

HOUSE OF LORDS

HOUSE OF COMMONS

JOINT COMMITTEE ON DRAFT CONSTITUTIONAL RENEWAL BILL

*Memorandum by Malcolm Jack, Clerk of the House of Commons (Ev 02)*

**Demonstrations in the Vicinity of Parliament**

Introduction

1. The starting point for consideration of managing protest around Parliament is in the Government's intention to repeal Sections 132-138 of the Serious Organised Crime and Police Act 2005 (SOCPA). That undertaking is now provided for in Clause 1 of the Draft Constitutional Renewal Bill.
2. While intending to repeal sections 132-138 of SOCPA so that "people's right to protest is not subject to unnecessary restrictions",<sup>[1]</sup> the Government has also indicated that it believes "Parliament itself is well placed to contribute to proper consideration of what needs to be secured in order to ensure that Members are able freely and without hindrance to discharge their roles and responsibilities".<sup>[2]</sup> To that end the Government "invites the views of Parliament on whether additional provision is needed for the purpose of keeping passages leading to the House free and open while the House is sitting, or to ensure, for example, excessive noise is not used to disrupt the workings of Parliament".<sup>[3]</sup>
3. This paper focuses on what might be considered necessary by way of additional provision to the Bill in order to ensure Members' free access and for excessive noise to be controlled.

Background

4. Some background to the present situation may be helpful in putting into context what additional provision Parliament might seek by way of the legislation. That involves considering the genesis of the SOCPA provision and the role of the historic sessional order.
5. Parliament Square has long been a focus for public interest. In the nineteenth century there were frequent demonstrations for trade union rights; suffragette protests culminated in the Black Friday riot of 1913; in the 1970s anti-apartheid and other demonstrations were staged, and more recently

pro- and anti- hunting protests. Since June 2001, Mr Brian Haw has staged a "permanent peace protest"[4] opposing US and UK actions against Iran and Afghanistan.

6. Acts of Parliament intended to prevent large numbers of people approaching Parliament include the Tumultuous Petitioning Act of 1661 and the Seditious Meetings Act of 1817, both now repealed.[5] The orderly control of public protest nationally is now governed by the Public Order Act 1986.[6] This requires organisers of marches to give six clear days' written notice to the police and permits the police to impose conditions on a march if they believe there is a risk of serious public disorder, damage or disruption.

7. Since 1713 the House passed a series of Sessional Orders at the beginning of each session. The Order relating to the Metropolitan Police was passed in its most recent form in every session from 1842-2006. It required the Commissioner of the Metropolitan Police to ensure that "the streets leading to this House be kept free and open and that no obstruction be permitted to hinder the passage of Members to and from this House during the Sitting of Parliament, or to hinder Members by any means in the pursuit of their Parliamentary duties in the Parliamentary Estate". The Order was transmitted to the Metropolitan Police Commissioner with the intention of the Commissioner giving directions to constables under powers contained in the Metropolitan Police Act 1839.

8. In November 2003, the Procedure Committee undertook an inquiry into Sessional Orders and Resolutions. In evidence to that committee, the Metropolitan Police drew attention to the limitations of the Order. The Commissioner's directions, for example, did not include a power of arrest. They noted that no prosecutions had been brought under the 1839 Act for many years, and that its provisions "lacked teeth".[7]

9. The Procedure Committee concluded that the introduction of fresh legislation was needed to ensure that the police had adequate powers in this area. They recommended that the Sessional Order should only continue until such legislation was in force. The Government accepted this recommendation.[8] In the current session, no Sessional Order was passed in the Commons (though the Lords passed their equivalent order).[9]

10. The Serious Organised Crime and Police Act (SOCPA) 2005 placed on a statutory basis the framework for dealing with static demonstrations in the vicinity of parliament (the intention being that marches would be dealt with under the Public Order Act). Sections 132-138 of the Act provide that:

- Any person who demonstrates, or organizes a demonstration, in a designated area (specified by regulation) without prior authorisation by the Commissioner is guilty of an offence subject to penalty of imprisonment or fine or both.
- Six days' written notice is required if authorisation is sought.
- The commissioner may impose requirements on any one seeking such authorisation to prevent "hindrance to the proper operation of Parliament", or other disorder or disruption.
- No loudspeakers may be used other than by the emergency services.

11. SOCPA received Royal Assent on 7 April 2005. As preparations were being made to implement its provisions, Mr Brian Haw won an application for judicial review on 28 July. He argued successfully that the creation of an offence triggered by the absence of prior police authorisation "when the demonstration starts" did not apply to him since his demonstration had 'started' before the enactment of the bill.[10] The Government successfully appealed against this judgement on 8 May 2006 when the Court of Appeal found that it was clear that the intention of the Government was that the provisions of the Act should apply to all demonstrations regardless of when they began.[11]

12. Mr Haw had by this stage obtained authorisation under SOCPA for his protest, but the police imposed a number of restrictions on him, including one that limited his placard display to a maximum width of three metres. Mr Haw refused to comply with these with the result that the police removed his placards on 23 May 2006. On 22 January 2007 Mr Haw successfully contended in the Westminster district court that he had not breached police conditions. The judge ruled that the conditions were unclear and had not been imposed by the Metropolitan Commissioner himself but by a more junior officer. The judge ruled that the Commissioner had no powers to delegate such actions to a more junior officer.[12] CPS has now successfully appealed against this point.[13]

13. In July 2007 the Government published its Green Paper The Governance of Britain. The issue of protests in the vicinity of Parliament was dealt with under the chapter "Re-invigorating our democracy". The Government noted that "strong views" had been expressed both in terms of the principle and practical application of sections 132–138 of SOCPA.[14] It acknowledged that the right to peaceful protest was an essential civil liberty and was also protected by Article 10 of the European Charter of Human Rights. Consultation has been undertaken; the results are set out in Part 3 of the Constitutional Renewal documents.

