



**JOINT BRIEFING ON THE PUBLIC ORDER BILL FOR REPORT  
STAGE IN THE HOUSE OF LORDS  
JANUARY 2023**



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The Public Order Bill is a staggering escalation of the Government's clampdown on protest. Throughout its passage in the House of Lords, the Public Order Bill has been criticised by peers for being "draconian",<sup>1</sup> "worrying,"<sup>2</sup> and "open to serious objection and in some ways misconceived."<sup>3</sup> Most recently, five UN Special Rapporteurs have said that the Bill "could result in undue and grave restrictions" on civil liberties if not seriously amended.<sup>4</sup>

As a coalition of **74 organisations** spanning the human rights, privacy, criminal justice, democracy, children's rights, international development, environment, freedom of speech and expression, health, trade union, violence against women and girls, racial justice, housing, legal, community, migrants' rights and faith sectors, **we urge parliamentarians to defend protest rights and support amendments to mitigate the Public Order Bill's worst effects.**

- **Amendments to remove Serious Disruption Prevention Orders made on conviction and made otherwise than on conviction (clauses 19 and 20)**, in the names of Lord Ponsonby, Lord Paddick, Lord Anderson of Ipswich, and Baroness Chakrabarti
- **Amendments to remove protest-specific stop and search powers (clauses 10 and 11)**
  - Suspicion-based stop and search, in the names of Lord Paddick and Baroness Chakrabarti
  - Suspicion-less stop and search, in the names of Lord Coaker, Lord Paddick, and Baroness Chakrabarti
- **Amendment to remove the criminal offences of locking on and being equipped to lock on (clauses 1 and 2)**, in the names of Baroness Chakrabarti and Baroness Jones of Moulsecoomb

No coherent case has been made by the Government for these expansive new powers, with the Director of Public Prosecutions stating recently that the authorities "already have the legal tools" they need.<sup>5</sup> Measures in the Bill have been criticised by the police, the Home Office, His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), and former senior police advisors for being "unworkable"<sup>6</sup> and incompatible with human rights. The Joint Committee on Human Rights (JCHR) and the Commissioner for Human Rights for the Council of Europe have further highlighted the potential detrimental impact of the Bill for the UK's international rights record.<sup>7</sup>

Shortly before the Public Order Bill's Report Stage, the Government added amendments to define serious disruption in relation to specified new offences, limit the defence of reasonable excuse, and create new triggers for the police to impose conditions on protest. Together, they constitute a drastic, further expansion of police power, allowing the police to intervene in and impose conditions on protests that have a 'more than minor', rather than 'serious' impact. Far from clarifying matters, these amendments exacerbate legal uncertainty and threaten to further restrict the right to protest. The

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<sup>1</sup> Lord Skidelsky, HL Deb 1 Nov 2022, vol.825, col.192

<sup>2</sup> Lord Balfe, HL Deb 1 Nov 2022, vol.825, col.172

<sup>3</sup> Lord Hope, HL Deb 1 Nov 2022, vol.825, col.154

<sup>4</sup> Letter to the UK Government from the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the right to privacy (OL GBR 16/2022), 22 December 2022:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27724>

<sup>5</sup> Sir Charles Walker: "I hope... I will be allowed to read a very short list just to set out the laws that already exist and have been covered by colleagues: obstructing a police officer, Police Act 1996; obstructing a highway, Highways Act 1980; obstruction of an engine, Malicious Damage Act 1861, endangering road users, Road Traffic Act 1988; aggravated trespass, Criminal Justice and Public Order Act 1994; criminal damage, Criminal Damage Act 1971; and public nuisance, the Police, Crime, Sentencing and Courts Act 2022."<sup>5</sup> HC Deb 18 Oct 2022, vol. 720, col.581.

