



Fearless Futures
Police Crime Sentencing and Courts Bill
Call for evidence
14th May 2021

This submission is in light of our expertise and experience in building equitable and inclusive cultures. This is not only our organisation's mission but is a core aim of the UK Equalities Laws, and necessary for a progressive democratic society to thrive. Implementation of the Police Crime Sentencing and Courts Bill (PCSCB) will unequivocally further compound and exacerbate existing inequities in the UK by negatively targeting already marginalised groups. This bill threatens to further harm marginalised communities through an expansion of policing and prison powers and excessively punitive legislation and threatens to silence protests and campaigns for justice. Given the limited word count for this consultation we have been unable to set out our concerns in full and would welcome further engagement with the Home Office.

PCSCB Part 3 - Curbing right to protest

If implemented these changes will effectively strip citizens of the democratic right to protest injustice, broaden police powers to subjectively obstruct protests and criminalize anyone who, even unknowingly, breaches conditions. Evidence strongly suggests they will particularly harm marginalised groups given the over-policing and violent tactics already routinely deployed against BAME people, disabled people and those with mental health conditions.

The right to protest against injustice is part of the lifeblood of democratic society. Many rights and protections today enshrined in UK law were hard won through protest by marginalised communities; the Chartist movement brought forward suffrage for working-class men and democratic political reform, followed by suffrage for women through much protest across the 19th century. The 1920 Blind March brought forth The Blind Persons Act 1920, the first disability focused legislation in history. The 1963 Bristol Bus Boycott contributed directly to the passage of the 1965 Race Relations Act. Campaigning groups from across LGBTQIA+ communities in the 1970s challenged discriminatory legislation through protest and direct action. Under proposed changes to the Public Order act, these protests would have been prohibited, prevented and obstructed and the progress towards equality succeeded by them, not realised. Governments and Home Secretaries at the time of the movements listed above opposed these calls for justice. Handing the power to decide whether a protest is justified or should be allowed directly to the Home Secretary



as proposed in this Bill, paves the way for critical progress not yet achieved to be obstructed.

Protests that defined these movements were disruptive, noisy, inconvenient and caused annoyance – protest fundamentally needs to be so, to disrupt a status quo in the interest of equality and justice. Proposed amendments to the 1986 Public Order Act and Police Reform and Social Responsibility Act 2011 will allow police to set restrictions to protests at their own discretion enabling the Police to criminalize a protest on the basis that they deem it to be causing “serious annoyance” or “serious inconvenience”. The proposed changes to the 1986 Public Order Act and 2011 Police Reform and Social Responsibility Act border authoritarianism¹.

The proposed changes are also in opposition to human rights legislation to which the UK is bound in that they obstruct not only the facilitation of protest but directly oppose the legal obligation for *positive protection* of protest. The Venice Commission Guidelines describe protection of the right to assembly as “crucial to creating a tolerant and pluralistic society”². They remind Organisation for Security and Cooperation (OSCE) member states that they are “bound by human rights instruments and politically binding OSCE commitments which confer protection on the right to freedom of peaceful assembly” and have “legal obligation to ensure the protection of the rights contained therein”.

The PCSCB overwhelmingly increases the breadth and depth of police powers. The police have been found to employ heavy handed/disproportionate/violent tactics against marginalised groups exercising their democratic right to protest³⁴. This has increased during 2020/21 where police have selectively and discriminately used COVID-19 restrictions⁵, to

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<https://www.theguardian.com/commentisfree/2021/mar/16/johnson-government-authoritarian-policing-bill-free-speech>

² OSCE, “European Commission for Democracy Through Law (Venice Commissions) OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR),” 2019.

³ <https://www.bbc.co.uk/news/av/uk-england-london-34617715>

⁴ http://news.bbc.co.uk/1/hi/uk_politics/7958198.stm

⁵ Kent Police stopped two asylum seekers from protesting over conditions at the Napier barracks site where they are being held. This included concerns about the spread of coronavirus and the lack of self-isolation for those infected. An outbreak at the site was reported days after the protest took place.

<https://www.libertyhumanrights.org.uk/issue/liberty-calls-for-protest-protections/>



justify obstruction of protest⁶ and the use of police violence⁷. In particular evidence of heavy-handed policing of Black and racially and ethnically minoritised people during 2020's BLM protests⁸ was starkly contrasted by under-policing of far-right demonstrations which are almost exclusively white. Increasing police powers of a force repeatedly evidenced as institutionally racist,^{9,10,11,12,13,14} and discriminate in the use of their powers, will increase the vulnerability of marginalised groups exercising their democratic right to protest injustice.

