

# Police, Crime, Sentencing and Courts Bill

## Summary of implications for MAG

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As promised, this summarises the implications of the Police, Crime, Sentencing and Courts (PCSC) Bill on the activities and freedoms of the Motorcycle Action Group to pursue its agenda using various means, including demonstrating publicly.

### Background to the Bill

*‘Ever since the first large-scale Extinction Rebellion protest in April last year I have been talking publicly and with the government about the potential for change to powers and to legislation that would enable the police to deal better with protests in general given that the act that we work to – the Public Order Act – is now very old, [dating to] 1986. But specifically, to deal with protests where people are not primarily violent or seriously disorderly but, as in this instance, had an avowed intent to bring policing to its knees and the city to a halt and were prepared to use the methods we all know they did to do that. Metropolitan Police Commissioner, Cressida Dick*

The PCSC Bill has been generated as a direct result of demonstrations which took place in London and Bristol. In London, supporters of the Extinction Rebellion environmental group disrupted the ability of people in the capital to go about their business. The police stated at the time that they felt unable to remove the protestors using existing powers. There was much public anger regarding these demonstrations. In Bristol, a demonstration removed the statue of a historical figure and demonstrators threw it into the quayside waters, again causing a great deal of debate and controversy. These two incidents have led to the current initiative to give police more powers to prevent a recurrence of such events in future. The Bill has been used as an opportunity to introduce a wide range of measures in one go. Inevitably, in seeking to restrict the actions of the groups mentioned, everyone else is also potentially affected.

### Overall assessment

In theory, the measures in this Bill could further restrict MAG’s ability to conduct its demonstrations in the UK. The powers of the police are expanded, and they can prevent demonstrations of groups as small as one person from taking place.

Furthermore, it can be an offence for individuals to act in ways which are illegal but which they didn't even know are illegal, as long as they 'ought to' have known the situation regarding the law.

Whether the rules actually impact on MAG's demonstrations and activities is entirely a function of political guidance given to the police by the prevailing political administration. Indeed, this is the case under existing law. Therefore, it is not possible to say that this Bill necessarily restricts MAG's actual activities. It does, nevertheless, provide more tools to the State to prevent demonstrations.

However, an area of the Bill which has barely been mentioned relates to changes in road traffic tariffs for offences. It seems that there is a substantial increase in the severity of the tariffs, and this will unquestionably have an effect on road users, including motorcyclists. Regardless of people's views about these tariffs, our membership should be aware of them, and MAG should have a position.

## **Specifics**

I cover the measures in brief. I am able to provide a more detailed analysis on request. The comments relate to the order in which they appear in the Bill, not according to a perceived hierarchy of concern to riders.

## **Part 1**

### **Police Driving Standards**

There's a lot here about tightening up the expectations on police drivers in regard to their duty of care in how they drive. Doubtless this is intended to address the issue of accidents involving speeding police officers. This hasn't been a major MAG issue but it's interesting that it's here. Most likely, this sort of provision would show up for a specific case that MAG might be required to look at in the future, at the request of a member who is involved in an altercation with a police vehicle. I provide relevant references at the end of this document.

## **Part 2**

### **Chapter 3**

#### **Extraction of Information from Electronic Devices**

There is a lot of new power to extract information from electronic devices, such as your phone. Although the rules proposed here pay lip service to the owner's right to refuse, in reality if you hand your phone to the police, they can pretty much do what they like with it. This is not a good step forward. A biker stopped at the roadside and accused of a crime could have their phone taken away and its contents analysed. While not biker-specific, it clearly does provide some opportunity to invade personal liberties of riders in a way that is compromising to the principle of personal privacy to a greater extent than current law allows

### **Part 3**

#### **Public order**

The Government claims public order is being 'protected... with specific reference to worrisome considerations such as noise, causing offence and intimidation or harassment of persons of reasonable firmness.' This opens the way for court cases to set precedents in this regard. There are other, similar, statements from the Government, all of which are open to the setting of new precedents in court.

The problem for MAG is simple. If a court case is lodged against a MAG demo, then this can be used to set the precedents for other motorcycle demos. The issue is more serious because it is very expensive for MAG to defend actions at a demo in court while, by contrast, the Government has effectively unlimited resources to invest in a court case. Therefore, even if we're right, we are unlikely to be able to pay for the cost of the defence. This is why the Government usually wins such cases – and these then become the precedents used in law. This process erodes civil liberties over a period of time.

