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## The Police, Crime, Sentencing and Courts Bill: Part 3, Protest – Report Stage

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Despite Amnesty International’s stated opposition to the Police, Crime, Sentencing and Courts Bill (the Bill) as a whole, given its enormous breadth and numerous extremely problematic provisions, it is proceeding through the legislative process. This briefing focuses on **Part 3 - Protest**, which would introduce unprecedented restrictions to the rights to protest. If passed Part 3 would seriously curtail human rights in this country and damage the UK’s international standing, potentially irreparably.

**We urge Peers to oppose Part 3 in its entirety. Should it not be possible to remove existing provisions and oppose new Government amendments completely, we recommend Peers vote to mitigate some of the worst impacts:**

- **Vote against Government amendment 159** to prevent the introduction of Serious Disruption Prevention Orders (“SDPOs”) or ‘Protest Banning Orders’
- **Vote against Government amendments 154-158** on protest-specific Stop and Search
- **Support amendments 115, 123, 124, and 125** to remove the ability of police to impose noise-based conditions on protest in the names of Lord Rosser and Lord Dubs
- **Support amendments that would replace** the “ought to know” knowledge requirement

### Summary

Hundreds of [civil society organisations and legal academics](#), [cross-party Parliamentarians](#), [former Chief Constables](#), [UN Special Rapporteurs](#) and the Council of Europe have expressed concern at the introduction of this Bill, particularly in relation to measures that represent a serious threat to the rights to peaceful protest. This was already the case before the Government tabled amendments during the Lords’ Committee stage of the Bill, that would further criminalise protest, expand stop and search powers and create orders that could be used to prevent certain individuals from protesting at all.

Proposals to restrict protest in the Bill represent a serious threat to the rights to freedom of expression, association and peaceful assembly in the UK. If implemented these provisions would leave the UK in breach of international human rights law. Given the UK’s supposed commitment to promote open societies around the world and criticism of other States which restrict access to these rights (in similar ways), the UK’s international reputation and credibility is likely to be severely damaged if Part 3 passes, particularly so if the Government’s new amendments are accepted.

Amnesty’s analysis is that the provisions in Part 3 of the Bill:

- breach the UK’s international obligations under relevant Human rights law,
- are neither necessary or proportionate given existing legal frameworks and police powers in these areas,
- will introduce a chilling effect on those wishing to exercise their fundamental rights to peaceful protest in future,
- new government amendments tabled at Lords committee stage appear unlawful from the outset, breaching the principal of legality,
- introduce vague and undefined subjective terminology which places both excessive burden on police officers to interpret and risks further subjective, discriminatory and/or over policing of certain groups, especially minoritised groups,

- give disproportionate powers to Ministers to restrict freedom of assembly without adequate safeguards to prevent their misuse,
- seriously damage the UK's reputation and credibility on the world stage as a purported defender of human rights and fundamental freedoms.

### Threat to the UK's international standing

As well as introducing unprecedented restriction on civil liberties in the UK, the restrictions on protest would severely damage the UK's reputation internationally. The [UK's Integrated Review of Security, Foreign, Development and Defence Policy](#) committed to promoting open societies as a priority and recognised 'rising authoritarianism' globally as a key threat.

The UK consistently criticises repressive policies in countries such as Russia, Hong Kong and Belarus<sup>1</sup>, yet is attempting to implement similarly repressive policies in this Bill. For example:

- In **Russia** the Law on Assemblies prohibits certain categories of people from organising protests, including people convicted of protest-related administrative offences more than once in the preceding 12 months. This mirrors the restrictions proposed through Serious Disruption Prevention Orders (SDPOs) – for more detail see below – though SDPOs go even further in preventing not just the organisation of protests, but any participation.
- Also in **Russia**, authorities can prevent protests going ahead on the basis that “road repairs involving vehicles” are taking place (for example in 2018 the St Petersburg Legislative Assembly refused permission for a protest to take place in Malinovka Park on those grounds). The proposed new offence for impeding construction workers to carry out their work is very similar.
- In **Hong Kong** the Commissioner of Police has the power to prohibit or impose conditions on peaceful public gatherings when he or she “reasonably considers [it] ... to be necessary ... in the interest of national security or public safety, public order or the protection of the rights and freedoms of others”. These wide-ranging provisions are vague and fail to meet the international human rights law criteria of precision, nor do they have the requisite judicial authorisation required to safeguard against abuse. The introduction of new highly subjective and ill-defined vague terms such as noise, unease and annoyance in the UK would mirror this, although through criminalising actions that would otherwise be lawful, this Bill again goes even further.
- In **Belarus** anyone who has received an administrative fine related to organising a protest cannot organise any other protest for at least one year following the conviction. People convicted of a wide range of other related ‘crimes’ are also prohibited from organising protests. This again mirrors the restrictions proposed through SDPOs, but once again SDPOs go further in also preventing participation.
- Also in **Belarus**, the recently amended Law on Mass Events allows law enforcement officials to search any citizen attending protests and anyone who refuses to be searched will be prevented from entering the area where a protest is taking place (this mirrors the provisions to enable stop and search without suspicion in an area where a protest is taking place).