<sup>6</sup> Evans, M. *Law to curb Just Stop Oil protests 'a sledgehammer to crack a nut', say ex-police chiefs*, The Telegraph, 17 December 2022: <https://www.telegraph.co.uk/news/2022/12/17/law-curb-just-stop-oil-protests-sledgehammer-crack-nut-say-ex/>

<sup>7</sup> Joint Committee on Human Rights, *Government creating hostile environment for peaceful protest, report finds*, 17 June 2022:

<https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>

addition of these controversial amendments at such a late stage in the passage of the Bill raises further concerns as to whether their impact can be robustly scrutinised.<sup>8</sup>

**We oppose the Public Order Bill’s anti-protest measures in the Bill in their entirety. We urge peers to attend the Report Stage of the Public Order Bill, speak up to defend protest rights, and support amendments to mitigate its worst effects.**

## **AMENDMENTS TO REMOVE SERIOUS DISRUPTION PREVENTION ORDERS (‘SDPOS’ OR ‘PROTEST BANNING ORDERS’)**

**Clause stand part amendment to remove Serious Disruption Prevention Orders made on conviction**, in the names of Lord Ponsonby, Lord Paddick, Lord Anderson of Ipswich, and Baroness Chakrabarti

*Leave out Clause 19*

**Clause stand part amendment to remove Serious Disruption Prevention Orders made otherwise than on conviction**, in the names of Lord Ponsonby, Lord Paddick, Lord Anderson of Ipswich, and Baroness Chakrabarti

*Leave out Clause 20*

### **Briefing**

1. Part 2 of this Bill introduces a new civil order – Serious Disruption Prevention Orders (SDPOs) – that can be imposed on individuals who have carried out (or contributed to another person carrying out) activities relating to at least two protests within a five-year period, whether or not they have been convicted of a crime.<sup>9</sup> They can last anywhere from one week to two years, with the potential to be renewed indefinitely.
2. SDPOs are effectively ‘protest banning orders’, with the potential to ban named individuals from protesting, associating with certain people at certain times, and even using the internet in certain ways. Those subject to SDPOs may also be subject to a range of onerous requirements, including reporting to certain places at certain times and electronic monitoring. A person subject to a SDPO will commit a criminal offence if they fail without reasonable excuse to fulfil one of the requirements of the SDPO, violate one of the SDPO’s prohibitions, or notify to the police any information which they know to be false. The consequence of committing this offence is maximum 51 weeks’ imprisonment,<sup>10</sup> a fine, or both.
3. **SDPOs are an unprecedented and highly draconian measure that stand to extinguish named individuals’ fundamental right to protest as well as their ability to participate in a political community. They will also have the effect of subjecting individuals and wider communities to intrusive surveillance.**
4. **SDPOs have been criticised by police:** When an identical proposal for ‘protest banning orders’ that would restrict named individuals’ right to protest was assessed by HMICFRS, they agreed with the Home Office and police interviewees that:

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<sup>8</sup> See Liberty’s briefing on the Public Order Bill for Report Stage in the House of Lords: New Government amendments, January 2023: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2019/03/Libertys-briefing-on-Government-amendments-to-the-Public-Order-Bill-January-2023-.pdf>

<sup>9</sup> See: Public Order Bill, Clause 20(2)(a)(iii): P has “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, in England and Wales; and Clause 20(2)(a)(v): P has “caused or contributed to the carrying out by any other person of 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, in England and Wales.”

<sup>10</sup> The offence provides that a person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both. If the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, the maximum sentence will be six months; (b) if the offence is committed after that time, the maximum sentence will be 51 weeks.

**“Such orders would *neither be compatible with human rights legislation nor create an effective deterrent.*** All things considered, legislation creating protest banning orders would be legally very problematic because, however many safeguards might be put in place, ***a banning order would completely remove an individual’s right to attend a protest.*** It is difficult to envisage a case where less intrusive measures could not be taken to address the risk that an individual poses, and where a court would therefore accept that it was proportionate to impose a banning order (emphasis added).<sup>11</sup>

