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## The Public Order Bill – Report Stage Briefing, Lords

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The government is proposing a Public Order Bill (PO 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 PO 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 PO Bill in its entirety and/or vote to mitigate its worst effects, including through:**

- **Supporting 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
- **Supporting 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
- **Supporting 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
- **Voting against new government backed amendments in the names of Lord Hope, Lord Faulks and Lord Sharpe that would:**
  - Introduce offence-specific definitions of ‘serious disruption’ with extremely low thresholds, e.g. ‘more than minor’ hindrances to daily activities
  - Limit the scope of the reasonable excuse defence for certain new offences
  - Introduce three ‘more than minor’ disruption triggers to enable the police to pre-emptively impose conditions on, and potentially prevent, protests

### Summary

If implemented, the provisions in this Bill would leave the UK in breach of international human rights law. In September 2020, the UN Human Rights Council adopted revised commentary - [General comment No. 37](#) (2020) - on the right of peaceful assembly (Article 21 of the International Covenant on Civil and Political Rights) to provide detailed guidance on state obligations in relation their positive duty to uphold rights to peaceful assembly, which includes the right to peaceful protest. All the provisions contained in the PO Bill, in our view violate the principles contained within General Comment No.37., including relevant case law judgements noted within the commentary itself.

Amnesty has long held the view that Police have a very broad range of existing powers at their disposal to deal with offences that may take place during a protest. We are concerned that the breadth of those powers already give scope for subjective over policing and potential abuse of those

powers. For example, in a suppression of the rights of a free press, on November 2022, Hertfordshire Police arrested and detained [three journalists](#) for reporting on a number of environmental protests taking place. One female reporter from LBC radio was reportedly held in a police cell for five hours. The arrest of journalists for reporting in these circumstances is a fundamental breach of universally held rights, which should serve as a warning of the dangers of increasing police powers in these areas and further undermines the credibility of the UK as a champion of media freedoms on the world stage.

### **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. Moreover, in his closing statement to the 49<sup>th</sup> session of the Human Rights committee, in April 2022, Lord Ahmed of Wimbledon, Minister of State at the FCDO made specific reference to importance of this year's Human Rights Committee resolution passed on threats against Human Rights Defenders, a [resolution](#) that the UK government strongly supported. That resolution requires that Governments prevent measures that restrict fundamental rights through repressive actions, including excessive criminalisation of rights including freedom of assembly.

Given the UK Government's publicly declared commitment to promote open societies around the world and criticism of other States which restrict access to these rights, the UK's international reputation and credibility will be severely damaged if this Bill passes.

The UK often uses its voice on the international stage to condemn repressive policies in a number of countries.<sup>1</sup> Whilst Amnesty International does not compare or rank specific countries directly, and measures each country independently and objectively against relevant international human rights law and standards, it is striking to note that many of the provisions in the PO Bill mirror similar public order provisions in many of the same countries considered by the UK to be overly repressive by placing amongst other things, undue restrictions on the rights to freedom of assembly.

- 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 mirrors the restrictions proposed through Serious Disruption Prevention Orders (SDPOs) – for more detail see below – but SDPOs go further in also preventing participation. Also 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).
- In **Egypt**: Law No.107 for 2013 for “organizing the right to peaceful public meetings, processions and protests” appear to contain several similar restrictions to the proposed measures to prevent blocking of roads, transportation networks and infrastructure, with a similar level of prison sentences ranging from between 2 and 5 years.
- In the **Philippines**. Under the Presidential Decree 1877 Providing for the Issuance of a Preventive Detention Action 1983, the authorities may make pre-emptive arrests against individuals for committing acts which could endanger public order and the stability of state, in powers that appear similar to what's proposed under SPDOs, and prevent them from undertaking such activity for a period of up to a year.

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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)

- 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 SDPOs, though again SDPOs go even further in preventing not just the organisation of protests, but any participation. 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 **Turkey**, there are a number of public order laws that contain provisions similar to the PO Bill. For example, Article 28 of the Law on Meetings and Marches 1983 gives authorities the power to imprison people for up to three years who organise or participate in meetings and demonstrations deemed as unlawful. Other public order legislation contains similar stop and search powers and powers to confiscate a range of protest related items.

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.

