

LIBERTY

**BIG
BROTHER
WATCH**

**LIBERTY AND BIG BROTHER WATCH'S JOINT
BRIEFING ON THE PROTEST MEASURES IN
THE POLICE, CRIME, SENTENCING AND
COURTS BILL FOR THE "DO NOT RESTRICT
OUR RIGHTS TO PEACEFUL PROTEST"
PETITIONS DEBATE**

APRIL 2021

ABOUT LIBERTY

Liberty is an independent membership organisation. We challenge injustice, defend freedom and campaign to make sure everyone in the UK is treated fairly. We are campaigners, lawyers and policy experts who work together to protect rights and hold the powerful to account.

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at libertyhumanrights.org.uk/policy.

ABOUT BIG BROTHER WATCH

Big Brother Watch is a civil liberties and privacy campaigning organisation, fighting for a free future. We're determined to reclaim our privacy and defend freedoms at this time of enormous technological change.

We're a fiercely independent, non-partisan and non-profit group who work to roll back the surveillance state and protect rights in parliament, the media or the courts if we have to. We publish unique investigations and pursue powerful public campaigns. We work relentlessly to inform, amplify and empower the public voice so we can collectively reclaim our privacy, defend our civil liberties and protect freedoms for the future.

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INTRODUCTION

1. On Monday 26th April, MPs will debate the protest provisions in the Police, Crime, Sentencing and Courts Bill. The debate was triggered by the petition, “Do not restrict our rights to peaceful protest”, after it was signed by almost a quarter of a million people.¹ They stand united with many – across sectors and the country – who have used various means to make their voices heard against this Bill. This includes the over half a million signatories to petitions launched by civil society organisations calling for the Bill to be scrapped² and more than 700 legal academics from across Britain’s leading institutions calling for Part 3 to be removed.³ 250 organisations, from Liberty and Amnesty, to Friends of the Earth and Greenpeace; from Shelter and Crisis, to Right to Roam and the Ramblers; and from the Traveller Movement and Friends, Families and Travellers to Unite, the TUC and UNISON, wrote a joint letter to the Secretaries of State for Justice and the Home Department warning that the Bill “represents an attack of some of the fundamental rights of citizens.”⁴ And from London and Southampton, to Manchester, Newport and Cardiff, thousands of people have demonstrated to protect their right to do so.
2. The right to protest is the lifeblood of any democracy. But in recent years, the environment for people’s ability to make their voices heard has grown ever more hostile, with the State vested with increasingly significant powers to regulate protest. This pandemic has brought into sharper focus the attitude of the State towards this fundamental right. Research into the policing of Black Lives Matter protests in the Summer of 2020 showed that the Metropolitan Police used excessive force, including through practices such as kettling, the tactic of enclosing protestors in confined spaces for hours on end;⁵ and anti-lockdown protests were arrested under the false claims that protest was outright banned under coronavirus regulations.⁶ This past week, Avon and Somerset police issued an apology and have been forced to pay damages for similarly

¹ UK Government and Parliament Petitions, <https://petition.parliament.uk/petitions/579012>

² See, for example, petitions by [Greenpeace](#) (146,498 signatories), [350.org](#) (132,330 signatories) and [Friends of the Earth](#) (90,468 signatories).

³ Andrew Woodcock, ‘More than 700 legal scholars urge Boris Johnson to ditch ‘draconian’ restrictions on right to protest’, *The Independent* (17 March 2021) <https://www.independent.co.uk/news/uk/politics/police-bill-academics-letter-priti-patel-b1818695.html>

⁴ Friends of the Earth, *Open Letter to the Home Secretary and Secretary of State for Justice* (March 2021) <https://friendsoftheearth.uk/system-change/open-letter-home-secretary-and-secretary-state-justice>

⁵ The Network for Police Monitoring (NETPOL), *Britain is Not Innocent*, November 2020, page 4 <https://secureservercdn.net/50.62.198.70/561.6fe.myftpupload.com/wp-content/uploads/2020/11/Britain-is-notinnocent-web-version.pdf>

