

HOUSE OF LORDS  
HOUSE OF COMMONS  
JOINT COMMITTEE ON DRAFT CONSTITUTIONAL RENEWAL BILL

*MEMORANDUM BY THE HOME OFFICE*

This Memorandum sets out the Home Office's position on the main relevant legislation that would apply to policing protest around Parliament should sections 132 to 138 of the Serious Organised Crime and Police Act 2005 (SOCAP) be repealed. This does not comprise an exhaustive list of possible applicable legislation.

**POLICING PROTEST FRAMEWORK**

a) Public Order Act 1986: Sections 11,12 and 14

1. If the SOCAP provisions were repealed the Public Order Act 1986 would apply to the policing of static demonstrations and marches around Parliament as it does elsewhere in England and Wales. Sections 11 & 12 of the Public Order Act covering processions (marches) already apply around Parliament.

2. Section 11 of the Public Order Act 1986 requires the organisers of public processions to give written notice to the police 6 days in advance, giving the date, time and route of the march and name and address of person organising it, unless not reasonably practicable.

3. Sections 12 & 14 of the Public Order Act give the police the power to impose conditions on public processions and public assemblies, as appear necessary to prevent:

§ serious public disorder,

§ serious damage to property,

§ serious disruption to the life of the community, or

§ the intimidation of others with a view to compelling (see paragraph 31) them not to do an act they have a right to do.

4. In the case of processions, the conditions that can be imposed are not specified but may include conditions as to the route to be followed or prohibiting the procession from entering any specified public place etc.

5. In the case of assemblies, conditions which can be imposed are limited to those governing:

§ the place where the assembly may be held;

§ the maximum duration; and

§ the maximum number of participants.

6. A public assembly is defined in the Public Order Act as an assembly of 2 or more persons in the open air. Currently, under SOCAP a demonstration in the vicinity of Parliament can consist of one person. The powers can be exercised in advance or once the procession or assembly has begun. A person who organises or takes part in a public procession or public assembly who knowingly fails to comply with a condition imposed by a police officer is guilty of an offence.

7. By way of example, if two competing demonstrations occurred around Parliament, the police could impose conditions to prevent serious public disorder on the organisers or those taking part in either demonstration if they had good reason to think that the demonstrations might result in serious public disorder etc and where those directions appeared necessary to prevent it.

8. Equally, if a protest started becoming violent or a crowd of protestors decided to storm Carriage Gates, the police would have powers to impose conditions on the basis of preventing serious public disorder. In addition to powers to impose conditions, the police would be able to arrest a person involved in the commission of a criminal offence if there were reasonable grounds for believing that the person's arrest was necessary for ascertaining the person's name and address (where they cannot otherwise readily be ascertained), or preventing either physical injury, loss or damage to property, public indecency or an unlawful obstruction of the highway.

b) The Metropolitan Police Act 1839: Section 52

9. Additionally, the Commissioner has powers under section 52 of the Metropolitan Police Act 1839 to make regulations from time to time, and as occasion shall require, for preventing obstruction in the streets during public processions etc and to give directions to the constables for keeping order and for preventing any obstruction of the thoroughfares in the immediate

neighbourhood of her Majesty's palaces and the public offices, the High Court of Parliament, etc and in any case when the streets or thoroughfares may be thronged or may be liable to be obstructed.

10. The 1839 Act could be used to give constables directions to prevent disorder around Parliament and to keep access to the Houses of Parliament free from obstruction, for example. But any directions issued would need to be reasonable, proportionate and balanced to meet ECHR requirements.

#### Section 54 - Prohibition of nuisances by persons in the thoroughfares

11. Every person shall be liable to a penalty not more than [level 2 on the standard scale], who, within the limits of the metropolitan police district, shall in any thoroughfare or public place, commit any of the following offences; (that is to say,)

9. Every person who, after being made acquainted with the regulations or directions which the commissioners of police shall have made .....for preventing obstructions during public processions and on other occasions herein-before specified, shall wilfully disregard or not conform himself thereunto:

14. Every person, . . . , who shall blow any horn or use any other noisy instrument, for the purpose of calling persons together .....

[There are 17 nuisances listed under section 54. The two set out above are the most relevant in relation to protests]

12. It is important to note that the Sessional Order on the Commissioner has no effect beyond the walls of Parliament. While it can provide an indication of the House's expectations of the Commissioner, it confers no powers on the Commissioner. It should not be confused with the provisions of section 52 of the Metropolitan Police Act 1839.

