

WRITTEN EVIDENCE FROM LIBERTY (CJB0011)

SUMMARY

1. Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.
2. This submission will cover the Government's announcement to bring forward new protest laws as well as supplementary recommendations on the Bill's wider provisions.

PROPOSED NEW PROTEST LAWS

3. On 8 February, the Government announced their intention to add a range of new powers to clamp down on people's right to protest via the Criminal Justice Bill.
4. These amendments are yet to be tabled, and as such we are limited in our ability to analyse the impact these will have on people's right to freedom of expression and freedom of assembly.
5. However, we have serious concerns about the proposals trailed in media reports around these upcoming amendments. More generally, we are deeply sceptical about the introduction of further measures to criminalise activities associated with protest.
6. The introduction of further measures to restrict protest in the Criminal Justice Bill will mark the fourth time the Government have legislated to restrict protest since March 2021.¹ The Police, Crime, Sentencing and Courts Act 2022 and the Public Order Act 2023 were deemed by the Joint Committee to likely have a 'chilling effect' on the right to protest in England and Wales.² New measures to be introduced in the Criminal Justice Bill will only exacerbate this hostile environment for freedom of expression.

Powers to arrest protesters using face coverings to conceal their identity

7. The Government have indicated that forthcoming amendments to the Criminal Justice Bill will include measures to allow police officers to arrest individuals who disregard orders to

¹ The Police, Crime, Sentencing and Courts Bill (now Act) was laid before Parliament in March 2021 and gained Royal Assent in April 2022. The Public Order Bill (now Act) was laid before Parliament in May 2022 and gained Royal Assent in May 2023. The Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 were introduced via statutory instrument in May 2023.

² Joint Committee on Human Rights. 2022. *Legislative Scrutiny: Public Order Bill*, Joint Committee on Human Rights. Available at: <https://committees.parliament.uk/publications/22681/documents/166680/default/>

remove face coverings at protests. Although the amendment itself is yet to be published, the Home Office press release announcing the measures stated that this offence will carry the penalty of 1-month imprisonment and £1,000 fine.³

8. **Everyone attending protests must have the freedom to make decisions on how to keep themselves safe, and how to protect their privacy.** For many, face coverings are the main deciding factor for whether attending a protest is possible at all, whether for health and/or privacy reasons (including survivors of domestic abuse and sexual violence). We are seriously concerned about any attempt to criminalise the wearing of face coverings at protest and reject the Government's assumption that the use of face coverings is intrinsically linked to public disorder.
9. The police already have the powers under Section 60AA of the Criminal Justice & Public Order Act 1994 (CJPOA) to require a person to remove "any item which the constable reasonably believes that person is wearing wholly or mainly for the purpose of concealing his identity."⁴ Failure to remove an item when required to do so is already a criminal offence, carrying a punishment upon summary conviction of up to 1 month's imprisonment or a fine not exceeding level 3 on the standard scale, or both.⁵
10. These powers are used where a Section 60 CJPOA suspicionless stop and search authorisation has already been made. We note the recent expansion of suspicionless stop and search to protest contexts in the Public Order Act 2023. Suspicionless stop and search is arguably one of the most powerful tools the police have given the level of intrusion involved, and the intimidation people subject to such a power often experience. Protest stop and search powers received significant criticism, including by the Joint Committee on Human Rights, for the way they interfere with our rights under Articles 8, 10 and 11 and 14 ECHR, as given domestic effect by the Human Rights Act 1998 (HRA) and risk entrenching discrimination.⁶ We heavily caution against the introduction of further measures to ban face coverings in a context where the police already have significant powers to stop and search people at protests and require people to remove face coverings.
11. The use of face coverings at protests are especially vital for some disabled people and people who are clinically vulnerable. Any measures that increase the risk of punishment for wearing a face covering risk breaching Article 14 ECHR which states that the exercise of rights,

³ Home Office. 2024. *New protest laws on face coverings and pyrotechnics*. 8 February 2024. Available at: <https://www.gov.uk/government/news/new-protest-laws-on-face-coverings-and-pyrotechnics>

⁴ Section 60AA Criminal Justice and Public Order Act 1994

⁵ Section 60AA (7) Criminal Justice and Public Order Act 1994

⁶ Joint Committee on Human Rights. 2022. *Legislative Scrutiny: Public Order Bill*. Available at: <https://committees.parliament.uk/publications/22681/documents/166680/default/> (p.18)

including the right to freedom of expression (Article 10 ECHR) and freedom of assembly and association (Article 11 ECHR), must be secured without discrimination. As some disabled people may - and people who are clinically vulnerable need to - rely on face coverings to protect their health at protests, measures that seek to criminalise the use of face coverings will likely have a disproportionate impact on their ability to exercise their rights. We also urge the Joint Committee to scrutinise the particular impact of forthcoming measures on clinically vulnerable people, many of whom are not recognised under the Equality Act and therefore will be absent from the Government's Equality Impact Assessment on such measures.