Next, a fundamental change here is a shift towards giving the police close to absolute power to shut down any protest. Arguably, they already have this power, because there is a wide-ranging set of laws about the issue already. However, this part of the Bill includes a further set of restrictions on our liberty. That doesn't necessarily mean that MAG's ability to demonstrate will be curtailed. However, the set of new conditions that can be imposed on, for example, a peaceful demonstration by motorcyclists, means that any demo could be stopped very easily, for instance on the basis of concerns about what MIGHT happen, and what MIGHT be the intent of the demonstrators.

Specifically, police senior officers will be able to impose substantial conditions on static protests – that means protests where there is no marching. A stationary motorbike blockade would constitute a static protest. They can also impose a start and finish time – thereby making it illegal to demonstrate before or after that time. Remember, although we know this is all a response to the disruptive and anarchic antics of Extinction Rebellion - an anti-establishment group that the police felt current powers prevented them from dispersing and arresting - these new rules lead to rights lost by MAG too.

Another factor here is the imposition of noise limits. This is directed at the use of loudspeakers and noisy groups. However, the unintended consequence is directly going to affect motorbike demos, because of the obvious emission of noise by machines. It will be a matter of precedent – yet again – in terms of how these rules are applied and how they affect MAG. Note also that MAG demos often use handheld loudhailers, and these would also fall under the new restrictions – with severe penalties if one is found guilty of transgressing the law. As such, these regulations will indeed potentially affect MAG events, if it is deemed that they are being held in some way illegally, or if the ‘proper’ permissions have not been secured.

Note again that all of these apply to a demonstration carried out even by one single one person. A loud motorbike being revved in protest outside a building would breach these new regulations. The fine for this, or generally refusing to follow police directions over how they should conduct their protest, can be up to £2,500.

Note also that another worrying part of this is that it will also become a crime if you don’t follow restrictions you, as a protester, ‘ought’ to have known about, even if you haven’t received a direct order from an officer. This means you can be found guilty of an offence you didn’t know you were committing. This is a big change, because the current law requires police to prove protesters knew they’d been told to move on before this constitutes a breach of the law.

A part of the new framework includes making it a crime to be ‘intentionally or recklessly causing public nuisance.’ This is all about giving police powers to prevent people occupying public spaces, hanging off bridges, gluing themselves to windows, or employing other protest tactics to make a demonstration inconvenient to others. The Government claims that they are not curbing the public’s right to protest, but this is self-evidently untrue. These changes clearly do reduce the public’s ability to demonstrate – and the politicians have made it absolutely clear they intend to proceed with these changes come what may. Bikers could be prevented from

carrying out just about any kind of demonstration, or the demo could be so limited it becomes meaningless.

## **Part 4**

### **Unauthorised encampments**

'Unauthorised encampments' are also included in the Bill. This does not cover things like MAG rallies. It is again directed at those who set up tents on public highways and so on. However, there are also limitations to going onto land without authorisation, including with a vehicle. These restrictions actually include elements of regulation that means even if you appear to have the intent to trespass or are 'likely' to cause damage or 'significant disruption.' Thus, likely future outcomes are now being taken into consideration and there are MAG related situation where this, or the 12-month sanction which relates to the fact that if someone tells you not to go onto their land, that restriction lasts for 12 months, even if you aren't told not to go on the land again. There's potential for MAG members to fall foul of this restriction, and again this is likely to be tested in court, with the precedents becoming the applicable indication of what is permitted and what is not. The Government will claim none of this is intended to prevent legitimate protest or activity, but the powers are so wide ranging they could indeed affect MAG activity.

The Government has stated (including to MAG) that 'Articles 10 and 11 of the European Convention on Human Rights set out that everyone has the right to freedom of expression and of peaceful assembly and association with others. However, these freedoms are not absolute, and restrictions may be placed for the protection of the rights and freedoms of others.' However, this is window dressing. MAG has explored the potential for using these protections in the past, and the cost in time and money make them practically out of reach to the majority of groups and individuals, and MAG hasn't got the resources to take the Government or police to court – and they know it.