13. The directions of the Commissioner should be understood to relate to those assemblies which are capable of being obstructive etc (i.e. in accordance with section 52 of the Metropolitan Police Act, irrespective of the wording of the sessional order) or else risk being ultra vires. [Papworth v Coventry 1967]

#### c) Local Authority Byelaws

14. The byelaws which apply to Parliament Square Garden under the Trafalgar Square and Parliament Square Garden Byelaws 2000 would continue to apply as they do for Trafalgar Square.

These byelaws require prior notification and permission by the Mayor for assemblies on the Garden [see paragraph 35 for details].

## OTHER POTENTIALLY APPLICABLE LEGISLATION

15. As well as setting out the powers the police have to manage protests, the Public Order Act also includes a range of criminal offences associated with public disorder that would apply on repeal of SOCAP as they currently apply. There is also other legislation that can potentially apply to criminal acts committed in the course of a demonstration.

### a) Sections 1 to 5 of the Public Order Act 1986

16. Section 1 - offence of riot where a group of twelve or more people use or threaten unlawful violence for a common purpose and the conduct of them taken together is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety. It's rare for a charge of riot to be brought.

17. Section 2 - offence of violent disorder where a group of three or more people use or threaten unlawful violence and; the conduct of them taken together is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.

18. Section 3, - offence of affray where a person uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety. In order to prove this offence the threat of unlawful violence has to be towards a person present at the scene.

19. Section 4 of the Public Order Act 1986 contains the offence of using threatening, abusive or insulting words or behaviour or displaying threatening abusive or insulting writing or signs. The behaviour must be directed to a person with intent either to cause him to believe immediate unlawful violence will be used; or to provoke such violence; or to cause him to believe such violence will be used.

20. Section 4A of the 1986 Act also criminalises the use or display of such words or behaviour. The person must intend to cause harassment, alarm or distress and must actually do so. It is a defence for the accused to show his conduct was reasonable. Taking photographs or video film of a person in a 'threatening' manner could constitute an offence under this section.

21. Section 5 of the 1986 Act makes it an offence to use or display such words or behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress. The conduct need not be directed against a particular person but the accused must intend his words or behaviour to be threatening, abusive or insulting or be aware that they may be. It is a defence to show that there was no reason to believe there was anyone within sight or hearing likely to be caused harassment, alarm or distress. It is also a defence if the accused can show his conduct was reasonable. A police officer can be caused harassment, alarm or distress under this section, and the offence does not require the act causing harassment alarm or distress to be directed towards the officer.

b) Protection from Harassment Act 1997

22. Pursuing a course of conduct (including verbal conduct) which amounts to harassment of another, including alarming, distressing or putting in fear of violence will be an offence under section 2 or 4 of the Protection from Harassment Act 1997.

23. It is an offence under section 2 of the Protection from Harassment Act 1997 to pursue a course of conduct which amounts to harassment of another (or of two or more persons, where the intention is to deter them from carrying out lawful activities - this was added by section 125 of the Serious Organised Crime and Police Act 2005) - harassment includes alarming or causing a person distress and conduct includes speech. An intention to cause harassment is not necessary, but it is necessary to show that a reasonable person would think the behaviour amounted to harassment. It is a defence to show that the course of conduct was reasonable in the particular circumstances.

24. It is an offence under Section 4 of the Act to pursue a course of conduct causing another to fear that violence will be used against him. The court may make a restraining order on conviction for either offence and a victim of harassment may take civil proceedings under the Act for an injunction and damages for any resulting anxiety or financial loss. The perceived limitations of the powers are that they require a "course of conduct" which in the case of harassment of a single person means conduct on at least two occasions and in the case of harassment of two or more persons, means conduct on at least one occasion in respect of each person.

25. The course of conduct could include aiding, abetting, counselling and procuring such harassment ('collective harassment') by virtue of s7 of the Act as amended by the s43 of the Criminal Justice and Police Act 2001.

c) Breach of the Peace

26. There is a breach of the peace wherever (even on private premises):

§ harm is actually done, or is likely to be done, to a person, whether by conduct of the person against whom a breach of the peace is alleged or by someone whom it provokes; or

§ harm is actually done, or is likely to be done, to a person's property in his presence; or

§ a person is genuinely in fear of harm to himself or to his property in his presence as a result of an assault, affray, riot or other disturbance.

27. The common law power to arrest to prevent a breach of the peace may also be available, but only where an imminent risk of violence could be established

d) Obstructing police officers

28. Resisting or obstructing a police officer in the execution of his duty is an offence under section 89 of the Police Act 1996.

e) Trade Union and Labour Relations (Consolidation) Act 1992

29. Under section 241 of the Trade Union and Labour Relations (Consolidation) Act 1992, it is an offence to do any of the following wrongfully and without legal authority and with a view to compelling a person to do or abstain from doing anything he has a right to abstain from or do:

§ to use violence, intimidate a person or his family or injure his property;

§ persistently follow him;

§ hide tools or other property;

§ watch or beset his house or other place where he is;

§ follow him in a disorderly manner.

