



UK Parliament

How much impact did the House of Lords have on the Public Order Act (2023)?

What's the story?

The Public Order Act (2023) received Royal Assent on 2nd May 2023, following a lengthy period of 'ping-pong', in which the House of Commons considered a large number of amendments made in the House of Lords. While a number of more technical Lords amendments were accepted, many key amendments were either overturned, or replaced with an alternative approved by the Government. The final Act was quickly put to use at King Charles III's coronation. Metropolitan police arrested several members of Republic, an anti-monarchy group, on the grounds that they had 'locking-on' devices that are now illegal.

What led to the introduction of the Public Order Bill?

In September and October 2021, during the passage of the Police, Crime, Sentencing, and Courts Bill (PCSC Bill), the environmental group Insulate Britain conducted a series of protests in which members blocked major roads in and around London, with some protesters gluing themselves to the road to make it more difficult for the police to move them. In response, the Government proposed a large number of amendments to the PCSC Bill, which gave police a broad range of new powers to respond to this form of direct action. However, the PCSC Bill had already completed its Commons stages, and was in the report stage in the Lords when these controversial amendments were proposed. Many Peers argued that these significant additions should be subject to far greater scrutiny. After Peers voted against the amendments in January 2022, the Government withdrew them, and announced plans to introduce them as a standalone bill – this became the Public Order Bill, which was introduced on 11th May 2022.

What measures are included in the final Public Order Act?

- 1) *Several new criminal offenses* – The Act creates a number of new criminal offenses. These include 'locking-on' (attaching yourself to others, objects or buildings to cause serious disruption), 'obstructing major transport works' (obstructing the construction or maintenance of major transport projects like HS2), 'interfering with key national infrastructure' (preventing or significantly delaying the operation of key infrastructure like airports and railways), and 'tunnelling' (creating or being present in a tunnel capable of causing a serious disruption without a 'reasonable excuse', such as legitimate roadworks).
- 2) *Expanded police stop and search powers* - The Act includes a 'suspicion-led' stop and search power (enabling police to search an individual if they suspect that they have an object, like a lock-on device, that will be used in conjunction with a protest related offense). More controversially, it also includes a 'suspicion-less' stop and search power (enabling police to conduct searches without any suspicion, as long as a senior officer has authorised the use of this power in a specified locality for a specified period).
- 3) *Serious disruption prevention orders (SDPOs)* – The Act allows courts to issue a new type of order that places limits on protestors who repeatedly cause serious disruption. Courts can issue an SDPO to someone convicted of a protest related offense if the individual has already been convicted of a protest related offense in the past, or if they have already breached a protest relation injunction. Police can also apply for an SDPO to be issued to individuals who, on two recent occasions, have been convicted of protest related offenses. An SDPO can prohibit individuals from being in a particular place, being with particular people, having particular items in their possession, and from using the internet to facilitate or encourage others to commit protest related offences. Breaching an SDPO without a 'reasonable excuse' is a criminal offence carrying a maximum six months' imprisonment, an unlimited fine, or both.
- 4) *Abortion clinic safe access zones* – Interfering with a person's decision to access, provide, or facilitate the provision of abortion services within a 150m zone is now an offence carrying an unlimited fine.
- 5) *Safeguards for journalists* – The Act specifies that the police cannot use the powers they have been granted to maintain public order to prevent a person from reporting on or observing protests.



How was the Public Order Bill amended in the Lords?

Amendments to the new stop and search powers – The Lords voted 284-209 to entirely remove Clause 11 of the Public Order Bill, which gives the Police the power to stop and search people without suspicion. Lord Paddick argued that “stop and search is a highly intrusive and potentially damaging tool if misused by the police.” Many Peers were particularly concerned that suspicion-less stop and search could have a disproportionate impact on Black and ethnic minority communities and young people. The clause ended up being the subject of much back and forth. After the Commons disagreed to the Lords’ amendments, the Lords responded with alternatives, but these were again overturned in the Commons. Ultimately, the Lords did not insist on the removal of these new powers from the final Bill.

