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## The Public Order Bill

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The government is proposing a Public Order Bill (PB Bill) that would introduce further excessive restrictions on the rights to protest, following those already introduced in the Police, Crime, Sentencing and Courts Act (the PCSC Act). The Public Order Bill contains provisions that the Government attempted to include in the PCSC Act but were rejected by the House of Lords in February 2022. Amnesty's analysis of those provisions at the time was that they were so vague, undefined and open to subjective interpretation that they were likely to be unlawful from the outset, would seriously curtail human rights in this country and damage the UK's international standing, potentially irreparably. The Bill itself fails the three-part test of legality, necessity and proportionality and therefore:

**Amnesty urges Parliamentarians to oppose the PB Bill in its entirety.**

### Suggested questions:

*Does the Government see the parallel between its proposed Serious Disruption Prevention Orders and legislation in Belarus, which prevents anyone subject to an administrative fine related to organising a protest, from organising any other protest for at least one year?*

*Is the Government aware that its proposed SDPOs are similar to, but go further than, provisions in the Russian Law on Assemblies, which prohibits people convicted of protest-related administrative offences from organising protests, but not participating in them as SDPOs do?*

*What is the Government's assessment of The [College of Policing](#) and [Her Majesty's Inspectorate](#) position that stop and search is already an overused and ineffective tool that can be largely counterproductive by eroding trust between the police and local communities that are disproportionately targeted?*

### Summary

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

Peers rejected the additional amendments, with good reason, and it is therefore very concerning that the Government has immediately opted to introduce them again. 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 the PB Bill passes.

### Threat to the UK's international standing

As well as introducing unprecedented restrictions 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 **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.

## 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 to 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>

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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)

<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)

Amnesty's assessment is that the PB Bill would leave the UK in breach of international human rights law. It is crucial to point out that the police already had considerable legal powers to police protest<sup>3</sup> before the PCSC Act, and clearly now have more.

### **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 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**

Some of powers in the PB Bill, particularly those relating to Stop and Search, will likely lead to discriminatory policing of already over-policed and marginalised groups, particularly Black men. These are excessive powers, which 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.

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. The PCSC Act and the PB Bill are 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. The Home Secretary's May 2022 decision to remove restrictions on use of Section 60 is particularly concerning in this context.

### **Analysis of provisions**

**Serious Disruption Prevention Orders:** These orders effectively ban certain individuals from participating in protests on the basis that they have been convicted on two prior occasions of protest

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<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>

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:** 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.

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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>

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 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:** Obstruction of the highway is already an existing offence, and it is therefore unclear how this provision 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:** 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 related clauses in Part 3 of the PCSC Act, 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 Parliamentarians across the House to oppose the PB Bill in its entirety.**

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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>