PCSCB Part 10 - Serious Violence Reduction Orders

The introduction of Serious Violence Reduction Orders (SVROs) will deepen and further the criminalisation, over-policing and excessive surveillance of BAME people, particularly men and boys, both in terms of who is actually subject to SVROs by the courts and who is likely to be illegitimately targeted by the police under the S&S powers attached.

The Lammy Review highlighted racism across the entire Criminal Justice System. As SVROs are dependent on the courts to distribute, we can expect to see BAME communities being disproportionately subjected to them. Those subject to SVROs would be treated as perpetual criminals upon release from prison because they would be indiscriminately deemed "likely to go on to commit more violence" simply on the basis of a previous related conviction. The traumatic effect of consistently using S&S on those attempting to transform their lives and rehabilitate cannot be underestimated.

⁶ A Mental health nurse who organised a socially distanced protest against low pay in the NHS was issued with a £10,000 fine
<https://www.manchestereveningnews.co.uk/news/greater-manchester-news/andy-burnham-asks-police-review-20046002>

⁷ The violent policing of the Sarah Everard vigil was condemned by members across Government
<https://www.bbc.co.uk/news/uk-56396960> and it must be noted that the Just Inspectorate 2021 report which found the police acted appropriately was produced by a team made up over 50% of former police officers and is therefore void of necessary impartiality
<https://www.justiceinspectors.gov.uk/hmicfrs/publication-html/inspection-metropolitan-police-services-policing-of-vigil-commemorating-sarah-everard-clapham-common/>

⁸ Adam Elliott-Cooper, "Britain Is Not Innocent," 2020.

⁹ Poppy Noor, "Met Police Use Tasers and Restraints More Often against Black People | Metropolitan Police | The Guardian," The Guardian, 2018,
<https://www.theguardian.com/uk-news/2018/dec/05/met-police-use-tasers-and-restraints-more-often-against-black-people>.

¹⁰ Amnesty International, "Trapped in the Matrix: Secrecy, Stigma, and Bias in the Met's Gangs Database," 2018, www.amnesty.org.uk/gangs.

¹¹ Ruth Blakeley et al., "Leaving the War on Terror A Progressive Alternative to Counter-Terrorism Policy," 2019, www.tni.org.

¹² Liberty, "Liberty's Briefing on Police Use of Live Facial Recognition Technology," 2019.

¹³ OHCHR, "OHCHR | UN Human Rights Experts Says Deaths in Custody Reinforce Concerns about 'Structural Racism' in UK," 2018,
<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22997&LangID=E>.

¹⁴ Stopwatch, "Vehicle Stops and Strip Searches - the Methodology of Our Recent Findings," Stopwatch, 2014,
<https://www.stop-watch.org/news-comment/story/vehicle-stops-and-strip-searches-the-methodology-of-our-recent-findings>.



The proposed introduction of SVROs will increase the use of Stop and Search (S&S) powers. There is no evidence base for increasing S&S powers, under SVROs or otherwise; the Home Office's own data shows that S&S is ineffective in tackling crime, with its application to knife-related offences suggesting no significant crime reduction¹⁵, yet use of these powers continues to increase. Between March 2019-20 there was an increase of over 50% in S&S powers; 76% of S&S during that period resulted in no further action.¹⁶

The introduction of SVROs will empower the police to exercise S&S of anyone subject to an SVRO without requiring reasonable grounds to suspect criminal activity. As such, the use of SVROs is likely to breach human rights legislation to which the government is bound. In *Gillan and Quinton v UK*, it was found that the S&S of a person in a public place without reasonable suspicion of wrongdoing could violate Article 8 ECHR, where such powers are not sufficiently circumscribed and contain inadequate legal safeguards to be in accordance with the law. In particular the ECHR determined that the lack of reasonable suspicion rendered an individual "extremely vulnerable to an arbitrary exercise of power."¹⁷

The scope for increased racial profiling and targeting with the introduction of SVROs is especially concerning as it is unclear how police on the ground will know who is and who is not subject to SVROs. BAME people are already particularly vulnerable to arbitrary use of S&S powers where the requirement for reasonable grounds are ignored or mis-used and Blackness is effectively read as synonymous with criminality; ethnic minorities are 4.1 times more likely to be stopped by the police, rising to 8.9 times with respect to Black people.¹⁸ In May 2020, Black people in London were stopped almost twice as much as in May 2019 despite being in a national lockdown.¹⁹ More than a quarter of Black 15-24 year olds and 30% of Black boys and men in London were subject to S&S during the same period²⁰.