5. **SDPOs are extraordinary and far-reaching measures, both in terms of who they can apply to and their effects.** For SDPOs made on conviction, the definition of ‘protest-related offences’ as “an offence which is directly related to a protest” is expansive and legally uncertain.<sup>12</sup> SDPOs made otherwise than on conviction go a step further: they can be imposed on a person who has not committed a criminal offence at all, but has merely *contributed to* the carrying out by *another person* of activities related to a protest that *were likely to* result in serious disruption. It is difficult to imagine a situation where someone’s actions would *not* somehow fall within the conditions under which someone could be given an SDPO - for example, it could cover anything from purchasing a bike lock, paint and superglue, to holding a banner, to observing a demonstration from afar. At Second Reading, Labour peer Lord Hendy gave an example of how SDPOs made otherwise than on conviction could impact trade unionists, particularly in the absence of a trade dispute defence: “[E]very general secretary and every member of every national executive committee which has authorised picketing that has caused disruption to an organisation, such as Network Rail or a train operating company, could be caught by these provisions and have a serious disruption prevention order made against them.”
6. **SDPOs could effectively place any activist, commentator, or politician who voices an opinion on any issue, who inspires someone else to protest in such a way as to cause ‘serious disruption’, at risk** – even if this is a person they do not know and have never met. Already, analysis from Netpol on the “threshold and terminology matrix” purportedly used by counter-terrorism police to respond to far-right extremism demonstrates that protest activities that merely cause “a change to the behaviour of the population or change to specific government policy” are sufficient to warrant intervention by the police; SDPOs will only entrench and expand this dynamic. And although the link between a person’s past conduct and the effect of ‘serious disruption’ need only be incredibly tenuous for someone to be given an SDPO; and being given an SDPO can completely alter the course of a person’s life. **As Liberal Democrat peer Lord Paddick noted during Report Stage of the Police, Crime, Sentencing and Courts Act (PCSC Act) where these measures were first introduced and resoundingly rejected, “you do not even have to have been to a protest to be banned from future ones.”**<sup>13</sup>
7. **One of the most concerning and disproportionate requirements that can be imposed on an individual subject to an SDPO is electronic monitoring (EM), in particular, 24/7 GPS monitoring.** Geolocation data is highly sensitive: it tells you where someone has been, which GP practice they attend, where they shop, and much more. These are intimate details of one’s private life that bear no relation to one’s protest-related activities. Once an individual is subject to a 24/7 GPS tag, all of this data is potentially laid bare to the State, with the further

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<sup>11</sup> Pg. 16, HMICFRS, *Getting the balance right? An inspection of how effectively the police deal with protests*, March 2021, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf>

<sup>12</sup> Analogously, Football Banning Orders (on which the ‘protest banning orders’ considered and criticised by HMICFRS in its March 2021 report are based) (FBOs) can be imposed on the basis of an extremely wide list of offences, including driving etc. when under the influence of drink or drugs or with an alcohol concentration above the prescribed limit. See Annex B of the CPS’s guidance on FBOs: <https://www.cps.gov.uk/legal-guidance/football-related-offences-and-football-banning-orders>

<sup>13</sup> HL Deb 17 Jan 2022, vol.817, col. 1439

potential to cause people to alter their behaviour and actions. These harms are exacerbated by the potentially unlimited duration of an electronic monitoring condition.”<sup>14</sup>

- 8. SDPOs have weak procedural safeguards.** At Committee Stage, the former Independent Reviewer of Terrorism Legislation Lord Anderson of Ipswich drew parallels between SDPOs and Terrorism Prevention and Investigation Measures (TPIM) - the equivalent of SDPOs for terrorism suspects, and, in Lord Anderson’s words, “the most extreme forms of restriction known to our law, short of imprisonment”. In both cases, failure to adhere to a condition can result in a prison sentence. However, SDPOs far surpass TPIMs in their severity: they can be imposed on the basis of a minor conviction (such as obstructing a highway) or even no conviction, are “completely unlimited” in their content, can be imposed by a magistrate, are renewable indefinitely, lack robust scrutiny mechanisms, and could affect up to 400 people per year (by contrast, only two TPIMs are currently in force).<sup>15</sup> The Delegated Powers and Regulatory Reform Committee has identified further concerns over the Secretary of State’s power to issue guidance to the police on “identifying persons” to be given an SDPO with limited consultation and Parliamentary scrutiny, calling it “an extreme example of a power to issue guidance on the exercise of statutory functions”<sup>16</sup> and risking impinging on the operational independence of the police.<sup>17</sup>

