

HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

13th Report of Session 2021–22

**Police, Crime, Sentencing
and Courts Bill:
Government Amendments**

Onshore Wind Bill [HL]

**Coroners (Determination of
Suicide) Bill [HL]**

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Membership

[Baroness Andrews](#)

[Lord Blencathra](#) (Chair)

[Baroness Browning](#)

[Lord Goddard of Stockport](#)

[Lord Haselhurst](#)

[Lord Henty](#)

[Lord Janvrin](#)

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[Lord Tope](#)

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Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hlddelegatedpowers@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Thirteenth Report

POLICE, CRIME, SENTENCING AND COURTS BILL: GOVERNMENT AMENDMENTS

1. This Bill was passed by the House of Commons on 5 July. It was introduced in the House of Lords on 6 July and is currently at Committee stage.
2. The Government have tabled amendments for Committee stage “in response to the significant disruption, including the obstruction of Parliament... over the last few months caused by Insulate Britain protestors”.¹
3. The Home Office has provided a supplementary Delegated Powers Memorandum (“the supplementary Memorandum”)² in relation to the amendments.
4. We draw the attention of the House to one delegated power.

Amendment 10—new section 342V of the Sentencing Code: power to issue guidance on the exercise of police functions in relation to serious disruption prevention orders

5. Amendment 10 inserts new sections 342L to 342X into the Sentencing Code³ to create a new form of order (a serious disruption prevention order (“SDPO”)) that a court can make to impose restrictions on a person on their conviction for a “protest-related offence”⁴ or on application by the police.
6. The new sections give courts a very broad discretion to impose “anything” by way of requirement or prohibition,⁵ including such things as—
 - a requirement to attend a particular place at particular times; and
 - prohibitions on being at a particular place between particular times, being with particular persons or participating in particular activities.

A person who is subject to an SDPO must keep the police informed of their home address and any other premises at which they regularly stay.⁶

7. Breach of a requirement under an SDPO or provision of false information to the police in purported compliance with an SDPO is an offence punishable by up to six months’ imprisonment and/or an unlimited fine.⁷ An SDPO can last for between one week and two years⁸ but can be renewed.⁹

1 [Letter of 16 November 2021](#) from Baroness Williams of Trafford and Lord Wolfson of Tredegar to Lord Rosser and Lord Falconer of Thoroton.

2 Home Office, *Supplementary Delegated Powers Memorandum* (15 November 2021): <https://bills.parliament.uk/publications/43688/documents/966> [accessed 23 November 2021].

3 Parts 2 to 13 of the Sentencing Act 2020 together make up a code called the “Sentencing Code” (see section 1(1) of that Act).

4 Offences directly related to a protest—see new section 342X.

5 See new sections 342L(6) and 342M(5).

6 See new section 342P.

7 See new section 342S.

8 See new section 342Q.

9 See new section 342T.

*SDPOs made on conviction*¹⁰

8. A court may impose an SDPO when sentencing a person for a “protest-related offence” if it is satisfied¹¹ that—
- the person has been convicted of another protest-related offence¹² in the previous 5 years; and
 - it is necessary to make the order—
 - to prevent the person from—
 - committing another protest-related offence or a protest-related breach of an injunction—or causing or contributing to the commission of such an offence or breach by others; or
 - carrying out activities related to a protest that result in, or are likely to result in, serious disruption to two or more individuals, or to an organisation—or causing or contributing to the carrying out of such activities by others; or
 - to protect two or more individuals, or an organisation, from the risk of serious disruption arising from a protest-related offence, a protest-related breach of an injunction, or activities related to a protest.