⁶ Damien Gayle and Mattha Busby, ‘Police arrest 155 anti-lockdown protesters in London’ *The Guardian* (28 November 2020) <https://www.theguardian.com/world/2020/nov/28/met-police-anti-lockdown-protest-london>

treating protest as banned and unlawfully arresting four protestors.⁷ In 2019, the Metropolitan Police banned Extinction Rebellion protests and falsely imprisoned hundreds of people, a move which was subsequently found to be unlawful by the High Court;⁸ and the Court of Appeal quashed the convictions of the Stansted 15, after they were illegally convicted on terrorism-related charges in 2017.⁹ The Lord Chief Justice in the Stansted 15 case stated that the protestors “should not have been prosecuted for the extremely serious offence,” and Lord Burnett said that “there was, in truth, no case to answer.”¹⁰ These instances, including of confusingly issued powers and unjustified offences, suggest that these tactics are becoming more normalised, all to threaten people against engaging in their human right to protest.

3. The fundamental rights to freedom of expression and freedom of assembly, contained in Article 10 and Article 11 of the European Convention on Human Rights (ECHR) respectively, are given domestic effect in Human Rights Act. The courts have reiterated that these rights are fundamental in a democratic society, and that, in order for them to be given meaningful effect, the state may only interfere with them in limited circumstances, and only where their action is “lawful, necessary and proportionate.”¹¹
4. The European Court of Human Rights (ECtHR) has warned that “any measures interfering with [these rights] other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it.”¹² The presumption, therefore, must always rest in favour of protecting these rights, and in the case of the UK, the police have a responsibility to facilitate their enactment.
5. Unnecessary criminalisation of dissent, which this Bill seeks to do, goes against the very best traditions of our history and completely undermines the public’s right to protest. The trajectory of public order legislation has largely moved in one direction – incrementally chipping away at people’s fundamental rights and weighting the balance of power heavily towards the authorities. Under the Public Order Act 1986 (POA), police have wide powers to impose conditions and prohibit protests, as well as broad discretion in how those

⁷ Damian Gayle, ‘Bristol police to pay damages for arrest of activists using Covid powers’, *The Guardian* (22 April 2021) <https://www.theguardian.com/world/2021/apr/22/bristol-police-to-pay-damages-for-arrest-of-activists-using-covid-powers>

⁸ ‘Extinction Rebellion: High Court rules London protest ban unlawful’, *BBC News* (06 November 2019) <https://www.bbc.co.uk/news/uk-50316561>

⁹ ‘Stansted 15 win appeal against conviction for deportation flight protest’, *BBC News* (29 January 2021) <https://www.bbc.co.uk/news/uk-england-essex-55859455>

¹⁰ *Thacker & Ors v R*, [2021] EWCA Crim 97 (29 January 2021)

¹¹ See: <https://www.equalityhumanrights.com/en/human-rights-act/article-10-freedom-expression>

¹² *Navalnyy v Russia* [2018] ECHR 1062 (15 November 2018)

powers are applied. It appears, then, that this Bill attempts to plug non-existent gaps and is intent on further strengthening State power. Should this Bill with its expansion of State power pass through Parliament in its current form, it will drastically limit the ability for all people to stand up to power.

6. Given the sweeping nature of these powers and the gravity of harm that they will enable, Liberty and Big Brother Watch believe these measures must be excised from the Bill entirely. Below are our key concerns.

IMPOSING CONDITIONS ON PUBLIC PROCESSIONS

7. Clause 54 amends section 12 of the POA to allow the police to impose conditions on a procession if they have a reasonable belief that the noise generated by persons taking part in the procession may “result in serious disruption to the activities of an organisation which are carried on in the vicinity of the procession” or may “have a significant and relevant impact on persons in the vicinity”. It confers a power on the Home Secretary to make regulations detailing the meaning of “serious disruption to the activities of an organisation carried on in the vicinity”.
8. Clause 54 establishes a new basis for police to impose conditions on processions: noisiness. It provides that if the noise a procession creates causes serious disruption or has a significant and relevant impact on people – which may include causing people to “suffer serious unease, alarm or distress” – the police may impose any conditions as appear necessary to prevent it.
9. These proposals would constitute a gross expansion of police powers, which strike at the heart of the fundamental right to protest. Protests, by their very nature, are noisy. Noise is also a crucial means of expressing collective solidarity or grief and, quite literally, making voices heard by those in power. The noise protests generate may simply be a product of the number of people who assemble – like the hundreds of thousands of people who came together in the streets to attend the countryside march,¹³ oppose the Iraq War¹⁴ or make their voices heard on Brexit¹⁵ – which is often a central ingredient of effective protest. As legal academic Professor David Mead commented, the proposed

