The United Kingdom's Police, Crime, Sentencing and Courts Bill

Analysis of compliance with international human rights standards

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I. Introduction[1]

The provisions in Part 3 (cl.54-cl.60) of the Police, Crime, Sentencing and Courts Bill ('the Bill')[2] relating to public order powers and the regulation of protest are a direct response to calls by the Commissioner of the Metropolitan Police, Dame Cressida Dick, for changes to the law that would allow the police (in her words) to more *"safely and effectively manage"* highly disruptive protests.

In February 2020, the Commissioner stated that *"ever since the first large-scale Extinction Rebellion protest in April [2019]"* she had been engaging with government about possible reforms to:

> *"... enable the police to deal better with protests in general ... but specifically to deal with protests where people are not primarily violent or seriously disorderly but ... had an avowed intent to bring policing to its knees and the city to a halt ..."*[3]

In September 2020, the Government commissioned Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) to conduct an inspection into the policing of protests. The HMICFRS report ('Getting the Balance Right?') was published on 11 March 2021 – two days after the Police, Crime, Sentencing and Courts Bill was introduced into Parliament - and lends support to the Government's overarching justification for the protest powers and penalties included in the Bill.

The Bill was initially debated by MPs during its 2nd reading in the House of Commons on 15-16 March and is due next to be considered by a Public Bills Committee (date still to be announced at the time of writing).[4]

This briefing examines the provisions of the Bill primarily through the lens of the UN Human Rights Committee's recently adopted General Comment No. 37 on the Right of

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[1] This analysis was prepared by the European Center for Not-for-Profit Law Stichting (ECNL) in collaboration with Michael Hamilton, Associate Professor of Public Protest Law, School of Law, University of East Anglia and member of OSCE-ODIHR Panel on Freedom of Assembly and of Association (@LawOfProtest). ECNL is very grateful to Blinne Ní Ghrálaigh and David Mead for comments on an earlier draft. Responsibility for any errors or omissions remains with the authors.

In memory of Christof Heyns, who passed away on 28 March 2021 and who, as the UN Human Rights Committee's Rapporteur for General Comment No.37 (the right of peaceful assembly), led the drafting of this landmark standard-setting document.

[2] Police, Crime, Sentencing and Courts Bill, https://publications.parliament.uk/pa/bills/cbill/58-01/0268/200268.pdf

[3] 'Met chief: update public nuisance law to tackle Extinction Rebellion', *The Guardian*, 5 February 2020.

[4] The Bill's progression through Parliament can be tracked here. For background to the Bill, see Jennifer Brown and Sally Lipscombe, 'Police, Crime, Sentencing and Courts Bill: Part 3 and 4, Public order and unauthorized encampments.' House of Commons Library Briefing Paper (Number 9164, 12 March 2021). For additional commentary and analysis, see David Mead, 'Yes, you can ... but only if you're quiet: The UK's plans to silence "noisy" and "annoying" protest in the Police, Crime, Sentencing, and Courts Bill 2021' (*Verfassungsblog*, 17 March 2021); David Mead, 'Some fuller initial thoughts on the Police, Crime, Sentencing, and Courst Bill 2011 – the new public order powers in clauses 54-60' (*ProtestMatters*, 14 March 2021); Good Law Project, 'Police, Crime, Sentencing and Courts Bill 2021 ("PCSC Bill") – Briefing for MPs' (*Good Law Project*, 15 March 2021).

Peaceful Assembly[5] as guaranteed under Article 21 of the International Covenant on Civil and Political Rights. We also refer to other regional standard-setting sources from the Council of Europe (Venice Commission), the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the jurisprudence of the European Court of Human Rights (ECtHR). The analysis concludes with two comparative tables which show the original provisions and how they would look following the amendments proposed by Part 3 of the Bill. These tables are included in the two annexes to this briefing.

II. The rationale and approach behind the Bill: the cost of protests

The HMICFRS report published on 11 March 2021 highlights disruptive demonstrations by animal rights and environmental protesters as well as Black Lives Matter protests in the wake of the killing of George Floyd (and related counter-demonstrations).[6] It refers to pro- and anti- Brexit demonstrations and to anti-lockdown protests.[7] It expressly forewarns of the challenges presented by the prospect of "more large-scale and sustained protests as the UK Government hosts the G7 summit in Cornwall in June 2021, and the United Nations climate conference (COP 26) in Glasgow in November 2021."[8] In particular, the report also points to the claimed costs of policing Extinction Rebellion (XR) protests in April and October 2019[9] and to purported financial losses suffered by private companies (HS2 and NewsUK).[10]

> ***The examples of protests by different human rights and environmental groups – and the repeated emphasis on the costs associated with these protests – have been relied upon by the Home Secretary to justify the new powers and penalties set out in the Bill.***

> ***Protesters, however, often seek to convey, confront and challenge views on critical matters of public interest. Indeed, a key rationale for the protection of the right of peaceful assembly is that protesters lack the financial wherewithal to lobby government, or to effectively compete for visibility and attention in a marketized and saturated media environment. It is for this reason that international human rights standards reject any attempt to justify the imposition of restrictions on protest on grounds of cost – or indeed to reallocate the cost burdens of***

[5] Human Rights Committee, General Comment no. 37 (2020) on the right of peaceful assembly (article 21).
[6] HMICFRS, 'Getting the balance right? An inspection of how effectively the police deal with protests' (11 March 2021). pp.17-18 – protests variously against badger culling, fracking and the construction of the HS2 rail line.
[7] HMICFRS, 'Getting the balance rights?', p.18.
[8] HMICFRS, 'Getting the balance rights?', p.18 and p.110.
[9] The HMICFRS report (at p.17) cites 'Extinction Rebellion protests cost police £37 million and led to other investigations being shut' *The Telegraph*, 22 October 2019 and draws unfavourable comparison with the annual budget of London's violent crime taskforce (see also the Foreword to the report). The report further states (at p.56) that the policing operation in relation to the anti-fracking protests in Lancashire between 2017 and 2019 'cost £11m.'
[10] In this regard, the HMICFRS report states (at p.23) that 'News UK estimates that it incurred losses in excess of £1m' as a result of XR's blocking the entrances and exits to Newsprinters on 4 September 2020. The report further states (at p.35) that HS2 estimated 'the direct costs from protest to HS2 and its supply chain to be £32m'.

> *protecting protest (holding instead that these must be borne by the State).*

UN Human Rights Committee's General Comment No. 37, para 64:
Requirements for participants or organizers either to arrange for or to contribute towards the costs of policing or security, medical assistance or cleaning, or other public services associated with peaceful assemblies are generally not compatible with article 21.

OSCE/ODIHR – Venice Commission, Guidelines on Freedom of Peaceful Assembly (3rd edition), para 155:
Organizers should not be required to pay for the facilitation of peaceful assemblies by the State. State authorities should not make the policing or facilitation of a peaceful assembly contingent on the payment of the respective costs by the organizers. The facilitation of assemblies is an inherent part of the role of law enforcement and needs to be undertaken by the state regardless of the nature, size or other circumstances surrounding an assembly. [...]

It is accepted that the right of peaceful assembly is a qualified right that can legitimately be subject to proportionate restrictions in certain circumstances. However, as further outlined below, the protest powers and penalties that the Bill seeks to introduce are overbroad and can only serve to fundamentally chill the exercise of the right of peaceful assembly.

Furthermore, it is worth noting that the Home Office policy paper on 'Protest Powers', in summarising the objectives of the provisions on policing protests, argues that the Bill "*will improve the police's ability to manage such protests, enabling them to dedicate their resources to keeping the public safe*."[11] As highlighted below, the Bill proposes unduly broad restrictions that aim to *manage* rather than to facilitate and protect the fundamental right to freedom of peaceful assembly.

