

BIG BROTHER WATCH

**Big Brother Watch briefing
on the Police, Crime,
Sentencing and Courts Bill;
Commons consideration of
House of Lords amendments**

February 2022

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. The Police, Crime, Sentencing and Courts Bill poses a direct threat to the right to protest. This Bill has been roundly condemned by hundreds of civil society organisations¹ and legal academics,² former Home Secretaries,³ police chiefs,⁴ and over half a million signatories to petitions launched by organisations calling for the Bill to be removed,⁵ as well as people across the UK who have demonstrated to protect their right to do so.
2. Measures which interfere with the fundamental rights to freedom of expression and freedom of assembly, protected by Article 10 and Article 11 of the European Convention on Human Rights (ECHR) respectively, will only be lawful where they are provided by law, necessary and proportionate. 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.”⁶ The presumption must rest in favour of protecting these rights and the authorities have a positive obligation to facilitate their enactment.
3. Unnecessary criminalisation of dissent, which this Bill seeks to do, goes against the very best traditions of our history and 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 powers are applied. It appears that this Bill 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 for what they believe in.
4. During the passage of the Bill through the Commons, the Home Office Parliamentary Under Secretary of State, Victoria Atkins MP, argued that the legislation will not explicitly ban protests.⁷ The use of such a claim in defence of a Government’s Bill is a remarkable reflection on the extreme, undemocratic nature of the provisions in the

¹ 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>

² 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-letterpriti-patel-b1818695.html>

³ HC Deb 15 March 2021 vol 691. See also Tobi Thomas, ‘Police and crime bill will create toxic legacy, warns Blunkett’, The Guardian (02 April 2021) <https://www.theguardian.com/uk-news/2021/apr/02/police-and-bill-will-create-toxic-legacy-warns-blunkett>

⁴ Rob Merrick, ‘Police should be ‘really worried’ about new crackdown on right to protest, ex-police chief says,’ The Independent (15 March 2021) <https://www.independent.co.uk/news/uk/politics/policing-bill-protest-priti-patel-b1817225.html>. Maya Oppenheim, ‘UK heading towards ‘paramilitary policing’ under proposed policing protest laws, warns ex-police chief,’ The Independent (28 March 2021) <https://www.independent.co.uk/news/uk/home-news/policing-bill-paramilitary-warning-b1823618.html>.

⁵ See, for example petitions by [Greenpeace](#) (146,498 signatories), [350.org](#) (132,330 signatories) and [Friends of the Earth](#) (90,468 signatories). See also the quarter of a million signatories to the “Do Not Restrict our Right to Peaceful Protest” petition, UK Government and Parliament Petitions, <https://petition.parliament.uk/petitions/579012>

⁶ *Navalnyy v Russia* [2018] ECHR 1062 (15 November 2018)

Bill. Clearly, a blanket ban on the right to protest would breach the right to freedom of expression protected by Article 10 of the Human Rights Act. However, the Bill would drastically restrict the right to protest in a wide range of circumstances, including preventing some protests from taking place outside of Parliament and rescinding limits on how the police may restrict assemblies. This could result in the application of conditions which could nullify such a demonstration entirely.

5. The Minister also argued that the provisions in Part 3 will not result in the imprisonment of more people.⁸ However, changing the law so that those in breach of protest conditions who “ought to have known” about them will be committing an offence; increasing penalties for such breaches; codifying a broad, otherwise “moribund”, Public Nuisance Offence; and creating an expansive catalogue of protest offences will not only result in excessive criminalisation – it will have a broader chilling effect on protest.
6. During the passage of the Bill through Parliament, the Government have cited cases of protesters blocking emergency services as justification for provisions within this Bill⁹. It is important to note that it is already a criminal offence to obstruct or hinder emergency workers responding to emergency circumstances under the Emergency Workers (Obstruction) Act 2006. Therefore, instances of individuals deliberately blocking the routes of ambulances can be dealt with under existing criminal law.
7. Report Stage scrutiny of Part 3 of the Bill, which predominantly engages the right to protest, took place in the House of Lords on Monday 17 January. In the course of the session, Peers inflicted 14 defeats on the Government. This included the introduction of 4 protest-related amendments which engaged existing elements of Part 3 and the outright rejection of 6 Government amendments, which had sought to make material changes to the Bill late in its passage through Parliament.
8. During the House of Commons’ Third Reading of the Bill, which saw it receive criticism from all sides of the House, Conservative backbencher Steve Brine MP actively encouraged Members of the House of Lords to address the problems posed by Part 3 of the legislation. Speaking during the debate he said, “I actually agree with some of what my right hon. Friend the Member for Haltemprice and Howden (Mr Davis) said. The parts of the Bill on protest are not right just yet, and I predict that they will have a challenging time in the other place.”¹⁰. Now that Peers have accordingly improved the Bill, it is vital that MPs accept these changes.
9. This briefing is solely focused on protest rights affected by the Police, Crime, Sentencing and Courts Bill, specifically Lords’ amendments to Part 3 of the Bill. We believe that the provisions within Part 3 of the Bill actively undermine the right to assembly and the right to free expression. Given the sweeping nature of these