¹³ Tania Branigan ‘400,000 bring rural protest to London,’ *The Guardian* (23 Sep 2002)

<https://www.theguardian.com/uk/2002/sep/23/hunting.ruralaffairs2>

¹⁴ ‘Million’ march against Iraq War,’ *BBC News* (16 February 2003) <http://news.bbc.co.uk/1/hi/uk/2765041.stm>

¹⁵ ‘Brexit March: Million joined Brexit protest, organisers say,’ *BBC News* (23 March 2019)

<https://www.bbc.co.uk/news/uk-politics-47678763>. See also: Mark Townsend ‘March organisers hail ‘one of the greatest protest marches in British history,’’ *The Guardian* (19 October 2019) <https://www.theguardian.com/uk-news/2019/oct/19/peoples-vote-march-hailed-as-one-of-greatest-protest-marches-in-british-history>

power to regulate protests simply because it will generate noise that might have certain effects is an “existential threat to protest, so closely entangled are protests with noise”.¹⁶

10. Liberty and Big Brother Watch are concerned by the wide discretion this and other powers established by Part 3 afford to the police. Broad discretion is likely to lead to the police facilitating some protests while clamping down on others, based on a range of political and structural factors. Liberty and Big Brother Watch are also concerned that this type of overbroad policing power may make public order situations more difficult for frontline officers. As we have commented before, overbroad and disproportionate powers are not necessarily a boon for police, but can instead place an unhelpful burden on the exercise of their professional discretion. Further, such powers may in fact set up confrontation between protestors and the police.
11. Clause 54 (4) allows the Secretary of State for the Home Department the power to delineate by way of secondary legislation what constitutes the “serious disruption to the life of the community” test under the POA and the new “serious disruption to the activities of an organisation which are carried on in the vicinity” test which this Bill seeks to establish. These regulations may “give examples of cases in which a public procession is or is not to be treated” as meeting these thresholds. This gives the Government of the day an expansive power – subject to limited Parliamentary scrutiny – to effectively declare the kind of protests and causes it deems inconvenient or unacceptable, and provide the police a licence to limit them. As former Prime Minister and Home Secretary Theresa May cautioned during second reading, “it is tempting when Home Secretary to think that giving powers to the Home Secretary is very reasonable, because we all think we are reasonable, but future Home Secretaries may not be so reasonable [...] I would urge the Government to consider carefully the need to walk a fine line between being popular and populist. Our freedoms depend on it.”¹⁷

IMPOSING CONDITIONS ON PUBLIC ASSEMBLIES

12. Clause 55 replicates the power to impose conditions based on noisiness contained in clause 54 and applies them to static assemblies. Additionally, it removes the caveat under section 14 of the POA that conditions on static assemblies may only be imposed on the place an assembly may be held, its maximum duration or the maximum number of people attending, in so far as they apply to assemblies in England and Wales. Under clause 55

¹⁶ David Mead ‘Yes, you can... but only if you’re quiet,’ *Verfassungsblog* (17 March 2021) <https://verfassungsblog.de/uk-silence-protest/>

¹⁷ HC Deb 15 March 2021 vol 691

any conditions that “appear necessary” could be imposed on static assemblies, aligning sections 12 and 14 of the POA.