The proposed Bill risks conflating potentially legitimate concerns about 'public order' with a policy driven 'law and order' narrative. In this regard, General Comment No. 37 emphasizes that the term 'public order' (in international human rights treaties) and 'law and order' (as a policy objective) are not the same thing.

UN Human Rights Committee, General Comment No. 37, para 44:
'Public order' refers to the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded, which also entails respect for human rights, including the right of peaceful assembly. States parties should not rely on a vague definition of 'public order' to justify overbroad restrictions on the right of peaceful assembly. [...] 'Public order' and 'law and order' are not synonyms, and the prohibition of 'public disorder' in domestic law should not be used unduly to restrict peaceful assemblies.

[11] UK Government (Home Office), Policy Paper: Police, Crime, Sentencing and Courts Bill 2021: protest powers factsheet (16 April 2021).

The avowed goal of the Bill seems to be to deter forms of protest activity that fall within the scope of international human rights protections. This is an attempt to negate the oppositional and disruptive values that are intrinsic to an effective right of peaceful assembly and right to protest. **As such, the Bill, if introduced in its current form, would fundamentally tilt the balance away from the facilitation and protection of an effective right of peaceful assembly towards the 'effective management' of the right by the police.**

III. State obligations to promote an enabling environment for peaceful assemblies

The starting point for considering any draft legislation must be the overarching obligation on States to promote an enabling environment for the exercise of the right of peaceful assembly: **according to international human rights standards, States have 'positive duties' to facilitate the exercise of the right to peaceful assemblies as well as 'negative duties' to refrain from unjustifiable interferences that would undermine the exercise of the right.**

UN Human Rights Committee, General Comment No. 37, para 8:
The recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination. This requires States to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants.

UN Human Rights Committee, General Comment No. 37, para 23:
The obligation to respect and ensure peaceful assemblies imposes negative and positive duties on States before, during and after assemblies. The negative duty entails that there be no unwarranted interference with peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause.

UN Human Rights Committee, General Comment No. 37, para 24:
Moreover, States parties have certain positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives. States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. [...]

UN Human Rights Committee, General Comment No. 37, para 36:
[...] The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.

UN Human Rights Committee, General Comment No. 37, para 74:
[...] The basic approach of the authorities should be, where necessary, to seek to facilitate peaceful assemblies.

OSCE/ODIHR – Venice Commission, Guidelines on Freedom of Peaceful Assembly (3rd edition), para 21:
Presumption in favour of (peaceful) assemblies. Freedom of peaceful assembly is recognized as a fundamental right in a democratic society and should be enjoyed, as far as possible, without regulation.
OSCE/ODIHR – Venice Commission, Guidelines on Freedom of Peaceful Assembly (3rd edition), para 22:
Positive obligation to facilitate and protect. States have a positive duty to facilitate and protect the exercise of the right to freedom of peaceful assembly. This duty should be reflected in the legislative framework and relevant law enforcement regulations and practices. It includes a duty to facilitate assemblies at the organizer's preferred location and within 'sight and sound' of the intended audience.

> *The background Home Office Policy Protest Powers Factsheet summarising the objectives of provisions on protests of the Bill refers repeatedly to the 'management' of protest (a term akin to 'control'): "The Government is proposing several changes in the law which will improve the police's ability to proactively manage the most disruptive protests and provide punitive outcomes that reflect the seriousness of offences committed by protesters."*

> *The Bill, however, places a thumb on the scale of State regulation (rather than on the effective exercise of the right) and fails to reflect the State's negative duty to protect assemblies from 'unwarranted interference'. This fails to recognize the obligations on State authorities to 'respect and ensure', and to 'facilitate' and 'protect' peaceful protest.*

IV. Deliberately disruptive peaceful protest in international human rights law

It is important to consider the level of protection afforded by international human rights standards to deliberately disruptive but peaceful protest. As already noted, the right of peaceful assembly is a qualified right which may be subject to lawful, necessary and proportionate restriction. Its exercise may of course bring it into conflict with the rights and freedoms of others. However, the European Court of Human Rights has emphasized that:

> *"... where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance."*[12]

In *Kudrevičius v Lithuania* (2015), the European Court of Human Rights recognized that *"physical conduct purposely obstructing traffic and the ordinary course of life in order to seriously disrupt the activities carried out by others"* is *"not an uncommon occurrence in the*

[12] For example, *Oya Ataman v Turkey*, judgment of 5 December 2006, para 42.

context of the exercise of freedom of assembly in modern societies." While describing such seriously disruptive action as not being *"at the core of that freedom as protected by Article 11 of the Convention,"*[13] the Court nonetheless held that such action falls within the protective scope of the right of peaceful assembly:

> *"... the Court does not consider that the impugned conduct of the demonstrations for which the applicants were held responsible was of such a nature and degree as to remove their participation in the demonstration from the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention."*[14]

Likewise, the OSCE/ODIHR – Venice Commission *Guidelines on Freedom of Peaceful Assembly* unequivocally indicate **that the essence of right to peaceful assembly incorporates some degree of disruption.**

OSCE/ODIHR – Venice Commission, Guidelines on Freedom of Peaceful Assembly (3rd edition), para 143:
Some degree of disruption with respect to these rights must be tolerated if the essence of the right to peacefully assemble is not to be deprived of any meaning. Furthermore, neither temporary disruption of vehicular or pedestrian traffic, nor opposition to an assembly, are of themselves legitimate reasons to impose restrictions on an assembly.

The UN Human Rights Committee has also emphasized that *"[p]eaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration."* Moreover, General Comment No. 37 is emphatic that dispersal of a peaceful disruptive assembly can only ever be justified if the disruption is both serious *and* sustained.

This cumulative requirement of disruption being both 'serious and sustained' is specifically intended to preclude dispersal in cases involving either serious disruption that is short-lived or long-term disruption that does not meet the requisite threshold of seriousness.

UN Human Rights Committee, General Comment No. 37, para 7:
In many cases, peaceful assemblies do not pursue controversial goals and cause little or no disruption. The aim might indeed be, for example, to commemorate a national day or celebrate the outcome of a sporting event. However, peaceful assemblies can sometimes be used to pursue contentious ideas or goals. Their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity. These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy. To the extent that an event may create such disruptions or risks, these must be managed within the framework of the Covenant.

[13] *Kudrevičius and Others v. Lithuania*, Appl no. 37553/05, judgment of 15 October 2015, para 97 (protest by farmers blocking major intersection); *Annenkov and Others v Russia*, Appl no. 31475/10, judgment of 25 July 2017, para 127 (overnight sit-ins on market premises). Also, See also, *Tuskia and Others v Georgia*, Appl no. 14237/07, judgment of 11 October 2018, paras 74-75 (unauthorized entry to University Rector's office).

[14] *Kudrevičius and Others v. Lithuania*, Appl no. 37553/05, judgment of 15 October 2015, para 98 (though holding that the protesting farmers had ultimately been subject to proportionate restrictions that fell within the margin of appreciation enjoyed by Lithuania).

UN Human Rights Committee, General Comment No. 37, para 44:
[…] Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration. […]

UN Human Rights Committee, General Comment No. 37, para 85:
An assembly that remains peaceful while nevertheless causing a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is 'serious and sustained'.

