

PUBLIC ORDER BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Public Order Bill as brought from the House of Commons on 19 October 2022 (HL Bill 61).

- These Explanatory Notes have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The purpose of this Bill is to strengthen police powers to tackle dangerous and highly disruptive tactics employed by a minority of protesters. This includes provisions to protect major transport projects and key national infrastructure from being targeted by protesters, causing significant delays to the travelling public, preventing the distribution of critical goods such as fuel, and causing costly delays in construction.
- 2 The Bill is in three Parts.
- 3 Part 1 creates a number of new offences relating to locking-on, tunnelling, obstructing major transport works and interfering with the use or operation of key national infrastructure. This Part also confers preventative powers for the police to search for and seize articles related to protest-related offences. It equalises the rank of senior officer to whom the exercise of certain powers under the Public Order Act 1986 may be delegated, removing differences between London and the rest of the country. It extends to the British Transport Police and Ministry of Defence police, where appropriate, existing public order powers already available to other police forces. It makes provision concerning the granting of injunctions in proceedings brought by the Secretary of State in relation to protest activity. Finally, an amendment was inserted into the Bill by the House of Commons on 18 October 2022, making it an offence for a person within a designated area (buffer zone) to interfere with a person's decision to access, provide, or facilitate the provision of abortion services within that buffer zone.
- 4 Part 2 provides for a new preventative court order, the Serious Disruption Prevention Order, to disrupt the activities of repeat offenders.
- 5 Part 3 contains general provisions, including in relation to extent and commencement.

Policy background

- 6 Current legislation to manage protests provides predominantly for powers to counter behaviours at protests which are violent or distressing to the public. These powers include those under the Public Order Act 1986 (the "1986 Act") which provides the police with powers to manage public processions and assemblies, including protests. Sections 12 and 14 of the 1986 Act (as amended by the Police, Crime, Sentencing and Courts Act 2022 ("the 2022 Act")) allow the police to impose any type of condition on a public procession or public assembly necessary to prevent: significant impact on persons or serious disruption to the activities of an organisation by noise; serious disorder; serious damage to property; serious disruption to the life of the community; or if the purpose of the persons organising the protest 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.
- 7 Recent changes in the tactics employed by certain protesters have highlighted some gaps in current legislation, for example gluing themselves to buildings or vehicles, blocking roads, tunnelling under land that is subject to development, and obstructing access to buildings such as oil refineries and newspaper printing works. The 2022 Act addressed some of the gaps in the law, including by increasing the maximum penalty for the offence of wilful obstruction of a highway and providing for a statutory offence of intentionally or recklessly causing public nuisance. To further address these gaps, the Bill:
 - Introduces new criminal offences of locking-on and going equipped to lock-on, criminalising the protest tactic of individuals recklessly or intentionally attaching themselves to others, objects or buildings to cause serious disruption.

- Introduces new criminal offences of causing serious disruption by tunnelling, going equipped to tunnel, and being present in a tunnel.
- Introduces a new criminal offence of obstructing major transport works. This will cover any behaviours which obstruct or interferes with the construction or maintenance of significant transport projects such as High Speed 2.
- Provides for a new criminal offence of interfering with key national infrastructure. This covers any behaviour which obstructs or delays the use or operation of key infrastructure, such as airports, railways, oil refineries and printing presses.
- Extends stop and search powers (both suspicion-led and suspicionless) for police to search for and seize articles related to protest-related offences.
- Provides for a Secretary of State to bring proceedings in relation to protest activity and makes provision about injunctions in such proceedings.
- Introduces a new preventative court order – the Serious Disruption Prevention Order – targeting protestors who repeatedly inflict disruption on the public or businesses.

8 Some of these measures were originally tabled by the Government as amendments at Lords Report stage of the Police, Crime, Sentencing and Courts Bill. Following the debate on 17 January 2022 (House of Lords, Official Report, columns 1430-1476), the Government amendments were rejected by the Lords.

Legal background

9 The Bill amends the following legislation:

- Section 1 of the Police and Criminal Evidence Act 1984, which confers stop and search powers on the police.
- Section 14 of the Public Order Act 1986, which makes provision for chief police officers to impose conditions on public assemblies or one-person protest where certain conditions are met.
- Section 15 of the Public Order Act 1986, which makes provision for chief officers of police to delegate certain functions in relation to the imposition of conditions on processions or assemblies and the prohibition of trespassory assemblies.
- Section 14 of the Planning Act 2008 (“the 2008 Act”), which defines nationally significant infrastructure projects.
- Section 379 of the Sentencing Code (“the Code”), which signposts other behaviour orders etc available on conviction (in this case to Serious Disruption Prevention Orders provided for in Part 2 of the Bill).

Territorial extent and application

- 10 Clause 35 sets out the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 11 The provisions in the Bill extend and apply to England and Wales only, except amendments to other Acts which have the same extent as the Acts being amended.
- 12 Clause 6(10) amends section 14 of the 2008 Act, Clause 15 amends section 15 of the 1986 Act.
- 13 Clause 16 amends sections 14, 14ZA, 14A and 15 of the 1986 Act. Section 14ZA extends to England and Wales only but the other sections extend to Great Britain. For the Ministry of Defence Police amendments apply in Great Britain but for the British Transport Police they only have practical application in England and Wales.
- 14 There is a convention (“the Sewel Convention”) that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. (In relation to Scotland and Wales, this convention is enshrined in law: see section 28(8) of the Scotland Act 1998 and section 107(6) of the Government of Wales Act 2006.)
- 15 It is the view of the UK Government, that the provisions in the Bill relate to reserved matters in Wales and, as such, they not within the legislative competence of Senedd Cymru and no legislative consent motion is being sought in relation to any provision of the Bill.
- 16 It is also the view of the UK Government that the relevant Ministry of Defence Police provisions in clause 16 of the Bill relate to reserved matters in Scotland and, as such, they are not within the legislative competence of the Scottish Parliament and no legislative consent motion is being sought in relation to these provisions.
- 17 If the Government introduces or accepts amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 18 See the table in Annex B for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Part 1: Public Order

Clause 1: Offence of locking on

- 19 Subsection (1) creates a new offence of “locking on”. An offence is committed where a person attaches themselves to another person, to an object or to land, or an object to another object or to land. It is a requirement of the offence that the act causes or is capable of causing serious disruption to two or more individuals or an organisation in a place other than a dwelling and that the accused intends that to occur or is reckless as to whether it will occur.
- 20 Subsection (2) provides for a reasonable excuse defence. The burden of proof is placed on the defendant as the facts as to whether they have a reasonable excuse will be within their knowledge. The prosecution will still need to prove all the elements of the offence to the criminal standard of proof, including that the act causes or is capable of causing serious disruption, and the defendant intended or was reckless as to serious harm disruption. Although not explicitly set out, the standard to which the defendant will be required to prove the defence is the balance of probabilities.
- 21 Subsections (3) and (4) provide for the maximum penalty for the offence, namely six months imprisonment (rising to 51 weeks once section 281(5) of the Criminal Justice Act 2003 has been brought into force), an unlimited fine, or to both.
- 22 Subsection (5) defines what is meant by a “dwelling”.

