



Home Office

Ministry
of Justice**Rt Hon Chris Philp MP**
Minister of State for Crime, Policing
and Fire2 Marsham Street
London SW1P 4DFwww.gov.uk/home-office**Laura Farris MP Minister for Victims**
and Safeguarding102 Petty France
London SW1H 9AJAlex Cunningham MP
Shadow Minister for Courts and Legal Services

Ref: 114792

Alex Norris MP
Shadow Minister for Policing

10 May 2024

Dear Alex and Alex,

CRIMINAL JUSTICE BILL: FURTHER GOVERNMENT AMENDMENTS FOR REPORT

We are writing to provide you with details of a second tranche of Government amendments we have tabled today for Report stage.

Public order

The recent wave of protests following the devastating events in Israel and Gaza and on-going environmental-related protests have highlighted gaps in public order legislation. We are seeking to remedy these by introducing new measures that will give the police the tools they need to maintain public order and safety. These measures are as follows:

Banning the wearing or otherwise using items for the purpose of concealing identity in designated localities (new clauses: “*Concealing identity at protests: offence*”, “*Concealing identity at protests: designating localities and giving notice*” and “*Concealing identity at protests: procedure and other provision*”)

These new clauses make the wearing or otherwise using an item wholly or mainly for the purpose of concealing identity in a locality designated by police under the provisions an offence. The authorisation will be placed on a designated locality when it is thought that protest activity is likely to involve or has involved the commission of offences.

During recent protests, the police have observed that some individuals have been using face coverings to conceal their identity to avoid conviction for criminal behaviour. An authorisation under section 60AA of the Criminal Justice and Public Order Act 1994 currently enables an officer to direct an individual to remove a face covering which the individual is using to conceal their identity. However, police have observed that individuals have been complying with these orders and then returning to a crowd and redeploying the face covering once there.

To resolve this, these new clauses confer a power on the police to designate localities for up to 24 hours (with provision to extend for 24 hours) where they reasonably believe a public protest may take place or is taking place, which is likely to involve or has involved the commission of offences, and it is expedient to prevent or control the commission of offences to designate the locality. In areas where a designation is in force, it will be an offence to wear or otherwise use an item wholly or mainly to conceal identity.

‘Wholly or mainly for the purpose of concealing their identity’ is an established test which the police already use when exercising their existing section 60AA powers, to ensure that the offence does not capture those covering their faces for other reasons, for example, for religious or health reasons.

The offence will carry a maximum penalty of up to one month imprisonment or a fine of up to £1,000 or both.

This would enable an officer to arrest an individual employing any item which the constable reasonably believes is being worn or used wholly or mainly for the purpose of concealing identify within the designated area.

Climbing on a war memorial (new clause “*War memorials*” and new Schedule “*Specified war memorials*”)

In recent protests related to the Gaza conflict we have seen protestors climb on war memorials. Understandably, this has caused considerable anger and outrage from the public. Regrettably, this is not a new phenomenon, and we commend the campaign by Jonathan Gullis and James Sunderland to tighten the law in this area, building on the provisions in the Police, Crime, Sentencing and Courts Act 2022 which increased the maximum penalty for criminal damage of less than £5,000 to a memorial. Consultation with the police has revealed a gap in legislation; by addressing this we will provide the police with clarity about how to treat individuals who climb war memorials.

New clause “*War memorials*” therefore creates a new offence of climbing on a specified war memorial as listed in the new Schedule. This list covers war memorials designated as Historic England National Heritage Category I sites; there is a power to add to this list by regulations (subject to the draft affirmative procedure). The maximum penalty for the offence is three months’ imprisonment, a £1,000 fine, or both. This will give the police a clear power to tackle this disorderly behaviour and help them maintain public order.

Possession of pyrotechnics (new clause “*Possession of pyrotechnic articles at protests*”)

Again, during the recent protests related to the Gaza conflict, the police have observed an increase in the use of flares and fireworks at marches and assemblies. In some cases, protesters have fired fireworks towards the Israeli embassy and police officers. One video shared on social media shows protestors climbing the statue of Winston Churchill holding a discharged flare. This activity has clear implications regarding safety and the public’s perception of lawlessness that can cause fear and contribute to wider disorder. Our consultation with the police has again highlighted a need for legislation to provide clarity and consistency regarding the possession of flares and other pyrotechnics by protestors.

This new clause creates a new offence of possessing a pyrotechnic article while taking part in a public procession or assembly that constitutes a protest, or a one-person protest.

To assist the police in enforcing the new offence, and to avoid unintentionally capturing innocent bystanders who have fireworks for entirely lawful reasons, the offence will include a reasonable excuse defence. The maximum penalty for the offence is a £1,000 fine.

Disrupting road transportation (new clause “*Causing serious disruption to road transport infrastructure*”)

Over the past year, activist protest groups have continued to deploy disruptive protest tactics in novel ways, for example the tactic of “slow walking”, which involves intentionally causing disruption on roads. This tactic has resulted in considerable frustration and concern from those directly impacted by the tactic and from the wider general public, who correctly believe that the right to peaceful protest does not extend to behaviour that causes serious disruption to the daily lives of others. This tactic has also had a considerable impact on police resource, with the police response costing the taxpayer over £7 million between April and July 2023.