V. Additional thresholds for intervention proposed in the Bill

The current law (the Public Order Act 1986) provides for the imposition of conditions on assemblies where a senior police officer reasonably believes that a 'public procession' (section 12(1)) or 'public assembly' (section 14(1)) *"may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or where the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do."*

The Bill elaborates a further trigger for police intervention based on the purported noisiness of an assembly when it may result in serious disruption to the activities of an organisation which are carried on in the vicinity and that may have a significant impact on persons in the vicinity. This additional ground for the imposition of conditions on assemblies stands to fundamentally erode the protections afforded by Article 21 ICCPR and Article 11 ECHR. The most problematic elements of this proposed trigger are considered further below.

1. Noisy assemblies that may have serious disruption to the activities of an organisation

The Bill proposes the creation of a trigger for the imposition of conditions on public processions (cl.54(2)(a)), assemblies (cl.55(2)(b)), and one-person protests (cl.60) where the noise generated *"may result in serious disruption to the activities of an organisation which are carried on in the vicinity"* of the assembly. It might be assumed that the phrase, 'activities of an organisation' is intended to include the commercial activities of businesses in the vicinity of an assembly or protest (though the meaning is left to the Home Secretary to clarify).

In this regard, it is notable that General Comment No. 37 cites as an example of the cumulative impact of sustained gatherings, "*assemblies held regularly at night in residential areas*." The General Comment, however, emphasizes that **business enterprises have a responsibility to respect the right of peaceful assembly and may thus be expected to accept some level of disruption arising as a result of the exercise of the right.**

UN Human Rights Committee, General Comment No. 37, para 31:
States parties hold the primary responsibility for the realization of the right of peaceful assembly. However, business enterprises have a responsibility to respect human rights, including the right of peaceful assembly of, for example, communities affected by their activities and of their employees. Private entities and broader society

may be expected to accept some level of disruption as a result of the exercise of the right.
UN Human Rights Committee, General Comment No. 37, para 51:
Concerning restrictions on the time of assemblies, participants must have sufficient opportunity to manifest their views or to pursue their other purposes effectively. Peaceful assemblies should generally be left to end by themselves. Restrictions on the precise time of day or date when assemblies can or cannot be held raise concerns about their compatibility. with the Covenant. Assemblies should not be limited solely because of their frequency. The timing, duration or frequency of a demonstration may, for example, play a central role in achieving its objective. However, the cumulative impact of sustained gatherings may be weighed in a proportionality assessment of a restriction. For example, certain assemblies held regularly at night in residential areas might have a significant impact on those living nearby.

2. Noisy assemblies that may have a significant impact on persons in the vicinity – including 'serious unease'

The Bill (cl.54(3), cl.55(5) & cl.60(6)) seeks to introduce a vanishingly low threshold for regulation where conditions can be imposed on a procession, assembly or single-person protest because the noise it generates may cause 'serious unease, alarm or distress'.

As the above-mentioned Home Office policy paper on 'Protest Powers' outlines, the police can restrict protest not only when they reasonably believe that noise from the protest may cause 'serious disruption to an organisation's activities' but also when it may cause 'significant impact on people in the vicinity of the protest' and 'impact' is broadly defined to include *"intimidation, harassment, serious unease, serious alarm, or serious distress with the police then having to consider whether the impact is significant."*[15]

While the European Court of Human Rights has itself accepted the threshold of 'intimidation',[16] the inclusion of additional vague and overbroad terms such as 'serious unease' and 'serious alarm or distress' is of particular concern.

In relation to the latter threshold ('serious alarm or distress') it is notable that, following his country visit to the UK in 2013, the UN Special Rapporteur on the Rights of Peaceful Assembly and of Association expressed concern that punishing "*threatening or abusive words or behaviour or disorderly behaviour, or displays any writing, sign or other visible representation which is threatening, abusive, within the hearing or sight of a person likely to be caused harassment,* ***alarm or distress***" (in section 5 of the Public Order Act 1986) may unduly capture and curtail *"direct action by peaceful protestors … and hence may curtail freedom of peaceful assembly."*[17]

In relation to the threshold of 'serious unease', it is the very essence of an effective right to protest that it remains capable of causing discomfort. Where protesters seek to challenge the status quo,

[15] UK Government (Home Office), Policy Paper: Police, Crime, Sentencing and Courts Bill 2021: protest powers factsheet (16 April 2021).
[16] ECtHR *Fáber v Hungary*, Appl No 40721/08, judgment of 24 July 2012, para 56 – and drawing, at para 18, on the US cross-burning case of *Virginia v Black* 538 US 343 (2003).
[17] A/HRC/23/39/Add.1, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, Mission to the United Kingdom of Great Britain and Northern Ireland (17 June 2013), para. 16.

they inevitably cause some level of 'unease' – even 'serious unease' – for those who might be opposed to change. This has been true of all major societal advances initiated by courageous acts of protest – including by movements against segregation, apartheid and slavery to name but a few. It must also be true of environmental protest which calls on us all to fundamentally alter the way we live.

As General Comment No. 37 categorically states, any restrictions imposed must not 'impair the essence of the right.' International human rights law also emphasizes that the grounds enumerated in treaty provisions to justify the restriction of rights "*should not be supplemented by additional grounds in domestic legislation, and should be narrowly interpreted by the authorities.*"[18]

To extend the grounds for restriction to 'serious unease' is effectively to supplement the legitimate aims set out in article 11(2) ECHR and Article 21 ICCPR because the threshold is neither one recognized in human rights law nor implies the need to undertake careful assessment of whether other concrete 'rights and freedoms' are actually engaged on the facts of a particular case.[19]

Indeed, by focusing on the noise generated by protests, the Bill also stands to undermine the 'sight and sound' principle – i.e., that those exercising the right of peaceful assembly should be able (both visibly and audibly) to reach their target audience and be heard even if that causes some unease.

UN Human Rights Committee, General Comment No. 37, para 22:
[...] Moreover, while the time, place and manner of assemblies may under some circumstances be the subject of legitimate restrictions under article 21, given the typically expressive nature of assemblies, participants must as far as possible be enabled to conduct assemblies within sight and sound of their target audience.

UN Human Rights Committee, General Comment No. 37, para 47:
Restrictions imposed for the protection of 'the rights and freedoms of others' may relate to the protections under the Covenant or other human rights of people not participating in the assembly. At the same time, assemblies are a legitimate use of public and other spaces, and since they may entail by their very nature a certain level of disruption to ordinary life, such disruptions must be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions.

UN Human Rights Committee, General Comment No. 37, para 53:
The regulation of the time, place and manner of assemblies is generally content neutral, and while there is some scope for restrictions that regulate these elements, the onus remains on the authorities to justify any such restriction on a case-by-case basis. Any such restrictions should still, as far as possible, allow participants to assemble within sight and sound of their target audience, or at whatever site is otherwise important to their purpose.

[18] E.g. OSCE/ODIHR – Venice Commission, Guidelines on Freedom of Peaceful Assembly (3rd edition), para 130.
[19] OSCE/ODIHR – Venice Commission, Guidelines on Freedom of Peaceful Assembly (3rd edition), para 143 (and corresponding footnotes, 270-274).

VI. Proposed regulatory scheme for one-person protests

In parallel with the proposed new grounds for imposing conditions on public processions and public assemblies, the Bill proposes the creation of a regulatory scheme to enable the imposition of conditions on one-person protests in public places (cl.60 of the Bill). As with processions and assemblies, this scheme relies on a senior police officer having a reasonable belief that the noise generated will seriously disrupt the activities of an organisation or cause significant impact on persons in the vicinity.

The same concerns about the low thresholds for intervention (raised above in relation to marches and assemblies) also apply here. Moreover, the necessity of subjecting one-person protests to regulation has not been established by the government (and is nowhere addressed in the Home Office 'protest powers factsheet'). In addition, it is also important to note that the move to regulate one-person protests engages article 19 ICCPR on freedom of expression. General Comment No.37 specifically addresses the issue of single person protesters:

> **UN Human Rights Committee,** General Comment No. 37, para 13:
> While the notion of an assembly implies that there will be more than one participant in the gathering, a single protester enjoys comparable protections under the Covenant, for example under article 19.