*SDPOs made otherwise than on conviction*¹³

9. A magistrates’ court may impose an SDPO on a person at any time - on application by the police - if it is satisfied¹⁴ that—
- the person has, on at least two occasions in the previous 5 years¹⁵—
 - been convicted of a protest-related offence or been found in contempt of court for a protest-related breach of an injunction—or caused or contributed to the commission of such an offence or breach by others; or
 - carried out activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals, or to an organisation—or caused or contributed to the carrying out of such activities by others; and
 - it is necessary to make the order—
 - to prevent the person from—
 - committing a protest-related offence or a protest-related breach of an injunction—or causing or contributing to the commission of such an offence or breach by others; or
 - carrying out activities related to a protest that result in, or are likely to result in, serious disruption to two or more

10 See new section 342L.

11 On the balance of probabilities.

12 Relating to a different protest or committed on a different day.

13 See new section 342M.

14 On the balance of probabilities.

15 Each such event must relate to a different protest or have taken place on a different day.

individuals, or to an organisation—or causing or contributing to the carrying out of such activities by others; or

- to protect two or more individuals, or an organisation, from the risk of serious disruption arising from a protest-related offence, a protest-related breach of an injunction, or activities related to a protest.
10. We consider that the SDPO regime places considerable power in the hands of the police—
- first, any decision of a court as to whether to make an SDPO—and as to the restrictions to be imposed under one - is likely to be heavily influenced by what the police say about whether the conditions for making one are met, the types of restrictions that should be imposed and the period for which restrictions should apply;
 - second, SDPOs can be applied in a broad range of circumstances: they are not limited to the prevention of criminal conduct but can be imposed for such vague, and rather open-ended, purposes as preventing people from “contributing to” the carrying out of activities that are likely to result in “serious disruption” to as few as two people; and
 - third, SDPOs can be imposed even on people who have not been convicted of any offence - it is sufficient for a magistrates’ court to be satisfied that a person has carried out activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more people, or to an organisation (or caused or contributed to the carrying out of such activities by others). SDPOs are therefore a means by which people who have not been convicted of any offence can be made subject to restrictions on liberty backed by criminal penalties. We are surprised that all applications for SDPOs in respect of such people would be determined in the magistrates’ court,¹⁶ where it is unclear how likely it is that magistrates would reject police assessments made for the purposes of such applications.
11. New section 342V allows the Secretary of State to issue guidance to chief officers of police and chief constables¹⁷ in relation to SDPOs, including, in particular, on—
- the exercise of their functions in relation to SDPOs;
 - identifying persons in respect of whom it may be appropriate for applications for SDPOs to be made; and
 - providing assistance to prosecutors in connection with applications for SDPOs.
12. A chief officer of police or a chief constable “must have regard to” such guidance.

¹⁶ Though a decision may be appealed to the Crown Court.

¹⁷ The Chief Constable of the British Transport Police Force, the Chief Constable of the Civil Nuclear Constabulary, and the Chief Constable of the Ministry of Defence Police.

13. We have repeatedly observed¹⁸ that, although a duty to have regard to statutory guidance does not imply a duty to follow it in any or all respects, where legislation requires that regard must be had to statutory guidance, in practice this means that those to whom the guidance applies will normally be expected to follow it—including by the courts - unless there are cogent reasons for not doing so.
14. The power to issue guidance would therefore allow the Secretary of State to influence the exercise of the significant statutory functions of the police in relation to SDPOs—including the identification of persons in respect of whom applications for SDPOs should be made.
15. The guidance is subject to negative procedure scrutiny.¹⁹ It is not subject to any consultation requirement.
16. The Government’s view, as stated in the supplementary Memorandum,²⁰ is that guidance should be subject to parliamentary procedure only in “exceptional circumstances” but that the guidance in question merits this “given the extensive parliamentary and public debate about the appropriate balance between the rights of protesters to exercise their freedom of speech and assembly and the rights of other persons and organisations to go about their business without serious disruption”.
17. However, we are surprised and disappointed that the supplementary Memorandum fails to address the issue of whether the affirmative procedure might be appropriate—despite our earlier Report on this very Bill having identified two examples of guidance to which the police “must have regard” that we said were sufficiently significant to merit affirmative procedure scrutiny—
 - first, we considered that guidance issued by the Secretary of State under clause 140(1) of the Bill - on the exercise of police functions in relation to serious violence reduction orders—should be subject to the affirmative procedure because the exercise of those functions could prove to be highly controversial.²¹ We indicated that such scrutiny would benefit the police by whom the functions would be exercised as well as the wider public. There are significant similarities between serious violence reduction orders and SDPOs, both being preventative court orders under which significant restrictions on liberty may be imposed, backed by criminal sanctions; and

18 For example, *37th Report* (Session 2019–21, HL Paper 258), para 8; *18th Report* (Session 2015–16, HL Paper 83), para 13; *20th Report* (Session 2015–16, HL Paper 90), paras 10–11; *21st Report* (Session 2015–16, HL Paper 98), para 27; *22nd Report* (Session 2015–16, HL Paper 102), para 19; *1st Report* (Session 2016–17, HL Paper 13), para 38.