A 2-year maximum sentence and unlimited fines are proposed for breaching an SVRO, making it a crime to not comply with an S&S, not answer questions from the officer, or "obstruct" the S&S in any way, including questioning the legality of the S&S itself. This

¹⁵ R. McCandless, A. Feist, J. Allan, and N. Morgan, *'Do Initiatives Involving Substantial Increases in Stop and Search Reduce Crime? Assessing the Impact of Operation BLUNT 2'*, Home Office, 2016.

¹⁶ Home Office, "Police Powers and Procedures England and Wales, Year Ending 31 March 2020 Second Edition," 2020, <https://www.gov.uk/government/publications>.

¹⁷ "Gillian And Quinton v. The United Kingdom," 2010, [https://hudoc.echr.coe.int/rus/#%7B%22itemid%22:\[%22001-96585%22\]%7D](https://hudoc.echr.coe.int/rus/#%7B%22itemid%22:[%22001-96585%22]%7D).

¹⁸ Home Office, "Introduction of Knife Crime Prevention Orders," 2020, <https://www.gov.uk/government/news/introduction-of-knife-crime-prevention-orders>.

¹⁹ Sarah Marsh, "Met Police Increased Use of Section 60 Stop and Search during Lockdown | Metropolitan Police | The Guardian," *The Guardian*, 2020, <https://www.theguardian.com/uk-news/2020/jul/27/met-police-increased-use-of-section-60-stop-and-search-during-lockdown>.

²⁰ This provides just one example of how racial disparity increases in S&Ss when these powers were broadened, although there are numerous.



further reduces the agency of individuals subject to S&S under these powers to advocate for themselves or hold officers to account *even where the person being stopped is not in fact subject to an SVRO*. Legitimately questioning the legality of the S&S by someone stopped but *not* subject to such an order could be read as “non compliance” and perceived as grounds to arrest the person. Furthermore, the narrowly defined terms of “compliance” may be impossible to adhere to for people with learning disabilities and mental-health issues and will negatively impact a group already disproportionately subject to over-policing and police violence/brutality²¹²²²³

PCSCB Part 4 - Unauthorised encampments

Proposed changes in Part 4 of the Bill targets Gypsy, Roma and Traveller (GRT) communities - one of the most marginalised communities in the UK.

The criminalisation of trespass in this bill is in direct conflict with the positive duty imposed on the UK to ‘facilitate the Gypsy way of life’ by the ECHR ruling: *Chapman v UK*, 2001²⁴. Nomadic lifestyle is central to the traditions and cultural practices of GRTs and fundamental to their continuation as peoples²⁵. The historic and ongoing failure to provide authorised sites has forced GRTs to stop on unauthorised sites. Recent research into compliance with Planning Policy for Traveller Sites and need and supply of GRT pitches reveals shockingly low numbers, with only 8 out of 68 local authorities meeting their identified need for GRT pitches²⁶. Just last month a report evidenced that there are 1,696 households on waiting lists for pitches with only 59 vacant pitches on permanent sites and 42 vacant pitches on transit sites across the whole of England²⁷. Furthermore, In order to meet the government’s planning definition of a Traveller, without which GRTs cannot be assessed as needing a pitch or get planning permission for a site, GRTs are required to provide proof that they travel - which this bill will make virtually impossible.

²¹ Equality and Human Rights Commission Report 106: Non-natural deaths following police custody available at <https://www.equalityhumanrights.com/en/publication-download/research-report-106-non-natural-deaths-following-prison-and-police-custody>

²² 11 of the 18 people killed in police custody in (financial year 2019/20) were identified as having ‘mental health concerns’ https://www.policeconduct.gov.uk/sites/default/files/Documents/statistics/deaths_during_following_police_contact_201920.pdf

²³ <https://www.opendemocracy.net/en/ournhs/mental-health-and-deaths-after-police-contact-why-senis-law-is-welcome-but-mo/>

²⁴ “*Chapman v. The United Kingdom* (Application No. 27238/95)”, 2001, <https://www.eschr-net.org/caselaw/2008/chapman-v-united-kingdom-application-no-2723895>.