Clause 2: Offence of being equipped for locking on

- 23 Subsection (1) creates an offence where a person has an object (such as glue or a padlock) with them in a place other than a dwelling with the intention that it may be used in the course of or in connection with the locking on offence provided for in Clause 1.
- 24 Subsection (2) provides that the maximum penalty for the offence is an unlimited fine.
- 25 Subsection (3) applies the definition of a “dwelling” in Clause 1.

Clause 3: Offence of creating a tunnel

- 26 Subsection (1) creates a new offence of “causing serious disruption by tunnelling”. An offence is committed where a person creates, or participates in the creation of, a tunnel, the creation or existence of the tunnel causes or is capable of causing serious disruption to two or more individuals or an organisation in a place other than a dwelling and the person intends that to occur or is reckless as to whether it will occur.
- 27 Subsection (2) provides for a reasonable excuse defence. The burden of proof is placed on the defendant as the facts as to whether they have a reasonable excuse will be within their knowledge. The prosecution will still need to prove all the elements of the offence to the criminal standard of proof. Although not explicitly set out, the standard to which the defendant will be required to prove the defence is the balance of probabilities.
- 28 Subsection (3) provides that, if the construction of the tunnel was authorised by someone with an interest in the land who was entitled to do so (for example the landowner, legitimate occupier, or someone acting on their behalf), this will count as a reasonable excuse.
- 29 Subsections (4) provides for the maximum penalty for the offence, namely three years imprisonment on indictment or the maximum penalty a magistrates’ court may impose on summary conviction (currently 6-months), an unlimited fine, or both.

- 30 Subsections (5) and (6) define what is meant by a tunnel and an excavation.
- 31 Subsections (7) provide that this offence does not apply to tunnels that start in or are under a dwelling.
- 32 Subsection (8) applies the same definition of a “dwelling” as in Clause 1.

Clause 4: Offence of being present in a tunnel

- 33 Subsection (1) creates a new offence of “causing serious disruption by being present in a tunnel”. An offence is committed where a person is present in a tunnel, their presence causes or is capable of causing serious disruption to two or more individuals or an organisation in a place other than a dwelling and the person intends that to occur or is reckless as to whether it will occur.
- 34 Subsections (2) and (3) provide the same reasonable excuse defence as Clause 3.
- 35 Subsections (4) provides for the maximum penalty for the offence, namely three years imprisonment on indictment or the maximum penalty a magistrates’ court may impose on summary conviction (currently 6-months), an unlimited fine, or both.
- 36 Subsections (5) and (6) define what is meant by a tunnel and an excavation.
- 37 Subsections (7) provide that this offence does not apply to tunnels that start in or are under a dwelling.
- 38 Subsection (8) applies the same definition of a “dwelling” as in Clause 1.

Clause 5: Offence of being equipped for tunnelling

- 39 Subsection (1) creates a new offence of “being equipped for tunnelling”. This will be committed where a person has an object with them in a place other than a dwelling with the intention that it will be used in the course of or in connection with the commission by any person of the tunnelling offences provided for in Clause 3 and Clause 4.
- 40 Subsections (2) and (3) provide that the maximum penalty for the offence is six-months imprisonment on summary conviction (rising to 51 weeks once section 281(5) of the Criminal Justice Act 2003 is brought into force), an unlimited fine, or both.
- 41 Subsection (4) applies the same definition of a “dwelling” as in Clause 1.

Clause 6: Obstruction etc of major transport works

- 42 Subsection (1) provides that a person commits an offence if the person (a) obstructs a relevant undertaker or person acting under the undertaker’s authority in setting out the lines of any major transport work, in constructing or maintaining any major transport works, or taking any steps that are reasonably necessary for the purposes of facilitating, or in connection with, the construction or maintenance of any major transport works, or (b) interferes with, moves or removes any apparatus which relates to the construction or maintenance of any major transport works and belongs to a person within subsection (5).
- 43 Subsection (2) provides for a reasonable excuse defence, and a defence if the act was done in contemplation or furtherance of a trade dispute. The burden of proof is placed on the defendant as the facts as to whether they have a reasonable excuse will be within their knowledge. The prosecution will still need to have proved all the elements of the offence to the criminal standard of proof, including the serious harm or obstruction that arises as a result of the act or omission, and the defendant intended or was reckless as to serious harm or obstruction. Although not explicitly set out, the standard to which the defendant will be required to prove the defence is the balance of probabilities.

- 44 Subsections (3) and (4) provide for the maximum penalty for the offence, namely six months imprisonment (rising to 51 weeks once section 281(5) of the Criminal Justice Act 2003 has been brought into force), an unlimited fine, or to both.
- 45 Subsection (5) sets out the persons to whom apparatus may belong for the purposes of subsection (1)(b): the undertaker, statutory undertaker, or a person acting under their authority.
- 46 Subsection (6) defines “major transport works”. The definition is in two parts. First, it covers transport infrastructure authorised by an Act of Parliament, for example, the High Speed Rail (London – West Midlands) Act 2017 and the High Speed Rail (West Midlands - Crewe) Act 2021 which provide the legislative authority for the construction of the first and second phases of HS2 from London to the West Midlands and Crewe. The second part of the definition relates to transport works granted development consent by an order made under section 114 of the 2008 Act. Development consent orders cover nationally significant infrastructure projects, including new airports, airport extensions and major road projects.
- 47 Subsection (7) explains what type of development is within subsection (6)(b). The types of development are threefold:
- a. Developments that are, or form part of a nationally significant infrastructure project within any of paragraphs (h) to (l) of section 14(1) of the 2008 Act, namely a highway-related development; an airport-related development; the construction or alteration of harbour facilities; the construction or alteration of a railway; or the construction or alteration of a rail freight interchange.
 - b. Developments that are, or form part of, a project (or proposed project) in the field of transport to which the Secretary of State has given a direction under section 35(1) of the 2008 Act, for example the new railway works between Bedford and Cambridge (East West Rail Company - Planning Act 2008 direction (publishing.service.gov.uk)).
 - c. Associated developments in relation to developments within paragraphs (a) and (b) above.
- 48 Subsections (8) and (9) defines terms used in this clause, including “undertaker”.
- 49 Subsection (10) amends section 14 of the 2008 Act. Section 14(1) of the 2008 Act lists the categories of project which are “nationally significant infrastructure projects” for the purposes of the Act and section 14(3) enables the Secretary of State to make an order which amends the categories of nationally significant infrastructure project. Subsection (10) inserts a new subsection (3A) in section 14 of the 2008 Act which enables an order made under section 14(3) to make consequential amendments to subsection (6)(a) of this clause.

