

Briefing

Police, Crime, Sentencing and Courts Bill

Summary

On Tuesday 14th September the Police, Crime, Sentencing and Courts Bill will receive its Second Reading in the House of Lords. Friends of the Earth has serious concerns about Parts 3 and 4, set out in this briefing, and we believe they should be removed from the Bill in their entirety. The Bill attempts to seriously limit the right to peaceful protest, increase prison sentences, and give police more powers to arrest people for peaceful activities. It also criminalises the lifestyle of nomadic, Gypsy, Roma and Traveller communities, and limits access to nature.

Part 3: Public Order

This Bill poses a serious threat to some of our most fundamental rights, freedom of assembly and speech, which allows us to peacefully protest – and that are vital to any democratic society.

For decades, Friends of the Earth and its supporters have campaigned to improve the environment for people and the planet by taking to the streets in protest, or assembling in parks and squares. Time and time again this has been an essential part of winning positive changes to make our lives healthier, cleaner and more sustainable.

In recent years, protest was an essential part of the campaign against fracking. Numerous concerned communities protested outside council meetings, fossil fuel firms' headquarters, drilling sites and on high streets. Those communities and activists were vindicated and there is now a moratorium on fracking. These peaceful protests were often noisy, and may have caused inconvenience and perhaps annoyance to some. But that is no reason to restrict them. Yet this Bill would criminalise many of these protests and silence the voices of communities opposing unwelcome and destructive developments in the future.

Concerns about the protest provisions of the Bill extends across the whole of civil society. Over Hundreds of civil society organisations (including Liberty, RSPB, CAFOD, Big Brother Watch, Shelter, Amnesty UK and CPRE) and religious leaders signed a joint letter ahead of Second Reading describing the proposals as representing “an attack on some of the most fundamental rights of citizens”. Over 600,000 members of the public have signed a petition opposing these measures in the Bill.

However, concerns are not restricted to civil society organisations. A number of former police chiefs have strongly criticised Part 3 of the Bill:

- Former Chief Constable of Greater Manchester Police Sir Peter Fahy said: “People need to be really worried about this [Bill]...the right to protest, the right to gather, the right to have a voice is fundamental to our democracy, and particularly British democracy.”ⁱⁱ

- Former Chief Constable of Durham Constabulary Mike Barton said: “Fortunately, in the UK we are not a paramilitary-style police force. But these powers dangerously edge in that direction. Police chiefs will be seen as the arbiters of what is and is not allowed when it comes to protest.”ⁱⁱⁱ
- Former Metropolitan Police Commander John Sutherland said: “I’m not comfortable with an awful lot of what has been proposed... My greatest concern is that the new proposal pits the police against the communities that they serve.”

Two former Home Secretaries have spoken out. At Second Reading Rt Hon Theresa May MP said: “I do have some concerns about some of the aspects of the public order provisions in the Bill... freedom of speech is an important right in our democracy, however annoying or uncomfortable that might sometimes be.”

Former Labour Home Secretary Lord Blunkett has said that “by giving police forces sweeping discretion about how they deal with protesters, this law would drive a wedge between them and the public”.^{iv}

The Government has claim that it is committed to upholding the right to freedom of assembly and free speech. This has little credibility as its own watchdog The Equalities and Human Rights Commission has called on the Government to reconsider measures to expand powers to police peaceful protest, which it considers breach Articles 10 and 11 of the European Convention of Human Rights.

The Joint Committee on Human Rights has flagged concern about the impact the measures could have and the lack of justification for them. It has called for many of the clauses in Part 3 to be amended or removed from the Bill entirely and for the introduction of statutory protection for the right to protest^v.

Over 700 legal scholars have signed an open letter calling for Part 3 of the Bill to be removed in its entirety.^{vi}

Protest is the lifeblood of democracy and our country is much better for it. However, the government’s proposals would mean that ordinary citizens face being silenced for speaking out on vital issues.

The Government says that the right to peaceful protest is not threatened by these measures. This claim does not stand up to scrutiny of the details of the legislation:

- The Bill (Clauses 55, 56, 57) makes a number of changes to the Public Order Act 1986 including to dramatically expand the conditions that can be placed by the police on "static assemblies" to include any deemed necessary by a police officer (currently just the place, duration and size can be changed). This will create greater uncertainty for potential participants and organisers.
- The triggers for conditions will now include the protest being deemed too noisy, causing "serious disruption" to an organisation's activities or having a "relevant impact" on people in the vicinity including “serious unease”. This is an existential threat to a core purpose of protest - making the voices of the public heard to decision makers. The Secretary of State would be given the power to change the definition of "serious disruption" in Secondary Legislation creating yet more confusion and making protest more difficult for organisations to undertake with certainty. Police officers will be able to severely restrict a protest in anticipation that its noise might have an impact on the organisation or decision-makers it's directed at, or on

passers-by, making it effectively pointless. Citizens will be quite literally silenced by these measures, forced to consider whether their protest will be too noisy to be allowed to go ahead. The responsibility for implementing these vague conditions will fall to the police officers (possibly relatively junior ones at the scene of a small community demonstration), who will have to make quick decisions that will significantly impact on citizens human rights. The new legislation creates the expectation that the new rules are there to be used. Those targeted by noisy environmental protests will be quick to claim disruption to their activities and unease, which the police may feel compelled to act on.