13. This clause largely mirrors clause 54 and reiterates the concerns outlined at paragraphs 8-11.
14. Liberty and Big Brother Watch are concerned by the attempt to reduce the limits on powers to regulate static assemblies. The existing distinction between sections 12 and 14 reflects the less disruptive impact of, and the relative ease with which police can facilitate, static assemblies compared to marches. These provisions erode that necessary distinction. As then Home Secretary Lord Hurd of Westwell noted during second reading of the Public Order Act 1986, “[w]e stopped short of a power to ban because we believed that that would be an excessive limit on the right of assembly and freedom of speech. For this reason, clause 14 does not permit the police to impose conditions changing the date and time of an assembly. They will be able only to impose conditions limiting its size, location or duration”.¹⁸ Liberty and Big Brother Watch consider that extending the wide-ranging powers police are afforded to regulate processions is a disproportionate interference with the right to protest.

BREACH OF POLICE-IMPOSED CONDITIONS

15. Clause 56 reduces the knowledge requirement for an offence to be committed under sections 12 and 14 of the POA, so it is no longer necessary to prove that a person actually knew of the conditions, just that they “ought to have known” a condition was in force.
16. Sections 12 and 14 of the POA already criminalise behaviour that would not in itself be a criminal offence but for the imposition of conditions by the police. Clause 56 goes a step further and risks criminalising people who unwittingly breach conditions the police impose. This places an additional undue burden on the organisers of protests to inform protestors of conditions and on protestors themselves to gather information on any conditions that might be imposed. It may disproportionately criminalise small, under-resourced and spontaneous protest groups. Furthermore, people who are digitally excluded – which disproportionately includes disabled, older, and poor people – may not have access to information that, for example, the police communicate on digital platforms.

¹⁸ HC Deb 13 January 1986 vol 89 797

17. Legal experts writing on this language have pointed out how the terminology ‘ought to have known’ is a “vague term, hard to define, harder to enforce and possibly impossible to effectively convict.”¹⁹ With the inconsistent approach to protest that we have witnessed during this pandemic, such terminology will only serve to further entrench discriminatory policing. Many people may avoid organising or attending protests for fear of arrest for breaching a condition they were not aware of, while others may attend a protest but feel compelled to follow what they are told is a necessary condition but turns out is not in force or legally invalid.
18. Clause 56 is rendered more worrying by provisions which significantly increase the maximum sentence for breaching a police-imposed condition. The Bill increases the maximum sentence for an organiser who falls foul of a condition by 266%, from three to eleven months imprisonment. It also increases the maximum fines that may be imposed on both an organiser and attendee of a protest from level 3 to level 4 on the standard scale. These changes would substantially extend the criminal sanctions that could be imposed on people for the exercise of a fundamental right when they engage in behaviour – such as simply being in a particular place at a particular time – that is not in itself a criminal offence, save for the imposition of conditions by the police.

LIMITING PROTESTS AROUND PARLIAMENT

19. Clause 57 amends 142A of the Police Reform and Social Responsibility Act 2011 (PRSR) to widen the geographical scope of the controlled area around Westminster where particular activities cannot take place. It also adds “obstructing, by the use of any item or otherwise, the passage of a vehicle” that is entering or exiting the Parliamentary Estate to the activities that are prohibited in the controlled area under section 143 of the PRSR.
20. Clause 57 extends the controlled area around Parliament where “prohibited activities” cannot take place to include Canon Row, Parliament Street, Derby Gate, Parliament Square and other roads within the district of Victoria Embankment. It also expands the list of conduct that constitutes a prohibited activity – which currently includes operating amplified noise equipment and erecting tents or other sleeping equipment – to include obstructing vehicular access using “any item or otherwise”. This is a sweeping provision, which, unlike the existing prohibited activities, does not appear to require a person to have any equipment, inviting the police to target anyone in the area. A direction to desist

¹⁹ Richard Gibbs ‘The headline criticisms thrown at the Police, Crime, Sentencing and Courts Bill are simply wrong,’ April 21 2021 <https://www.conservativehome.com/platform/2021/04/richard-gibbs-the-headline-criticisms-thrown-at-the-police-crime-sentencing-and-courts-bill-are-simply-wrong.html>

from doing any of the prohibited activities listed above can last up to 90 days and may be given orally. Failure to comply with such a direction without reasonable excuse is a criminal offence and is liable on summary conviction to a fine not exceeding level 5.