Clause 7: Interference with use or operation of key national infrastructure

- 50 Subsection (1) makes it an offence for a person to do an act which interferes with the use or operation of key national infrastructure where the person intends the act to have that effect or is reckless as to whether it will do so.
- 51 Subsection (2) provides a defence of reasonable excuse and a defence applying to industrial action.
- 52 Subsection (3) provides for the maximum penalty for the offence, namely, on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court (that is, six months (rising to 12 months once paragraph 24(2) of Schedule 22 to the Code has been brought into force)), an unlimited fine, or both and, on conviction on indictment, 12 months’ imprisonment, an unlimited fine, or both.

- 53 Subsections (4) and (5) define interference as an act that prevents or significantly delays the infrastructure from being used or operated to any extent of its intended purpose.
- 54 Subsection (6) lists key national infrastructure in scope of the offence, namely: road transport infrastructure; rail infrastructure; air transport infrastructure; harbour infrastructure; downstream oil infrastructure; downstream gas infrastructure; onshore oil and gas exploration and production infrastructure; onshore electricity generation infrastructure; and newspaper printing infrastructure. These terms are defined in Clause 8.
- 55 Subsections (7) to (9) confer a power on the Secretary of State, by regulations (subject to the affirmative procedure), to amend the list of key national infrastructure in subsection (7) and make consequential amendments to Clause 8.
- 56 Subsection (10) defines further terms used in this clause.

Clause 8: Key national infrastructure

- 57 This clause defines the different types of key national infrastructure for the purposes of Clause 7.

Clause 9: Interference with access to or provision of abortion services

- 58 This amendment was inserted by the House of Commons on 18 October 2022.
- 59 Subsection (1) makes it an offence for a person within a buffer zone to interfere with a person's decision to access, provide, or facilitate the provision of abortion services within that buffer zone. Subsection (3) defines "interferes with".
- 60 Subsection (2) defines a buffer zone as an area that is within 150 metres from any part of an abortion clinic or any access point to a building or site that contains an abortion clinic, and is on or adjacent to a public highway or right of way, in an area to which the public has access, within the area of land attached to an abortion clinic, or in a location that is visible from any of those areas.
- 61 Subsection (4) provides for the maximum penalty for the offence in the first instance, namely, on summary conviction, 6 months' imprisonment, a fine, or both. On further instances, the maximum penalty for the offence is on conviction on indictment 2 years' imprisonment, a fine or both, and on summary conviction 12-months imprisonment, a fine or both.
- 62 Subsection (5) sets out actions that may take place within buffer zones but are not considered an offence under Clause 9. This includes: anything done while providing or facilitating abortion services in an abortion clinic, anything done while providing medical care in a healthcare facility, the operation of a camera or camera footage that is not used for purposes contributing to the offence, and the actions of a police officer while carrying out their duties.

Clause 10: Powers to stop and search on suspicion

- 63 This clause amends section 1 of the Police and Criminal Evidence Act 1984 ("PACE") to allow a constable to stop and search a person or vehicle if they have reasonable grounds for suspecting that they will find an article made, or adapted or intended, for use in the course of or in connection with the following offences:
- an offence under section 137 of the Highways Act 1980 (wilful obstruction of a highway) involving activity which is capable of causing serious disruption;
 - an offence under section 78 of the Police, Crime, Sentencing and Courts Act 2022 (intentionally or recklessly causing public nuisance);
 - an offence under Clause 1 (offence of locking on) of this Bill;

- an offence under Clause 3 (offence of causing serious disruption by tunnelling);
- an offence under Clause 4 (offence of causing serious disruption by being present in a tunnel);
- an offence under Clause 6 (obstruction etc of major transport works) of this Bill; and
- an offence under Clause 7 (interference with use or operation of key national infrastructure) of this Bill;

64 The exercise of stop and search powers under section 1 of PACE is subject to PACE code of practice A ([PACE Code A \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)) which will be updated to reflect the extension of the section 1 powers.

Clause 11: Powers to stop and search without suspicion

- 65 This clause makes provision for a senior police officer to give an authorisation applying to a specific locality for a specified period and that allows a constable in uniform to stop and search a person or vehicle for an object made, adapted or intended for use in the course of or in connection with a specified protest-related offence. While the authorisation is in force the constable may exercise the power whether or not they have any grounds for suspecting the person or vehicle is carrying such an object.
- 66 Subsection (1) provides for the circumstances in which a senior officer of or above the rank of inspector can give an authorisation enabling a police constable to exercise stop and search powers without suspicion. Those circumstances are that the senior officer reasonably believes that any of the offences specified in paragraph 40 above may be committed in a locality within the police force area or that persons are carrying prohibited objects (as defined in subsection (2)) in a locality within the force area.
- 67 Subsection (3) stipulates that if the further condition in subsection (4) is met the senior police officer may give an authorisation that the suspicionless stop and search powers conferred by this clause are to be exercisable anywhere within a specified locality, which is within the officer's police area, and for a period not exceeding 24 hours.
- 68 Subsection (4) specifies the condition under which a senior police officer may give an authorisation. The senior officer must reasonably believe that: the authorisation is necessary to prevent the commission of offences within subsection (1)(a) or the carrying of prohibited objects, the specified locality is no greater than is necessary to prevent such activity, and the specified period must be no longer than is necessary to prevent such activity.
- 69 Subsection (5) allows for an officer of the rank of superintendent or above to provide for an authorisation to continue for up to a further 24 hours.
- 70 Where such an authorisation is in place, subsection (6) confers on any constable in uniform power to stop any person and search them or anything carried by them for a prohibited object; or to stop any vehicle and search the vehicle, its driver and any passenger for a prohibited object.
- 71 Subsection (7) allows a constable to stop any person or vehicle and make any search the constable thinks fit whether or not the constable has any grounds for suspecting that the person or vehicle is carrying a prohibited object.
- 72 Subsection (8) enables a constable to seize an object found during the course of a search if they have reasonable grounds for suspecting it to be a prohibited object.
- 73 Subsection (9) provides that the powers in this clause and Clauses 12 to 14 apply to ships, aircraft and hovercraft as they apply to vehicles.

- 74 Subsection (10) defines terms used in Clauses 11 to 14.
- 75 Subsection (11) provides that the powers conferred by Clauses 11 to 14 do not affect any power conferred otherwise than by those clauses.
- 76 The exercise of stop and search powers under this clause will be subject to PACE code of practice A ([PACE Code A \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100000/pace-code-a)) which will be updated to reflect these new powers. PACE Code A covers analogous suspicionless stop and search powers conferred by section 60 of the Criminal Justice and Public Order Act 1994.