⁷ POLICE, CRIME, SENTENCING AND COURTS BILL, Public Bill Committee, House of Commons Official Report, 8 June 2021, [https://hansard.parliament.uk/commons/2021-06-08/debates/5461eefa-46db-44f6-8a2f-9278c1404bf4/PoliceCrimeSentencingAndCourtsBill\(NinthSitting\)](https://hansard.parliament.uk/commons/2021-06-08/debates/5461eefa-46db-44f6-8a2f-9278c1404bf4/PoliceCrimeSentencingAndCourtsBill(NinthSitting))

⁸ Ibid.

⁹ Ibid.

¹⁰

powers and the gravity of harm that they will enable, Big Brother Watch believes that MPs must support Lords amendments 73, 80 and 87 which remove the new protest “trigger” and threats to both static assemblies and one-person protests.

LORDS AMENDMENT 73 (LORD ROSSER) – REMOVAL OF NOISE AS NEW CRITERIA FOR PLACING CONDITIONS ON PROCESSIONS

10. The PCSC Bill as originally drafted amends section 12 of the Public Order Act (POA) 1986 to allow the police to impose conditions on (and thus limit) 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”.
11. 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 dissent 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, which is often a central ingredient of effective protest. As legal academic Professor David Mead commented, the proposed 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”.¹¹
12. Big Brother Watch is 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. We are also concerned that this type of overbroad policing power may make public order situations more difficult for frontline officers by creating an unhelpful burden on the exercise of their professional discretion. This was reflected in a speech by Lord Oates during Report Stage in the House of Commons when he asked “Do we really think that a senior police officer should be put in a position where they have to take on the responsibility of determining whether a protest should go ahead at the place proposed or on the route planned on the basis of the noise that protest may generate and the impact that it may have on people?”¹²
13. During Committee Stage in the House of Commons, the Minister, Victoria Atkins, inferred that the new noise criteria for adding conditions to a protest may vary in its application depending on whether the buildings surrounding the protest in question

¹¹ David Mead ‘Yes, you can... but only if you’re quiet,’ Verfassungsblog (17 March 2021) <https://verfassungsblog.de/uk-silence-protest/>

¹² HL Deb, 24 November 2021, vol. 816, col. 939

are double or single-glazed.¹³ This demonstrates the absurd nature of this provision which would be subjective in its application and could result in the curtailment of almost any protest in practice.

14. During House of Lords Report Stage, Lord Coaker (Lab) moved amendment 73 to clause 55, to leave out subsections (2) and (3). This has the effect of removing provisions which would allow police to limit processions based on the criteria of noise.

15. The amendment supported a recommendation of by Parliament's Joint Committee on Human Rights. In their report on Part 3 of the Bill the Committee said:

*"The Bill introduces a new "trigger" for the police to impose restrictive conditions on public assemblies and processions based on the noise they produce. This new trigger is neither necessary nor proportionate, and should be removed from the Bill."*¹⁴

16. The new noise trigger was criticised across the House during its passage through the House of Lords, including by Conservative Peer Lord Cormack who said:

*"Sticking yourself to the roof of a train or a road seems something that we should deal with—but not noise... this is not sensible, and nor is it practical."*¹⁵

17. The amendment was overwhelmingly supported by the House of Lords who voted 261 content to 166 not content. The amendment was supported on a cross-party basis and saw the largest Conservative rebellion on Part 3 of the PCSC Bill so far, with 9 Conservative Peers voting in favour. 51 Crossbench peers also supported the amendment.

18. Analysis and recommendation: Police already have the power to add conditions to a procession where it is causing "serious disruption to the life of the community". A new trigger based on noise could result in the limitation of any significant procession and seriously threatens the rights to free assembly and free expression. MPs must support this amendment.

LORDS AMENDMENT 80 (LORD PADDICK) - REMOVAL OF FORMER CLAUSE 56 REGARDING CONDITIONS ON PUBLIC ASSEMBLIES

19. As formerly drafted, Clause 56 of the PCSC Bill replicates the power to impose conditions based on noisiness contained in Clause 56 and applies them to static assemblies.