## AMENDMENTS TO REMOVE PROTEST-SPECIFIC STOP AND SEARCH

**Clause stand part amendment to remove protest-specific, suspicion-based stop and search,** in the names of Lord Paddick and Baroness Chakrabarti.

*Leave out Clause 10.*

**Clause stand part amendment to remove protest-specific, suspicion-less stop and search,** in the names of Lord Coaker, Lord Paddick, and Baroness Chakrabarti.

*Leave out Clause 11.*

### **Briefing**

- 9. Suspicion-based stop and search:** Clause 10 of the Bill amends section 1 of the Police and Criminal Evidence Act (PACE) 1984 to expand the types of offences that allow a police officer to stop and search a person or vehicle. The police officer must have reasonable grounds for suspecting they will find an article “made, adapted or intended for use in the course of or in connection with” ‘protest-related’ offences contained within the PCSC Act<sup>18</sup> and as proposed elsewhere in this Bill<sup>19</sup>. The police may seize any prohibited item found during a search.
- 10. Suspicion-less stop and search:** Clause 11 of the Bill creates a new suspicion-less stop and search power, such that a police officer of or above the rank of inspector may make an authorisation applying to a particular place for a specified period, which would allow police officers to stop and search someone or a vehicle without suspicion. They will be able to do this if they reasonably believe that one of the following offences may be committed in the area: wilful obstruction of a highway (section 137 of the Highways Act 1980), intentionally or recklessly causing public nuisance (section 78 of the PCSC Act), locking on (clause 1),

<sup>14</sup> Para 130, Public Order Bill: Explanatory Notes, May 2022, <https://publications.parliament.uk/pa/bills/cbill/58-03/0008/en/220008en.pdf>

<sup>15</sup> HL Deb 13 Dec 2022, vol. 826, col. 633

<sup>16</sup> Delegated Powers and Regulatory Reform Committee, *Public Order Bill*, 3 November 2022:

<https://committees.parliament.uk/publications/31504/documents/176700/default/>

<sup>17</sup> Lord Rooker, HL Deb 13 Dec 202, vol. 826, col.620.

<sup>18</sup> The offences of wilful obstruction of a highway (section 137 Highways Act 1980), intentionally or recklessly causing public nuisance (section 78 of the PCSC Act),

<sup>19</sup> Locking-on (clause 1), obstructing major transport works (clause 6), interfering with the use or operation of key national infrastructure (clause 7), causing serious disruption by tunnelling (clause 3), or causing serious disruption by being present in a tunnel (clause 4).

obstructing major transport works (clause 6), interfering with the use or operation of key national infrastructure (clause 7), causing serious disruption by tunnelling (clause 3), or causing serious disruption by being present in a tunnel (clause 4). Such authorisation can also arise if the officer reasonably believes that people in the area are carrying ‘prohibited objects’. ‘Prohibited object’ is defined as an object which is either made or adapted for the use in the course of or in connection with one of the listed offences, or is intended by the person who has it in their possession for such use by them or someone else. Clause 13 creates a specific offence for intentional obstruction during the course of a suspicion-less, protest-specific stop and search. The maximum penalty for obstruction is 51 weeks’ imprisonment, a fine not exceeding level 3 on the standard scale, or both.