VII. The meaning of 'serious disruption' in the Bill and process for determining it

The Bill (cl.54(4), cl.55(6) & cl.60(16)) arrogates to the Home Secretary the power to publish Regulations on the meaning of 'serious disruption' (including the meaning of serious disruption to 'the activities of an organisation') and to include in these regulations examples of what is or is not 'serious disruption.' The Home Office factsheet seeks to justify such regulations as being necessary to *"enable the police to make use of their powers with the confidence that they are doing so legally."*[20] This is problematic in both procedural and substance terms.

In procedural terms, the above-mentioned regulations are to be made by statutory instrument and a draft laid before and approved by a resolution of each House of Parliament (cl.54(15)). However, this affirmative resolution procedure lacks the opportunities for Parliamentary scrutiny that exist in respect of primary legislation. Given that the nature of disruption is itself self-explanatory, **one can only surmise that the regulations will focus on threshold questions of 'seriousness' – and if this is so, it is even less appropriate for the threshold to be determined and specified without full Parliamentary debate.**

[20] UK Government (Home Office), Policy Paper: Police, Crime, Sentencing and Courts Bill 2021: protest powers factsheet (16 April 2021).

In substantive terms, the fact that any Regulations may include examples of what is or is not 'serious disruption' invites generalization and a blanket approach to regulation. This is contrary to the approach required by international human rights law.

> **UN Human Rights Committee,** General Comment No. 37, para 38:
> Any restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly concerned. Blanket restrictions on peaceful assemblies are presumptively disproportionate.

There are also substantial risks with leaving the definition of disruption to be determined by the Minister whose department (the Home Office) has responsibility for police funding. By defining and interpreting 'serious disruption' in the manner most likely to bring this 'trigger' into being, it might be anticipated that the regulations would thus aim to reduce the size of police deployments and the related costs of the protest policing.[21]

Indeed, such regulation by analogy may be designed to provide the police with a workaround to the High Court ruling in *Jones and others v Commissioner of the Police for the Metropolis*[22] that the power to impose conditions on any public assembly (under section 14(1) of the Public Order Act 1986)[23] could not be used to impose a prospective area-wide ban on all public gatherings (in this case, separate assemblies under the aegis of Extinction Rebellion (XR) by grouping them under the umbrella of a single 'assembly'). The Court held that:

> *"Separate gatherings, separated both in time and by many miles, even if co-ordinated under the umbrella of one body, are not one public assembly within the meaning of section 14(1) of the 1986 Act."*[24]

VIII. Expansion of the controlled area around the Palace of Westminster, prohibited activities and related police powers

The 'sight and sound' principle outlined above is further imperilled by the provisions in clause 57 of the Bill amending Part 3 of the Police Reform and Social Responsibility Act 2011.[25] Clause 57(2) of the Bill would amend section 142A of the 2011 Act so as to expand the geographic area within which the regulatory scheme governing controlled areas with restricted activities (like Parliament Square) applies. Furthermore, the Bill introduces new prohibited activity – namely obstructing, by the use of any item or not the passage of a vehicle of any description into or out of an entrance into or exit from the Parliamentary Estate, where that entrance or exit is within, or adjoins, the Palace of Westminster controlled area.

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[21] See, for example, fn 16 above (citing *Wright v Commissioner of Police for the Metropolis* [2013] EWHC 2739 (QB), paras 60 and 62).
[22] *R (Jones and others) v Commissioner of the Police for the Metropolis* [2019] EWHC 2957 (Admin).
[23] Public Order Act 1986 (c.64).
[24] R (Jones and others) v Commissioner of the Police for the Metropolis [2019] EWHC 2957 (Admin), para 72.
[25] Part III (Parliament Square), Police Reform and Social Responsibility Act 2011 (c.13).

By proposing these provisions, the Bill puts forward place and manner specific restrictions, which lower the threshold than in the existing Act and also run contrary to international standards regarding freedom of peaceful assembly. Below we explain why.

As is well established in human rights law, place-specific restrictions, as proposed in the Bill, represent a blanket approach to regulation and this is contrary to the case-specific and individualized approach to assessing the proportionality of interferences required by international human rights law.

OSCE/ODIHR – Venice Commission, Guidelines on Freedom of Peaceful Assembly (3rd edition), para 82:
Duty to facilitate assemblies at the organizer's preferred location and within 'sight and sound' of the intended audience. Assemblies should be able to effectively communicate their message and must therefore be facilitated within 'sight and sound' of their target audience unless compelling reasons (that conform with the permissible justifications for imposing limitations under Article 21 ICCPR or Article 11(2) ECHR) necessitate a change of venue. In those cases, alternative sites should be provided that are as close as possible to the initially proposed site.

OSCE/ODIHR – Venice Commission, Guidelines on Freedom of Peaceful Assembly (3rd edition), para 133:
No blanket bans. Blanket legal restrictions – for example, banning all assemblies during certain times, or from particular locations or public places that are suitable for holding assemblies – constitute excessive restrictions violating the right to freedom of assembly. Restrictions which impose bans on the time or location of assemblies as a rule, and then allowing exceptions to this rule, invert the relationship between freedom and restrictions by turning the right to freedom of peaceful assembly into a privilege. For that reason, blanket bans may fail the proportionality test because they fail to differentiate between different ways of exercising the right to freedom of assembly and preclude any consideration of the specific circumstances of each case.Blanket bans may interfere significantly with the ability to hold assemblies within sight and sound of the intended audience.

OSCE/ODIHR – Venice Commission, Guidelines on Freedom of Peaceful Assembly (3rd edition), para 147:
Restrictions on place. At the core of the right to freedom of assembly is the ability of the assembly participants to choose the place where they can best communicate their message to their desired audience. It would be disproportionate if authorities categorically excluded places suitable and open to the public as sites for peaceful assemblies. The use of such suitable sites must always be assessed in the light of the circumstances of each case. The fact that a message could also be expressed in another place, is by itself insufficient reason to require an assembly to be held elsewhere, even if that location is within sight and sound of the target audience. This means that legislators may not exclude entire categories of locations for the holding of assemblies (such as certain types of buildings, including presidential palaces or parliaments, hospitals, schools and educational institutions). The same applies to privately-owned spaces, where no restrictions beyond those which ordinarily apply to such spaces (in buildings e.g., fire codes, sanitation laws, escape routes) should be applied. This also includes prohibitions that exclude the use of the Internet as a place for holding an assembly, through shut-down or limitation of access. If, however, having regard to all relevant factors of a specific case, the authorities reasonably conclude that it is necessary to change the place of an assembly, a suitable alternative place should be made available. Any alternative location must be such that the message which the

assembly seeks to convey may still be effectively communicated to those at whom it is directed – in other words, the assembly should still take place within 'sight and sound' of the target audience (see paragraph 61 above, and 'Simultaneous assemblies' at paragraph 78). Other means of conveying expression, such as the placement of video screens near the target audience of the assembly, are not adequate substitutes for the physical presence of assembly participants within sight and sound of the intended audience.

