



Home Office

Rt Hon Kit Malthouse MP
Minister for Crime, Policing
and Probation

Rt Hon Harriet Harman MP
Chair
Joint Committee on Human Rights
Houses of Parliament
London
SW1A 0AA

By email only

20 December 2021

Proposed Government amendments to the Police Crime, Sentencing and Courts Bill

Dear Harriet,

Thank you for your letter of 29 November on behalf of the Joint Committee on Human Rights in relation to the new amendments to Part 3 of the Police, Crime, Sentencing and Courts Bill which the Government has tabled. I am responding in my capacity as the Bill Minister in the House of Commons following a restructuring of ministerial portfolios. Please see below the Government's response to your queries. I hope that they will support your further scrutiny of the Bill.

1. Can you explain the necessity for these amendments over and above the current powers available to the police? In particular, why it was necessary to introduce them at this late stage with such limited opportunity for scrutiny and debate?

As you said in your letter, these amendments have been tabled in response to the recent significant and repeated disruption we have seen a small minority of protestors inflict upon the public. Such behaviour is completely unacceptable, with some of the tactics we have seen employed by protestors placing themselves, the public, and the police at serious risk of harm.

You are correct in stating that tactics such as obstruction of the highway are not novel. However, Insulate Britain have used the tactic in an unprecedented manner which has highlighted that the existing powers available to police and the courts are insufficient. It is completely unacceptable that a few protestors have been able to repeatedly return to commit the same acts over and over again because the offences being committed are

non-imprisonable and the courts cannot detain them on remand even if they admit that they will go on to reoffend.

The Government has endeavoured to ensure that Parliament has as much time as necessary to scrutinise these measures. The consideration of Part 3 of the Bill was rescheduled to the 11th and final day of Committee stage in the House of Lords. Similarly, these measures will be considered on the last day of Report stage, ensuring that Peers receive the maximum allowable amount of time to scrutinise them. MPs will naturally have an opportunity to consider the new measures when the Bill returns to the Commons later in January.

2. Do you accept that the new offences and powers in the Government's amendments, particularly those with pre-emptive effect, are likely to affect acts of public protest that fall within the protection of Articles 10 and 11 ECHR? How does each of the amendments take into account the fact that the exercise of these rights may legitimately cause a level of disruption?

As we have made clear on multiple occasions, in the use of all new and existing public order powers the police and courts will need to consider the rights of protestors when using and interpreting them. Section 6 of the Human Rights Act 1998 requires that all public authorities must not act incompatibly with Convention rights, these new powers do not change that.

These amendments, particularly the ones with pre-emptive effect, were developed to tackle illegitimate levels of disruption which go beyond what is rightly protected by Convention rights.

3. Can you identify the safeguards within the new amendments, over and above the general duty in s.6 HRA, that will prevent the powers they contain being used in breach of Convention Rights?

Section 6 of the Human Rights Act 1998 is an appropriate safeguard for all public order measures. However, in addition to this, further safeguards are in place to ensure the compatibility of the new measures with the European Convention on Human Rights. I will address the specific concerns you have raised in your letter.

The offence of 'locking-on' only applies when such a lock-on causes, or could cause, serious disruption and the perpetrator intends or is reckless as to whether their act will have such a consequence. The police will need to consider these factors when assessing whether a lock-on meets these conditions and is therefore an offence. It will then be for the prosecution to demonstrate that these thresholds have been met.

The offence of obstruction etc of major transport works contains safeguards in subsection (2)(a) and (2)(b) of the new clause which respectively specify that it is a defence for a person charged with the offence to prove that they had a reasonable excuse for their act or that their act was wholly or mainly in contemplation or furtherance of a trade dispute.

Public order officers receive extensive training on the safe and proportionate management of protest. As Chief Constable Ben-Julian Harrington, the National Police Chiefs' Council's National Public Order and Public Safety Lead, said to you during the JCHR's oral evidence session on 28 April 2021 –

“All of what we do is informed by the Human Rights Act, of course, including Articles 10 and 11, which have been discussed. That is one of the key considerations for policing, in our training, our authorised professional practice, our continuous professional development and the decisions that we make and the police reflect upon it all the time, trying to get the balance right between those positive and negative duties. Whatever powers we use, getting that balance right is important.”

In addition to not acting incompatibly with Convention Rights, multiple criteria must be considered by the courts when making a Serious Disruption Prevention Order (SDPO). The court must consider it necessary to make the SDPO to prevent a person with protest related convictions or a history of causing serious disruptions at protests from continuing to commit such acts. In assessing each case, the court will only be able to consider behaviour which occurred in the five years prior to the day the person is convicted, or for an order on application, the day the order is imposed. Behaviour may only be considered if it occurred when the individual was 16 or older. Orders will last from a minimum of one week up to a maximum of 2 years, and can be varied, renewed, discharged and appealed.

The suspicion-less stop and search powers are necessary for fast paced protest contexts where the police may not be able to ascertain the appropriate level of suspicion to make use of the suspicion-led powers. The authorisation of their use will be limited to where it is necessary to prevent particular offences being committed or particular prohibited items being carried. The authorisation must be for a specified period that is no longer than is necessary, and for a specified locality that is no greater than is necessary. The stop and search powers will be subject to the existing safeguards in the Police and Criminal Evidence Act 1984 (PACE). Furthermore, Code A of PACE, which provides statutory guidance for officers' exercise of their stop and search powers, will be updated to reflect the extension of stop and search to public order situations. This will ensure that exercise of the new powers will be held to the same standards as existing stop and search powers.

4. Why have no or limited statutory definitions been provided for uncertain terms used in the amendments? Where imprecise terms are used what steps will be taken to ensure that the public and police understand the limits of the new restrictions and powers?

These new measures employ terms which have been used in existing legislation and are well understood by the public, police, and courts. Additionally, the term 'protest' is employed commonly in the English language, as it has been throughout both public and Parliamentary debates on the PCSC Bill without any need for further definition. Therefore, we believe the term will be well understood by anyone who needs to interpret the law.

Thank you again for writing to me regarding these amendments to Part 3 of the Bill. I hope my response supports your scrutiny of these measures.

Yours sincerely,

A handwritten signature in black ink, reading "Kit Malthouse". The signature is written in a cursive, slightly slanted style.

Rt Hon Kit Malthouse MP