The offence does not have to be connected to a trade dispute.

30. The behaviour must be "wrongful" i.e. it must amount to a civil wrong such as nuisance, intimidation or trespass. .

31. The section has its origins in the Conspiracy and Protection of Property Act 1875 and is most obviously relevant in the context of trade disputes. However, it is not limited in its terms to such a dispute and one of the leading cases concerns a demonstration outside an abortion clinic. That case (DPP v Fidler 1 WLR 91) may also illustrate the difficulties in prosecuting for the offence in the context of pickets and demonstrations as it turned on the difference between "compelling" and "persuading". The defendants argued successfully that their actions were designed to persuade, not to compel women not to have terminations. The offence will also only be available where the protestors' action is tortious. If the demonstration is entirely peaceful and does not involve trespass or intimidation or amount to a public nuisance, no offence under section 241 may be committed.

## ISSUES ARISING FROM PERMANENT DEMONSTRATIONS

a) Unlawful Obstruction of the Highway

32. Under section 137 of the Highways Act 1980, if a person without lawful authority or excuse in any way wilfully obstructs the free passage along a highway, he is guilty of an offence and liable to a fine not exceeding level 3. The onus is on the prosecution to prove that the defendant was obstructing the highway without lawful authority or excuse. A constable may arrest a person where necessary to prevent unlawful obstruction of the highway under section 24 of the Police and Criminal Evidence Act.

33. In October 2002, Westminster City Council's claim for an injunction to remove Brian Haw's display of banners which they alleged was an obstruction of the highway was dismissed on the basis that the Claimant's use of the highway was not unreasonable in the circumstances, having regard in particular to his right to freedom of expression under Article 10 of the European Convention on Human Rights 1950 ("ECHR"): Westminster City Council v Haw [2002] EWHC 2073 (QB).

34. Article 10 cannot be used to circumvent highway regulations, but it is a significant consideration when assessing the reasonableness of any obstruction to which protest gives rise. Courts also account for the duration, place, purpose and effect of obstructions.

#### b) Byelaws - Trafalgar Square and Parliament Square Garden Byelaws 2000

35. These are enforced by the heritage wardens employed by the Greater London Authority. Section 5 lists the acts within the Squares for which written permission is required. These include:

5. Unless acting in accordance with permission given in writing by -

(a) the Mayor, or

(b) any person authorised by the Mayor to give such permission

no person shall within the Squares-

5) use any apparatus for the transmission, reception, reproduction or amplification of sound, speech or images, except apparatus designed and used as an aid to defective hearing, or apparatus used in a vehicle so as not to produce sound audible to a person outside that vehicle, or apparatus where the sound is received through headphones;

7) camp, or erect or cause to be erected any structure, tent or enclosure;

10) organise or take part in any assembly, display, performance representation, parade, procession, review or theatrical event;

36. Breach of these bye-laws is an offence punishable on summary conviction with a fine not above level 1 of the standard scale (s385(3) Greater London Authority Act 1999).

#### POWERS TO MANAGE SECURITY RISKS/RISKS TO PUBLIC SAFETY

37. The Joint Committee asked witnesses about the implications of the police losing powers to impose conditions on a protest to prevent a security risk and a risk to public safety if sections 132 to 138 of SOCAP were repealed.

38. If SOCAP were repealed, the police would not have a specific power to impose conditions on a public procession or assembly on the grounds of a security or public safety risk under sections 12 & 14 of the Public Order Act 1986.

39. As set out in paragraph 3, sections 12 & 14 of the Public Order Act 1986 give the police the power to impose conditions on public processions and public assemblies, as appear necessary to prevent:

§ serious public disorder,

§ serious damage to property,

§ serious disruption to the life of the community, or

§ the intimidation of others with a view to compelling them not to do an act they have a right to do.

40. The Home Office view is that preventing public safety risks can be managed under the criteria for imposing conditions outlined above, to the extent that they fall within preventing serious public disorder and that the measures available would be effective.

41. In so far as preventing a risk to security is concerned, since sections 132 to 138 of SOCAP came into force, physical security measures around Parliament have been increased. There are operational measures in place for the protection of the Government Security Zone including regular mobile and foot patrols of the area and certain sites.