¹³ POLICE, CRIME, SENTENCING AND COURTS BILL, Public Bill Committee, House of Commons Official Report, 8 June 2021, [https://hansard.parliament.uk/commons/2021-06-08/debates/5461eefa-46db-44f6-8a2f-9278c1404bf4/PoliceCrimeSentencingAndCourtsBill\(NinthSitting\)](https://hansard.parliament.uk/commons/2021-06-08/debates/5461eefa-46db-44f6-8a2f-9278c1404bf4/PoliceCrimeSentencingAndCourtsBill(NinthSitting))

¹⁴ Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order), Joint Committee on Human Rights, 16 June 2021, p3, <https://committees.parliament.uk/publications/6367/documents/69842/default/>

¹⁵ HL Deb. 17 January 2022, Vol. 817 Col. 1401

20. Clause 56 also 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 56, any conditions that “appear necessary” could be imposed on static assemblies, aligning sections 12 and 14 of the POA.
21. Big Brother Watch is 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. If the impetus for this change is so that powers in relation to processions and assemblies are “equalised” in the interests of clarity, we query why they are being levelled down (i.e. via repeal of the limits on the nature of the conditions that can be imposed on assemblies) rather than levelled up (i.e. via imposition of limits on the nature of conditions that can be imposed on processions). 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”.¹⁶
22. Further, it is not clear what conditions the Government are seeking to give the police the power to impose on protests beyond those which restrict the place an assembly may be held, its maximum duration or the maximum number. This subtle change, regarding the limits that can be placed on conditions imposed, could conceivably have dramatic consequences for protesters – affording the police near unfettered discretion to impose any condition they see fit including, for example, restrictions on the words or slogans that can be expressed on placards.
23. Amendment 80 was moved by Lord Paddick (Lib Dem) during House of Lords Report Stage and has the effect of removing clause 56 of the Bill.
24. The removal of noise as a trigger for limiting static assemblies was recommended by the JCHR.¹⁷ The Committee also noted their concern at the expansion of the Police’s power to limit static assemblies and said that this expansion should be confined to the addition of a condition as to the start and finish times of an assembly but this recommendation has not been adhered to and the police’s power to limit assemblies under this new provision would be limitless.¹⁸

¹⁶ HC Deb, 13 January 1986, vol. 89, col. 797

¹⁷ Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order), Joint Committee on Human Rights, 16 June 2021, p3, <https://committees.parliament.uk/publications/6367/documents/69842/default/>

¹⁸ Ibid, P22.

25. The amendment was overwhelmingly supported by the House of Lords who voted 238 content to 171 not content. Those who voted in favour of the amendment spanned across the House and included 43 Crossbenchers and 3 Conservative Peers.
26. **Analysis and recommendation: Static assemblies should not be regulated on the basis of noise and new police powers to limit protests of this kind are neither necessary or proportionate. As such MPs must support this amendment.**

LORDS AMENDMENT 87 (LORD PADDICK) – REMOVAL OF FORMER CLAUSE 61 REGARDING RESTRICTIONS ON ONE-PERSON PROTESTS

27. The PCSC Bill as formerly drafted establishes a new police power to impose conditions on (and thus suppress) one-person protests on the basis that the noise generated will seriously disrupt the activities of an organisation or cause significant impact on people in the vicinity. Breach of these conditions may be punished with a maximum sentence of 51 weeks imprisonment or a level 4 fine.
28. Big Brother Watch believes that this clause is entirely disproportionate. We note that a one-person protester 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 61 (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 protester potentially at risk of triggering the offence.
29. This clause largely mirrors Clause 56 and reiterates the concerns outlined at paragraphs 10-11.
30. Amendment 87 was laid by Lord Paddick (Lib Dem) during Report Stage in the House of Lords and has the effect of removing Clause 61 from the Bill. The amendment was supported on a cross-party basis and passed unanimously and without a division.
31. The JCHR also recommended that this Clause be removed from the Bill in its entirety.¹⁹
32. **Analysis and recommendation: Big Brother Watch considers this clause – designed to stifle individuals protesting alone from exercising their fundamental rights – entirely disproportionate. Criminal law already covers individual behaviour that is threatening or even disruptive. As such, it is vital that MPs support this amendment.**

¹⁹ Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order), Joint Committee on Human Rights, 16 June 2021, p20, <https://committees.parliament.uk/publications/6367/documents/69842/default/>

CONCLUSION AND RECOMMENDATIONS

33. Taken into consideration individually, the wide-sweeping clauses in Part 3 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 will Government dissuade people from expressing their views and standing up for what they believe in, but undermine democracy, and the crucial measures of accountability and scrutiny that uphold it.

34. In order to safeguard the rights to free assembly and free expression, Big Brother Watch urges MPs to support all three of these Lords amendments (73, 80 and 87) to the PCSC Bill as they consider changes made by the House of Lords.

36. 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 the public's ability to protest. We strongly urge Parliament to protect the rights to freedom of assembly and freedom of expression and excise these aspects of the Bill.