Clause 12: Further provisions about authorisations and directions under section 11

- 77 Subsection (1) requires an inspector giving an authorisation under Clause 11 to inform an officer of superintendent rank or above as soon as practicable.
- 78 Subsection (2) stipulates that the authorisation under Clause 11 must be given in writing and signed, specify the grounds on which it was given and detail the locality covered by the authorisation and for how long the powers are available.
- 79 Subsection (3) provides that a direction given by an officer of the rank of superintendent or above under Clause 11(5) allowing for the continuation of the powers for a further period of up to 24 hours must also be given in writing. Where, due to operational circumstances, it is necessary to give the direction verbally, it must be recorded in writing as soon as practicable.
- 80 Subsection (4) ensures the powers in Clauses 11 and 12 may be exercised by senior officers of the British Transport Police (“BTP”) Force.
- 81 Subsection (5) provides that where an authorisation is made by a senior BTP officer, the “locality” to be covered by an authorisation is to be defined by reference to the jurisdiction of BTP as specified in section 31(1)(a)-(f) of the Railways and Transport Safety Act 2003, this includes railway tracks, stations and other land used for purposes of or in relation to a railway.

Clause 13: Further provisions about searches under section 11

- 82 Subsections (1) and (3) state that a person who is searched or a person who has their vehicle searched by a constable under Clause 11 is entitled to obtain a written statement from the officer that the person was searched and/or the vehicle was stopped.
- 83 Subsections (2) and (4) places a time limit of 12 months, from the day of the search, for the person or driver to request a statement as in subsections (1) and (3).
- 84 Subsection (5) provides that any object seized by a constable under Clause 11 may be retained in accordance with regulations made by the Secretary of State. Subsections (6) to (9) make further provision in respect of the regulation-making power, including that such regulations are subject to the negative procedure. It is envisaged that such regulations will make broadly analogous provisions to those contained in the Police (Retention and Disposal of Items Seized) Regulations 2002 (SI 2002/1372) made under section 60A of the Criminal Justice and Public Order Act 1994.

Clause 14: Offence relating to section 11

- 85 Subsection (1) makes it an offence for a person intentionally to obstruct an officer in exercising powers under Clause 11.
- 86 Subsections (2) and (3) provide for the maximum penalty for the offence, namely one month’s imprisonment (rising to 51 weeks once section 281(5) of the Criminal Justice Act 2003 has been brought into force), a level 3 fine (currently £1,000), or both.

Clause 15: Processions, assemblies and one-person protests: delegation of functions

87 Sections 12, 14 and 14ZA of the 1986 Act enable a chief officer of police to impose conditions on upcoming public processions, assemblies and one-person protests where certain conditions are met. Where a chief officer of police believes that their powers in section 12 will be insufficient to prevent a public procession from causing serious public disorder, they can apply to the local council (or the Secretary of State for the Metropolitan and City of London Police forces) to prohibit processions in part of or all their district for a maximum of three months under section 13 of the 1986 Act. Section 14A applies a similar power to section 13 in relation to trespassory assemblies. Section 15 enables a chief constable for a force outside London to delegate their functions under sections 12 to 14A to an Assistant Chief Constable. In contrast, in London the Metropolitan Police Commissioner or City of London Police Commissioner can only delegate these functions to an officer of the rank of Assistant Commissioner (equivalent to a chief constable in other forces). This clause substitutes a new subsection (2) of section 15 of the 1986 Act so that the functions can be delegated to an officer of the rank of Commander (or above), which is equivalent to Assistant Chief Constables outside of London. This is necessary to relieve Assistant Commissioners of the heavy burden of attending court to provide firsthand evidence whenever the lawfulness of a condition attached to a protest is contested.

Clause 16: Assemblies and One-Person Protests: British Transport Police and MoD Police

88 Clause 16 amends sections 14 and 14ZA of the Public Order Act 1986, which allow chief officers of the police to impose conditions on an upcoming public assembly or one-person protest where certain conditions are met. Section 14A allows chief officers of police, where they believe an assembly will be trespassing on land and may cause serious public disorder, to apply to the local council to prohibit trespassory assemblies, with the consent of the Secretary of State, within a certain area for a maximum of 4 days. In the case of the City of London Police or Metropolitan Police Service, the Commissioner need not apply to the local council and may prohibit trespassory assemblies solely with the consent of the Secretary of State. Section 15 allows a chief constable of a force to delegate their powers under sections 12 to 14A of the 1986 Act to an assistant chief constable.

89 Subsection (2) extends the powers under section 14 of the 1986 Act to set conditions on public assemblies to the British Transport Police and Ministry of Defence Police, where the assembly in question is being held or intended to be held within their jurisdictions¹.

90 Subsection (3) extends the powers under section 14ZA of the 1986 Act to set conditions on one-person protests to the British Transport Police and Ministry of Defence Police, where the one-person protest in question is being held or intended to be held within their jurisdictions².

91 Subsection (4) applies the powers under section 14A of the 1986 Act to prohibit trespassory assemblies to the British Transport Police and Ministry of Defence Police. The chief constable of the British Transport Police must reasonably believe that the assembly is to be held on an area within the jurisdiction of the British Transport Police to which the public do not have a general right of access, that the assembly is likely to be held without the consent of the occupier of the land, and may result in serious disruption to railway services, or to the life of the community,

¹ This subsection extends to England and Wales and Scotland. For the MDP it applies to the same extent. For BTP it only applies in England & Wales.

² This subsection extends to England and Wales only.

or in significant damage to land, or a building or monument on it that is of historical, architectural, archaeological or scientific importance³.

- 92 The chief constable of the Ministry of Defence Police must be satisfied that the assembly will be held on an area within the jurisdiction of the Ministry of Defence Police to which the public do not have a general right of access, and that the assembly is likely to be held without the consent of the occupier of the land, and may result in serious disruption to use for defence purposes, or to the life of the community, or in significant damage to land, or a building or monument on it that is of historical, architectural, archaeological or scientific important.
- 93 Each chief constable must gain the consent of the Secretary of State before making an order prohibiting assemblies under this subsection.
- 94 Subsection (5) allows the chief constables of the Ministry of Defence and British Transport Police forces to delegate any of their functions in the above subsections to deputy or assistant chief constables.