The UK's ability to promote open societies, the international rules-based system and respect for human rights internationally will be severely compromised by provisions which so clearly and widely restrict fundamental human rights and leave the UK in breach of international human rights law.

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<sup>1</sup> See for example

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/999607/Human\\_Rights\\_and\\_Democracy\\_the\\_2020\\_Foreign\\_\\_Commonwealth\\_\\_Development\\_Office\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999607/Human_Rights_and_Democracy_the_2020_Foreign__Commonwealth__Development_Office_report.pdf)

## Background

The rights to peaceful protest are fundamental universal rights enshrined in international and domestic human rights law. The state and its agencies have a positive obligation to protect the rights of peaceful protest and any restrictions or limitations must be imposed as a last resort in cases where it is necessary in order to achieve one of a very limited number of objectives: the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Even then, only after all other less intrusive measures are considered can a restriction be imposed. Restrictions must not cause more harm than the harm they seek to avoid.

For example, as articulated in the UN Human Rights Council General Comment on the right to peaceful assembly in [September 2020](#):

*“State parties should not rely on a vague definition of “public order” to justify overbroad restrictions on the right of peaceful assembly. Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration.”<sup>2</sup>*

Amnesty’s assessment is that Part 3 of this Bill would leave the UK in breach of international human rights law. The Bill significantly lowers thresholds applied to public order situations with the introduction of new highly subjective and ill-defined vague terms such as noise, unease and annoyance. The Bill also gives Ministers further enhanced powers to issue further legally binding regulations around these highly subjective and vague thresholds, which raises the prospect that the current or any future government may misuse these powers to stifle criticism and views that it might find uncomfortable. This sets an enormously dangerous precedent.

The new criminal offence of participating in a demonstration and not being aware of any restrictions in place using the threshold of “ought to have known” is a hugely disproportionate criminalisation of individuals whose activities would otherwise have been perfectly lawful in any other given context.

It is also crucial to point out that the police already have considerable legal [powers to police protest](#).<sup>3</sup> Police officers in the UK can and do make arrests for any number of offences in relation to policing demonstrations. These include, but are not limited to trespass, criminal damage, causing harassment alarm or distress, inciting or being violent and, blocking or otherwise impeding public highways. Powers also include intelligence led pre-emptive arrests and the use of reasonable force where necessary. Police also have authority to deploy a wide range of surveillance tools to monitor crowds and identify individuals as well as existing broad powers to stop, search and detain. Amnesty already considers many of these powers to be overly broad and open to misuse, and so strongly objects to even further powers being added to this repertoire, and in contravention of international human rights law.

## Getting the balance right

Much has been spoken about the need to strike a more appropriate balance between the rights of protesters versus the rights of others to not be subjected to undue disruption. In Amnesty’s view the criminal justice system already demonstrates its ability to determine that balance and to establish whether any specific protest has caused disruption that has been disproportionate. The Courts already make this determination, ruling both for and against specific protests based on this proportionality test, including previous protests that have resulted in road closures or blocking access to specific sites and businesses<sup>4</sup>. It should also be stated that many of these activities can already be subject to criminal charges under the current law where the disruption they cause is

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<sup>2</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11)

<sup>3</sup> See <https://www.app.college.police.uk/app-content/public-order/>

<sup>4</sup> For example <https://www.bbc.co.uk/news/uk-england-lancashire-41763568> and

<https://www.standard.co.uk/news/uk/extinction-rebellion-protests-guilty-newspaper-printing-blockade-b946166.html>

disproportionate. This can include the blocking of roads, obstruction and access to businesses, aggravated trespass and criminal damage and those engaging in such activities during any given demonstration are routinely arrested, charged and convicted of those offences where the disruption they caused was deemed disproportionate.