11. **These measures mark a gross expansion of police powers.** There is potentially an endless list of objects that could be ‘made, adapted, or intended for use in the course of or in connection with’ the listed offences, so broad are the terms in this definition; indeed, it could include such commonplace items as bike-locks, posters, placards, fliers, and banners. **We believe that the creation of protest-specific stop and search powers risks disproportionately interfering with individuals’ rights to a private and family life as well as freedom of expression and assembly, and have knock-on effects for their willingness and ability to exercise their fundamental rights.**
12. **The expansion of suspicion-less stop and search powers to a protest context is particularly significant.** The JCHR highlights that the power to stop and search without reasonable suspicion has previously been introduced only to deal with “the most serious offending”, including where “serious violence” is anticipated or where it is believed weapons are being carried; or “where it is reasonably suspected that an act of terrorism will take place. In the JCHR’s words, “It is surprising and concerning that the Bill would introduce similar powers to deal not with serious offences punishable with very lengthy prison terms, but with the possibility of non-violent offences relating to protest, most of which cover conduct that is not even currently criminal.” **During the debate over this proposed power in the House of Lords during the passage of the PCSC Act, crossbench peer Lord Carlile of Berriew warned that “the dilution of without-suspicion stop and search powers is a menacing and dangerous measure” and that the power is “disproportionate, and the Government should think twice about it.**<sup>20</sup>
13. **These measures will further entrench racism in the criminal justice system.** Time and time again, on stop and search both with and without suspicion, evidence has shown that such powers are used disproportionately against racialised, minoritised, and migrant communities, particularly the Black community. We are deeply concerned that any expansion of such powers will entrench racial disproportionality in the criminal justice system and further erode trust in public institutions, contrary to the prohibition against discrimination in Article 14 of the European Convention on Human Rights as incorporated by the Human Rights Act 1998. In November 2021, the Home Office released its annual stop and search data which showed a sharp rise in the use of s.1 PACE, and according to the most recent statistics, Black people were seven times more likely to be stopped and searched than white people.<sup>21</sup> When the reasonable grounds requirement was removed, they were 14 times more likely to be stopped and searched.<sup>22</sup> At Second Reading of this Bill, Conservative MP Richard Fuller urged the Government to “think carefully” about extending such powers given the sheer

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<sup>20</sup> HL Deb 17 Jan 2022, vol.817, col. 1435

<sup>21</sup> Home Office, *Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2021*, 18 November 2021 available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2021>

<sup>22</sup> Home Office, *Public Order Bill: Equality Impact Assessment*, 2022, <https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-equality-impact-assessment>

amount of evidence on how they are already used disproportionately against communities of colour, particularly the Black community.<sup>23</sup>

14. **The traumatic impact of these measures is long-lasting.** Experiencing stop and search can be mentally and physically traumatising.<sup>24</sup> Hackney Account – a youth-led social action project – conducted participatory research with young people in Hackney, and found that the practice of stop and search can have “a damaging impact on mental wellbeing, causing feelings of embarrassment, humiliation or anger”.<sup>25</sup> This is further exacerbated by the fact that the police are empowered to use reasonable force to carry out a stop and search if necessary, including using taser, firearms, batons, and handcuffs.<sup>26</sup> The impact of discriminatory stop and search on affected communities is deep and enduring. Research by Dr Patrick Williams with young people on the Metropolitan Police Service (MPS)’s ‘Gangs Matrix’ found that respondents identified stop and search as “the catalyst for the onset of their negative relationship with the police.”<sup>27</sup> The Home Office itself acknowledges that the expansion of stop and search “would risk having a negative effect on a part of the community where trust and confidence levels are relatively low.”<sup>28</sup>
15. Clause 14 creates a new offence of obstructing a police officer in the conduct of a protest-specific, suspicion-less stop and search. We are concerned that this could criminalise Legal Observers seeking to support individuals who are being stopped and searched: for example, handing someone a bust card with legal advice could constitute obstruction.<sup>29</sup> Further, as highlighted by multiple parliamentarians during previous debates, the new obstruction offence “could [also] criminalise... the kind of questioning which was encouraged after the dreadful Sarah Everard case, when people were told in such situations to question whether the police officer had the authority to approach the person at all.”<sup>30</sup> Given declining trust in the police, especially among women<sup>31</sup> and people from racialised communities,<sup>32</sup> we need greater, not lesser, scrutiny of their powers – the creation of this offence moves us in the wrong direction.