Clause 17: Power of Secretary of State to bring proceedings

- 95 Clause 17 makes provision for a Secretary of State to bring civil proceedings (including applying for injunctions) in relation to protest activity.
- 96 Subsection (1) sets out a power for a Secretary of State to bring civil proceedings where they reasonably believe that one or more persons are carrying out or likely to carry out activities related to a protest.
- 97 Subsections (2) and (3) specify that the Secretary of State must also reasonably believe the activities are:
- Causing or likely to cause serious disruption to the use or operation of any key national infrastructure (as defined in clause 8), or
 - To access to any essential goods or services in England and Wales, or
 - Having or likely to have a serious adverse effect on public safety in England and Wales.
- 98 Subsection (4) provides that proceedings may be brought in the name of the Secretary of State where these conditions are met and the Secretary of State considers that it is expedient in the public interest to do so.
- 99 Subsection (5) requires the Secretary of State to consult such persons (if any) as the Secretary of State considers appropriate before bringing proceedings, in particular having regard to any persons who may also bring civil proceedings in relation to the protest-related activities (for example, the landowner).
- 100 Subsection (7), in line with other offences in the Bill, excludes from scope activities done in contemplation or furtherance of a trade dispute.

Clause 18 and Schedule 1: Injunctions in Secretary of State proceedings: Power of arrest and remand

- 101 Clause 18 applies in proceedings brought by the Secretary of State under clause 17. Subsection (2) provides that, if the Court has granted an injunction prohibiting conduct which is capable

³ This subsection extends to England and Wales and Scotland. For the MDP it applies to the same extent. For BTP it only applies in England & Wales.

of causing nuisance or annoyance to a person, or of having a serious adverse effect on public safety, the Court may attach a power of arrest to any provision of the injunction.

102 Subsection (3) provides that the Court may do this if the Secretary of State has applied for it, and if the Court thinks that the prohibited conduct involves the use or threat of violence, or that there is significant risk of harm to a person, or to the public or section of the public.

103 Subsection (4) allows a constable to arrest, without a warrant, anyone they reasonably suspect may be in breach of a provision of an injunction that has a power of arrest attached. Subsection (5) requires constables to inform the Secretary of State of the arrest as soon as reasonably practicable.

104 Subsection (6) provides that a person who is arrested must appear before court within 24 hours of the arrest, and that the court may remand the person if required.

105 Subsection (8) introduces Schedule 1, which contains further detail on remand.

106 Subsections (9) to (11) make further provision about remand in particular cases.

Part 2: Serious Disruption Prevention Orders

107 This Part introduces a new civil order, the SDPO.

Clause 19: Serious disruption prevention order made on conviction

108 Subsections (1) to (5) set out the conditions for making a SDPO on conviction. Subsection (1) provides for the preliminary conditions that must be satisfied before a court can make an order, namely that the offender is aged 18 or over, has been convicted of an offence which was committed on or after Clause 18 came into force and the prosecution has applied for an order to be made (consequently, a court may not make an order on its own volition).

109 Subsections (2) to (5) sets out further conditions for the making of an order. These require that the offender has been convicted by the court of a protest-related offence and that on another occasion (that is, at a different protest or on a different day) within the last five years the person has engaged in another protest event (and was aged 16 or over at the time). Such an event must take one of the following forms (subsection (3)(a)), namely that the offender has:

- been convicted of another protest-related offence;
- been found in contempt of court for a protest-related breach of an injunction;
- carried out activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals or to an organisation;
- caused or contributed to any other person committing a protest-related offence or a protest-related breach of an injunction; or
- caused or contributed to the carrying out by any other person of activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals or to an organisation.

110 In determining whether the conviction was for a protest-related offence and whether the earlier protest-related event had occurred, the court will apply the civil standard of proof (the balance of probabilities). A further condition for making an order is that the court considers it necessary to make the order for a purpose specified in subsection (5). Those purposes are to:

- a. prevent the person from committing a protest-related offence or a protest-related breach of an injunction,

- b. prevent the person from carrying out activities related to protests that result, or are likely to result in, serious disruption to two or more individuals or an organisation,
- c. prevent the person from causing or contributing to the commission by another person of the acts set out at (a) or (b) above (for example, where the person was responsible for organising protests),
- d. protect two or more individuals or an organisation from the risk of serious disruption caused by a protest-related offence, a protest-related breach of an injunction or activities related to a protest.

111 Subsection (6) enables a court to impose any requirement or prohibition as part of an order which it considers necessary to achieve one of the purposes specified in subsection (5), although Clause 21 provides a non-exhaustive list of such requirements or prohibitions.

112 Subsection (7) provides that a court may only make a SDPO under this clause if a person has a sentence imposed in respect of the current offence, or an order discharging that person conditionally. Consequently, if the offender is given an absolute discharge no SDPO may be made.

113 Subsections (8) and (9) enables the court to hear evidence from both the offender and the prosecution when deciding whether to make an order, and such evidence may include evidence that would not have been admissible in the proceedings for the current offence (for example, hearsay evidence).

114 Subsection (10) enables a court to adjourn proceedings on sentencing the offender in order to reach a decision on whether to make a SDPO, or on the restrictions or prohibitions to be attached to an order, at a later date.

115 Subsections (11) to (13) set out the powers of a court where the offender does not appear for any adjourned proceedings.

116 Subsections (14) requires the court to explain the effects of the order in ordinary language to the offender.

117 Subsection (15) provides that when considering whether a trigger protest-related offence fell within the “relevant period” for the purposes of subsection (2)(a) and the offence was committed over two or more days, it is to be treated as having been committed on the last of those days.

Clause 20: Serious disruption prevention order made otherwise than on conviction

118 This clause provides for the making of a SDPO by a magistrates’ court on application by a chief officer of police. Such an application may be made by the chief officer of the police force in England and Wales where the prospective subject of the order lives or is intending to come to, the British Transport Police, Civil Nuclear Constabulary or Ministry of Defence Police (see subsections (1)(a), (7) and (8)). An order may only be made in respect of a person aged 18 or older (subsection (1)(b)).

119 Subsection (2) sets out the conditions that must be met for an order to be made, namely that the person in question must have done two of the following during different protests or at the same protest but on different days:

- been convicted of a protest-related offence;
- been found in contempt of court for a protest-related breach of an injunction;
- carried out activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals or to an organisation;

- caused or contributed to any other person committing a protest-related offence or a protest-related breach of an injunction; or
- caused or contributed to the carrying out by any other person of activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals or to an organisation.

120 The two trigger protest-related events must have occurred no earlier than the period starting five years before the order is made but each event must have taken place after Clause 19 comes into force and the person concerned must have been aged 16 or older at the time (subsection (3)).

121 In determining whether the condition in subsection (2) has been met the court will apply the civil standard of proof (the balance of probabilities).