12. FORTHCOMING MEASURES TO CLAMP DOWN ON FACE COVERINGS MUST ALSO BE SCRUTINISED IN THE CONTEXT OF THE HISTORIC DISCRIMINATION DISABLED PEOPLE HAVE EXPERIENCED AT PROTEST. IN THEIR "RESTRICTING THE REBELLION" REPORT, NETPOL FOUND THAT THE METROPOLITAN POLICE SYSTEMATICALLY DISCRIMINATED AGAINST DISABLED PROTESTERS BY FAILING TO MEET THEIR NEEDS DURING THE POLICING OF EXTINCTION REBELLION PROTESTS IN OCTOBER 2019.⁷ THIS FOLLOWED THE METROPOLITAN POLICE'S OWN DISABILITY INDEPENDENT ADVISORY GROUP ISSUING THEIR FIRST FORMAL COMPLAINT AGAINST THE MET FOR "IRREPARABLE DAMAGE" TO RELATIONS WITH DISABLED PEOPLE.⁸
13. WE ARE ALSO CONCERNED ABOUT THE IMPACT THESE MEASURES ARE LIKELY TO HAVE ON DISSIDENTS PROTESTING OUTSIDE FOREIGN EMBASSIES AGAINST AUTHORITARIAN STATES SUCH AS IRAN AND CHINA. PEOPLE TAKING PART IN SUCH PROTESTS WEAR FACE COVERINGS TO PROTECT THEIR ANONYMITY IN THE FACE OF HEIGHTENED RISKS OF SURVEILLANCE, HARASSMENT, AND WIDER RETALIATION FROM THE STATES THEY ARE PROTESTING AGAINST. THIS IS PARTICULARLY IMPORTANT IN CASES WHERE THERE IS EVIDENCE OF EXTRATERRITORIAL REPRESSION AND/OR WHERE INDIVIDUALS FEAR THE CONSEQUENCES OF SPEAKING OUT ABROAD FOR THEIR LOVED ONES AT HOME OR INDEED THEIR ABILITY TO TRAVEL HOME SAFELY. FOR EXAMPLE, THE WIDELY CONDEMNED NATIONAL SECURITY LAW IMPOSED ON HONG KONG BY THE CHINESE GOVERNMENT, CONTAINS AN EXTRATERRITORIAL CLAUSE WHICH EFFECTIVELY CRIMINALISES CRITICISM OF THE CHINESE GOVERNMENT AND CHINESE COMMUNIST PARTY, AND SUPPORT FOR HONG KONG INDEPENDENCE, ANYWHERE IN THE WORLD. AS RECENTLY AS JULY 2023, THE UK GOVERNMENT CONDEMNED THE USE OF THIS LAW TO ISSUE ARREST WARRANTS FOR 8 INDIVIDUALS LIVING OUTSIDE HONG KONG (INCLUDING SOME RESIDING IN THE UK), STATING THAT "THE UK WILL ALWAYS DEFEND THE UNIVERSAL RIGHT TO FREEDOM OF EXPRESSION AND STAND UP FOR THOSE WHO ARE TARGETED."⁹ BANNING PROTESTERS FROM WEARING MASKS AND PREVENTING THEM FROM BEING ABLE TO SHIELD THEIR IDENTITIES

⁷ Netpol. 2019. *Restricting the Rebellion: A Netpol report on the policing of Extinction Rebellion protests in London in October 2019*. Available at: <https://netpol.org/wp-content/uploads/2019/11/Restricting-Rebellion-Report-with-Full-Appendices.pdf>

⁸ The Guardian. 2019. *Met police accused of 'degrading' treatment of disabled XR activists*. 29 October 2019. Available at: <https://www.theguardian.com/uk-news/2019/oct/29/met-treatment-of-disabled-xr-activists-branded-degrading-and-humiliating>

⁹ Foreign, Commonwealth & Development Office. 2023. *Hong Kong National Security Law arrest warrants: Foreign Secretary's statement*. 3 July 2023. Available at: <https://www.gov.uk/government/news/statement-on-hong-kong-national-security-law-arrest-warrants#:~:text=The%20UK%20will%20always%20defend,binding%20Sino%2DBritish%20Joint%20Declaration.>

will increase the risk that they will become targets for harassment and intimidation¹⁰ and/or deter them from exercising their right to speak out altogether.