In addition to the expansion of the controlled geographic area around the Palace of Westminster, the Bill proposes the addition of a further 'prohibited activity' – namely, *"obstructing, by the use of any item or otherwise, the passage of a vehicle of any description into or out of an entrance into or exit from the Parliamentary Estate, where that entrance or exit is within, or adjoins, the Palace of Westminster controlled area."*

Unlike the other prohibited activities listed in section 143(2) – such as operating any amplified noise equipment in the controlled area of Parliament Square or placing any sleeping equipment in the controlled area for the purpose of sleeping there overnight – **the proposed new offence may be committed without any equipment whatsoever.** Indeed, the reach of the proposed obstruction offence (under cl.57(3)(c)) would include merely 'making the passage of a vehicle more difficult.' **This is a substantially lower threshold for obstruction or disruption than General Comment No. 37 envisages.**[26]

Given that, under section 143(1) of the 2011 Act, the police may give directions either to 'cease doing' a prohibited activity or 'not to start doing' that activity, this represents **a very significant expansion of police discretion.** As Professor David Mead argues, *"[a]nyone in the area becomes a potential suspect, not just those with sleeping bags or loudspeakers. They can now much more easily be given a direction to desist, and failure without reasonable excuse constitutes an offence."*[27]

It is notable in this regard that following his country visit to the UK in 2013, the UN Special Rapporteur on the Rights of Peaceful Assembly and of Association expressed concern with the place-specific restrictions as already existing under section 143 of the 2011 Act. In particular, the Special Rapporteur was concerned

> *"... that such a provision may in fact be aimed at prohibiting long-term peaceful protests in front of Parliament. In addition, under the Parliament Square Garden Byelaws 2012 the organization and participation in, inter alia, any assembly, display, performance, representation, parade, or procession are subject to prior authorization (section 5(1)(j)). In this regard, the Special Rapporteur is of the opinion that the exercise of fundamental freedoms should never be subject to previous authorization, but at most to a regime of notification."*[28]

[26] See, for example, General Comment No. 37, paras 15 and 47.

[27] David Mead, 'Some fuller initial thoughts on the Police, Crime, Sentencing, and Courst Bill 2011 – the new public order powers in clauses 54-60' (*ProtestMatters*, 14 March 2021).

[28] A/HRC/23/39/Add.1, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, Mission to the United Kingdom of Great Britain and Northern Ireland, para 14.

IX. Increased penalties

The table in Annex II to this briefing summarises the penalties that presently exist under the Public Order Act 1986 and the equivalent penalties proposed under the Policing Bill.

It is important to note that the Bill proposes to lower the fault element of existing offences so as to enable **the imposition of penalties where organisers or participants of an assembly, procession or one-person protest *"ought to know that the condition has been imposed."***

While assembly organisers (where there is an identifiable organiser) will generally be in position to know whether and what conditions have been imposed, participants in an assembly will often not be privy to that information. Notwithstanding the purported justification for this change – that some protesters 'cover their ears and tear up written conditions' in order to avoid having knowledge of their existence[29] – **the effect of this change will be to criminalize inadvertent breaches of conditions by assembly participants who may be genuinely unaware of what conditions have been imposed.**

The Bill (cl.59) abolishes the common law offence of public nuisance, but places it on a statutory footing whereby it can be occasioned by any act or omission causing serious harm including (any) 'damage to property', 'serious annoyance' or 'serious inconvenience.' A person guilty of this offence is liable under the terms of the Bill to imprisonment (on summary conviction) for a maximum term of 12 months or (on indictment) for a maximum term of 10 years.[30]

Clause 46 of the Bill (Criminal damage to memorials) also increases the maximum penalty for criminal damage to a memorial from three months to 10 years (while also expanding the definition of a 'memorial' to include 'any moveable thing (such as a bunch of flowers)'. This gives rise again to significant concerns about the proportionality of sentencing.[31]

In sum, the increase in penalties, lowering of the fault requirement and the breadth of the new nuisance offence pull in the opposite direction of General Comment No. 37 which states that restrictions must not "*be aimed at discouraging participation in assemblies or causing a chilling effect.*"

Indeed, the General Comment further requires that "*the imposition of any restrictions should be guided by the objective of facilitating the right [of peaceful assembly], rather than*

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[29] UK Government (Home Office), Policy Paper: Police, Crime, Sentencing and Courts Bill 2021: protest powers factsheet (16 April 2021). See also HMICFRC, 'Getting the Balance Rights?', p. 114 citing 'Green MP Caroline Lucas cleared over fracking protest' (BBC News, 17 April 2014).

[30] This proposed statutory maximum can only be regarded as a draconian measure which is intended to exert a deterrent and chilling effect. Notable in this regard is the successful appeal judgment in *Roberts, Blevins and Loizou v R* (2018). Here, a 16-month prison sentence imposed on anti-fracking protesters, convicted of 'public nuisance' (after they climbed on top of lorries at the fracking site near Blackpool) was held to be 'manifestly excessive'. See further, Court quashes excessive sentences of fracking protesters (*The Guardian,* 17 October 2018).

[31] See, for example, the Strasbourg court judgment in *Murat Vural v Turkey*, Appl No 9540/07, judgment of 21 October 2014, finding the imposition of the maximum prison sentence (here, more than thirteen years) for pouring paint on a statue of Atatürk to be "grossly disproportionate" (para 68).

seeking unnecessary and disproportionate limitations on it." (see UN Human Rights Committee's General Comment No. 37, para 36, above).

UN Human Rights Committee, General Comment No. 37, para 67:
Where criminal or administrative sanctions are imposed on organizers of or participants in a peaceful assembly for their unlawful conduct, such sanctions must be proportionate, non-discriminatory in nature and must not be based on ambiguous or overbroadly defined offences, or suppress conduct protected under the Covenant.

OSCE/ODIHR – Venice Commission, Guidelines on Freedom of Peaceful Assembly (3rd edition), para 36:
Proportionality of penalties. Penalties imposed for conduct occurring in the context of an assembly must be necessary and proportionate, since unnecessary or disproportionately harsh sanctions for behaviour during assemblies could inhibit the holding of such events and have a chilling effect that may prevent participants from attending. Such sanctions may constitute an indirect violation of the freedom of peaceful assembly. Offences such as the failure to provide advance notice of an assembly or the failure to comply with route, time and place restrictions imposed on an assembly should not be punishable with prison sentences, or heavy fines.

OSCE/ODIHR – Venice Commission, Guidelines on Freedom of Peaceful Assembly (3rd edition), para 222:
Any penalties imposed must be necessary and proportionate. Unnecessary or disproportionately harsh sanctions for behaviour during assemblies could, if known in advance, inhibit the holding of such events and have a chilling effect that may prevent participants from attending. Such sanctions could thus constitute an indirect violation of the freedom of peaceful assembly.431 Penalties for minor offences that do not threaten to cause or result in significant harm to public order or to the rights and freedoms of others should accordingly be low and the same as minor offences unrelated to assemblies. In cases involving minor administrative violations, it may be inappropriate to impose any sanction or penalty on assembly participants and organizers.

X. Conclusions

The above serious concerns with the Police, Crime, Sentencing and Courts Bill do not stem from a suggestion that seriously disruptive protest can never be subject to proportionate restriction.

The amendments proposed by the Bill will violate these standards by striking at the essence of the ICCPR and ECHR right to freedom of peaceful assembly and by:

1. conferring discretion on the Home Secretary to define 'disruption' without Parliamentary oversight,
2. introducing vague concepts (e.g., 'serious unease') subject to discretionary interpretation by the police;
3. increasing the powers of the police to decide on fundamental issues about the exercise of the right, and
4. disproportionately increasing the penalties that protesters may face.

