

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

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The consultation paper Managing Protest around Parliament followed the Governance of Britain Green Paper (Cm 7170) in which the Government committed to consulting on the sections of SOCPA covering demonstrations near Parliament. This was one of the first acts of the Gordon Brown Government in July 2007. The White Paper, The Governance of Britain: Constitutional Renewal, (Cm 7342-1) in March 2008 followed the consultation. It is apparent from this process that the consultation was a genuine consultation where the Government and civil servants listened to the submissions relating to restrictions on protest and proposed action that was consistent with the consultation response. This in itself is a significant change in emphasis from the way in which much legislation on criminal justice has been passed from 1994 to the present.

The Analysis of Consultations document gave a clear impression of submissions on managing protest around Parliament. The Ministry of Justice press release was unequivocal that the Government had accepted the overwhelming sentiment expressed in the consultation exercise:

"The Home Secretary Jacqui Smith will remove the legal requirement to give notice of demonstrations around Parliament and obtain the authorisation of the Metropolitan Police Commissioner." 25 March 2008.

This is a fundamental change in attitude from previous Government announcements on criminal justice measures which often seemed to pursue stated policy with little regard to consultation or evidence.[1]

Indeed it is evident that sensible and rational suggestions in the consultation paper to revise the law about conditions on processions and assemblies were overlooked because of the strength of feeling of respondents who supported repealing the restrictions and did not consider the detailed suggestions for amendments to the regulation in Part II Public Order Act 1986. Specifically the suggestion that the conditions that can be imposed on assemblies and marches should be harmonised (question 2), subject to appropriate modifications, it is submitted would give the police more flexibility in deciding the appropriate steps to take in a public order situation. Arguably the senior police officer should be given a greater degree of discretion to impose such conditions as are reasonable and proportionate in the circumstances while promoting the right of freedom of

assembly and association and the right of freedom of expression. In relation to assemblies it is probably not helpful if the current list in the Public Order Act 1986 is seen as being an exhaustive one rather than examples. Although I am not aware of any caselaw regarding this others may know if this has caused difficulties for protesters or police in practice. Section 14 Public Order Act could simply be amended to make it clear that the conditions imposed can include but are not limited to those listed.

Section 12 states that the senior police officer "may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions."

Whereas s. 14 states that the senior police officer "may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation."

(The relevant parts of ss. 12 and 14 are included at the end of this paper).

It might be clearer if the wording of s. 14 was amended to give consistency with s. 12. Amended the wording might be that the senior police officer "may give directions imposing on the persons organising or taking part in the assembly such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it." I believe this would make clear that the list was not intended to be exhaustive but a statement that the conditions are including but not limited to those listed could be included if thought necessary by the draughtsman.

Arguably SOCPA gave the Commissioner no ability to add conditions on protesters that is not already covered by existing pre-2005 legal powers. However there was possible ambiguity about noise nuisance and further thought is needed about unreasonable use of noise to disrupt the business of those working in and around Westminster on a more than temporary basis. If time-limited noise nuisance generally were to be penalised this would surely remove politicians from the necessity of being always able to deal with hecklers, which surely is a part of the skill of the job. (The issue of noise is covered specifically in s. 134(4)(f) and s. 137 on use of loudspeakers in designated area). Section 3 of the consultation considered whether there should be a different position around Parliament than in other locations. The concerns about Members of Parliament not being obstructed and allowing the business of Parliament to proceed unhindered (paras. 3.2 and 3.3) are both important. The same issues though apply to every local Council up and down the land and it would be a self-obsessed and out of touch local council that called in the police to resolve such matters.

They would look out of touch and elitist and as if they did not care about the views of their residents. It is noticeable though that noise nuisance is not covered by breach of the peace or except by possible inference by Public Order Act powers and even the breathtakingly broad section 54 para. 14 of the Metropolitan Police Act 1839 appears to omit protests from this offence (nor is there an equivalent provision for other areas in the eclectic s. 28 Town Police Clauses Act 1847). Clearly while banning many other forms of nuisance and disturbance of the day, one might term it 'anti-social behaviour', the Victorians were not as concerned about noise nuisance in cities as people and politicians are today.

It is right that there should not be a criminal offence for a person to use a loudspeaker in the designated area (with repeal of the 2005 Act provisions). The Explanatory Notes to the Draft Constitutional Renewal Bill tell us that "the use of loudspeakers will continue to be governed by section 62 of the Control of Pollution Act 1974 and section 8 of the Noise and Statutory Nuisance Act 1993."

Section 62 'Noise in streets' generally prohibits operation of a loudspeaker in a street between the hours of nine in the evening and eight in the following morning (and for commercial purposes not relevant here).[2] SOCPA used the same wording relating to certain exceptions which include the proviso that the equipment "is so operated as not to give reasonable cause for annoyance to persons in the vicinity". It is possible that this wording could be incorporated into a condition that police could impose on users of loudspeakers at processions and assemblies under the POA. However I would assert that any such provision (in this case condition) should be subject to a warning before any escalation - and that escalation thereafter be initially by means of a fixed penalty. Alternatively if it was felt that restriction was only needed near Parliament because of its unique status then amendment could be made by way of an amendment to the Metropolitan Police Act 1839. This might cover actual disruption rather than simply annoyance. How this might be done is considered below. Officers would also it is suggested need a power to confiscate equipment if reasonable and this is also noted.

The clearest explanation of the penalty notice system that I am aware of is that on the Home Office website:

"Once a penalty notice has been issued the recipient must either pay the amount shown on the notice or request a court hearing. This must be done within the 21 days of the date of issue.

