intend to enhance these safeguards through the development of a national framework for scrutiny of stop and search by local communities, and consideration of any unnecessary barriers to increased use of body worn video.

The Home Office also publishes extensive data on the use of stop and search to drive transparency. For the first time in 2021, we collected and published data on both age and gender of all individuals stopped and searched, alongside our longstanding collection of data on ethnicity. This allows us to create a clearer picture on how stop and search is used and how best to build on the existing trust and confidence held between the police and the communities they serve.

The Government has already confirmed that data on these new powers will be collected and published, broken down by age, gender and ethnicity, and including the outcome of the search, as for existing stop and search powers.

**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)

The suspicion-less powers are necessary and reflect the operational reality of policing. In the fast-paced context of a protest, it can be challenging to assert the appropriate level of suspicion needed for a suspicion led search. In addition, the use of suspicion-less stop and search is not inconsistent with the right to engage in peaceful protest, as it would only be targeted at preventing the guerrilla tactics employed by some.

Chief Constable Chris Noble, lead for protest on the National Police Chiefs' Council explained that "Whether it is a suspicion-led or suspicionless power, we see real value in being able to intervene and ensure that the rights of everyone impacted by protest, as well as the rights of those expressing their views through protest, are protected."

HMICFRS recognised the need for the police to be granted suspicion-less powers to stop and search for articles connected with protest related offences. The creation of this offence would prevent the loss of police time spent removing protestors by preventing individuals from being able to lock-on in the first place. HMICFRS also noted the possibility that "such powers could have a disproportionate impact on people from black, Asian and other minority ethnic groups" and, therefore, the need to monitor the use of such powers. To prevent the arbitrary or discriminatory use of these powers, there are various safeguards in place, such as statutory codes of practice and body worn video. As mentioned in response to recommendation 6, we intend to enhance these safeguards through the development of a national framework for scrutiny of stop and search by local communities, and consideration of any unnecessary barriers to increased use of body worn video as outlined in the Inclusive Britain report.

Further, the police are subject to section 6(1) of the Human Rights Act 1998 and accordingly required to exercise their powers compatibly with the Convention rights.

## **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)**

The police do have powers to impose conditions on protests and to arrest those who breach them. However, it is clear that they do not address the prolific protesters who repeatedly set out to cause unjustifiable disruption and misery to others time and time again. That is why SDPOs are needed.

As with all other measures in this Bill, the Human Rights Act 1998 and soon the Bill of Rights, provide appropriate safeguards, requiring that the powers be used compatibly with Articles 10 and 11 of the ECHR.

We again thank the committee for their scrutiny of the Public Order Bill.