14. Furthermore, we note that the Government have previously criticised the Hong Kong Government for introducing emergency legislation banning face masks in response to pro-democracy protests in 2019.¹¹ The introduction of oppressive measures akin to those the Government have previously criticised risks damaging the UK's international standing and credibility when criticising other states for cracking down on protest which the Joint Committee previously highlighted in their legislative scrutiny of the Public Order Bill.¹²
15. Finally, we are concerned about the impact of any blanket ban on masks on people's right to freedom of thought, conscience, and religion, as protected by Article 9 ECHR, which includes both the right to hold and manifest one's beliefs. Depending on the wording of the proposed new measure, we are concerned that it may disproportionately impact Muslim communities including people who wear the niqab.¹³

Removal of the right to protest as a reasonable excuse defence for some protest offences

16. The Government's announcement of further measures to restrict protest stated their intention to remove "the ability to use the right to protest as a reasonable or lawful excuse to commit some crimes". Although the full detail is not yet published, the listed offences where this would apply include wilful obstruction of a public highway, locking on and public nuisance.¹⁴ We note that the Government brought forward amendments to limit the ability of protesters to use a reasonable excuse offence during the passage of the Public Order Bill (now Act). These amendments were rejected by the House of Lords.
17. When scrutinising the Public Order Bill (now Act) during its passage, the Joint Committee on Human Rights stated that one of only two safeguards¹⁵ within the offence of locking on, included the ability of a defendant to raise a defence by showing that they had a "reasonable excuse" for the action taken, making it possible for someone who 'locks-on' to use their right to protest under Articles 10 and 11 ECHR as a defence in court. Proposed measures to

¹⁰ The Guardian. 2023. *'We don't feel safe here': Hongkongers in UK fear long reach of Chinese government*, 17 October 2023. Available at: <https://www.theguardian.com/global-development/2023/oct/17/we-dont-feel-safe-here-hongkongers-in-uk-fear-long-reach-of-chinese-government>

¹¹ HL Deb 7 October 2019, vol 799, col 1903

¹² Joint Committee on Human Rights. 2022. *Legislative Scrutiny: Public Order Bill*. Available at: <https://committees.parliament.uk/publications/22681/documents/166680/default/> (p.9)

¹³ Community Policy Forum: <https://x.com/PolicyCommunity/status/1755576741244834172?s=20>

¹⁴ Home Office. 2024. *New protest laws on face coverings and pyrotechnics*. 8 February 2024. Available at: <https://www.gov.uk/government/news/new-protest-laws-on-face-coverings-and-pyrotechnics>

¹⁵ We note that the other safeguard identified by the Joint Committee was the burden on the prosecution to prove that such an offence amounted to serious disruption. We would argue that this safeguard has also been significantly weakened since the passage of the The Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 which significantly lowered the threshold of serious disruption through which the police can impose conditions on protest from 'significant' to 'more than minor'.

remove this defence would have disastrous consequences for those exercising their right to protest. Removing this defence must also be viewed in the context of unprecedented numbers of protesters being arrested, prosecuted, and convicted for exercising their right to protest which has most recently been condemned by the UN Special Rapporteur on Environmental Defenders under the Aarhus Convention as a regressive shift from the UK.¹⁶

18. The potential removal of the right to protest defence is especially concerning given the vague, broad nature of protest-related offences such as locking on. The breadth of this offence was repeatedly criticised by Liberty, the Joint Committee and Parliamentarians from all parties during the passage of the Public Order Bill for the way that it encompassed a raft of activities that would not be considered criminal activities but for the creation of the offence. This has already resulted in both people exercising their right to protest, and people simply going about their daily activities, being arrested for the offence of locking-on.¹⁷ The breadth of this offence, combined with limited routes to challenge in the court through the removal of reasonable excuse, is a recipe for violations of rights.