Amendments to the new abortion clinic safe zones rules - The Lords successfully amended the text of Clause 9 of the Bill, which establishes a 150m ‘safe access zone’ around abortion clinics. The revised text, proposed by Baroness Sugg, still makes it illegal to protest, or in any way attempt to influence or interfere with, a person’s right to access an abortion. However, the Lords’ amendment brought the rule more in line with Human Rights law, by removing prison sentences from the possible penalties for the offence and by creating some exceptions to the law (including private dwellings, places of worship, and anyone that is accompanying a person, with their consent, to an abortion clinic). The Government took a neutral stance towards the amendment, and it was approved without a division in the Commons.

Amendments to insert new protections for journalists: The Lords voted 283 – 192 to insert a new clause that included clear protections for journalists and other observers of protests, including legal observers, academics and bystanders. Lord Hope argued that this protection had to be explicitly stated as “it is too big a risk to leave” it unsaid or assumed. Others in the Lords disagreed, arguing that the amendment was unnecessary as “arresting a journalist for the principal purpose of preventing reporting on a protest” would be an abuse of police powers regardless. Ultimately, MPs disagreed with the Lords’ amendment, but did approve an amendment-in-lieu, which is substantively similar, albeit with slightly different language. Peers accepted this amendment, and the final Act includes these new protections.

Amendments to the meaning of ‘serious disruption’: Lord Coaker moved an amendment to insert a definition of ‘serious disruption’ for the purposes of the Bill. As several measures in the Bill relied on a trigger of causing ‘serious disruption’, many criticised the Government for not including a definition of what exactly this meant. The definition provided by the Lords was rejected by the Commons, however the Commons did return their own amendment-in-lieu to address the issue. This alternative amendment replaced the Lords’ broader definition (actions causing “significant delay” and “significant harm”) with the narrower definition of protest-related disruption or delay that is “more than minor”.

Amendments to the new Serious Disruption Prevention Orders – Before the Bill even arrived in the Lords, the Government had already tabled two amendments to the new Serious Disruption Prevention Orders (SDPOs), after they were criticised during the Commons committee stage. The first amendment removed an option to use electronic tags to monitor recipients of an SDPO. The second amendment limited SDPOs to just one renewal (the Bill originally included the option for courts to renew these orders without limit). Both amendments were agreed to in the Lords. However, Peers also made two further amendments to the criteria for issuing/ triggering an SDPO. The first amendment stated that an SDPO on conviction can only be given if the individual has already received another protest-related conviction, or has been found in contempt of court for breaching a protest-related injunction, in the past five years. The second amendment sought to entirely remove clause 20, which originally allowed the police to apply for an SDPO to be issued to an individual who had not previously been convicted of a protest-related offence. The Government accepted the first amendment and stated that this new limit made the second amendment redundant. Under the final Act, SDPOs cannot be issued without conviction, but police can request one up to five years after a conviction has been made – this is a longer period of time than for all other non-violent convictions, which are usually considered ‘spent’ after one year.



How does this fit into your exams?

UK Parliament – Does the House of Lords need further reform? How much influence does the Lords have?

The Public Order Act is a useful example when evaluating the comparative influence the Lords and Commons exert on the government, and whether the upper chamber needs further reform.