21. Expanding the geographical scope where restrictions can be applied and the type of restrictions that can be imposed would be a retrograde step, which would mirror the effect of the widely criticised provisions in the Serious Organised Crime and Police Act 2005 which the PRSR repealed. As a matter of human rights law, States have a duty not to place unnecessary obstacles in the way of people wishing to protest and a positive obligation to facilitate protest.²⁰ The right to freedom of assembly includes the right to choose the time, place and modalities of any protest.²¹ As the Court of Appeal has held, protest “becomes effectively worthless if the protestor’s choice of ‘when and where’ to protest is not respected as far as possible.”²²
22. Any legislation that will limit the scope to protest in the vicinity of Parliament gives rise to particularly acute concerns. Liberty and Big Brother Watch are concerned that these provisions could create a *de facto* buffer zone around Parliament. While protests may commonly have the effect of irritating those they seek to influence and prominent protests in Westminster may cause embarrassment to the Executive, this is no justification for making protest around Parliament a criminal act.
23. Given Clause 57 extends the PRSRA provisions which prohibit rough sleeping and pitching tents in the area of Parliament Square to apply to a much wider area, Liberty and Big Brother Watch note that these clauses will not only affect protesters but also may impact upon homeless people and others in the vicinity of Parliament. With the Vagrancy Act 1824 looking likely to be repealed – a move that Liberty and homelessness organisations have long campaigned for and wholeheartedly support – we caution that other legislation might be utilised to target homeless people. There is a long history of criminalisation and enforcement against homeless people around Parliament.²³ We are concerned that these provisions may lead to the PRSR Act powers being used to criminalise rough sleepers over a much wider area, which could amount to social cleansing in areas of national importance and beyond.

²⁰ *Ollinger v Austria*, Application No. 76900/01.

²¹ *Sáska v. Hungary*, Application no. 58050/08.

²² *Singh and ors, R (on the Application of) v Chief Constable of West Midlands Police* [2006] EWCA Civ 1118, at para 87

²³ Adam Forrest, “Homeless people kicked out of underpass next to parliament ‘so MPs can get to work,’” *The Independent* (25 March 2019) <https://www.independent.co.uk/news/uk/home-news/homeless-people-westminster-tunnels-parliament-mps-police-sleep-rough-a8839076.html>

POWER TO SPECIFY OTHER AREAS AS CONTROLLED AREAS

24. Clause 58 gives the Secretary of State the power to list alternative areas as controlled areas under the PRSR should Parliament relocate temporarily.
25. Liberty and Big Brother Watch consider the controlled area established by the PRSR and the powers to limit activity within it as a disproportionate interference with the rights to freedom of expression and assembly in an area which is arguably the most effective location for protest – opposite the main gates to the Palace of Westminster, the principal entrance and exit for Cabinet Ministers, parliamentarians and members of the public. Therefore, we cannot support its application to other areas, should Parliament temporarily relocate.

INTENTIONALLY OR RECKLESSLY CAUSING PUBLIC NUISANCE

26. Clause 59 abolishes the common law offence of public nuisance and replaces it with a wider offence of intentionally or recklessly causing serious harm or risk of serious harm to the public, or obstructing the public in the exercise or enjoyment of a right.
27. The new statutory offence that this clause intends to create would be committed by intentionally or recklessly causing serious harm. This is interpreted broadly to include not only “serious distress, serious annoyance, serious inconvenience or serious loss of amenity” but also the *risk* of someone suffering those things. The maximum custodial sentence is ten years. While there is a “reasonable excuse” defence, this is an attenuated safeguard as it is only available once a person has been criminally charged.
28. The proposed statutory offence is incredibly broad. In the explanatory notes that accompany the Bill, the offence is said to be intended to target conduct “such as hanging from bridges”.²⁴ However, the wording of the offence is far broader than this – given that many if not most protests may cause, or may risk causing, “serious annoyance”, a vast array of protestors may fall foul of an offence that involves a sentence of up to ten years imprisonment. This is an unacceptably broad basis upon which to regulate protest. As the Court of Appeal held in *Tabernacle v Secretary of State for Defence*, “rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are likely to be inconvenient and tiresome, at least perceived as such by others who are out of sympathy with them.”²⁵ These proposals could render such nuisances criminal acts, and

