



Home Office

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Lord Alton of Liverpool
Chair, Joint Committee on Human Rights
House of Lords
London
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4th March 2026

Dear Lord Alton,

Thank you for your follow up letter of 5 February 2026 relating to further concerns you have around the new offence of concealing identity at a designated protest in the Crime and Policing Bill. In your letter, you state that my response does not fully answer a number of the questions you posed, below I have responded to the additional points you raised, and I hope this reply now addresses your concerns.

Designation and enforcement

At the start of your letter you mention that you would like further **explanation for why it is believed limiting the offence to protests where crime is expected sufficiently protects Articles 10 and 11 rights, considering the view that peaceful protesters still have those rights even if others commit offences, as evidenced in Frumkin v Russia.**

You also specifically request clarification on ***how the Article 10/11 rights of peaceful protesters who have legitimate reasons to conceal their identities will be protected if a demonstration is designated due to actual or anticipated criminal behaviour by others***’.

I acknowledge the importance of peaceful protest in maintaining democracy within this country, and I am content that the new concealing identity measure at a designated protest does not infringe on these rights. I do also note that States enjoy a certain margin of appreciation in assessing whether and to what extent any interference with the exercise of freedom of expression is necessary, and whether a pressing social need exists.

As per my letter sent you on 20 January 2026, the new offence of concealing identity does not apply to all protests. There is a requirement set out in the provision that where a locality is designated under this provision, all reasonable steps are taken to notify the public of the fact that a designation has been made; the nature of the offence created by this designation; the locality to which the designation applies; and the period during which the designation will be in force.

Where police decide to designate a protest under this new power, it is expected that the police will issue notifications in a way that is reasonable, proportionate, and consistent with their duties under the Equality Act 2010 and the Human Rights Act 1998.

This will not only ensure that any communication does not disadvantage minority or vulnerable groups, and that information is shared in accessible formats where appropriate, but also that protesters are fully aware that it may be a criminal offence if they wear a face covering.

The rights to Article 10 and 11 are qualified rights, and they should not be upheld at the expense of the safety and security of others. These rights therefore do not confer a right to anonymity, nor an entitlement for individuals to protest in whatever manner they consider reflects their individual circumstances. The police must balance these considerations with their overarching duty to ensure the safety and wellbeing of all.

You then state that government acknowledges the fact that “many individuals wear face coverings to protect personal identity without any criminal intent” and proceed to ask, ***‘Given the recognition that reasons beyond work, religion and health may be legitimate, how can this be achieved once a designation is in place?’***

Whilst I acknowledge this fact, in my previous letter to you, I stated that it is the responsibility of individual police forces to decide whether a protest should be designated or not. Furthermore, it is anticipated that the police will use this measure where they have reasonable belief to suggest there will be the commission of offences at a protest. This means that this measure is not expected to apply to all protests. Police forces will consider the threshold of the likelihood of the commission of offences. If there is no evidence of this, they will not have grounds to designate a protest.

You then referenced Lord Hanson’s comment **on 13 January 2026 where he stated in the House of Lords that police would have the power not to require a person to remove a face covering if that could put them or their family in danger, that “police officers will make a judgment on those issues on the ground”, but it remains unclear to us whether you are happy for the police not to enforce the law in that situation?**

From there, you move on to ask ***What action do you consider should be taken by an individual officer in a designated locality, faced with a person ostensibly committing an offence but protesting peacefully and concealing their identity for a legitimate purpose not related to work, religion or health?***

I would like to restate my position on this matter which is that it is the responsibility of the police to decide how this measure is applied in such a circumstance. Although it will be an offence for anyone to conceal their identity in an area that has been designated (whether or not they’re committing other offences), if the person is protesting peacefully then we would expect police to respond proportionately. The police will always use discretion on deciding whether to take action against an offence and must be satisfied that the two legal tests set out in the Police and Criminal Evidence Act 1984 are met before they can make an arrest.

As mentioned in my last response to you the Crown Prosecution Service (CPS), College of Policing and National Police Chiefs’ Council (NPCC) will develop guidance to help forces consider how this measure should be applied, and the circumstances where it is believed the commission of offences is likely to occur.