In response to this, the police have previously used section 7 of the Public Order Act 2023 to arrest those blocking roads. However, the police have made it clear that this offence is not always effective when used to combat protesters disrupting the roads. Amongst other things, the offence is triable either way, enabling protesters to opt for Crown Court trials in a deliberate attempt to clog up the criminal justice system, delaying justice for more serious offences. This new clause seeks to remedy these issues and strengthen police powers to deal with this tactic. The new offence provides that individuals who intentionally cause serious disruption to the use or operation of road transport infrastructure, for example by slow walking, will be committing a criminal offence. The new offence will be a summary only, with a maximum penalty of six months’ imprisonment, an unlimited fine, or both.

Amendments to several protest-related offences to remove protest from the scope of reasonable and lawful excuse defences (new clause “*Damage, disruption etc in course of protest: exclusion of defence of lawful or reasonable excuse*”)

In light of recent protests, it is clear that the Supreme Court’s decision in *Ziegler*, which held that the protection of Articles 10 and 11 of the European Convention on Human Rights extends, to a certain degree, to a protest which takes the form of intentional disruption by obstructing others, should be mitigated to ensure that the right to protest cannot be used as an excuse to engage in seriously disruptive acts. This new clause aims to prevent the minority of protesters who deliberately cause disruption from exploiting statutory defences to criminal offences. The offences modified by the new clause include those relating to criminal damage and wilfully obstructing a highway.

Creating an offence of cuckooing (new clauses “*Cuckooing*” and “*Cuckooing: interpretation*” and new Schedule “*Cuckooing: specified offences*”)

These new clauses will make cuckooing a standalone criminal offence. While there are a range of existing offences that can already be applied to cases of cuckooing, we have listened to the concerns raised by Sir Iain Duncan Smith and others that the existing legal framework can be improved to better ensure offenders are held to account for the harm done to victims of cuckooing.

Consequently, these new clauses and Schedule would criminalise the control, however obtained, over another person’s dwelling without consent for the purposes of enabling it to be used in connection with specified criminal activity. The list of specified criminal offences captures the types of criminal activity that we understand takes place in

cuckooed properties, for example drugs supply, sexual offences and storage of offensive weapons. The new clauses also provide a delegated power (subject to the draft affirmative procedure) for the Secretary of State to amend the list of offences in order to future proof the offence against exploitative criminals who continually adapt their methods.

The offence would carry a maximum penalty on indictment of five years' imprisonment or a fine (or both).

Suspension of parental responsibility (new clauses "*Restricting parental responsibility when sentencing for rape of a child*" and "*Report on duty to make prohibited steps orders and power to repeal*" and amendment to clause 86)

This new clause provides for the automatic suspension of parental responsibility in cases where a perpetrator has been sentenced for the rape of any child (sections 1 or 5 of the Sexual Offences Act 2003). This measure would build on the mechanism the Government has already included in clause 16 of the Victims and Prisoners ('VAP') Bill. This has become known as 'Jade's Law' and provides for the automatic suspension of parental responsibility in cases where a perpetrator has killed a partner or ex-partner with whom they share children.

The children and families affected by these horrific crimes will already be dealing with a traumatic and difficult set of circumstances. Whilst measures already exist for the suspension of parental responsibility by the courts, we know that families and the former partners of perpetrators have had to go through long and costly proceedings in the family courts to obtain an order to that effect and protect their children, adding to their burdens at this time. Through this amendment, and recognising the work of Harriet Harman in highlighting this issue, the Government intends to shield families from the additional strain these proceedings can bring.

The new clause adopts the same process and procedure set out in clause 16 of the VAP Bill.

In the new clause, where a perpetrator is sentenced for any of the relevant crimes, the Crown Court will be required to make an order suspending their parental responsibility, unless there is an existing order to that effect. Following this the relevant local authority (the local authority within whose area the child is ordinarily resident or, in the absence of such local authority, the local authority in England and Wales where the child is present) will be under a duty to make an application to the family court to review the order made by the Crown Court within 14 days starting from the day after the order was made.

Where the affected parent is subsequently acquitted on appeal of the crime which resulted in the making of the Crown Court order, the local authority will be under a duty to make an application for the family court to review the order. This application must be made within 14 days after the verdict of acquittal was entered.

The process for how the suspension will take effect is outlined in the VAP Bill. We want to understand the practical impact the changes will have on the courts and most importantly the children and families involved. For this reason, we have included provision for a report on the measures once they have been in place for three years. If necessary, following the outcome of the report, the new clauses also contain a power for the Lord Chancellor to repeal the provisions.

Suspension of internet protocol addresses and internet domain names (amendment to Schedule 3)

Schedule 3 makes provision for IP address suspension orders and domain name suspension orders. Paragraph 10 of Schedule 3 makes provision for rules of court. Proceedings in respect of IP address suspension orders and domain name suspension orders will be civil proceedings so rules of court in Scotland will need to be made by Act of Sederunt rather than Act of Adjournal, as paragraph 10(2) currently provides. The amendment to paragraph 10(2) makes this change.

All these amendments apply to England and Wales only save for that to Schedule 3 which extends UK-wide.

We attach supplementary delegated powers and ECHR memorandums in respect of these amendments.

We are copying this letter to Alison Thewlis (SNP spokesperson for Home Affairs), Chris Stephens (SNP spokesperson for Justice and Immigration), Alistair Carmichael (Liberal Democrat spokesperson for Home Affairs and Justice), Gavin Robinson (DUP spokesperson for Home Affairs), Dame Diana Johnson (Chair, Home Affairs Committee), Sir Robert Neill (Chair, Justice Committee), Joanna Cherry (Chair, Joint Committee on Human Rights), Sir Iain Duncan Smith, Matt Vickers and Harriet Harman. We are placing a copy of this letter and attachments in the House library.

Yours sincerely,



Rt Hon Chris Philp MP



Laura Farris MP