



Ministry
of Justice



Home Office

Lord Wolfson of Tredegar
QC
Parliamentary Under
Secretary of State

Baroness Williams of
Trafford
Minister of State

Lord Rosser and Lord Falconer of Thoroton

16 November 2021

Dear Richard and Charlie,

**POLICE, CRIME, SENTENCING AND COURTS BILL: GOVERNMENT AMENDMENTS
FOR LORDS COMMITTEE STAGE**

We are writing to let you have details of the attached further Government amendments we have tabled for Lords Committee stage. They are in response to the significant disruption, including the obstruction of Parliament, we have seen over the last few months caused by Insulate Britain protestors.

Wilful obstruction of highway (new clause “*Wilful obstruction of highway*”)

Section 137 of the Highways Act 1980 currently provides for a maximum penalty of a level 3 fine (£1,000) if an individual is found without lawful authority or excuse to have wilfully obstructed the free passage along a highway. It is clear from recent events that this is no deterrent to protestors who may be crowd funded and do not fear being arrested. This amendment therefore increases the maximum penalty to a term of imprisonment not exceeding six months, an unlimited fine, or both.

In addition, the amendments to section 137 make clear that this offence can still be committed even if the highway has been temporarily closed. This is to close a loophole in which it has been argued that the offence can not be committed if free passage along the highway has already been restricted, either by other protestors or the police and traffic authorities in response to the protest.

Offences related to locking on (new clauses “*Offence of locking on*” and “*Offence of being equipped for locking on*”)

These amendments will create two new offences designed to deter individuals from ‘locking on’, the tactic in which they attach themselves to other individuals or objects or land, or attach objects together or to land, creating an obstruction which is difficult and time consuming for the police to remove.

The locking on offence will be committed if an individual intentionally creates a lock on which either intentionally or recklessly causes, or is capable of causing, serious disruption to two or more people or an organisation. If found guilty of such an offence, an individual will be liable on summary conviction to a maximum term of imprisonment of six months, an unlimited fine, or both.

The offence will not apply in private dwellings or if the individual has a reasonable excuse.

The second new offence will apply 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 an offence under the new “locking on” offence. The maximum penalty will be an unlimited fine.

Obstruction of major transport works (new clause “*Obstruction etc of major transport works*”)

We have seen considerable disruption of the construction or maintenance of major transport works, causing delay to projects of national importance. HS2 Ltd has estimated, for example, that protestor activity has cost the project up to £80m. We therefore propose to create a new offence of obstructing the construction of major transport works. These are transport works that are authorised directly by an Act of Parliament or by certain development consent orders under the Planning Act 2008. As such it would include construction of major railways, roadways, airports and ports.

The new clause would criminalise actions that, without reasonable excuse, disrupted those authorised to carry out such construction or maintenance, either through obstruction of their efforts or by interfering with, moving or removing apparatus required for the construction. It would also be an offence to obstruct actions that are reasonably necessary for the construction or maintenance of the transport works such as surveying land prior to works commencing. An individual found guilty of such an offence would be liable on summary conviction to a term of imprisonment not exceeding six months, an unlimited fine, or both.

Powers to stop and search (new clauses “*Powers to stop and search on suspicion*”, “*Powers to stop and search without suspicion*”, “*Further provisions about authorisations and directions under section (Powers to stop and search without suspicion)*” “*Further provisions about searches under section (Powers to stop and search without suspicion)*” and “*Offence relating to section (Powers to stop and search without suspicion)*”)

While we expect the new and modified offences described above to deter some from locking on we also want to empower the police to pro-actively prevent those not deterred from carrying out highly disruptive protests. New clause “*Powers to stop and search on suspicion*” therefore amends section 1 of the Police and Criminal Evidence Act 1984 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, adapted or intended for use in the course of or in connection with an offence listed in the amendment. These are the offences detailed herein, namely obstructing the highway where it involves activity which causes or is capable of causing serious disruption to two or more individuals or to an organisation,

locking on, intentionally or recklessly causing public nuisance and the obstruction of major transport works.

In a protest situation with large numbers of people, it will not always be possible for a constable to form suspicion that a particular individual may be intending to commit an offence. Consequently, new clause "*Powers to stop and search without suspicion*" also makes provision for a suspicionless stop and search power. It would allow a police officer of or above the rank of inspector to give an authorisation applying to a specified locality for a specified period and allowing a constable 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 the offences listed in the amendment. 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. It would be an offence for a person to intentionally obstruct a constable exercising this power.