- The threshold for prosecuting someone for breaching police conditions imposed on a protest is reduced in the Bill, so that the individual merely "ought to have known" about the conditions' existence, rather than knowingly breaching them, as is the case currently. This places the burden on protesters to find out about such conditions and on organisers to make them known. As a result, many will avoid attending or organising a protest for fear of arrest for breaching a condition that they were unaware of and receiving a criminal record. In particular, this may create further barriers for those from communities which already have disproportionately negative experiences of policing and the criminal justice system.
- The Bill increases the penalty for breaches of police conditions to up to 11 months imprisonment for organisers (from 3 months currently) and an increased fine for individuals attending. These are disproportionate punishments which the Government has offered no justification for and will increase the chilling effect.
- Clauses 58 and 59 create an extended buffer zone around Parliament, where it will be harder to protest for fear of creating an obstruction to vehicles.
- Clause 60 places an offence of intentionally causing a "public nuisance" in law, with a maximum sentence of 10 years for actions which include non-violently causing serious annoyance or inconvenience. These vague terms create a wide ranging and catch all offence which might capture many peaceful protests and is left open to interpretation, and will be confusing for those wishing to protest to navigate. The JCHR has serious concerns about this drafting and called for the Bill to be amended so that Articles 10 and 11 are specifically included as a defence in these cases.
- Clause 61 makes it possible to place conditions on protests by a single individual (at least 2 people are required currently) based on noise.

We believe that Part 3 of this Bill would threaten the democratic rights of citizens to make their voices heard through peaceful process, and it would damage the relationship between the police and the communities they serve. Smaller, community organisations and local campaigns without access to legal advice and dedicated staff are likely to be worst impacted by these changes.

The fact is that some protests are difficult, time consuming or inconvenient to police, and have impacts on those they're targeted at or the wider public. But that's not a reason for restricting them and criminalising those who organise and take part.

These measures make it easier for decision-makers and the powerful to avoid scrutiny, opposition and being held to account, while ordinary citizens face being silenced for speaking out on the issues that concern them. Protest is the lifeblood of democracy and our environment is better for it.

Part 4: Unauthorized Encampments

Part 4 of the Bill introduces new measures to create a new offence of trespass by “residing on land without consent in or with a vehicle”. This will criminalise the way of life of nomadic Gypsy, Roma and Traveller communities, already some of the most marginalised in the UK. The measures will push these communities into the criminal justice system while failing to provide adequate sites and permitted stopping places.

The new offence will even catch those who might be intending to reside, or who are on the land and suspected of intending to have a vehicle. Significantly it gives police the power to confiscate a vehicle of those suspected of the offence. For members of these communities, confiscating a vehicle isn't merely an inconvenience, it means seizing their homes and all their belongings within, with dire consequences for families.

This measure is opposed by the National Police Chiefs Council, with greater site provision being its preferred option for managing unauthorised encampments^{vii}. The courts have recognised and protected the right of the Gypsy and Traveller community to maintain a nomadic life style and the Equalities and Human Rights Commission has called on the Government to reconsider this legislation and increase the availability of authorised sites for the use of the GRT community^{viii}.

And the harm goes wider. Landowners wishing to make the countryside a hostile place for those seeking to enjoy it will gain a powerful new tool to deter wild campers, cyclists and others. It would send a signal that the countryside is not an open resource accessible to all, but a place of complex rules and regulations, with criminal sanctions for breaching them. This could deter those from communities with worse experiences of the criminal justice system, especially people of colour, who already face barriers to accessing the countryside.

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ⁱ <https://friendsoftheearth.uk/system-change/open-letter-home-secretary-and-secretary-state-justice> ⁱⁱ

<https://www.independent.co.uk/news/uk/politics/policing-bill-protest-priti-patel-b1817225.html> ⁱⁱⁱ

<https://www.independent.co.uk/news/uk/home-news/policing-bill-paramilitary-warning-b1823618.html> ^{iv}

<https://www.theguardian.com/uk-news/2021/apr/02/police-and-bill-will-create-toxic-legacy-warns-blunkett> ^v

<https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/156037/government-plan-to-change-law-to-restrict-demonstrations-breach-human-right-to-protest-says-ichr/>

^{vi} <https://www.independent.co.uk/news/uk/politics/police-bill-academics-letter-priti-patel-b1818695.html> ^{vii}

[https://hansard.parliament.uk/commons/2021-05-18/debates/4a680cae-4b28-4fd0-8dd2-f9d3a1ee04e8/PoliceCrimeSentencingAndCourtsBill\(FirstSitting\)#contribution-B8FFC3E4-8C51-46A3-AB6B-983C29EC4A2C](https://hansard.parliament.uk/commons/2021-05-18/debates/4a680cae-4b28-4fd0-8dd2-f9d3a1ee04e8/PoliceCrimeSentencingAndCourtsBill(FirstSitting)#contribution-B8FFC3E4-8C51-46A3-AB6B-983C29EC4A2C)

^{viii} <https://bills.parliament.uk/publications/41645/documents/309>