19. Furthermore, we recognise that the existing ‘reasonable excuse’ defence in the offence of locking on is already insufficient and echo the concerns raised by the Joint Committee in their initial scrutiny of the locking on offence regarding its engagement of the right to a fair trial under Article 6 ECHR, alongside Articles 10 and 11 ECHR. The offence reverses the burden of proof as compared to the offence of reasonable obstruction of the highway under section 137 of the Highways Act 1980, placing the burden on the protester to show that they have a ‘reasonable excuse’. As the Joint Committee stated in their report “requiring the defendant to prove something, even on the balance of probabilities, may result in a conviction despite their being an element of doubt.” Further limiting, or removing, this protection would have disastrous consequences for those exercising their right to protest.

20. Much like with measures introduced in the Public Order Act that had already been resoundingly rejected during the passage of the PCSC Act, the Government are attempting to chip away at our protest rights through multiple pieces of legislation, adding layer upon layer of restriction and criminalisation that not only renders our right to protest greatly weakened but creates a complicated and unworkable enforcement regime.

¹⁶ The Guardian. 2024. *UN expert condemns UK crackdown on environmental protest*. 23 January 2024. Available at: <https://www.theguardian.com/environment/2024/jan/23/un-expert-condemns-uk-crackdown-on-environmental-protest>

¹⁷ In May 2023, the Metropolitan Police detained a number of protesters from the group Republic while they were unloading placards from their vehicle. The police claimed that luggage straps used to hold together the bundles of placards could be used for “locking on”. See: <https://inews.co.uk/news/anti-monarchists-no-further-action-arrests-coronation-2327291>
In June 2023, police arrested a woman attending Royal Ascot under suspicion of being equipped with intent to lock on using nail glue she was carrying for her false nails. See: <https://www.dailymail.co.uk/news/article-12218499/Police-handcuff-Royal-Ascot-racegoer-lead-away-start-day-two-festival.html>

Further measures

21. The Government have also announced their intention to bring forward measures to make climbing on war memorials a specific public order offence, carrying a 3-month sentence and a £1000 fine, as well as making the possession of flares, fireworks and any other pyrotechnics at protests illegal.¹⁸
22. While we wait to see the detail of these amendments, we are deeply sceptical of further measures that build on very recently passed legislation. The PCSC Act introduced new provisions on war memorials, increasing the maximum penalty for criminal damage of less than £5,000 to a memorial from 3 months to 10 years' imprisonment. During the PCSC Bill's passage we expressed concern about the broad drafting of what constituted a war memorial, and the extremely harsh prison sentences being threatened.
23. To introduce further measures to criminalise activity at protests suggests that the Government is taking a cavalier approach to legislating, introducing measure upon measure without any evidence to show why they are needed, and without giving any time for legislation to embed. We are also concerned about how these powers may interact with others such as those in the Public Order Act 2023, for example by potentially expanding the basis on which the police may stop and search people.
24. The Government have completely lost perspective: introducing swathes of restrictions in such a short space of time not only creates a deeply hostile environment for people trying to exercise their right to protest, but creates an unworkably complex web of legislation.

RECOMMENDATIONS

25. These recommendations pertain to our written evidence submitted in January 2024 and go beyond the measures mentioned in this supplementary briefing.
26. We will inevitably have recommendations regarding new protest amendments but we wait to see the published amendments.

Nuisance Begging and Rough Sleeping

27. Liberty opposes the introduction of measures to clamp down on so-called nuisance begging and rough sleeping.
28. We urge the Joint Committee to support the following amendments in the name of Bob Blackman MP¹⁹

¹⁸ Home Office. 2024. *New protest laws on face coverings and pyrotechnics*. 8 February 2024. Available at: <https://www.gov.uk/government/news/new-protest-laws-on-face-coverings-and-pyrotechnics>

¹⁹ Amendment numbers correct as of 16 February 2024. See: <https://publications.parliament.uk/pa/bills/cbill/58->

- a. Amendments 2-27 to remove ‘nuisance’ begging and rough sleeping measures (Clauses 46-70) from the Bill
- b. Amendment NC10 to introduce a commencement provision for the repeal of the Vagrancy Act 1824
- c. Amendment NC11 to require the Government to issue guidance on the use of powers relating to anti-social behaviour under this Act and the Anti-social Behaviour, Crime and Policing Act 2014

Police Access to the Driver and Vehicle Licensing Agency (DVLA)

29. Liberty opposes police having access to the DVLA for the purposes of running a facial recognition search in Clause 27. While the Bill does not explicitly refer to facial recognition searches, the Policing Minister stated that this was the intended outcome of the Clause.

30. We urge the Joint Committee to make urgent enquiries with the Minister about this issue.

(19 February 2024)