

Police, Crime, Sentencing and Courts Bill

Part 3 (clauses 54 to 60), of the Bill would make major changes to the way protests are policed in England and Wales:

- Clauses 54 to 56 and 60 would amend police powers in the Public Order Act 1986 so police can impose conditions on protests that are noisy enough to cause “intimidation or harassment” or “serious unease, alarm or distress” to bystanders.
- Clauses 57 and 58 would amend provisions in the Police Reform and Social Responsibility Act 2011 to expand the “controlled area” around Parliament where certain protest activities are prohibited. It would also add obstructing access to the Parliamentary Estate to the activities prohibited in the “controlled area”.
- Clause 59 would abolish the common law offence of public nuisance and replace it with a new statutory offence of “intentionally or recklessly causing public nuisance”.^{1, 2}

Official justification:

Recent changes in the tactics employed by certain protesters, for example gluing themselves to buildings or vehicles, blocking bridges or otherwise obstructing access to buildings such as the Palace of Westminster and newspaper printing works, have highlighted some gaps in current legislation.³

Details of justifications:

- Difficulty in policing simultaneous protests (debates over the use of Public Order Act 1986 w/r/t XR's 2019 “uprisings”) ^{1, 4}
- Difficulty in moving protestors (especially “lock-on” tactics) ^{1, 4}
- Harassment of MPs outside Parliament (Brexit protests and XR) ^{1, 4, 5}
- Growing use of non-violent tactics which are “seriously disruptive”, “distressing to the public” ⁶
- Need to update and simplify laws (e.g. extend police powers to regulate processions to static protests, the Law Commission’s recommendation that public nuisance offence be codified into statute law) ^{4, 5, 7}

Key Actors:

- These reforms seem to have been driven by the police themselves, largely by the Met (which is the site of the majority of UK protest activity) and through the National Police Chiefs’ Council (NPCC).⁸
- The NPCC is a collection of senior police chiefs, with few links to the outside business. Even their advisory board is largely made up of Police and Crime Commissioners (who in turn are often ex-police or local politicians).
- This is not surprising given that the Home Office has historically had very close links to the police, who are extremely effective lobbyists for legislative or policy changes that suit their interests. In fact, senior police officers (particularly from the Met)

form a well-established and influential network within the Conservative Party and the Home Office.

- Judges appear to have also taken a more repressive approach to protest law in recent years. It's not clear where that has come from.

Timeline:

- April 2019, the Home Secretary (then Sajid Javid MP) wrote to the commissioner of the Metropolitan Police raising concerns about significant disruption caused by protest and the large number of protesters actively seeking arrest.⁹
- Home Office, the Metropolitan Police and the National Police Chief's Council (NPCC) began work on drafting proposals.⁸
- On 6 June 2019, NPCC hosted a roundtable to explore the most practical legislative options that would assist in policing protests more effectively. A wide range of representation from the NPCC, police forces, police lawyers, College of Policing, Home Office and HS2 Ltd were in attendance.⁸
- This meeting led to the Metropolitan Police (on 22 July 2019) raising 19 potential proposals for legislative change on behalf of the NPCC. These were reviewed by the Home Office who also commission HMIC to report.⁸
- These were echoed by Policy Exchange in a series of reports in late 2019 calling for greater police power to regulate protests, especially in light of XR. (These were all authored by Richard Walton, former Met Anti-Terrorism Chief.)¹⁰

Wider context:

- In 2010 the Coalition government pledged to "restore rights to non-violent protest" (building on LibDem manifesto commitment). This led to series of reports by HMIC¹¹ which affirmed the duty of the police to facilitate peaceful protest and legislative changes to reduce scope for protest policing, allow protests in front of Parliament again (these had been banned in 2005). However, these were effectively undermined by increasingly aggressive use of police powers on the ground, courts increasingly taking the lead in setting anti-protestor precedents via case law, and massive expansion of surveillance of protesting.¹²
- Lots of police concern about how to control protests during a pandemic.¹³
- It is unclear to what extent in the long run the increasing number of laws/policies against protestors represent increasing repression, or simply increasing 'legalisation' of that repression.

References

- ¹ <https://researchbriefings.files.parliament.uk/documents/CBP-9164/CBP-9164.pdf>
- ² <https://goodlawproject.org/news/pcsc-bill-briefing-for-mps/>
- ³ <https://publications.parliament.uk/pa/bills/cbill/58-01/0268/en/200268en.pdf>
- ⁴ <https://researchbriefings.files.parliament.uk/documents/SN05013/SN05013.pdf>
- ⁵ <https://publications.parliament.uk/pa/jt201919/jtselect/jtrights/37/37.pdf>
- ⁶ [https://publications.parliament.uk/pa/bills/cbill/58-01/0268/20210304%20HO0383%20-%20PCSC%20Overarching%20IA%20-%20FINAL%20CLEAN%20\(signed\).pdf](https://publications.parliament.uk/pa/bills/cbill/58-01/0268/20210304%20HO0383%20-%20PCSC%20Overarching%20IA%20-%20FINAL%20CLEAN%20(signed).pdf)
- ⁷ <https://www.lawcom.gov.uk/project/simplification-of-the-criminal-law-public-nuisance-and-outraging-public-decency/>
- ⁸ <https://www.npcc.police.uk/About/Govandaccount.aspx>
- ⁹ <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests.pdf>
- ¹⁰ <https://policyexchange.org.uk/wp-content/uploads/2019/09/Protest-Parliament-and-the-rule-of-law.pdf>, <https://policyexchange.org.uk/pxevents/losing-london-permanent-protest-police-priorities-and-the-rights-of-londoners/>, <https://policyexchange.org.uk/wp-content/uploads/2019/07/Extremism-Rebellion.pdf>, <https://www.opendemocracy.net/en/dark-money-investigations/think-tank-wont-reveal-who-paid-for-report-calling-extinction-rebellion-extremists/>
- ¹¹ <https://www.justiceinspectors.gov.uk/hmicfrs/our-work/article/policing-protest-reviews/>
- ¹² https://ueaeprints.uea.ac.uk/id/eprint/69299/1/Accepted_manuscript.pdf
- ¹³ <https://www.tandfonline.com/doi/pdf/10.1080/09615768.2021.1885323?needAccess=true>