## AMENDMENTS TO REMOVE THE OFFENCE OF ‘LOCKING ON’

**Clause stand part amendment to remove the offence of locking on,** in the names of Baroness Chakrabarti and Baroness Jones of Moulsecoomb.

*Leave out clause 1.*

**Clause stand part amendment to remove the offence of being equipped for locking on,** in the names of Baroness Chakrabarti and Baroness Jones of Moulsecoomb.

<sup>23</sup> HC Deb, 23 May 2022, vol. 715, col. 103

<sup>24</sup> Ali A. and Champion, N. for the Criminal Justice Alliance, More harm than good - A super-complaint on the harms caused by ‘suspicion-less’ stop and searches and inadequate scrutiny of stop and search powers, May 2021, available at: [https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search\\_FINAL.pdf](https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf)

<sup>25</sup> Hackney Account, *Policing in Hackney: Challenges from youth in 2020*, 2020, available at: <https://static1.squarespace.com/static/5d234a046f941b0001dd1741/t/5f77795b9e2fdb6bf67d3c7d/1601665467995/Final+Draft+-+Report+-+Account+%28Online%29.pdf>

<sup>26</sup> Ali A. and Champion, N. for the Criminal Justice Alliance, More harm than good - A super-complaint on the harms caused by ‘suspicion-less’ stop and searches and inadequate scrutiny of stop and search powers, May 2021, available at: [https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search\\_FINAL.pdf](https://www.criminaljusticealliance.org/wp-content/uploads/CJA-super-complaint-into-section-60-and-scrutiny-of-stop-and-search_FINAL.pdf)

<sup>27</sup> Williams, P. and StopWatch, *Being Matrixed: The (Over)Policing of Gang Suspects In London*, August 2018, at p. 6. Available here: [http://www.stop-watch.org/uploads/documents/Being\\_Matrixed.pdf](http://www.stop-watch.org/uploads/documents/Being_Matrixed.pdf)

<sup>28</sup> Home Office, *Public Order Bill: Equality Impact Assessment*, 2022, <https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-equality-impact-assessment>

<sup>29</sup> Netpol, *Protecting protest: Why independent legal observers remain essential*, 11 May 2022, available at: <https://netpol.org/2022/05/11/protecting-protest-article11/>

<sup>30</sup> Lord Beith, HL Deb 1 Nov 2022, vol. 825, col. 153.

<sup>31</sup> End Violence Against Women coalition, *Almost half o women have less trust in police following Sarah Everard murder*, 18 November 2021: <https://www.endviolenceagainstwomen.org.uk/almost-half-of-women-have-less-trust-in-police-following-sarah-everard-murder/>

<sup>32</sup> Yougov, *Trust in the police has fallen amongst ethnic minority Britons*, 15 December 2021: <https://yougov.co.uk/topics/politics/articles-reports/2021/12/15/trust-police-has-fallen-amongst-ethnic-minority-br>

Leave out clause 2.