On the matter relating to the impact a statutory test for designating a locality would have on policing, you asked me to ***Please explain why anticipation that concealing identity will be intended to frustrate policing (rather than being rooted in other motivations) should not be included within the statutory test for designation.***

Does the need for “flexibility” extend to the police being able to make concealing identity a criminal offence at a protest where they do not consider this requirement to be met?

Through our ongoing engagement with policing stakeholders, it has been made clear that they are content with the current draft of this legislation. As you acknowledge, this is because it provides the police with the operational flexibility to apply this measure in a proportionate manner.

There is a substantial risk that if the statutory test is made too prescriptive in the drafting of this clause, the legislation becomes too rigid and so therefore poses a bigger threat to the proportionality of this measure. As stated, the current draft of this legislation will allow forces to make an informed decision on whether a protest should be designated based on the intelligence they have and the pre-engagement which takes place before a protest. Considering the discussions held with police stakeholders, it is not necessary to set out every factor that police should consider before implementing a measure or taking a particular course of action. Providing this level of specificity would be unusual and is unlikely to be helpful in practice.

Additionally, as mentioned both in my previous letter and this letter, the College of Policing, supported by the CPS and NPCC hold the responsibility of developing guidance. Through our continued discussions with these stakeholders, I am content that guidance and training provided to policing will provide the appropriate direction needed for the varying situations in which this provision may be used, and needed to inform decisions on whether a protest should be designated or not.

Transnational repression

In your letter you further make clear that you are concerned that rejecting both a general “reasonable excuse” defence, and a narrowly tailored defence for transnational repression leaves victims vulnerable, despite our view that such defences would create operational and legal complexity.

You then pose the following question ***“Could you please explain further why you consider such a defence would introduce unacceptable operational and legal complexity, given that the Bill as presently drafted would already require individual police officers and prosecutors to assess claims that the work, religion or health defences apply? Furthermore, why would a defence focused on transnational repression introduce more complexity than asking individual officers to “make a judgment on those issues on the ground” as Lord Hanson suggest”***

The reason we see this as a discrete issue, is that it goes beyond the scope of the clause. Transnational repression is diplomatically sensitive, since it would be potentially concerned with retribution by state actors on British soil or national actors against individuals connected with protesters in their countries of origin.

Including a statutory defence relating to transnational repression would introduce operational complexity for the police, as it is the role of the courts – not law enforcement – to assess reasonable doubt and evaluate any defences raised by a defendant. In the context of transnational repression cases, which are often internationally complex, such a defence would place an unnecessary burden on police to disprove claims related to potential threats to an individual’s safety from a particular state, for example.

The pre-engagement between organisers and the police ahead of a protest will likely allow the police to consider some of these complexities before designating a protest, and indeed determine the likelihood of the commission of offences. However, the final determination of reasonable doubt should rest with the courts, and so preserve their own operational independence.

Furthermore, you will be aware that the police have a duty to act in compliance with ECHR Convention rights. Transnational repression may engage the positive obligations under Articles 2 (right to life) and 3 (prohibition of torture) ECHR, when there is direct retribution against a protester by a state or non-state actor.

Ongoing scrutiny

Finally, you also reinforce the view that it is important to keep this public order measure under scrutiny.

You then make the recommendation that “.... ***should the Crime and Policing Bill become law, all designations of localities under what is now clause 119, as well as all arrests, charges and convictions for the offence of concealing identity under what is now clause 118, will be recorded and published as part of the Home Office’s official policing and crime statistics.***”

At this time, the Home Office is unable to commit to recording data on this offence, as we are engaging with police stakeholders to determine how this can be achieved. Nevertheless, the government remains committed to safeguarding the right to peaceful protest. This is why we have reaffirmed the devotion to continuously keep public order legislation under scrutiny. This not only includes publishing statistics and data on some of our public order measures, it also involves reviewing all public order legislation to ensure that police powers remain fit for purpose, are used consistently, and strike the right balance between protecting the public and upholding the right to lawful protest.

Thank you again for taking the time to share your concerns.

Very best wishes,

A handwritten signature in blue ink, appearing to be 'SJ' followed by a long horizontal stroke.

Sarah Jones MP
Minister of State for Policing and Crime