By introducing specific measures aimed in an unnecessary and ineffective manner at a small group of specific demonstrations and tactics, the government is breaching its wider international human rights obligations, and by doing so, creating a “chilling effect” on individuals with no intention of breaking the law, deterring them from exercising their rights to protest for fear of sanctions by the authorities.

### **Subjective decisions and disproportionality**

Part 3 of this Bill as worded, will also allow police officers to make any decisions on restrictions and limitations as “appear to be necessary”. These are excessive powers, which will not only place unreasonable burdens on police officers to make correct judgements in complex situations but will almost certainly lead to inconsistent and subjective decisions around protests which will further undermine trust and confidence in policing, especially by those communities who are already overpoliced. They are also likely to breach the principle of legality as they are so wide ranging, subjective and discretionary, it would not be foreseeable for those wishing to participate in protests to determine what decisions and actions the police can take against them.

It is clear that such issues already arise, for example in the policing of Black Lives Matter protests in Northern Ireland in June 2020, which was recently found to have been inconsistent and discriminatory, following Police Ombudsman and NI Policing Board investigations. Prosecutions have since been dropped and the Chief Constable has apologised. This Bill is likely to make incidences like this more common.

Further to this, Amnesty notes that evidence clearly points to unacceptable levels of racial discrimination within policing and the wider criminal justice system. The findings of the MacPherson Report into the death of Stephen Lawrence; the Lammy review into racial discrimination within the criminal justice system; the Review of the Metropolitan Police’s Gangs Matrix as well as a mountain of statistical evidence presented by the Home Office’s Use of Force reporting system, collectively demonstrates unacceptable levels of institutional racism within policing, specially targeted towards young black men. Other groups, such as Irish travellers, and in certain contexts other minoritised groups face similar disproportionate, hence discriminating over-policing.

### **Analysis of new Government amendments tabled to expand the scope of part three**

In November 2021, the Government tabled a series of new amendments during the Bill’s Committee Stage in the Lords, which would considerably expand the scope of public order powers. Given the introduction of such extensive measures at such a late stage of the Bill’s progress, there has been insufficient time for adequate parliamentary scrutiny of these measures, made all the more concerning given they place the UK in breach of existing international human rights obligations.

In some cases, the amendments tabled are so vague, undefined and open to subjective interpretation that they are likely to be unlawful from the outset. **While Amnesty’s view is that all of the Government’s amendments should be opposed**, we provide analysis on what we deem to be particularly problematic below. That is not to negate the impacts of those not covered.

**Serious Disruption Prevention Orders (Government Amendment 159):** These orders effectively ban certain individuals from participating in protests on the basis that they have been convicted on two prior occasions of protest related crimes, or on two prior occasions they have caused “serious disruption” (without conviction). In addition to banning their physical participation at protests, they

are also banned from certain online activities organising them. Amnesty considers these provisions to be violations of the right to freedom of peaceful assembly and of freedom of movement.

The potential for SDPO's to be imposed without the condition of a previous conviction is particularly problematic, because it gives total discretion to the authorities as to how they will define a range of actions in this context.

Even where based on previous convictions, these provisions are wholly disproportionate – they restrict the exercise of a fundamental right of peaceful assembly based on past conduct and there is no requirement that the past conduct be of a serious nature. Given the extremely broad and vaguely defined list of potential convictions that could be used to impose an SDPO, this provision this will risk depriving a large number of people for up to five 5 years of a fundamental universal human right. Furthermore, these provisions are not necessary – allowing assemblies to take place and making arrests if actual crimes are committed (rather than making pre-emptive orders) has a far less significant detrimental impact on the right to freedom of peaceful assembly, while still enforcing the law.

**Powers to stop and search on suspicion (Government amendments 154 – 158):** These are extraordinarily worrying provisions, especially given the widespread discriminatory use of stop and search powers on racialised groups in the UK. Widening the crimes that permit stops and searches will inevitably provide police even more discretion to use this power in a discriminatory manner. Suspicion-less stops and searches are inherently liable to arbitrary use. The [College of Policing](#), [Her Majesty's Inspectorate](#) and others have stated that stop and search is already an overused and ineffective tool that does not deter or prevent serious crime and can be largely counterproductive, by eroding trust between the police and local communities that are disproportionately targeted.