1) The fact that the Commons overturned key Lords amendments, and that Peers did not insist on them, highlights the limits of the House of Lords' influence. As we have seen, while Peers inflicted a number of defeats on the Government during the Bill's passage through the Lords, many of these amendments were swiftly overturned in the Commons, where the Government enjoys a majority, and where whips can usually exert more influence over backbenchers. Many Peers strongly objected to the creation of new suspicion-less stop and search powers, but their attempt to remove the power from the Bill was reversed by MPs. Under the Parliament Act (1949), the House of Lords has the power to delay legislation for up to a year, but this power is rarely invoked – the last Bill to become law under this procedure was the 2004 Hunting Act. Recognising that the unelected Lords lacks the authority of the elected Commons, Peers do not usually insist on their amendments. Had the Public Order Bill been introduced to the US Congress, the outcome could have been very different. As the elected House of Representatives and elected Senate must both approve the same final version of a Bill, each chamber can effectively veto amendments they disagree with. Critics of the Public Order Act, and supporters of constitutional reform, might argue that the unelected Lords leaves the UK's uncodified constitution all too flexible. They may argue that it would be beneficial to have a stronger separation of powers, and an upper house that can legitimately insist on amendments that are widely supported in the chamber – particularly when they concern constitutionally significant bills that impose limits on civil liberties.

2) However, the Public Order Bill was only subject to scrutiny as a standalone Bill as a result of resistance from the House of Lords. As previously mentioned, the Government originally attempted to insert much of contents of the Public Order Bill into the 2022 Police, Crime, Sentencing, and Courts Bill as a late-stage amendment. However, Peers were strongly opposed to the fact that these new criminal offenses would be subject to minimal scrutiny. On the 17th January 2022, Peers inflicted 14 defeats on the Government – the largest number of government defeats in a single day since the House of Lords was reformed in 1999 – with many defeats relating to the new protest-related offenses. As a result, the Government withdrew the amendments, and agreed to introduce a standalone Bill, which, as we have seen, allowed for key amendments to be made in the Commons (for example, the changes made to SDPOs at Committee Stage), and in the Lords (for example, the changes to the new abortion clinic safe zones rules, which were accepted by the Government and the House of Commons).

3) Focussing on the amendments that were overturned in the Commons also overlooks the importance of the amendments-in-lieu that were offered by the Government. The Public Order Bill demonstrates how the House of Lords does not need to persuade the Commons to leave its amendments in place in order to leave a lasting impact on a piece of legislation. As we have seen, in response to some Lords defeats, the Government proposed a number of amendments-in-lieu. While these alternative amendments were more preferable to the executive, they were often substantively similar, and at least partially addressed the concerns of Peers. For example, while the Government opposed the definition of "serious disruption" introduced by the Lords, it was nonetheless compelled to offer its own definition, potentially limiting the scope the Act. Supporters might argue that the Public Order Act demonstrates the benefits of the UK's flexible, political, uncodified constitution. A November 2022 YouGov poll found that the Public Order Bill was broadly supported by the public. The Lords was able to act as a vital 'revising chamber', using its time and expertise to highlight issues overlooked by the Commons, and inviting the Government to think again, and consider a compromise. But, unlike the US Senate, it lacks a veto that can threaten to bring the legislative process to a grinding halt. As the table on the next page shows, the Lords has inflicted a record number of government defeats in recent years, but the prospect of Lords defeats can shape legislation *before* it is even introduced, and Lords defeats can result in government amendments-in-lieu that would not have otherwise been considered.



Table 1 – House of Lords defeats by session (Source: UCL Constitution Unit)

Parliamentary session	No. of government defeats in the Lords	Prime Minister
1999-00	36	Blair
2000-01	2	Blair
2001-02	56	Blair
2002-03	88	Blair
2003-04	64	Blair
2004-05	37	Blair
2005-06	62	Blair
2006-07	45	Blair
2007-08	29	Brown
2008-09	25	Brown
2009-10	14	Brown
2010-12	48	Cameron (coalition)
2012-13	25	Cameron (coalition)
2013-14	14	Cameron (coalition)
2014-15	11	Cameron (coalition)
2015-16	60	Cameron (Con. majority)
2016-17	38	May
2017-19	62	May
2019*	1	Johnson
2019-21	114	Johnson
2021-22	128	Johnson

*There was only one vote in this short session, which lasted just 15 sitting days