122 A further condition for making an order is that the court considers it necessary to make the order for a purpose specified in subsection (4). Those purposes are to:

- a. prevent the person from committing a protest-related offence or a protest-related breach of an injunction,
- b. prevent the person from carrying out activities related to protests that result, or are likely to result in, serious disruption to two or more individuals or an organisation,
- c. prevent the person from causing or contributing to the commission by another person of the acts set out at (a) or (b) above (for example, where the person was responsible for organising protests),
- d. protect two or more individuals or an organisation from the risk of serious disruption caused by a protest-related offence, a protest-related breach of an injunction or activities related to a protest.

123 Subsection (5) enables a court to impose any requirement or prohibition as part of an order which it considers necessary to achieve one of the purposes specified in subsection (4), although Clause 21 provides a non-exhaustive list of such requirements or prohibitions.

124 Subsection (6) requires that the court explain the effects of the order in ordinary language to the person who is the subject of the order.

125 Subsection (9) provides that an application made by a chief officer of police for a territorial force must be made to a court acting for a local justice area that forms part of the police force area.

126 Subsection (10) provides that when considering whether a trigger protest-related offence fell within the “relevant period” for the purposes of subsection (2)(a) and the offence was committed over two or more days, it is to be treated as having been committed on the last of those days.

127 Subsection (11) provides that section 127 of the Magistrates’ Courts Act 1980 (which provides for a six-month time limit on a magistrates’ court hearing a complaint unless the complaint was made within six months from the time when the matter of complaint arose) does not apply to applications under this clause.

Clause 21: Provisions of serious disruption prevention order

128 As provided for in Clause 19(6) and 20(5) a court may impose any requirements (in addition to the standard notification requirements) or prohibitions as part of a SDPO as it considers necessary for a purpose set out in Clause 19(5) and 20(4) respectively. Subject to the generality

of those provisions, this clause sets out non-exhaustive examples of the types of requirements or prohibitions that may be imposed.

129 Subsection (2)(a) provides that the requirements that may be imposed by a SDPO include a requirement requiring the subject of the order to present themselves to a particular person at a particular time. Such a requirement may be necessary to reinforce a prohibition on the person attending known protest-related events. Subsection (2)(b) provides that a SDPO may include a requirement such that the subject of an order remains at a particular place for particular periods, for example, at their home during the currency of certain protests. Subsection (2)(c) provides that a SDPO may include a requirement for the subject of the order to submit to electronic monitoring in order to monitor their compliance with other requirements imposed by the order. This may include, for example, electronic monitoring of the perpetrator's whereabouts to monitor their compliance with restrictions on their being at a particular place (see subsection (4) below).

130 Subsection (4) sets out a non-exhaustive list of prohibitions that may be attached to a SDPO. These may prohibit the subject of an order from:

- being in or entering a particular place or area (for example, a named oil refinery),
- being in or entering a particular place or area at a certain time, or between certain times, on particular days or any days,
- being with particular people (for example, associates who were convicted of a protest-related offence at the same time as the subject of the order),
- participating in particular activities,
- possessing particular articles (for example, lock-on devices),
- using the internet to facilitate or encourage protest-related offences or protest-related breaches of injunctions, or carrying out activities relating to a protest that result in, or are likely to result in, serious disruption to two or more individuals or an organisation.

131 Subsection (5) provides that references to particular persons, particular places, activities and articles in this section can include persons, places, activities and articles of a particular description.

132 Subsection (6) provides that a SDPO may include exceptions to certain prohibitions imposed.

133 Subsection (8) provides that the requirements or prohibitions of a SDPO must, where possible, avoid conflict with the person's religious beliefs and times where they attend their place of work or educational establishment.

Clause 22: Requirements in serious disruption prevention order

134 Subsection (1) provides that, where a SDPO imposes a requirement on a person (other than a notification requirement as set out in Clause 24 and electronic monitoring requirements (as to which see Clause 23)), the order must name someone responsible for supervising compliance with the requirement.

135 Subsection (2) specifies that the supervisory person may be an individual or an organisation.

136 Subsection (3) sets out that the court must receive evidence about the suitability and enforceability of any requirements before they are imposed from the supervisory person or organisation.

- 137 Subsection (4) ensures the court assesses whether multiple requirements are compatible with one another before imposing them.
- 138 Subsection (6) establishes the duties for the supervisory person from subsection (1). This person must make any necessary arrangements in connection with the requirements they are responsible for, promote the person's compliance with them, and to inform the relevant chief officer of police if the person has complied or not complied with the relevant requirements.
- 139 Subsection (7) specifies that the relevant chief officer of police referenced in subsection (6) is either the chief police officer for the police area which it appears to the supervisory person the person subject to the SDPO lives in, or whichever chief police officer is most appropriate to inform if it appears to the supervisory person that the person subject to the SDPO lives in more than one police area.
- 140 Subsection (8) specifies that persons subject to a SDPO requirement must keep in touch with the supervisory person and notify them of any change in their home address.
- 141 Subsection (9) provides that subsection (8) applies to an individual subject to a SDPO as if it were a requirement of the order (as such, failure to comply without reasonable excuse will be an offence under Clause 27).

Clause 23: Further provision about electronic monitoring requirements

- 142 This clause sets out the conditions that must be satisfied to enable an electronic monitoring requirement to be attached to a SDPO.
- 143 An electronic monitoring requirement may be imposed to support the monitoring of an individual's compliance with other requirements of the order (for example, a prohibition on being at a particular place). Electronic monitoring is undertaken using an electronic tag usually fitted to the subject's ankle.
- 144 An electronic monitoring requirement cannot be imposed on a person subject to a SDPO in his or her absence (subsection 2). This is because the perpetrator must be present in court whilst the application to consider electronic monitoring is decided upon, to provide the court with the perpetrator's address for the purpose of the fitting and installation of the electronic monitoring equipment, and in order to allow the court to make the enquiry required by subsection (3).
- 145 Subsection (3) specifies that where another person's cooperation is required in order to secure the electronic monitoring, the monitoring cannot be required without that person's consent. This may include, for example, the occupier of the premises where the perpetrator lives or other persons living in the same premises as the perpetrator.
- 146 Subsection (4) obliges the court to ensure that electronic monitoring arrangements are available in the relevant local area (as defined in subsection (5)) before imposing an electronic monitoring requirement. In practice, the court would be notified of the availability of such arrangements by the Ministry of Justice.
- 147 Subsection (6) provides that a SDPO which includes an electronic monitoring requirement must specify the person who is responsible for the monitoring ("the responsible person").
- 148 Subsection (7) provides that the responsible person must be of a description specified in regulations made by the Secretary of State (such regulations are not subject to any parliamentary procedure).
- 149 Subsection (8) sets out the requirements for installation and maintenance of the electronic monitoring apparatus, including the requirements for the perpetrator to submit to monitoring apparatus being fitted or installed, inspected or repaired. This subsection also prohibits the perpetrator from interfering with the monitoring apparatus and requires the perpetrator to

take steps to keep the apparatus in working order, including keeping the equipment charged as directed. Failure to adhere to these requirements would constitute a breach of the SDPO (as to which see Clause 27).