²⁴ Police, Crime, Sentencing and Courts Bill Explanatory Notes <https://publications.parliament.uk/pa/bills/cbill/58-01/0268/en/200268en.pdf>

²⁵ *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23

as a result of them deprive someone of their liberty for a long and arguably disproportionate sentence.

29. These provisions have been described as reviving an “almost moribund” common law offence, in that it had been rendered redundant by the establishment of environmental protection offences and offences relating to grossly offensive communications.²⁶ When the common law offence has been used against protesters it has been subject to legal challenge – in 2018 the Court of Appeal quashed the custodial sentences that had been imposed on people protesting against fracking on the basis that they were “manifestly excessive”.²⁷ It is precisely this sort of “manifestly excessive” sentence that the Government is proposing to legislate, despite guidance from case law that this would be inappropriate.

30. During second reading, Secretary of State for Justice Robert Buckland commented that clause 59 “amounts to no more than a reiteration of the excellent work of the Law Commission. To say anything else is, frankly, once again a confection, a concoction and a twisting of the reality”.²⁸ Clause 59 does seek to implement the Law Commission’s 2015 recommendation to codify the offence, which formed part of a larger project on simplifying the criminal law.²⁹ However, the 2015 report did not consider the application of public nuisance to protests. It did note that their proposed defence of reasonableness would include cases where the individual is exercising a right under Article 10 or Article 11 of the ECHR, but then noted that it is “somewhat difficult to imagine examples in which this point arises in connection with public nuisance”.³⁰ Further, the Law Commission did not propose a maximum custodial sentence of a decade. While the Government is drawing on the Law Commission’s recommendation to support their position, they are using it for purposes the Commission never intended and certainly did not support.

IMPOSING CONDITIONS ON ONE-PERSON PROTESTS

31. Clause 60 establishes a new police power to impose conditions on one-person protests on the basis that the noise generated will seriously disrupt the activities of an organisation

²⁶ David Mead, ‘Some initial thoughts on the Police, Crime, Sentencing and Courts Bill – The New Public Order Powers in Clauses 54-60’, *Protest Matters*, 12 March 2021, <https://protestmatters.wordpress.com/2021/03/12/some-initial-thoughts-on-the-police-crime-sentencing-courts-bill-the-new-public-order-powers-in-clauses-54-60/>

²⁷ *R v Roberts (Richard)* [2018] EWCA Crim 2739

²⁸ HC Deb 16 March 2021 Vol. 691

²⁹ The Law Commission, ‘Simplification of Criminal Law: Public Nuisance and Outraging Public Decency’, 24 June 2015, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/438195/50076_Law_Commission_HC_213_print.pdf

³⁰ The Law Commission, ‘Simplification of Criminal Law: Public Nuisance and Outraging Public Decency’, p.45 24 June 2015, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/438195/50076_Law_Commission_HC_213_print.pdf

or cause significant impact on people in the vicinity. It may be punished with a maximum sentence of 51 weeks imprisonment or a level 4 fine.

32. Liberty and Big Brother Watch consider these clauses – designed specifically, and for the first time ever, to stifle individuals protesting alone from exercising their fundamental rights – are entirely disproportionate. They appear drafted in response to Steven Bray, the campaigner who has stood alone outside Parliament for many years to protest against Brexit, but have much wider implications.³¹ We note that a one-person protestor does not need to actually know that a condition has been applied in order to be guilty of the offence, just that they *ought to have known*. Moreover, Clause 50 (11) makes it a criminal offence for someone to incite someone to engage in a one-person protest, should conditions be applied to them that they have then proceeded to ignore. It is unclear how such a measure will be policed, with interested members of the public simply stopping to engage in conversation with a one-person protestor potentially at risk of triggering the offence.