The new clause makes clear the locality must be no bigger than necessary, and the duration is no longer than is necessary, to prevent the offences occurring. There is a maximum permitted duration of 24 hours, unless an officer of the rank of superintendent or above authorises an extension, which would also be limited to a maximum of 24 hours.

The amendments set out the administrative requirements on the police, for example, to notify an officer of the rank of superintendent or above if an authorisation is made by an inspector, and to specify in writing the grounds for the authorisation and the locality it applies to. It also sets out the rights of those stopped under the suspicionless power to obtain a written statement that the search was carried out using these powers.

For both types of stop and search, a constable may seize any object they have reasonable grounds for suspecting is an object they are searching for.

Serious Disruption Prevention Orders (new clause "*Serious disruption prevention orders*" and amendment to clause 175)

New clause "*Serious disruption prevention orders*" will introduce a new preventative court order – the Serious Disruption Prevention Order (SDPO), aimed at tackling repeated highly disruptive behaviour by prolific protestors. A court will be able to impose an SDPO against a person aged 18 or over under the following circumstances:

Firstly, on conviction of two or more protest-related criminal offences within the relevant period. These offences must have occurred on two separate occasions.

Secondly, on application by the police, where the court is satisfied, on the balance of probabilities, that that the individual has on two occasions in the relevant period:

- been convicted of a protest related criminal offence;
- caused or contributed to the commission of a protest related criminal offence or protest-related breach of an injunction by any other person;
- carried out activities related to a protest that resulted in, or was likely to result in, serious disruption to two or more individuals, or to an organisation, in England and Wales;
- caused or contributed to the carrying out of activities by any other person related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals, or to an organisation, in England and Wales; or

- been found in contempt of court for a protest-related breach of an injunction.

Whether an application is made on conviction or otherwise by the police, the court must also consider the making of an order is necessary to:

- to prevent the person from committing a protest-related offence or a protest-related breach of an injunction;
- to prevent the person from carrying out activities related to a protest that result in, or are likely to result in, serious disruption to two or more individuals, or to an organisation, in England and Wales;
- to prevent the person from causing or contributing to—
 - the commission by any other person of a protest-related offence or a protest-related breach of an injunction, or
 - the carrying out of activities by any other person related to a protest that result in, or are likely to result in, serious disruption to two or more individuals, or to an organisation, in England and Wales;
- to protect two or more individuals, or an organisation, in England and Wales from the risk of serious disruption arising from—
 - a protest-related offence,
 - a protest-related breach of an injunction, or
 - activities related a protest.

For all these circumstances, the relevant period for consideration of convictions or behaviour will be five years prior to the day an SDPO is imposed. However, a court will only be able to look back to a person's 16th birthday. In addition, for all circumstances, two occasions means either two separate days or two separate protests.

The courts will have discretion to impose any conditions necessary. SDPOs will last between one week and two years in duration, and the breaching of an order will constitute an offence carrying an unlimited fine and/or 6-months' imprisonment.

The measures will apply to England and Wales.

I attach a supplementary delegated powers memorandum in relation to these amendments.

As indicated in our letter of 19 October, we will also bring forward amendments at Report stage to provide for a new offence of interfering with the operation of key infrastructure.

Recent actions by Insulate Britain have further demonstrated the need to ensure that public order legislation strikes an appropriate balance between protecting the rights of the wider public adversely affected by protest activity and the protesters. The actions we have seen in recent months around the M25 and elsewhere have brought unacceptable disruption to those simply wanting to get to work or otherwise go about their daily lives. More importantly, some of them have put police officers, the travelling public, as well as the protesters themselves, at serious risk of harm.

These actions are wholly unacceptable, and it is for that reason we propose to strengthen the measures in the Bill to ensure that the police have the powers they need to tackle such highly disruptive protests and protect the public.

We are copying this letter to Lord Ponsonby, Lord Coaker, Lord Paddick, Lord Marks of Henley upon Thames, Lord Judge, Lord Blencathra (Chair, Delegated Powers and Regulatory Reform Committee), Baroness Taylor of Bolton (Chair, Constitution Committee), Harriet Harman (Chair, Joint Committee on Human Rights), Nick Thomas-Symonds, David Lammy and Sarah Jones. We are also placing a copy of this letter and enclosures in the library of the House.

A handwritten signature in blue ink, appearing to read "Susan".

Baroness Williams of Trafford

A handwritten signature in blue ink, appearing to read "David Wolfson".

Lord Wolfson of Tredegar