## **Briefing**

16. Clause 1 establishes a new criminal offence of ‘locking on’, targeting people who attach themselves to another person, an object or land; attach a person to another person, an object or land; or attach an object to another object or to land; if such activities cause, or are capable of causing ‘serious disruption’ to two or more people or to an organisation in a public place. The person must intend for the act to have this consequence, or be reckless as to this result. There is a defence of ‘reasonable excuse’. Punishment for breach is 51 weeks’ imprisonment,<sup>33</sup> a fine, or both. Clause 2 creates a related offence of being equipped for locking on.
17. **This offence restricts our right to choose how we protest.** Throughout history, a broad and diverse range of protest tactics have been used to stand up to power and make our voices heard and our right to choose the how we protest is confirmed in case law.<sup>34</sup> For example, suffragettes from the Women’s Freedom League chained themselves to the grille in the Ladies’ Gallery in order to protest their exclusion from Parliament.<sup>35</sup> This offence not only defies our right to choose how we protest, but criminalises an innumerable list of activities, stretching beyond what would typically be understood as ‘lock-on protests’ (where people lock themselves to one another via a ‘lock-on’ device or chain themselves to Parliament<sup>36</sup>) to any activity involving people ‘attaching’ themselves to other people, an object, or land; or ‘attaching’ objects to other objects and land.<sup>37</sup>
18. **This offence widens the criminal dragnet.** Almost every term in the new offence is left undefined, including the word ‘attach’ – meaning that this offence could potentially catch people engaged in activities such as linking arms with one another<sup>38</sup> and trees,<sup>39</sup> or locking their wheelchairs to traffic lights.<sup>40</sup> The ‘object’ in the offence of locking on does not have to be related to a protest, nor does the object have to be used by the person who has it in their possession. What this means is that essentially any person walking around with a bike lock, packet of glue, roll of tape or twine, or any number of other everyday objects could be at risk of having been found to have committed this offence, so wide is the net cast by it. During debates on this amendment during the passage of the PCSC Act, Lord Paddick raised the following example: “You could buy a tube of superglue to repair a broken chair at home, then get caught up in a protest and be accused of going equipped for locking on.”<sup>41</sup>

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<sup>33</sup> The offence provides that a person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both. If the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, the maximum sentence will be six months; (b) if the offence is committed after that time, the maximum sentence will be 51 weeks.

<sup>34</sup> “Organisers’ autonomy in determining the assembly’s location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other ways, are *important aspects of freedom of assembly*. Thus, the purpose of an assembly is often *linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact.*” See *Lashmankin v Russia* (Application No.57818/09).

<sup>35</sup> The Grille Incident, UK Parliament. <https://www.parliament.uk/about/living-heritage/transformingsociety/electionsvoting/womenvote/parliamentary-collections/ladies-gallery-grille/grille-incident/>

<sup>36</sup> Sisters Uncut, “*We are the suffragettes!*”: *Sisters Uncut chain themselves to Parliament at government art launch*, 8 June 2016, available at: <https://www.sistersuncut.org/2016/06/08/we-are-the-suffragettes-sisters-uncut-chain-themselves-to-parliament-at-government-art-launch/>

<sup>37</sup> HL Deb 17 Jan 2022, vol.817, col. 1433.

<sup>38</sup> Stead, J., *The Greenham Common peace camp and legacy*, The Guardian, 5 September 2006, available at: <https://www.theguardian.com/uk/2006/sep/05/greenham5>

<sup>39</sup> Topham, G., *Priest to chain herself to tree at Euston in protest against HS2 felling plans*, The Guardian, 11 January 2018, available at: <https://www.theguardian.com/environment/2018/jan/11/priest-chain-tree-protest-euston-hs2-felling-plans-london>

<sup>40</sup> Susan Archibald is a disability rights campaigner who shut down Trafalgar Square with fellow activists in 2012 when they chained their wheelchairs to traffic lights in a protest against the UK welfare assessment regime, then administered by Atos. See: Paterson, K., *WATCH: Scots wheelchair stunt activist hits out at Policing Bill*, The National, 24 November 2021, available at:

<https://www.thenational.scot/news/19739616.watch-scots-wheelchair-stunt-activist-hits-policing-bill/> and Liberty’s series of videos showcasing the power of protest in which Susan is featured: <https://www.libertyhumanrights.org.uk/fundamental/we-protest/>