Again, the proposals breach the UK's international human rights obligations. The Human Rights Council's General Comment on the Freedom of Peaceful Assembly stipulates that “stop and search” applied to those who participate in assemblies, or are about to do so, must be exercised based on reasonable suspicion of the commission or threat of a serious offence, and must not be used in a discriminatory manner. The mere fact that authorities associate an individual with a peaceful assembly does not constitute reasonable grounds for stopping and searching them.<sup>5</sup>

The measures will have a significant chilling effect on protest, as people wishing to exercise their right to protest will risk being searched for lock-on devices etc whether they have any intention to break a law or not. In other words, widespread stops of protesters will become normalised resulting in people thinking twice before joining a protest movement.

Secondly, introducing a ground for stops of “Intentionally or recklessly causing public nuisance” provides an extraordinarily broad ground – which is highly likely to be used outside of the context of protests and assemblies in any manner of other situations. Notably, given the propensity of police forces to use stop and search powers on racialised groups, expanding the grounds for such searches is highly likely to exacerbate discriminatory searches. Recent [Home Office data](#) shows that Black people are 7 times more likely to be stopped and searched than white people, and when the ‘reasonable grounds’ requirement is removed, Black people are 14 times more likely to be stopped and searched than white people.

The amendment that would allow for suspicion less stops and searches is even more concerning. The incredibly broad scope of items (not defined) that could be captured within this clause, items that are not illegal or otherwise prohibited or restricted in any other context, breaches the principle of

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<sup>5</sup> See UN Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21) available at: <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>

legality. The combined provisions within these clauses are so broad, fail to establish any clear limitations about the exercise of that power and creates a potential situation for Police to stop and search whoever they want on the basis of overly vague and broad activities that they believe might take place in any given area. It would be impossible for anyone attending a protest that could be captured under these provisions to have a clear view as to the reasons why they were being subjected to a stop and search or what items might fall within the scope of powers to seize them.

As such Amnesty's analysis is that such powers are incompatible with the UK's existing international obligations under both Article 11 of the European Convention on Human Rights and Article 21 of the International Covenant on Civil and Political Rights, as they relate to freedom of peaceful assembly.

**Wilful obstruction of highway (Government Amendment 150):** Obstruction of the highway is already an existing offence, and it is therefore unclear how this amendment meets either the proportionately or necessity test. The right to hold assemblies and demonstrations on public roads has been upheld consistently by national regional and international human rights bodies; the UN Special Rapporteur on Freedom of Peaceful Assembly and Association has stipulated that "the free flow of traffic should not automatically take precedence over freedom of peaceful assembly." This is echoed by the UN Human Rights Committee.

Courts in the UK have clearly shown that existing legislation can balance the rights of protests to block roads and businesses against the disruption caused to others and have shown themselves to be more than capable in determining whether such action was proportionate to the disruption caused. A recent Supreme Court judgment, *Director of Public Prosecutions v Ziegler and others* relating to protesters blocking access to the DSEI arms fair in September 2017 provides detailed analysis of these considerations.<sup>6</sup> In other cases, courts have ruled against the demonstrators.<sup>7</sup>

**Obstruction of major transport works (Government Amendment 151):** This provision fails the three-part test of legality, necessity and proportionality. The language is again vague and so broad that even coincidental obstruction of construction work by a big march that just happens to pass through a street where such works are ongoing could be covered in its scope. As with other clauses in Part 3, the use of an undefined "reasonable excuse" provision is not a sufficient safeguard. Taken as a whole, the potential broad scope of these provisions again appears to violate the principle of legality based on such a broad range of potential situations that would exist for a person to be able to determine whether activity fell within the scope of the provision. It is furthermore completely unclear, why it is necessary and proportionate to single out and criminalise obstruction of transport construction works in this way.

**Amnesty urges Peers across the House to oppose Part 3 and the new government amendments, or at the very least support amendments that would mitigate the provisions' worst impacts.**

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<sup>6</sup> See *Director of Public Prosecutions (Respondent) v Ziegler and others (Appellants)*, available at <https://www.supremecourt.uk/cases/docs/uksc-2019-0106-judgment.pdf>

<sup>7</sup> See, "Extinction Rebellion protesters found guilty over printing press blockade", <https://www.standard.co.uk/news/uk/extinction-rebellion-protests-guilty-newspaper-printing-blockade-b946166.html>