INSTITUTE for
CONSTITUTIONAL and
DEMOCRATIC
RESEARCH

RE: POLICE CRIME SENTENCING AND COURTS BILL 2019-2021

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BRIEFING

INTRODUCTION

1. Given the length of the Bill and the exceptionally limited period between publication and second reading, it is difficult to provide a comprehensive analysis. This briefing therefore sets out five issues that arise from the Bill. Given the purpose of the second reading debate, they are dealt with primarily at the level of principle. A more technical briefing will be provided for committee and report stages. The issues in this briefing are:

   (1) The time between publication and second reading marginalises parliament by making effective scrutiny practically impossible.

   (2) Part 3 substantially expands the Executive's powers to outlaw peaceful protests. It is not clear why this is necessary.

   (3) Part 7's focus on increased sentences is unevidenced. It does not address the problems identified by practitioners.

   (4) Clause 46 imposes harsher punishments for peaceful protests against monuments celebrating slavers than are imposed for violent crimes.

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(5) The Part 12 proposals for remote attendance at court are unevidenced and may reduce the quality of trials.

Time For Scrutiny

2. The Bill is nearly 300 pages long. It contains 176 clauses and 20 schedules. Much of the content concerns technical questions of criminal law and refers to terms of art that can only be understood by reference to caselaw. The bill was published on 9 March 2021. Second reading is schedule for 15 and 16 March. This gives just three full working days for scrutiny. Even for experienced counsel working full time, it is impossible to properly consider the Bill in the time available.

3. The purpose of second reading is to debate the principle of the bill, but the issues of principle cannot be properly addressed unless the real-world implications of the bill are first understood. Given the previous paragraph, it is difficult to see how the Commons can have a meaningful debate on the Bill at second reading. Parliament will, therefore, not be properly fulfilling its constitutional function in respect of this bill.

4. Some legislation must, of course, be passed urgently. In those situations, it is easy to see why a degree of scrutiny must be sacrificed. The coronavirus legislation provides an example. In that case, the deleterious impact on parliament's constitutional role is mitigated by the fact that the legislation is temporary. In the case of the instant Bill, the Executive has not identified anything that necessitates curtailing time for scrutiny. The emergency coronavirus powers (which much of the Bill moves towards placing on a permanent footing) are all in place and can be extended if necessary.

Protest Powers

5. Part 3 grants the Executive the power to limit peaceful protests which cause "disruption". The bill:

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(a) Expands the application of existing powers to limit protest marches (under the Public Order Act 1986) to apply to all forms of protest (including "static" protests and individual acts of protest).

(b) Substantially lowers the threshold at which these powers can be used by including "noise" in the existing categories of "serious disruption" (the existing threshold).

(c) Gives the Home Secretary power to unilaterally alter the meaning of the law by changing the meaning of "serious disruption", in effect giving the Executive the power to determine when and how the law applies.

6. Public protest has long been fundamental to British democracy and protected under our constitution. Indeed, the fact that the UK is now a democracy, is the result, in no small part, of public protests. Peaceful protest dates, at least, back to the Peasants Revolt of 1381 (which culminated in a mass peaceful gathering on Blackheath), during the 19th centuries, mass gatherings secured the passage of Reform Acts, extending the right to vote beyond the aristocracy and gentry, in the early 20th century women secured the right to vote through peaceful protest. Marches and static demonstrations, in the 20th century, saw people achieve key democratic liberties such as LGBT rights and steps towards racial equality.

7. Peaceful protest is a form of freedom of speech. While inherently disruptive, it allows (often marginalised and ignored) individuals and groups to express their opinions.

8. The "public order" provisions in the Bill give extremely broadly defined powers to the Executive (both ministers and police). The language of the tests for use of the powers is vague and dependant largely on the judgment of the individual. The result will be that

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the Executive enjoys substantially broad and unaccountable powers to determine which protests are permitted to happen. Given the vague language of the Bill, individuals will struggle to protect themselves through the justice system against arbitrary use of those powers. The Bill, therefore, represents a stripping of legal protections for individuals and a limiting of freedom of expression.

9. No evidential case for these powers has been advanced. Police, local government, and the national Executive already enjoy extensive powers to protect public spaces from offensive and dangerous protests through Public Spaces Protection Orders. These have been used effectively, for example, to prevent anti-choice protestors from harassing women accessing abortion and sexual health services. Instances of genuinely "disruptive" static protest are fairly limited. It is not at all clear what real problem these provisions are attempting to solve.

Increased Sentences

10. Part 7 contains a number of provisions to increase the length of sentences for various violent crimes. I have not been able to find any evidential or analytical consensus that longer sentences have this effect. There is, however, evidence that the likelihood of prosecution is a more effective deterrent. Barristers report that increased waiting times for trial (on average 525 days and sometimes up to four years) makes it more difficult to secure a conviction and increases the trauma for victims and witnesses.

11. The increase in waiting times is predominantly a result of Executive decisions to close courts. More than a third of courts have been closed since 2010 and more than half of all Magistrates courts (which handle the majority of criminal cases). The Bill contains nothing to address this.

Protections for "monuments"

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12. There is little credible evidence of a general threat to "monuments". The extent of the "threat" is limited to statues celebrating or commemorating controversial individuals. These are predominantly statues of slave traders but also include some individuals who are implicated in colonial violence and crimes or endorsed them. Nevertheless, clause 46 of the Bill contains broad powers to impose prison sentences of up to ten years on individuals who "damage" monuments. Given the nature of the "threat" to monuments, this will, in practice, apply predominantly to statues of slavers. Two points arise:

    (a) The term "monument" is broadly defined. In practice, it can mean almost anything (it would, to use a particularly extreme example, include a statue of Hitler erected in someone's front garden).

    (b) The potential prison sentence of 10 years is higher than that imposed for sexual assault, GBH, or aggravated assault. As an illustrative example, when the journalist Owen Jones was assaulted "as a result of his political beliefs" (according to the court), his attacker was sentenced to less than three years in prison. The effect of Clause 46 will, therefore, be that the criminal law will regard dead slavers as more important than many living victims of violent crime.

Remote Court Hearings

13. Part 12 begins to make permanent many of the arrangements for remote attendance at court that have been in place during the pandemic. While such arrangements were undoubtedly necessary during lockdown, there has been no study of their impact on the efficacy of trials. Anecdotal evidence indicates that a substantial part of an effective trial (such as cross examination, evidence, and even legal submissions) relies substantially on non-verbal communication. Remote attendance substantially limits the potential for this (in many, for example, the court camera barely captures more than the top of an individual's head). There is, therefore, a real risk in extending these measures (when they are no longer essential) without first properly studying their impacts on the

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effectiveness of trials. Failure to do so could lead to increased miscarriages of justice and a loss of public confidence in the justice system.

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