<sup>41</sup> HL Deb 24 Nov 2021, vol.816, col. 980



19. **This will create a chilling effect on the right to protest.** Although Clause 1(2) allows for the defence of ‘reasonable excuse’, we concur with the JCHR that this is an inadequate safeguard for the exercise of our right to protest, given that someone would have to be arrested before being able to plead the defence of reasonable excuse. Furthermore, as highlighted by the JCHR, the requirement on the defendant to show that they had a ‘reasonable excuse’ for locking on is notable for its reversal of the presumption of innocence, a central principle of criminal justice and an aspect of the Article 6 ECHR right to a fair trial.<sup>42</sup> In contrast to an offence like obstruction of the highway, where the prosecution must prove that the defendant did not have ‘lawful authority or excuse’ for their actions, for the new ‘locking-on’ offence the burden of proof would be on the defendant to show that he or she has a ‘reasonable excuse’, to a balance of probabilities. Where the constituent elements of the offence have been proved, a court may be 49% convinced that the defendant did have a reasonable excuse, but would still be required to convict. **What this means in practice is that defendants may find it more difficult to rely on this defence.**
20. **These measures have been criticised by police.** When consulted on an identical proposal by HMICFRS, “most interviewees [junior police officers] did not wish to criminalise protest actions through the creation of a specific offence concerning locking-on.”<sup>43</sup> As previously argued by Labour peer Lord Rosser: “The reality is that powers already exist for dealing with lock-ons. What we should be looking at is proper guidance, training and, as the inspectorate raised, improving our use of existing resources and specialist officers.”<sup>44</sup>

## CONCLUSION

21. At Second Reading, Conservative peer Viscount Hailsham urged peers to remember that “There is always a danger... that when seeking to address issues of public order Governments will go too far. Powers once given are hard to withdraw.”<sup>45</sup> **The Public Order Bill is an unprecedented attack on the right to protest, both in the breadth, scope, and severity of its measures. To safeguard our cherished civil liberties, we urge peers to oppose the Public Order Bill and vote for amendments that will mitigate its worst effects.**<sup>46</sup>

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<sup>42</sup> Joint Committee on Human Rights, *Government creating hostile environment for peaceful protest, report finds*, 17 June 2022, available at: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/171503/government-creating-hostile-environment-for-peaceful-protest-report-finds/>

<sup>43</sup> Pg 125, HMICFRS, *Getting the balance right? An inspection of how effectively the police deal with protests*, March 2021, available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf>

<sup>44</sup> HL Deb 17 Jan 2022, vol.817, col. 1433

<sup>45</sup> Viscount Hailsham, HL Deb 1 Nov 2022, vol.825, col.159.

<sup>46</sup> The signatories to this joint briefing are: Association of Chief Executives of Voluntary Organisations (ACEVO), Acorn, Action Aid, Advice for Renters, African Rainbow Family, Amnesty International, Another Europe Is Possible, Article 19, Black Activists Rising Against Cuts (BARAC), The Bat Conservation Trust, Big Brother Watch, Ben and Jerry’s, Black Equity Organisation, Bond, Campaign Against Climate Change, Children England, Christian Aid, Climate 2025, Climate Action Network UK, Community Policy Forum, Drive 2 Survive, Ecojustice Ireland, English Pen, the End Violence Against Women coalition, Fair Trials, Fair Vote, Fairer Housing, Fellowship of Reconciliation, Friends of the Earth, Four Paws, Free Tibet, Global Justice Now, Grassroots for Europe, Green Christian, Greener Jobs Alliance, Greenpeace, Gypsies and Travellers Essex, Haldane Society of Socialist Lawyers, Index on Censorship, the Joint Council for the Welfare of Immigrants (JCWI), Just Fair, Law for Life, Latin American Women’s Rights Service (LAWRS), Liberty, Maslaha, Museum of Homelessness, National Council of Voluntary Organisations (NCVO), Netpol, Nurses United, Open Britain, Open Spaces Society, Orgrave Truth and Justice Campaign, Peace Pledge Union, Police Spies Out Of Our Lives, Pregnant Then Screwed, Psychologists for Social Change, Quakers, Ramblers, Rene Cassin, Rights of Women, The Runnymede Trust, Sheila McKechnie Foundation, Sortition Foundation, Statewatch, The Humane League UK, The Movements Trust, Tibet Relief Fund, Tipping Point UK, Trades Union Congress, UK Open Government Civil Society Network, Unison, Unlock Democracy, War on Want, and We Own It.