

## Written evidence submitted by Leeds for Europe (Lfe) (PCSCB01)

### Police, Crime, Sentencing and Courts Bill

These comments on the Police, Crime, Sentencing and Courts Bill (the **Bill**) are prepared and submitted on behalf of the committee of Leeds for Europe (**LfE**). A number of the questions that were posed are not answered, we have retained a focus on the issues that we consider directly impact on LfE and its members. The clause references are references to the Bill.

*Does the power to extract information from electronic devices set out in Chapter 3 of Part 2 of the Bill comply with the right to respect for private life (Article 8 ECHR)?*

Yes potentially but the concern would be that this would be used against organisers of protests to intimidate them and reduce the willingness of people to organise or otherwise get involved in protests.

*Are the proposed changes to the law governing public assemblies, processions and one-person protests necessary to protect those adversely affected by such activities? Do the proposals in Part 3 of the Bill adequately protect the right to peaceful assembly (Article 11 ECHR) and the right to free expression (Article 10 ECHR)?*

## 1 Executive Summary

1.1 A quote from the case *Alexei Navalny v Russia* (decision of the European Court of Human Rights 15.11.18) provides a representation of LfE's position: "*Freedom of assembly as enshrined in Article 11 of the Convention (European Convention of Human Rights) protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote... Any measures interfering with freedom of assembly and expression 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...*".

1.2 The main points of concern to LfE can be summarised as follows:

1.2.1 A threat to the right to protest for citizens of England and Wales (**E&W**) and to those who take part in protests;

1.2.2 A threat to those who organise protests;

1.2.3 Unacceptable additional powers for the police and increase in the scope of offences.

## 2 Threat to the right to protest and to those who take part in protests

2.1 LfE's concern is that the Bill, as currently drafted, is a serious threat to the right to protest. The right to peacefully assemble and protest is the "*manifestation of the importance attached by the common law to both the right to protest and free speech*" (*R v Roberts (Richard)* [2019] 1 WLR 2577).

2.2 The proposals risk making protests ineffective and to curtail fundamental rights of citizens in a democracy, which allow people to express their concerns about the government of the day or other issues that they feel passionately about.

2.3 The proposals would mean that E&W would have more draconian laws than most democratic societies and it would put it out of kilter with international human rights, which have been established over many years and are important to most citizens of E&W. Brexit has been a disaster for the UK and this is another threat as it directly impacts on the European Convention on Human Rights (**ECHR**), in particular Article 10 (freedom

of expression) and Article 11 (freedom of peaceful assembly). These rights (and others under the ECHR) are fundamental rights that should not be restricted.

- 2.4 Such draconian laws seem to align E&W to regimes such as those in Turkey, Hungary and Belarus, rather than those that we were aligned with when part of the EU. The police will have scope to expand their powers against the citizens and to use more active intervention, which might result in more draconian measures (see below). This is likely to result in a fundamental (prejudicial) change in the relationship between individual/state and protestor/police. There is a significant risk that the police would be regarded as a hostile agency and individuals seen as enemies of the state rather than people with genuine concerns and causes that they want to promote.
- 2.5 The Bill would also mean a breach of a promise that was made by the Minister for Policing, Kit Malthouse in the House of Commons in September 2020. He said "*the right to peaceful protest is a fundamental tool of civic expression, and will never be curtailed by this government*".
- 2.6 LfE believe it is imperative that the right to protest is protected, even if there is the potential for causing inconvenience to other citizens. In relation to Clauses 54-60 there are a number of provisions that seek to restrict public assemblies and protests. It should be recognised that in combination these provisions are a threat to civil liberties and the democratic rights of the citizens of E&W.
- 2.7 For example Clause 57 expands the protected area around the Houses of Parliament and states that particular activities cannot take place. The proposals try to impose conditions on where and when protests can take place. The specific reference to one person protests could be seen as a direct reference to Steve Bray of SODEM, who is well known for his one person protests, which take place almost daily outside the Houses of Parliament on sitting days.

### **3 Threat to the organisers**

- 3.1 The LfE committee as the organisers of protests and demonstrations are concerned that the Bill could increase the chances of members of the LfE committee, or people at one of the protests organised by LfE, being held criminally responsible for peaceful activity.
- 3.2 There is an increase in the maximum custodial sentence for organisers if there is a breach of condition (from three months to 51 weeks) and increases in the fines for protestors breaching a condition. This will inevitably impact on the right to protest and there will be a reticence to organisers and protesters to get involved because of a heightened individual risk of fines or worse.

### **4 Expansion of Police powers and the scope of possible offences**

- 4.1 Clauses 54 and 55 of the Bill relate to public processions and assemblies. As currently drafted these seek to expand the ability of the police to impose (unrestricted) conditions on the right to public possessions and assemblies.
- 4.2 The control of protests is of concern, for example in relation to noise:
  - 4.2.1 The level of noise that could cause "*serious disruption to the activities of an organisation which are carried on in the vicinity of the procession*" or if the noise may have a "*relevant*" and "*significant*" impact on persons nearby. The scope is broad and open to interpretation, including abuse. This threatens the rights of citizens under Article 11 (freedom of peaceful assembly) of the ECHR, which should be preserved even if it causes disruption to ordinary life. In *Kuznetsov v*

*Russia* it was stated: “any demonstration in a public place inevitably causes a certain level of disruption to ordinary life... and that 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.”.