### Parliamentary needs

14. One difficulty in finding a solution suitable to Parliament is the Government's assertion that it "will not pursue harmonisation of the sorts of conditions that can be placed on marches and assemblies in the Public Order Act 1986"[15] (set out in para 6 above).

15. This conflicts with the views of the Metropolitan Police Service (MPS) which, in its response to the consultation document argues for prior notification of assemblies "in the close proximity of Downing Street and Parliament itself."[16] While considering the area defined by SOCPA to be too large, the MPS states its view that "prior notification is necessary to allow it to effectively manage the very large number of protests that take place in this small area."[17]

16. I am advised that the Serjeant at Arms agree with the MPS's view that prior notice should be given but that the area affected should be limited to comprise:

- That area of Abingdon Street adjacent to or opposite the Palace of Westminster

- St Margaret's Street
- Parliament Square
- Bridge Street
- Parliament Street
- Whitehall, south of Horse Guards Avenue
- Downing Street (if Parliament decides not to prohibit protest in this street)
- King Charles Street
- Victoria Embankment adjacent to Portcullis House
- Thames adjacent to Palace of Westminster.

17. The rationale for prior notice relates to the two principal requirements for Parliament, namely;

- unimpeded access to the Parliamentary estate for Members of Parliament (especially during times of sittings of either or both Houses);
- control of intrusive sound systems (loudspeakers etc) disrupting the work of parliament.

18. The two principal requirements do, of course, need to be met in the case of demonstrations whether or not subject to prior notice. In particular, pavements and roadways adjacent to Carriage Gates, St. Stephen's Entrance, Peers Entrance and Black Rod's Garden Entrance where there have been incidents involving Members trying to access the Houses either by vehicle or on foot, need to be kept clear of demonstrators.

19. The problem is that with the repeal of SOCPA provisions and in the absence of police powers of arrest in cases of offences of the sort given in the Public Order Act 1986, there would be little effective control of these areas, nor would there be any means of controlling intrusive noise from loudspeakers. As was acknowledged by the MPS and the Procedure Committee in 2003, the Sessional Order is insufficient an instrument to achieve this end.

20. A further point, supported by the Serjeant at Arms, is that overnight or permanent demonstrations should not be allowed on Parliament Square. Given recognition of the right to demonstrate legitimately, there seems no rationale for permanent demonstrations which are unsightly and may cause additional difficulties as more pedestrians are attracted to Parliament Square as a result of proposals on World Squares.

## Conclusions

21. While understanding the democratic right to bring protest to Parliament, the House authorities responsible for order and security support the view of the Metropolitan Police Service that there should be a stipulation for notification of demonstrations within the area defined in paragraph 16 above in the interest of maintaining public order and safety.

22. Whether or not such a provision is made, the House authorities consider that Clause 1 of the Bill should include provisions giving the police powers of arrest similar to those given in the Public Order Act in respect of demonstrators in the immediate vicinity of the Palace of Westminster so that free access to both Houses is maintained. They should apply to individual as well as to group demonstrators. They also consider that powers to control intrusive noise should be written into the Bill.

23. The House authorities see no justification for overnight or permanent demonstrations in Parliament Square once new regulation governing orderly and legitimate expression of opinion is in place, particularly in view of the likely use of the Square as a World Square.

Malcolm Jack

Clerk of the House of Commons

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[1] The Governance of Britain - Constitutional Renewal, Part I, para 30

[2] Ibid, para 28

[3] Ibid, para 29

[4] [www.parliament-square.org.uk](http://www.parliament-square.org.uk)

[5] Sessional Orders and Resolutions, Third Report from the Procedure Committee, Session 2002-03, HC 855, Ev 2

[6] Managing Protest around Parliament, Cm 7235, p9

[7] Sessional Orders and Resolutions, Ev 42

[8] Ibid, p2

[9] HL Minute, 6 November 2007

[10] R (on the application of Haw) v Secretary of State for the Home Department and another (All England law report).

[11] R (on the application of Haw) v Secretary of State for the Home Department and another (All England report).

[12] <http://news.bbc.co.uk/1/hi/england/london/6287091.stm>

[13] Note from Home Office

[14] The Governance of Britain, Cm 7170, p48.

[15] The Governance of Britain - Constitutional Renewal, Part I, para 26

[16] Managing Protest Around Parliament, Response from Metropolitan Police Service, p3

[17] Ibid, p 3