> ***The increased penalties and lowering of the fault element can only be interpreted as being intended to deter and chill legitimate protest. Ultimately, therefore, the Bill casts protest as an inconvenience to be managed rather than a fundamental right to be facilitated and protected.***

As we witness attacks on the right of peaceful assembly around the world, Parliament should reflect on the general admonition in General Comment 37 that *"failure to respect and ensure the right of peaceful assembly is typically a marker of repression".*

UN Human Rights Committee, General Comment No. 37, para 2:
The right of peaceful assembly is, moreover, a valuable tool that can and has been used to recognize and realize a wide range of other rights, including economic, social and cultural rights. It is of particular importance to marginalized individuals and groups. Failure to respect and ensure the right of peaceful assembly is typically a marker of repression.

UN Human Rights Committee, General Comment No. 37, para 36:
While the right of peaceful assembly may in certain cases be limited, the onus is on the authorities to justify any restrictions. Authorities must be able to show that any restrictions meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21, as discussed below. Where this onus is not met, article 21 is violated. The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.

ANNEX I. Comparative table of existing provisions and as amended by Part 3 (cl.54-cl.60) of the Police, Crime, Sentencing and Courts Bill

Imposing conditions on public processions (clause 54)	
Current Public Order Act 1986, Section 12	**Public Order Act 1986, Section 12 as AMENDED**
(1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that— (a)it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or (b)the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do, he may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions.	1)If the senior police officer, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that— (a)it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, **(aa) in the case of a procession in England and Wales, 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,** **(ab) in the case of a procession in England and Wales— (i) the noise generated by persons taking part in the procession may have a relevant impact on persons in the vicinity of the procession, and (ii) that impact may be significant, or",** (b)the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do, he may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption, **impact** or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions.
(2)In subsection (1) "the senior police officer" means— (a)in relation to a procession being held, or to a procession intended to be held in a case where persons are assembling with a view to taking part in it, the most senior in rank of the police officers present at the scene, and (b)in relation to a procession intended to be held in a case where paragraph (a) does not apply, the chief officer of police.	2)In subsection (1) "the senior police officer" means— (a)in relation to a procession being held, or to a procession intended to be held in a case where persons are assembling with a view to taking part in it, the most senior in rank of the police officers present at the scene, and (b)in relation to a procession intended to be held in a case where paragraph (a) does not apply, the chief officer of police **(2A) For the purposes of subsection (1)(ab)(i), the noise generated by persons taking part in a public procession may have a relevant impact on persons in the vicinity of the procession if—** **(a) it may result in the intimidation or harassment of persons of reasonable firmness**

	with the characteristics of persons likely to be in the vicinity, or **(b) it may cause such persons to suffer serious unease, alarm or distress.** **(2B) In considering for the purposes of subsection (1)(ab)(ii) whether the noise generated by persons taking part in a public procession may have a significant impact on persons in the vicinity of the procession, the senior police officer must have regard to—** **(a) the likely number of persons of the kind mentioned in paragraph (a) of subsection (2A) who may experience an impact of the kind mentioned in paragraph (a) or** **(b) that subsection, (b) the likely duration of that impact on such persons, and** **(c) the likely intensity of that impact on such persons."**
(11) In Scotland this section applies only in relation to a procession being held, and to a procession intended to be held in a case where persons are assembling with a view to taking part in it.	11) In Scotland this section applies only in relation to a procession being held, and to a procession intended to be held in a case where persons are assembling with a view to taking part in it. **(12) The Secretary of State may by regulations make provision about the meaning for the purposes of this section of—** **(a) serious disruption to the activities of an organisation which are carried on in the vicinity of a public procession, or** **(b) serious disruption to the life of the community.** **(13) Regulations under subsection (12) may, in particular—** **(a) define any aspect of an expression mentioned in subsection (12)(a) or (b) for the purposes of this section;** **(b) give examples of cases in which a public procession is or is not to be treated as resulting in—** **(i) serious disruption to the activities of an organisation which are carried on in the vicinity of the procession, or** **(ii) serious disruption to the life of the community.** **(14) Regulations under subsection (12)—** **(a) are to be made by statutory instrument;** **(b) may apply only in relation to public processions in England and Wales; (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.** **(15) A statutory instrument containing regulations under subsection (12) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.**

Imposing conditions on public assemblies (clause 55)	
Current Public Order Act 1986, Section 14	**Public Order Act 1986, Section 14 - as AMENDED**
(1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that— (a)it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or (b)the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do, he may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.	1) **Subsection (1A) applies if** the senior police officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that— a)it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, **(aa) in the case of an assembly in England and Wales, the noise generated by persons taking part in the assembly may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the assembly,** **(ab) in the case of an assembly in England and Wales—** **(i) the noise generated by persons taking part in the assembly may have a relevant impact on persons in the vicinity of the assembly, and** (ii) **(ii) that impact may be significant, or",** (b)the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do. **(1A) The senior police officer may give directions imposing on the persons organising or taking part in the assembly—** **(a) in the case of an assembly in England and Wales, such conditions as appear to the officer necessary to prevent the disorder, damage, disruption, impact or intimidation mentioned in subsection (1);** **(b) in the case of an assembly in Scotland, such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to the officer necessary to prevent the disorder, damage, disruption or intimidation mentioned in subsection (1)(a) or (b).**
2) In subsection (1) "the senior police officer" means— (a)in relation to an assembly being held, the most senior in rank of the police officers present at the scene, and (b)in relation to an assembly intended to be held, the chief officer of police.	**2) In this section,** "the senior police officer" **means—** **(a)in relation to an assembly being held, the most senior in rank of the police officers present at the scene, and** **(b)in relation to an assembly intended to be held, the chief officer of police.** **(2A) For the purposes of subsection (1)(ab)(i), the noise generated by persons taking part in an assembly may have a relevant impact on persons in the vicinity of the assembly if—** **(a) it may result in the intimidation or harassment of persons of reasonable firmness with the characteristics of persons likely to be in the vicinity, or** **(b) it may cause such persons to suffer serious unease, alarm or distress.**

	(2B) In considering for the purposes of subsection (1)(ab)(ii) whether the noise generated by persons taking part in an assembly may have a significant impact on persons in the vicinity of the assembly, the senior police officer must have regard to— (a) the likely number of persons of the kind mentioned in paragraph (a) of subsection (2A) who may experience an impact of the kind mentioned in paragraph (a) or (b) that subsection, (b) the likely duration of that impact on such persons, and (c) the likely intensity of that impact on such persons.
(10)A person guilty of an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both	(10)A person guilty of an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both **(11) The Secretary of State may by regulations make provision about the meaning for the purposes of this section of— (a) serious disruption to the activities of an organisation which are carried on in the vicinity of a public assembly, or (b) serious disruption to the life of the community. (12) Regulations under subsection (11) may, in particular— (a) define any aspect of an expression mentioned in subsection (11) (a) or (b) for the purposes of this section; (b) give examples of cases in which a public assembly is or is not to be treated as resulting in— (i) serious disruption to the activities of an organisation which are carried on in the vicinity of the assembly, or (ii) serious disruption to the life of the community. (13) Regulations under subsection (11)— (a) are to be made by statutory instrument; (b) may apply only in relation to public assemblies in England and Wales; (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision. (14) A statutory instrument containing regulations under subsection (11) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."**
Obstruction of vehicular access to Parliament (clause 57)	
Current Part 3 of the Police Reform and Social Responsibility Act 2011	**Part 3 of the Police Reform and Social Responsibility Act 2011 as AMENDED**
Section 142A (other controlled areas in vicinity of the Palace of Westminster): (1) For the purposes of this Part, the "Palace of Westminster controlled area" means the area of land in the City of Westminster that is comprised in— (a)the highways in the postal district SW1 known as—	Section 142A (other controlled areas in vicinity of the Palace of Westminster): (1) For the purposes of this Part, the "Palace of Westminster controlled area" means the area of land in the City of Westminster that is comprised in— (a)the highways in the postal district SW1 known as—