Payment of the penalty by the recipient discharges their liability to conviction of the offence for which the notice is issued. Payment involves no admission of guilt and removes both the liability to conviction and a record of criminal conviction."

(<http://police.homeoffice.gov.uk/operational-policing/crime-disorder/index.html/>).

It is suggested that any provisions considered here be subject to the lower tier penalty.

Another specific concern raised was Parliament as an obvious terrorist target. It must be noted that police and Government interpretation of what is a security risk has been highly discriminatory, particularly in the Metropolitan Police area - peace campaigners and protesters have generally been held to be a security risk necessitating high levels of policing but sporting-related processions or large crowds related to film and pop stars or alleged 'celebrities' have not. The distinction appears to be that legal powers are used where there is a political motive but not on large crowds without political background, ignoring the same or possibly greater security risks obvious in relation to groups that would not otherwise come to any particular attention of the police and may not (though they may) be organised by professional or experienced stewards. (The warnings about terrorist risk associated with the George Bush visit to London on 20 November 2003 can be contrasted with the much more low key policing of the England Rugby World Cup victory procession less than one month later, 8 December 2003).[3] The argument of Parliament as a particular security risk could apply to Premiership football grounds, mainline railway stations and many other particularly symbolic locations in the life of Britain as well as strategic ones. (The Counter-Terrorism Bill 2008 highlights policing at gas facilities, clauses. 77 - 82). Security and vigilance by the authorities, employees and the public at all of these locations is vitally important but restricting protest is not the same as security and vigilance.

Parliament is of course not a local Council office and the consultation paper and occasionally Government ministers as well as opposing MPs and Lords have highlighted that it correctly is a focus for protest by a wide range of people wanting to exercise their freedom of expression. If there really is a specific issue in relation to obstruction this merits further consideration though existing police powers are probably adequate. In part the Sessional Orders should be revised so that they directly cover the area around Parliament and the language modernised so that it reflects the Human Rights Act era language rather than apparently the antiquated language of the pre-Victorian era. A specific and limited legal provision relating to access to Parliament could be included here if necessary however police powers relating to both obstruction of highways and obstruction of officers probably give them sufficient powers at present. A specific power to deal with this and related offence if required could be included in an amendment to the Metropolitan Police Act 1839. It is interesting to note that this may not have been a significant issue before the modernisation of public order law twenty years ago. Card suggested that in London informal agreements usually worked in the past prior to the Public Order Act 1986.[4] It was certainly the case by contrast that on stop and search weak and informal controls did not work prior to the safeguards introduced in PACE at about the same time.

Conclusion.

Specific recommendations.

(1) Repeal the restrictions on protest around Parliament as included in the Bill.

(2) Keep the Sessional Orders but modernise the language - if thought necessary add a specific new clause to s. 54 para. 14 Metropolitan Police Act 1839 to cover obstruction of access to Parliament. This should initially include a requirement of a warning before an officer or CSO can take any further action. Escalation should then be by means of a fixed penalty with arrest only if necessary. Keeping the Sessional Orders is suggested because Parliament is of particular significance in the life of our democracy and that should be recognised.

(3) Regarding use of loudspeakers. The above clause could include a specific provision regarding use near Parliament. On complaint received if a police officer or CSO reasonably believes that noise from a loudhailer is excessive and hindering the work of any person in Parliament they may warn the user to reduce the volume. If the user does not do so within a reasonable time the officer must tell them that if they fail to do so they will be subject to a penalty notice and the equipment liable to confiscation. If the user still persists then the officer or CSO can give a penalty notice and / or confiscate the equipment. The notice should initially be a civil matter unless not paid and the equipment should be returned by the police in a reasonable time after application in writing by the user and payment of an administrative fee. Alternatively there could be a general amendment to the Public Order Act conditions.

(4) The Public Order Act 1986. As suggested in the original consultation paper the conditions that can be imposed if reasonable and proportionate should be standardised for conditions and assemblies. Rather than an exhaustive list it is suggested that the current lists be regarded as examples and the senior police officer given greater discretion, always subject to protection of the right to peaceful protest and freedom of assembly and association, the application of the Human Rights Act and the rule of law in general.

Public Order Act 1986 (extract).

12.- Imposing conditions on public processions.

(1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that-

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

he may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions.

14.- Imposing conditions on public assemblies.

(1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that-

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

he may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

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This is based on a shorter extract from a detailed draft paper on protest and police powers in England and Wales in the last decade. I have amended and expanded the section on this topic with additional legal detail and some references added on the specific questions of interest to the Committee. (Most background references omitted dealing with points which the Committee will be familiar with).

[1] Discussed by Reid, 'Law and Disorder: Victorian Restraint and Modern Panic' ch. 5 in *Behaving Badly: Visible crime, social panics and legal responses - Victorian and modern parallels*, ed. J. Rowbotham & K. Stephenson (Aldershot: Ashgate, 2003), pp. 83-4, 93.

[2] Section 8 and Sch. 2 of the 1993 Act covers consent of local authorities to the operation of loudspeakers in streets or roads. Paras. 214 - 216 of the commentary on the draft bill considers the ECHR implications of the provisions relating to noise.

[3] See 'England 750,000, Australia nil' A. Anthony, *The Guardian* 9/12/2003; cf 'Thousands protest against Bush' BBC News online, 21/11/2003.

[4] R. Card, *Public Order: the New Law*, (Butterworths, London, 1987), para. 4.5.