### **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 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, regardless of the Government’s last-minute amendments that seek to soften the sharp edges of SDPOs.** Even with the Government proposed “compromises” that reduce their duration, prevent renewal more than once and remove electronic tagging, SDPOs remain unprecedented and highly draconian.

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 will risk depriving a large number of people a fundamental universal human right.

The Human Rights General Comment on the rights of peaceful assembly is again forthright in its condemnation of measures that criminalise individuals from exercising their fundamental rights in this way. It concludes that any preventive detention of targeted individuals for more than a few hours may constitute arbitrary deprivation of liberty which is incompatible with the right to peaceful protest. It goes on to conclude that where law may permit such detention, it may only be used in exceptional cases and for no longer than absolutely necessary and only in cases where authorities have clear proof that individuals will engage or incite acts of violence during a particular assembly. SPDOs set a threshold well below the minimum requirements for necessity, lawfulness and proportionality in this context and therefore cannot be reconciled with the UKs obligations under relevant international human rights 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>2</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.

Allowing 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.

### **New Government amendments on the definition of 'serious disruption' and Police use of powers to impose conditions.**

Amnesty International is opposed to these amendments and calls for Peers to vote against them in their entirety. In our view they are contrary to the UK's obligations under the International Covenant on Civil and Political Rights and are highly likely to be found to be in breach of the European Convention on Human Rights.

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<sup>2</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 amendments set the bar for the concept of ‘serious disruption’ at the level of conduct that causes ‘disruption that is more than minor’ to ordinary everyday life. This is an extremely low bar that is contrary to the ordinary meaning of the words used; contrary to the Office of the High Commissioner for Human Rights’ General Comment on the Right of Peaceful Assembly, which talks of ‘serious and sustained disruption’<sup>3</sup>; and contrary to the European Court of Human Rights (ECtHR) caselaw on ‘serious disruption’. This caselaw talks of disruption that is ‘more significant than that caused by the normal exercise of the right of peaceful assembly in a public place.’<sup>4</sup> It therefore both makes clear that disruption must be ‘significant’, and also that the appropriate starting point for measuring this disruption is a comparison with that which is inevitably caused by peaceful assembly, and which is thus inherently protected by Convention rights. Even then, the European Court has been clear that what it considers ‘serious disruption’, which as has been noted is already a much higher threshold than that which is proposed here, still falls within the scope of the protection of the relevant Convention rights.<sup>5</sup> As such, while it might be legitimate to interfere with the exercise of those rights in this manner, any such interference would have to continue to meet the requirements of legality, proportionality and necessity.

However, the Government’s amendments allow police commanders to impose conditions, effectively restrictions, on protests before they have even occurred. The use of these discretionary powers can be justified on the basis of other people’s conduct, at a different place, at a different time and regardless of whether or not that conduct was itself ‘seriously disruptive’. These powers are highly likely to breach all three requirements of legality, proportionality and necessity. Despite being presented as a clarification, the proposed definition of ‘serious disruption’ remains extremely vague; combined with its application being based on the conduct of others, prior to any actual activity by the effected person and at the discretion of a police commander, it then becomes impossible to see how a person could effectively regulate their conduct so as to comply with their obligations under the provision (as the principle of legality requires).

Furthermore, in all or almost all cases it will be disproportionate to prevent an individual (or group of individuals) from exercising their expression and assembly rights based on the conduct of others, over which they have no control. ECtHR caselaw has consistently rejected the conflation of all protesters engaged in the same protest, stating that the rights of individuals who are engaged in peaceful protest must be protected from interference even when others in the same protest are engaging in violence. This strong protection would conflict with the circumstances foreseen by these amendments, in which it would not even be the same protest (merely an ‘associated’ protest) and the conduct triggering the restriction on any measure falls well short of violence. Finally, it is impossible to see how the use of these powers could pass a test of necessity, given that they would by definition pre-empt any ‘serious disruption’ (however defined) from occurring and therefore prejudice conduct of the individuals affected.

**In accordance with the arguments set out within this briefing, Amnesty International urges Parliamentarians across the House to oppose the PO Bill in its entirety.**

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3 See Office of the High Commissioner for Human Rights, General Comment No. 37 (Right to Peaceful Assembly), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>

4 See Kudrevičius And Others V. Lithuania, *Application no. 37553/05*, *Grand Chamber Judgment*, 15 October 2015

5 Ibid.