In summary, this part of the Bill really does have the capacity to curtail MAG's ability to demonstrate. However, the truth is that we have few options in terms of preventing the passage of this Bill. The Government has an in-built majority and the damage done to the reputation of public demonstrations by Extinction Rebellion is so great that the public is vaguely supportive of the changes.

## **Part 5**

## **Road traffic**

No-one seems to have noticed the next section, which relates entirely to road traffic, and primarily to offences. There is more to worry about here as far as riding is concerned than there is in any other part of this legislation. There are 12 pages on increasing penalties for traffic offences.

One of the darkest changes is the escalation of the penalty for causing death by dangerous driving to 14 years. This basically raises the penalty to the virtual equivalent of a sentence for murder. Connected to this section, there is also attention for careless and 'inconsiderate driving.' It is clearly a response to the remorseless lobbying from the road safety lobby. MAG ought to consider our response to this. Will stiffer penalties really have the desired effect, or is this the further demonisation of road users? Again, MAG might benefit from taking a view. Colleagues will be aware that MAG has indicated some sympathy with severe penalties in certain circumstances where a death has been caused by a third party. Now is the time for us to focus our attention on where, specifically, we stand on this issue. Whether or not we can change the law we need to be aware of where we stand on it.

In addition, in this section there are more powers to charge a vehicle user for the removal and disposal of vehicles. This is pretty much an open-ended opportunity to charge whatever they want to for the purpose of taking your motorbike away and crushing it. MAG should take a position on this.

In summary, this section really could create practical effects to riders, and it would be beneficial to consider these points, though again MAG needs to be realistic about the chances of actually altering any of the legislation.

## **Part 7**

### **Chapter 1**

#### **Driving disqualification: extension in connection with custodial sentence**

The Bill returns to traffic offences, this time the rules are extending the period of disqualification in the situation whereby there is a custodial sentence associated with the tariff set by the court. This is consistent with the general tenor of the overall legislation. Sentencing is being toughened up, and the law will be able to impose more severe penalties for a number of traffic related offences. MAG might wish to be

aware of these, but again it is unlikely we will be able to secure any changes, even if we are concerned about aspects of these rules. The main use of knowing the new rules is in the event of a member of MAG seeking our guidance and assistance.

## **Schedules**

These schedules expand on a number of elements of the Bill, with details of how the rules should be applied. These relate to the earlier parts of the Bill.

## **Summary**

Overall, the sections of traffic offences are more significant on a day-to-day basis than the sections on demonstrations. However, both of these aspects of the Bill serve to tighten up the reach of the State into MAG's activities and riders' freedoms.

In extreme cases, a particularly authoritarian Government could easily instruct the police to operate a strict enforcement, essentially banning a large proportion of demonstrations. In addition, the stricter punishment regime outlines a perspective that punishment is the way to control road users and demonstrators, and the restriction of the ability to demonstrate is the way to control anarchy-orientated groupings such as Extinction Rebellion.

There are other aspects of the Bill that will affect us as residents of the UK, and these are both ominous and restrictive. However, they are beyond the immediate scope of MAG's jurisdiction.

I propose that MAG takes heed of this report and considers the elements that I have highlighted as relevant to our political and freedom related activity.

We also need to be honest with ourselves about what we can and cannot change. In part our mission is to ensure that we influence the legislative process where this is likely to deliver results. Another part is to be prepared to support and inform our members in the circumstance where the legislation creates injustice in the treatment of motorcyclists in the UK. Thus, in the worst-case scenario, we need to understand what is happening and how it will affect us. In the best-case scenario, we could change the legislation. My professional assessment is that we are currently heading towards the worst case, not the best.

**Lembit Öpik**

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## **Appendix**

Police, Crime, Sentencing and Courts Bill 2021:

<https://publications.parliament.uk/pa/bills/cbill/58-01/0268/200268.pdf>

Overarching document:

<https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-overarching-documents>

Link to Explanatory Notes to the Bill:

<https://publications.parliament.uk/pa/bills/cbill/58-01/0268/en/200268en.pdf>

Link to the Bill itself:

Bill factsheets:

<https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets>

House of Commons Library supplementary notes:

<https://commonslibrary.parliament.uk/research-briefings/cbp-9158/>