(i)Bridge Street, (ii)St Margaret's Street, and (iii)Abingdon Street, (b)so much of the highway in the postal district SW1 known as Great College Street as immediately adjoins Abingdon Street Garden, (c)Old Palace Yard, (d)Abingdon Street Garden (and its pathways), and (e)Victoria Tower Gardens. (2)In subsection (1)— • "Abingdon Street Garden" means the garden constructed on the sites of properties formerly known as 18 to 28 (both inclusive) Abingdon Street, London, SW1, together with the garden surrounding the adjoining Jewel Tower and the lawn surrounding the King George V Memorial; • "highway" has the same meaning as in the Highways Act 1980 (see section 328 of that Act); • "Old Palace Yard" includes the King George V Memorial.	(i)Bridge Street, **(ia) Canon Row,** **(ib) Parliament Street,** **(ic) Derby Gate,** **(id) Parliament Square,** **(aa) so much of the highway in the postal district SW1 known as Victoria Embankment as lies between the highway in that district known as Bridge Street and the highway in that district known as Richmond Terrace,** (ii)St Margaret's Street, and (iii)Abingdon Street, (b)so much of the highway in the postal district SW1 known as Great College Street as immediately adjoins Abingdon Street Garden, (c)Old Palace Yard, (d)Abingdon Street Garden (and its pathways), and (e)Victoria Tower Gardens. **(1A) A reference to a highway in subsection (1)(a) or (aa) includes any land immediately adjoining that highway and to which the public have or are permitted access.** (2)In subsection (1)— • "Abingdon Street Garden" means the garden constructed on the sites of properties formerly known as 18 to 28 (both inclusive) Abingdon Street, London, SW1, together with the garden surrounding the adjoining Jewel Tower and the lawn surrounding the King George V Memorial; • "highway" has the same meaning as in the Highways Act 1980 (see section 328 of that Act); • "Old Palace Yard" includes the King George V Memorial.
Section 143 (prohibited activities in controlled area of Parliament Square or in Palace of Westminster controlled area)— (2)For the purposes of this Part, a "prohibited activity" is any of the following— (a)operating any amplified noise equipment in the controlled area of Parliament Square **[F2**or in the Palace of Westminster controlled area**]**; (b)erecting or keeping erected in the controlled area of Parliament Square— (i)any tent, or (ii)any other structure that is designed, or adapted, (solely or mainly) for the purpose of facilitating sleeping or staying in a place for any period; (c)using any tent or other such structure in the controlled area of Parliament Square for the purpose of sleeping or staying in that area; (d)placing or keeping in place in the controlled area of Parliament Square any sleeping equipment with a view to its use (whether or not by the person placing it or keeping it in place) for the purpose of sleeping overnight in that area;	Section 143 (prohibited activities in controlled area of Parliament Square or in Palace of Westminster controlled area)— (2)For the purposes of this Part, a "prohibited activity" is any of the following— (a)operating any amplified noise equipment in the controlled area of Parliament Square **[F2**or in the Palace of Westminster controlled area**]**; (b)erecting or keeping erected in the controlled area of Parliament Square— (i)any tent, or (ii)any other structure that is designed, or adapted, (solely or mainly) for the purpose of facilitating sleeping or staying in a place for any period; (c)using any tent or other such structure in the controlled area of Parliament Square for the purpose of sleeping or staying in that area; (d)placing or keeping in place in the controlled area of Parliament Square any sleeping equipment with a view to its use (whether or not by the person placing it or keeping it in place) for the purpose of sleeping overnight in that area;

(e)using any sleeping equipment in the controlled area of Parliament Square for the purpose of sleeping overnight in that area.	(e)using any sleeping equipment in the controlled area of Parliament Square for the purpose of sleeping overnight in that area. **(f) obstructing, by the use of any item or otherwise, the passage of a vehicle of any description into or out of an entrance into or exit from the Parliamentary Estate, where that entrance or exit is within, or adjoins, the Palace of Westminster controlled area.**
(3)But an activity is not to be treated as a "prohibited activity" within subsection (2) if it is done— (a)for police, fire and rescue authority or ambulance purposes, (b)by or on behalf of a relevant authority, or (c)by a person so far as authorised under section 147 to do it (authorisation for operation of amplified noise equipment).	(3)But an activity is not to be treated as a "prohibited activity" within subsection (2) if it is done— (a)for police, fire and rescue authority or ambulance purposes, (b)by or on behalf of a relevant **person**, or (c)by a person so far as authorised under section 147 to do it (authorisation for operation of amplified noise equipment).
(4)In subsection (2)(a) "amplified noise equipment" means any device that is designed or adapted for amplifying sound, including (but not limited to)— (a)loudspeakers, and (b)loudhailers.	(4)In subsection (2)(a) "amplified noise equipment" means any device that is designed or adapted for amplifying sound, including (but not limited to)— (a)loudspeakers, and (b)loudhailers. **(4A) In subsection (2)(f) the reference to obstructing the passage of a vehicle includes making the passage of a vehicle more difficult.**
(5)In subsection (3)(b) "relevant authority" means any of the following— (a)a Minister of the Crown or a government department, (b)the Greater London Authority, or (c)Westminster City Council.	(5)In subsection (3)(b) "relevant **person"** means any of the following— (a)a Minister of the Crown or a government department, (b)the Greater London Authority, (c)Westminster City Council **(d) a relevant member of the House of Lords staff, or** **(e) a relevant member of the House of Commons staff** **(5A) In subsection (5)— "relevant member of the House of Lords staff" has the meaning given by section 194(6) of the Employment Rights Act 1996; "relevant member of the House of Commons staff" has the meaning given by section 195(5) of that Act.**
Power to specify other areas as controlled areas (clause 58)	
Section 149 of the Police Reform and Social Responsibility Act 2011	**Addition to Section 149 of the Police Reform and Social Responsibility Act 2011**
INCOMPLETE SENTENCE n section 385 of the Greater London Authority Act 1999 (byelaws), after subsection (6) insert— "(6A)Byelaws under this section may not be made as respects Parliament Square Garden for the purpose of prohibiting a particular activity so far as that activity is a prohibited activity for the purposes of Part 3 of the Police Reform and	**149A Power to specify other areas as controlled areas** **(1) The Secretary of State may by regulations provide for any provision of sections 143 to 148 and 149(3) to apply, with or without modifications, in relation to an area specified in the regulations.** **(2) An area may be specified in regulations under subsection (1) by description, by**