42. Other measures to manage security risks around Parliament are set out below:

a) Trespass on designated sites

43. Sections 128 to 131 of the Serious Organised Crime and Police Act 2005 created the offence of criminal trespass on a protected site. On 1 June 2007 an order designating a number of sites as protected sites came into force. The order included the Palace of Westminster and Portcullis House.

b) Section 60 of Criminal Justice and Public Order Act 1994

44. Section 60 of the Criminal Justice and Public Order Act 1994, as amended by the Knives Act 1997, gives the police powers to stop and search in anticipation of violence.

45. Section 60 (1) contains a power under which if a police officer of or above the rank of inspector reasonably believes:

§ that incidents involving serious violence may take place in the locality in his police area, and that it is expedient to give an authorisation under this section to prevent their occurrence, or;

§ that persons are carrying dangerous instruments or offensive weapons in any locality in his police area without good reason,

46. The officer may give an authorisation that stop and search powers without suspicion can be used in a defined area for a specified period not exceeding 24 hours.

c) Section 44 of the Terrorism Act

47. An authorisation under section 44 of the Terrorism Act gives the police the power to stop and search pedestrians, vehicles, drivers and passengers for the purposes of preventing terrorism. Authorisations must be confirmed by the Secretary of State within 48 hours in order for it to remain valid after that period. The powers can be authorised in particular locations and for a particular period of time.

## NOISE NUISANCE

48. Section 137 of the Serious Organised Crime and Police Act 2005 bans the use of loudspeakers at any time and for any purpose (subject to a number of exceptions, including where consent of local authority has been granted) within the designated area around Parliament.

48. Repeal of section 137 will remove the general offence for using a loudspeaker in the designated area. Repeal of SOCAP will also remove the police's power to impose requirements as to maximum permissible noise levels where necessary to prevent disruption to the life of the community (section 134 (4) (f)) The use of loudspeakers will continue to be governed under Section 62 (1) of the Control of Pollution Act 1974 and section 8 of the Noise and Statutory Nuisance Act 1993. Section 62(1) of the Control of Pollution Act makes it an offence to operate a loudspeaker in a street between the hours of 9pm and 8 am, for any purpose.

50. However, under section 62(3A) of the 1974 Act, subsection 1 does not apply to the operation of a loudspeaker in accordance with a consent granted by a local authority under Schedule 2 to the Noise and Statutory Nuisance Act 1993. In other words, the 1993 Act allows a person to apply to the local authority to use a loudspeaker between 9pm and 8 am but the consent may itself be subject to conditions.

51. Section 2 of the Noise and Statutory Nuisance Act amended section 79 (1) of the Environmental Protection Act to make noise in street a statutory nuisance. It added paragraph (ga) to the list of statutory nuisances in subsection 1, "noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street". However subsection 1 (ga) does not apply to noise made by traffic, by any naval, military or air force of the Crown or by a visiting force; or by a political demonstration or a demonstration supporting or opposing a cause or campaign.

52. Use of amplification equipment on Parliament Square Garden requires the prior permission of the Mayor of London under the Trafalgar Square and Parliament Square Garden Byelaws.

53. The Joint Committee asked witnesses what powers would be available to the police and others to prevent noise disturbance upon repeal of section 137 of SOCAP. It was suggested that the police already had powers under section 14 of the Public Order Act to impose a condition on the maximum duration of an assembly, on the grounds that use of a loudspeaker was causing serious disruption to the life of the community.

54. The Home Office simply notes that it would be a question of fact as to whether individuals were causing sufficient disruption to the life of the community with loudhailers to justify the police imposing a condition on the basis of disruption to the life of the community and whether, consequently, a condition could be imposed limiting the duration of an assembly. As there would be no specific power to impose conditions limiting the use of a loudspeaker, the only option would be to tolerate the loudspeaker, or to limit the whole assembly. There may be questions about whether limiting the whole assembly is a proportionate response to loudspeaker noise.

55. The police would additionally have to recognise the exemption of noise from political demonstrations as a statutory nuisance under the Noise and Statutory Nuisance Act 1993, as well as any local authority consent that had been granted under the 1993 Act.

## POWERS OF ARREST

56. In accordance with section 24 of the Police and Criminal Evidence Act (PACE) a constable may, without warrant, arrest a person involved or suspected of involvement or attempted involvement in the commission of a criminal offence if there are reasonable grounds for believing that the person's arrest is necessary for one of the specified grounds at s24(5) PACE. These grounds include ascertaining the person's name and address (where they cannot otherwise readily be ascertained), and preventing either physical injury, loss or damage to property, public indecency or an unlawful obstruction of the highway. It is the latter ground (at s24(5)(v) PACE) which is of most obvious relevance in the context of large protests.