Clause 24: Notification requirements in serious disruption prevention order

150 Subsection (1) provides that a SDPO must impose the notification requirements under this clause.

151 Subsection (2) specifies that the person subject to an order must notify the information in subsection (3) to the police within 3 days of the order taking effect.

152 Subsection (3) sets out the information the person must provide to the police. This information is:

- Their name on the day the notification is given and any other names they use.
- Their home address on the day the notification is given.
- The addresses of any other premises where they regularly reside or stay.

153 Subsections (4) and (5) requires the person subject to an order to notify the police if they change their name or home address, or if they decide to live for a period of one month or more at an address not previously notified to the police. This information must be provided to the police within three days of such a change.

154 Subsection (6) provides that persons subject to a SDPO must fulfil the above requirements by attending a police station in the police area where they live and giving oral notification to a police officer or other person authorised by the officer in charge of the station.

Clause 25: Duration of serious disruption prevention order

155 Subsection (1) provides a SDPO takes effect the day it is made, subject to the provisions in subsections (3) and (4).

156 Subsection (2) sets out that a SDPO must specify the period that it has effect. This is a fixed period of a minimum of one week, up to a maximum of two years (but a SDPO may be renewed under the provisions of Clause 28).

157 Subsection (3) sets out that subsection (4) applies where a person has been remanded in or committed to custody by a court, had a custodial sentence imposed on them, or is on licence for part of a custodial sentence.

158 Subsection (4) provides that SDPOs may provide that they do not take effect until the person is released from custody, ceases to be subject to a custodial sentence, or ceases to be on licence. In the latter case, the licence conditions may have similar effect to the prohibitions or restrictions provided for in the order and, as such, the order need not take effect until the licence conditions cease to apply.

159 Subsection (5) allows SDPOs to specify periods where particular requirements or prohibitions have effect. Particular provisions of an order may therefore apply for a more limited period than the order itself and, in the case of an electronic monitoring requirement, may not apply for more than 12 months (subsection (6)). Where a requirement of a SDPO is time limited, the duration of the requirement (including an electronic monitoring requirement) may be extended on the variation of the SDPO under Clause 28.

160 Subsection (8) provides that, where a court makes a SDPO on someone already subject to a SDPO, the earlier order ceases to have effect.

161 Subsection (9) defines custodial sentence in this section as including pre-Code custodial sentence (see section 222(4) of the Sentencing Act 2020).

Clause 26: Other information to be included in serious disruption prevention order

162 This clause requires that a SDPO specifies the reasons for making the order and the penalties which may be imposed for breaching the order.

Clause 27: Offences relating to a serious disruption prevention order

163 Subsection (1) provides that a person subject to a SDPO commits an offence when:

- They fail to do anything required of them by the order without reasonable excuse.
- They do anything prohibited by the order without reasonable excuse.
- They provide information they know to be false to the police in compliance with the order.

164 Subsections (2) and (3) provide for the maximum penalty for these offences, namely six months' imprisonment (rising to 51 weeks when section 281(5) of the Criminal Justice Act 2003 is brought into force), an unlimited fine, or both.

Clause 28: Variation, renewal or discharge of serious disruption prevention order

165 Subsection (1) enables a person named in subsection (2) to apply to court to vary, renew or discharge a SDPO.

166 Subsection (2) sets out these persons. They are:

- The person subject to a SDPO.
- The chief officer of police where the person subject to a SDPO lives.
- A chief officer of police who believes that a person subject to a SDPO is in or intending to come into their police area.
- The chief officer of police who made the original SDPO application.
- The chief officer of police for the police area in which the person committed an offence which led to the imposition of a SDPO.
- Another relevant chief officer set out in subsection (3).

167 Subsection (3) identifies other relevant chief officers as the chief constables of the British Transport Police, Civil Nuclear Constabulary and Ministry of Defence Police.

168 Subsection (4) establishes that an application to vary, renew or discharge an order must be made to a magistrates' court by complaint, or in accordance with the rules of the court if applying to another court.

169 Subsection (5) requires the court to hear from the person making the application, and any other person specified in subsection (2) before making its decision.

170 Subsection (6) (subject to subsections (7) to (9)) allows the court to make such order varying, renewing or discharging a SDPO as it sees fit, following an application.

171 Subsections (7) and (8) allows a court to vary or renew a SDPO and impose additional requirements or prohibitions if it is satisfied that the order will:

- prevent the person subject to a SDPO from committing a protest-related offence or protest-related breach of an injunction,

- prevent the person subject to a SDPO from carrying out activities related to protests that result, or are likely to result in serious disruption to an organisation or two or more individuals,
- protect an organisation or two or more individuals from the risk of serious disruption arising from protest-related offences, protest-related breaches of injunctions and activities related to a protest,
- prevent the person subject to a SDPO from causing or contributing to any other person's protest-related offence or protest-related breach of an injunction, or
- prevent the person subject to a SDPO from causing or contributing to any other person's act which is likely to result in serious disruption to an organisation or two or more individuals.

172 Subsection (9) limits the duration of an extension of an electronic monitoring requirement to 12 months, but this does not preclude a further extension (again for no longer than 12 months) if the SDPO is renewed.

173 Subsection (10) specifies that the provisions in Clauses 21 to 26 (other than those in Clause 23(2) and (3) which deal with notification requirements when a SDPO is first imposed) also have effect in relation to the renewal or variation of an order under this section.

174 Subsection (11) requires the court to explain in ordinary language to the person subject to a SDPO, the effects of the SDPO which has been varied or renewed.

175 Subsection (12) provides that section 127 of the Magistrates' Courts Act 1980 (which provides for a six-month time limit on a magistrates' court hearing a complaint unless the complaint was made within 6 months from the time when the matter of complaint arose) does not apply to applications under this clause.

176 Subsection (13) defines the meaning of appropriate court for the purpose of this clause. The appropriate court is:

- Where the Crown Court or Court of Appeal made the SDPO, the Crown Court.
- Where a magistrates' court made the order and the application to vary, renew or discharge is made by someone listed under subsection (3), then the appropriate court is the original magistrates' court or the magistrates' court where the person subject to a SDPO lives.
- Where a magistrates' court made an order and a chief police officer applies, then the appropriate court is the original magistrates' court or the magistrates' court where the person subject to a SDPO lives, or a magistrates' court acting for a local justice area which includes any part of that chief officer's police area.