Social Responsibility Act 2011 (see section 143(2) of that Act).". (2) Any byelaw made under section 385 of the Greater London Authority Act 1999 before the date on which section 143 above comes into force ceases to have effect on that date so far as the byelaw makes provision prohibiting, as respects the controlled area of Parliament Square, a particular activity that is a prohibited activity for the purposes of this Part. (3)Nothing in this Part restricts the making of any byelaw under section 235(1) of the Local Government Act 1972 (power of councils to make byelaws) for the purpose of prohibiting, as respects the controlled area of Parliament Square [F1or the Palace of Westminster controlled area], a particular activity except so far as the activity is a prohibited activity for the purposes of this Part.	**reference to a map or plan or in any other way.** **(3) Regulations under subsection (1) may be made only if—** • **(a) either House of Parliament is, or is proposed to be, located somewhere other than the Palace of Westminster as a result of the Parliamentary building works or for any other reason, and** • **(b) as a result of that relocation, or proposed relocation, the Secretary of State considers that it is reasonably necessary for activities which are prohibited in relation to the controlled area of Parliament Square or the Palace of Westminster controlled area to be prohibited in relation to the area specified in the regulations.** **(4) In subsection (3)(a) "the Parliamentary building works" has the meaning given by section 1(1) of the Parliamentary Buildings (Restoration and Renewal) Act 2019. (5) The Secretary of State may by regulations make provision for any other enactment, or any instrument made under an enactment, to have effect with modifications in consequence of regulations under subsection (1).**
Intentionally or recklessly causing public nuisance (clause 59) - NEW	
(1) A person commits an offence if— (a) the person— (i) does an act, or (ii) omits to do an act that they are required to do by any enactment or rule of law, (b) the person's act or omission— (i) causes serious harm to the public or a section of the public, or (ii) obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large, and (c) the person intends that their act or omission will have a consequence mentioned in paragraph (b) or is reckless as to whether it will have such a consequence. **(2) For the purposes of subsection (1) an act or omission causes serious harm to a person if, as a result, the person— (a) suffers death, personal injury or disease, (b) suffers loss of, or damage to, property, (c) suffers serious distress, serious annoyance, serious inconvenience or serious loss of amenity, or (d) is put at risk of suffering anything mentioned in paragraphs (a) to (c).** **(3) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for the act or omission mentioned in paragraph (a) of that subsection.** **(4) A person guilty of an offence under subsection (1) is liable— (a) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine or to both; (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, to a fine or to both.** **(5) In relation to an offence committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 (increase in magistrates' court power to impose imprisonment) the reference in subsection (4)(a) to 12 months is to be read as a reference to 6 months.** **(6) The common law offence of public nuisance is abolished. (7) Subsections (1) to (6) do not apply in relation to— (a) any act or omission which occurred before the coming into force of those subsections, or (b) any act or omission which began before the coming into force of those subsections and continues after their coming into force. (8) This section does not affect— (a) the liability of any person for an offence other than the common law offence of public nuisance, (b) the civil liability of any person for any act or omission within subsection (1), or (c) the ability to take any action under any enactment against a person for any such act or omission. (9) In this section "enactment" includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978.**	

Imposing conditions on one-person protests (clause 60) - NEW
14ZA Imposing conditions on one-person protests **(1) Subsection (2) applies if the senior police officer, having regard to the time or place at which and the circumstances in which any one-person protest in England and Wales is being carried on or is intended to be carried on, reasonably believes— (a) that the noise generated by the person carrying on the protest may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the protest, or (b) that— (i) the noise generated by the person carrying on the protest may have a relevant impact on persons in the vicinity of the protest, and (ii) that impact may be significant.** **(2) The senior police officer may give directions imposing on the person organising or carrying on the protest such conditions as appear to the officer necessary to prevent such disruption or impact.** **(3) Where the one-person protest is moving, or is intended to move, from place to place— (a) the senior police officer must also have regard under subsection (1) to its route or proposed route, and (b) the conditions which may be imposed under subsection (2) include conditions as to the route of the protest or prohibiting the person carrying on the protest from entering any public place specified in the direction while the person is carrying it on.** **4) In this section "one-person protest" means a protest which, at any one time, is carried on by one person in a public place.** **(5) In this section "the senior police officer" means— (a) in relation to a one-person protest being held or to a one-person protest intended to be held in a case where a person is in a place with a view to carrying on such a protest, the most senior in rank of the police officers present at the scene, and (b) in relation to a one-person protest intended to be held in a case where paragraph (a) does not apply, the chief officer of police.** **(6) For the purposes of subsection (1)(b)(i), the noise generated by a person carrying on a one-person protest may have a relevant impact on persons in the vicinity of the protest if— (a) it may result in the intimidation or harassment of persons of reasonable firmness with the characteristics of persons likely to be in the vicinity, or (b) it may cause such persons to suffer serious unease, alarm or distress.** **(7) In considering for the purposes of subsection (1)(b)(ii) whether the noise generated by a person carrying on a one-person protest may have a significant impact on persons in the vicinity of the protest, the senior police officer must have regard to— (a) the likely number of persons of the kind mentioned in paragraph (a) of subsection (6) who may experience an impact of the kind mentioned in paragraph (a) or (b) of that subsection, (b) the likely duration of that impact on such persons, and (c) the likely intensity of that impact on such persons.** **(8) A direction given by a chief officer of police by virtue of subsection (5)(b) must be given in writing.** **(9) A person ("P") is guilty of an offence if— (a) P organises or carries on a one-person protest, (b) P fails to comply with a condition imposed under this section, and (c) at the time P fails to comply with the condition, P knows or ought to know that the condition has been imposed.** **(10) It is a defence for a person charged with an offence under subsection (9) to prove that the failure arose from circumstances beyond the person's control.** **(11) A person who incites another to commit an offence under subsection (9) is guilty of an offence.** **(12) A person guilty of an offence under subsection (9) is liable on summary conviction to a fine not exceeding level 4 on the standard scale. (13) A person guilty of an offence under subsection (11) is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale or both.** **(14) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales), the reference in subsection to (13) to 51 weeks is to be read as a reference to 6 months.** **(15) The Secretary of State may by regulations make provision about the meaning for the purposes of this section of serious disruption to the activities of an organisation which are carried on in the vicinity of a one-person protest.** **(16) Regulations under subsection (15) may, in particular— (a) define any aspect of that expression for the purposes of this section; (b) give examples of cases in which a one-person protest is or is not to be treated as resulting in serious disruption to the activities of an organisation which are carried on in the vicinity of the protest.** **(17) Regulations under subsection (15)— (a) are to be made by statutory instrument; (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.**

(18) A statutory instrument containing regulations under subsection (15) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

ANNEX II. Comparative table of existing penalties and new penalties as amended by the Police, Crime, Sentencing and Courts Bill

(Clause 56 - Offences under sections 12 and 14 of the Public Order Act 1986)

	Current maximum penalty under the Public Order Act 1986	Proposed maximum penalty under the Police, Crime, Sentencing and Courts Bill 2021
Organising an assembly or procession in E&W in breach of a condition	Level 4 fine (£2,500), 3 month's imprisonment or both if knowingly in breach [s.12(8) & s.14(8) POA 1986]	Level 4 fine (2,500), 51 week's imprisonment or both if ought to have known of conditions. [cl.56(6) & cl. 56(11)]
Taking part in an assembly or procession in E&W in breach of a condition	Level 3 fine (£1,000) if knowingly in breach [s.12(9) & s.14(9) POA 1986]	Level 4 fine (£2,500) if ought to have known of conditions. [cl.56(6) & cl. 56(11)]
Inciting a participant in an assembly or procession in E&W to breach a condition	Level 4 fine (£2,500), 3 month's imprisonment or both [s.12(10) & s.14(10) POA 1986]	Level 4 fine (£2,500), 51 week's imprisonment or both [cl.56(6) & cl. 56(11)]
Organising OR carrying on a one-person protest in breach of a condition	N/A [no provision for one-person protests in POA 1986]	Level 4 fine (£2,500) if ought to have known of conditions [cl.60 proposing s.14ZA(12) POA 1986]
Inciting another to organise or carry on a one-person protest in breach of a condition	N/A [no provision for one-person protests in POA 1986]	Level 4 fine (£2,500), 51 weeks imprisonment or both [cl.60 proposing s.14ZA(13) POA 1986]
Criminal damage to memorials	Where the damage caused to the property does not exceed £5,000 in value, 3 month's imprisonment or fine up to £2,500 or both [s.1(1) Criminal Damage Act 1971 and s.22 Magistrates' Courts Act 1980]	Imprisonment up to 10 years without prior assessment of monetary value [cl.46 proposing reforms to s.(1)(1) Criminal Damage Act 1971 and s.22 and Schedule 2 of the Magistrates' Courts Act 1980]

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