19 See new section 342W.

20 See para 7 of the supplementary Memorandum.

21 See *6th Report* (Session 2021–22, HL Paper 65), paras 19, 23–24. Serious violence reduction orders (“SVROs”) are new orders that a court will be able to make in respect of an adult offender where it is satisfied that the offender—or an accomplice—had an offensive weapon with them when the offence was committed. A person who is subject to an SVRO must keep the police informed of their home address and any other premises at which they regularly stay. The police would have powers to stop and search such a person for weapons without any requirement for reasonable suspicion that they are carrying a weapon. Breach of a requirement under an SVRO, provision of false information to the police in purported compliance with an SVRO or intentionally obstructing a constable exercising the stop and search power is an offence punishable with up to two years’ imprisonment.

- second, we considered that proposed revisions to an existing code of practice on the exercise of statutory stop and search powers (to complement guidance under clause 140(1))²² were sufficiently significant to merit affirmative procedure scrutiny. We noted that the legislation governing that code gives ministers a choice as to whether to make revisions by affirmative procedure regulations or by simply laying them before Parliament²³ but we explained that we have previously endorsed the principle (proposed by the Government in 2003) that “significant amendments” to that code should be subject to the affirmative procedure.²⁴
18. We consider that there are two respects in which the exercise of police functions in relation to SDPOs could prove to be even more controversial than the exercise of police functions in relation to serious violence reduction orders—
- first, an SDPO—unlike a serious violence reduction order - can be imposed on a person even if they have not been convicted of any offence. The power to issue guidance therefore allows the Secretary of State to influence the making of assessments by the police on the basis of which people who have not been convicted of any offence may be made subject to restrictions on liberty backed by criminal penalties; and
 - second, serious violence reduction orders can only be imposed to protect the public from the risk of harm involving weapons, or to prevent offenders from committing offences involving weapons, whereas SDPOs can be imposed for purposes that are, by comparison, much more open-ended—including the prevention of harm of a kind that is arguably of a much lower order (such as preventing a person from “contributing to” the carrying out of activities that are likely to result in “serious disruption” to as few as two people).
19. **We consider that new section 342V contains an extreme example of a power to issue guidance on the exercise of statutory functions. It allows the Secretary of State to influence the exercise by the police of functions that could prove to be highly controversial—including identifying persons in respect of whom the courts may make serious disruption prevention orders under which people who have not been convicted of any offence - and are not considered to be at risk of offending - may nonetheless be made subject to restrictions on liberty backed by criminal penalties.**
20. **We are disappointed that the supplementary Memorandum fails to even acknowledge what we said in our earlier Report on this very Bill about powers to issue guidance to which the police “must have regard”. We identified two examples of such guidance that we said were sufficiently significant to merit affirmative procedure scrutiny because they related to the exercise of police functions that could prove to be highly controversial. We consider that the exercise of**

22 To cover the new power that would allow the police to stop and search a person who is subject to a serious violence reduction order without any requirement for reasonable suspicion that they are carrying a weapon.

23 See section 67(7A) of the Police and Criminal Evidence Act 1984.

24 See *6th Report* (Session 2021–22, HL Paper 65), paras 25–26.

police functions in relation to serious disruption prevention orders could prove to be even more controversial.

21. **Accordingly, we consider that guidance under new section 342V is sufficiently significant to merit affirmative procedure scrutiny.**

ONSHORE WIND BILL [HL]

22. This Bill contains no delegated powers.

CORONERS (DETERMINATION OF SUICIDE) BILL [HL]

23. There is nothing in this Bill which we would wish to draw to the attention of the House.

APPENDIX 1: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 22 November 2021 Members declared no interests.

Attendance

The meeting was attended by Baroness Andrews, Lord Blencathra, Baroness Browning, Lord Janvrin, Lord Goddard of Stockport, Lord Haselhurst, Lord Rowlands and Lord Tope.