- 4.2.2 The wording proposed in the Bill is likely to apply to most protests and certainly of the type that LfE are likely to organise or take part in. This could lead to police intervention. Not only does this impact on individuals' rights under the ECHR but it gives the police much more power to restrict the fundamental freedoms, should they so choose. It is unclear whether there will be a consistent approach from police forces across the country.
- 4.2.3 The new provisions relating to noise could amount to a relevant impact on others in the vicinity if inter alia they cause “intimidation or harassment of persons of reasonable firmness...” or if such persons “suffer serious unease, alarm or distress”. This is a significant change to the current provisions under the Public Order Act. Those in the vicinity could find chants of a large crowd (which is often the nature of protests which invoke a passionate response) intimidating or say that they do in order to stop a protest where they do not agree with the cause.
- 4.2.4 It is not clear how the police will assess this and react. Will they decide that something may cause issues to others and make a judgment on whether, for example, specific chants may be considered ‘intimidating’ or ‘harassing’ and what the intensity of the impact of any noise is. The words ‘unease’, ‘alarm’ and ‘distress’ are extremely vague, which makes the application even more difficult and there could be overzealous interpretation. *Galstyan v Armenia* (2007) 50 EHRR 618: “The Court, however, finds it hard to imagine a huge political demonstration, at which people express their opinion, not generating a certain amount of noise.”.
- 4.3 In *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23, Mr Justice Laws said there was a margin that must be given to protests: “Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them.” If protests are to be subjectively reviewed and regulated there is a significant risk that it will take away their fundamental characteristics and to render them pointless. This also significantly effects the citizens' rights under Article 10 of ECHR..”.
- 4.4 If there is an expansion of the scope of the offences under the Public Order Act, so as to include peaceful and non-violent protests, this threatens citizens' rights under Articles 10 and 11 of ECHR, as a breach of the conditions would constitute a criminal offence. Additionally the Bill establishes a new offence where someone breaches a condition that they ought to have known existed.
- 4.5 Clauses 54(4) and 55(6) give the Home Secretary powers to make regulations to define what “serious disruption to the activities of an organisation which are carried on in the vicinity” or “serious disruption to the life of the community” actually mean for the purposes of the Public Order Act. This broad power could be exercised with little or no parliamentary scrutiny, and in ways that would expand the scope of the powers under the Bill. The Home Secretary will have more power to create laws that define “serious disruption” to communities and organisations – enabling police to crackdown on protests in E&W.
- 4.6 Clause 56 would expand the Public Order Act to allow a police officer to impose conditions which they consider necessary to prevent “disorder, damage, disruption, impact or intimidation”. The word impact is of particular concern as the nature of a protest is to

create an impact.

- 4.7 Clause 59 proposes replacing the common law offence of public nuisance with a new statutory offence. The breadth is of concern, when considered in the wider context of this Bill, and coupled with a 10 year maximum custodial sentence. The defence available is that there was a reasonable excuse for the act in question, with the burden of proof being on the person who is charged. *Alekhina v Russia* (2019) 68 EHRR 14, the European Court of Human Rights was clear that “*peaceful and non-violent forms of expression should not be made subject to the threat of imposition of a custodial sentence...*”.
- 4.8 Professor David Meads from the University of East Anglia (who specialises in the law of protest and public order) observed: “*Th(e) real problem for protesters and activists is not (always) so much the law – the legal rules and position – but how this is implemented and interpreted on the ground by officers; generally speaking the wider framed the law... even more widely used will be the operational power*”.

## 5 Final points

- 5.1 LfE's view is that the proposed Bill should not proceed in relation to protests. These are not appropriate changes in a democratic society. The consequence of changes such as those proposed will mean many people will be put off protesting as they will be worried about organising protests or taking part where there is the possibility that the police will impose conditions or intervene at the event and affect the ability of the protest to continue. This is irrespective of the fact that technically the police will interpret their own powers and only use them when necessary (interpret being the operative word and will vary from force to force, but could lead to misapplication). The right to later challenge is not a good explanation for the changes as the damage will already been done on the intervention.
- 5.2 The Government will say that there have been protests in recent years that have caused disruption, and so these changes are needed to allow the police to take the action they see fit in particular circumstances (which may not be applied in every case or only when there are extreme situations). Even if there were some protests that were more disruptive the majority are not and road closures for marches etc are agreed with the police and local councils, with the events usually limited to set times in one day. To bring in these changes will naturally affect protests because there will be a reluctance on the part of the organisers and participants to take part where the outcome and reaction of the police is unknown.
- 5.3 Many might argue that the stance of the police (e.g. in relation to the Sarah Everard vigil) suggests that they need less powers not more. It is unrealistic to assume that officers, often presumably following their training, and through guidance and handbooks, will not test the limits of these widely framed provisions that are proposed. It is Parliament's duty to ensure that there is no scope for that expansion that threatens the rights of citizens.
- 5.4 There is a real concern that this Government is seeking to remove the right to protest and to restrict our rights under the ECHR. We are very worried about this situation and MPs across all the parties should be defending these rights not seeking to erode them.

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