²⁵ Jack Bowers, “The Traveller Times, Online FAQ Pack, Gypsies and Travellers,” accessed May 13, 2021, www.travellerstimes.org.uk.

²⁶ <https://www.gypsy-traveller.org/wp-content/uploads/2016/12/Five-Year-Supply-Research-Findings-Statement-FINAL.pdf>

²⁷ <https://www.gypsy-traveller.org/wp-content/uploads/2020/02/Research-on-the-five-year-supply-of-deliverable-Gypsy-and-Traveller-sites-in-the-South-East-of-England.pdf>



Criminalisation of trespass will be accompanied by powers to seize a vehicle, imprisonment up to 3 months and fines up to £2,500, the potential ramifications of which could be catastrophic for individuals and families. Many GRTs dwell in their vehicle/caravans, therefore seizing their homes risks leaving GRTs targeted by this legislation street homeless. There is a direct correlation between accommodation insecurity and health and education outcomes; life expectancies for GRTs are 10-12 years shorter than for the non-traveller population²⁸ and GRT pupils have the lowest attainment of all ethnic groups, throughout school years.²⁹

The proposed exclusion period from an area has quadrupled to 12 months. This would make it impossible for families without a site to live on to, for example, keep their places at school, secure work, or to attend medical appointments and therefore serves to further compound inequalities experienced by GRTs.

The need to address the stark inequalities faced by GRTs has been recognised by the Government, who in June 2019 announced it would develop a cross-departmental strategy to tackle this³⁰. Yet, as Charity Friends, Families and Travellers note “It is hard to see how the introduction of PCSCB Part 4 is compatible with a strategy and with wider commitments to tackle race disparities”³¹.

Further serious considerations

Due to limitations in scope, we have been unable to address here how further changes proposed in this bill will negatively target and impact other vulnerable groups;

- Part 9 would provide the legal mechanism for charities and Academies to run youth jails in the form of Secure Schools for the first time in England and Wales. This creates a market interest in incarcerating young people and Child Welfare/Education Professional bodies have voiced strong opposition to these measures. The School to Prison pipeline is well detailed³² and the negative impact for young people

²⁸ Irish Traveller Movement in Britain, “Irish Traveller Movement in Britain The Health and Wellbeing of Gypsies and Travellers An Irish Traveller Movement in Britain Briefing,” 2012, www.irishtraveller.orgpolicy@irishtraveller.org.uk.

²⁹ Cabinet Office, “Race Disparity Audit Summary Findings from the Ethnicity Facts and Figures Website,” 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686071/Revised_RDA_report_March_2018.pdf.

³⁰ GOV.UK, “New National Strategy to Tackle Gypsy, Roma and Traveller Inequalities - Press Release,” 2019, accessed May 13, 2021,

<https://www.gov.uk/government/news/new-national-strategy-to-tackle-gypsy-roma-and-traveller-inequalities>.

³¹ Abbie Kirkby, “Briefing on New Police Powers for Encampments in Policing, Crime, Sentencing and Courts Bill: Part 4,” 2021,

<https://www.gov.uk/government/news/new-national-strategy-to-tackle-gypsy-roma-and-traveller->

³² <https://irr.org.uk/article/beyond-the-pru-to-prison-pipeline/>



particularly who are BAME, disabled, suffer mental health issues, and experience trauma is extreme. The severity of this legislation cannot be understated.

Fearless Futures recommendations

To meet its legal obligation under Human Rights conventions and UK equalities law and to meet the government's own stated commitments to equality in the UK this Government must;

- protect the democratic right of protest and public assembly and remove a police presence from protests; recognise protest as a necessary part of democratic society that has, does, and will continue to create positive change in our society
- not implement SVROs and stop the use of ineffective and racist S&S; robustly overhaul all tactics, processes, policies and agencies that have a stated aim of keeping people safe, to address the negative and often violent outcomes for marginalised communities
- not criminalise trespass and implement Negotiated Stopping³³ for GRTs and ensure local authorities take action to meet their obligation to provide sufficient authorised sites; explicitly and substantively take action to address the entrenched inequalities faced by GRT communities across all areas of society
- not make marketable the incarceration of children through secure schools or otherwise; cease all youth incarceration and instead invest in child welfare; invest in addressing the root causes of youth crime, namely addressing child poverty

³³ <https://www.negotiatedstopping.co.uk/>