Clause 29: Appeal against serious disruption prevention order

177 Subsection (1) provides for a person issued with a SDPO on conviction may appeal against the decision to make an order as if the order was part of the sentence for the offence for which they were convicted. As such, the appellate court will either be the Crown Court (where an order was made on conviction in a magistrates' court) or the Court of Appeal (where an order was made on conviction in the Crown Court).

178 Subsection (2) provides for a right of appeal against the making of a SDPO otherwise on conviction. The appeal is to the appropriate court as defined in subsection (5), namely the Crown Court.

179 Subsection (3) enables the person who applied for a SDPO otherwise than on conviction to appeal against the decision of the court to refuse to make an order. The appeal is to the appropriate court as defined in subsection (5), namely the Crown Court.

180 Subsection (4) provides for a right of appeal to the appropriate court as defined in subsection (5) in relation to the variation, renewal or discharge of a SDPO. The persons who may appeal here are:

- The person who applied for a SDPO to be varied, renewed or discharged may appeal if their application is refused.
- The person subject to a SDPO may appeal against a SDPO which has been varied or renewed.
- A person specified in Clause 26(2) may appeal against the varying, renewing or discharge of a SDPO, which occurred following an application by the person subject to the SDPO.

181 Subsection (6) enables the Crown Court, on granting an appeal, to make such orders necessary to give effect to its determination of the appeal and any appropriate consequential and incidental orders.

Clause 30: Guidance

182 Subsection (1) provides that the Secretary of State may issue guidance to chief officers of police in relation to SDPOs.

183 Subsection (2) sets out a non-exhaustive list of the matters which may be addressed in the guidance, namely:

- the exercise by chief officers of their functions under Part 2,
- identifying persons in respect of whom it may be appropriate for applications for SDPOs to be made, and
- providing assistance to prosecutors in connection with applications for SDPOs.

184 Subsections (3) and (4) enable the Secretary of State to revise any guidance issued under this clause and provides for any guidance issued under this clause to be published.

185 Subsection (5) requires chief officers of police to have regard to any guidance issued under this clause.

Clause 31: Guidance: Parliamentary procedure

186 This clause provides for any guidance issued under Clause 30 to be subject to the draft negative resolution procedure.

Clause 32: Data from electronic monitoring: code of practice

187 This clause requires the Secretary of State to issue a code of practice relating to the processing of data gathered in the course of electronic monitoring of individuals under electronic monitoring requirements imposed by a SDPO.

188 The processing of such data will be subject to the requirements of the General Data Protection Regulation and the Data Protection Act 2018. The code of practice issued under this clause is intended to set out the appropriate tests and safeguards for the processing of such data, in order to assist with compliance of the data protection legislation. For example, it is envisaged that the code will set out the length of time for which data may be retained and the

circumstances in which it may be permissible to share data with the police to assist with crime detection.

Clause 33: Interpretation of Part

189 This clause defines terms used in Part 2.

Clause 34: Consequential amendments

190 Subsection (1) amends the Prosecution of Offences Act 1985 to provide for the Director of Public Prosecutions to conduct applications for SDPOs under Clause 19.

191 Subsection (2) adds SDPOs to the list, in section 379(1) of the Code, of other behaviour etc orders (that is, other than the behaviour orders provided for in Part 11 of the Code) that a court may make on conviction. Section 379(1) acts as a signpost to the courts to other behaviour orders which may, as here, not only be made on conviction but also in other specified circumstances.

Part 3: General

Clause 35: Extent, commencement and short title

192 This clause specifies the territorial extent of the provisions in the Bill, provides for commencement and specifies the short title of the Bill.

Commencement

193 Clause 35(3) provides for Clause 35 to come into force on Royal Assent. The regulation-making powers in Clauses 7, 13 and 23 also come into force on Royal Assent. Clause 16 comes into force two months after Royal Assent. The remaining provisions will be brought into force by commencement regulations made by the Secretary of State (Clause 35(5)).

Financial implications of the Bill

194 The main public sector financial implications of the Bill fall to criminal justice agencies (including the police, prosecutors, HM Courts and Tribunals Service, the Legal Aid Agency and HM Prison and Probation Service). The estimated annual cost of the measures in the Bill once fully implemented is £0.9 million. This figure is estimated based on a number of assumptions about implementation which are subject to change. Further details of the costs and benefits of individual provisions are set out in the impact assessment published alongside the Bill.

Parliamentary approval for financial costs or for charges imposed

195 The Bill does not require a money resolution or a ways and means resolution.

Environment Act 2021

196 Lord Sharpe of Epsom is of the view that the Bill as brought from the House of Commons does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Compatibility with the European Convention on Human Rights

197 Lord Sharpe of Epsom has made the following statement under section 19(1)(b) of the Human Rights Act 1998:

"I am unable, but only because of clause 9, to make a statement that, in my view, the provisions of the Bill are compatible with the Convention rights but the Government nevertheless wishes to proceed with the Bill".

198 The Government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill's provisions with the Convention rights: this memorandum is available on the Government website.

Related documents

199 The following documents are relevant to the Bill and can be read at the stated locations:

- [Getting the balance right? An inspection of how effectively the police deal with protests \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk), March 2021, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services.
- Delegated Powers and Regulatory Reform Committee, 13th Report of session 2021-22 ([HL Paper 107](#)).
- Delegated Powers and Regulatory Reform Committee, 15th Report of session 2021-22 ([HL Paper 133](#)).
- Impact assessment.
- Equality impact assessment.
- Delegated powers memorandum.
- ECHR memorandum.

Annex A – Glossary

SDPO	Serious Disruption Prevention Order
The 1986 Act	Public Order Act 1986
The 2008 Act	Planning Act 2008
The 2022 Act	Police, Crime, Sentencing and Courts Act 2022
The Code	The Sentencing Code

Annex B – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clauses 1 to 35 (excluding Clause 16)	Yes	Yes	No	No	N/A	No	N/A
Clause 16	Yes	Yes	No	Some (see page 12)	N/A	No	N/A

Subject matter and legislative competence of devolved legislatures

200 It is the UK Government's view that all the measures in the Bill relate to reserved matters in Wales, specifically, the prevention, detection and investigation of crime, the maintenance of public order and policing (paragraphs 39, 40 and 41 of Schedule 7A to the Government of Wales Act 2006 respectively). These matters are generally devolved in Scotland and Northern Ireland in relation to territorial policing, as in this case. However, insofar as measures in Clause 16 which relate to the Ministry of Defence Police extend to Scotland, they are also a reserved matter, specifically Defence (paragraph 9 of Schedule 5 to the Scotland Act 1998).

PUBLIC ORDER BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Public Order Bill as brought from the House of Commons on 19 October 2022 (HL Bill 61).

Ordered by the House of Lords to be printed, 19 October 2022

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