33. This clause largely mirrors clause 54 and reiterates the concerns outlined at paragraphs 8-11.

CRIMINALISATION OF TRESPASS

34. Clause 61 establishes a criminal offence of trespass by amending Part 5 of the Criminal Justice and Public Order Act 1994 to include residing, or intending to reside, on land without consent in or with a vehicle, including if a person intends to have a vehicle with them. It also gives police the power to seize property and remove vehicles.

35. As we have discussed previously,³² the measures outlined in this part of the Bill will have significant impact on Gypsy and Traveller communities, by potentially leaving them homeless, compounding the inequalities experienced by them and pushing them into the criminal justice system.³³ Countless groups advocating against limiting access to the countryside have also spoken out about the trespass measures in this Bill and their impact in deterring wild campers, cyclists and others.³⁴ However, for the purpose of this

³¹ Sophia Sleight 'Stop Brexit Steve' Bray could be silenced under new policing law, Sadiq Khan warns,' *Evening Standard* (19 March 2021) <https://www.standard.co.uk/news/politics/stop-brexit-steve-bray-silenced-protest-policing-bill-sadiq-khan-b925183.html>

³² Liberty *Police, Crime, Sentencing and Courts Bill Briefing* March 2021 <https://www.libertyhumanrights.org.uk/wp-content/uploads/2021/03/Libertys-Briefing-on-the-Police-Crime-Sentencing-and-Courts-Bill-HoC-2nd-reading-March-2021-1.pdf>

³³ Friends, Families and Traveller *Police, Crime, Sentencing and Courts Bill Briefing* 24 March 2021 <https://www.gypsy-traveller.org/wp-content/uploads/2021/03/Briefing-on-new-police-powers-PCSCBill-and-CJPOA-24th-March-FINAL.pdf>

³⁴ Ramblers *Police, Crime, Sentencing and Courts Bill Briefing* 16 March 2021 <https://www.ramblers.org.uk/policy/england/access/trespass.aspx>

briefing and its use in the petitions debate, we only outline below how this clause affects protest.

36. Liberty and Big Brother Watch are concerned that this vaguely drafted clause will give landowners the chance to criminalise activity arbitrarily, and allow the police to arrest people simply on suspicion by an officer that they might ‘intend’ to reside. The potential for abuse of this legislation is obvious and significant, and Policing Minister Kit Malthouse failed to address these concerns in the recent petitions debate against the criminalisation of trespass.³⁵
37. Criminalising trespass ‘with intent to reside’ would criminalise protest camps (currently a matter for civil law), further closing down space for peaceful protest. As Friends of the Earth have identified, protest camps have been a feature of environmental and peace protests for decades. They state, “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 activities were vindicated and there is now a moratorium on fracking.”³⁶ Such a profound shift in this country’s approach to tackling climate disaster would arguably not have happened were it not for the actions of ordinary people campaigning at the sites of targeted power holders. This restriction could render actions such as picketing by strikers at their workplace – a point of significant pride for this country – or protests outside nuclear power plants illegal. And as we have previously identified, the fact that the alleged offences might not stand up in court is of little help, since it already has a chilling effect on the right to protest.

CONCLUSION

38. Taken into consideration individually, the preceding clauses in Parts 3 and 4 of the Police, Crime, Sentencing and Courts Bill give rise to grave concerns. But they become even more damaging when understood cumulatively. By targeting the tools that make protest meaningful, not only do you dissuade people from expressing their views and standing up for what they believe in, but you undermine democracy, and the crucial measures of accountability and scrutiny that uphold it.

³⁵ HC Deb Vol 692 19 April 2021

³⁶ Friends of the Earth *Police, Crime, Sentencing and Courts Bill Briefing*, 15 March 2021

<https://friendsoftheearth.uk/system-change/why-police-crime-sentencing-and-courts-bill-harmful-piece-legislation-1>

39. Protest is not a gift from the State, but a fundamental right. And many of this country's most hard-won and deeply cherished freedoms have been won through its enactment. We strongly urge Parliament to remove this Part in its entirety.