

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

Memorandum by Peter Steadman (Ev 06)

1. INTRODUCTION

The Joint committee considering the draft Constitutional Renewal Bill has invited submissions from interested parties. This document concerns itself specifically with the proposed repeal of sections 132-138 of the Serious Organised Crime and Police Act.

It will be noted that I have provided my own Background and Discussion notes, which may prove informative.

2. SUMMARY OF RECOMMENDATIONS

That Parliament should enact laws to facilitate the following:

§ Sufficient monitoring and police presence in Parliament Square and its environs so as to provide:

Security for all

A facility for peaceful protest;

Unimpeded access for business in Parliament.

§ Repeal sections 132-138 of the Serious Organised Crime and Police Act.

§ Revisit the original recommendations of the Metropolitan Police Commissioner as submitted to the Privileges Committee in July 2003.

§ Reinstate the right of the people to demonstrate spontaneously.

§ Limit the amount of time that a protestor can be 'in situ' in Parliament Square to (say) 18hours in any one day.

§ Not introduce any further control or hindrance in respect of the public's right to freely assemble and demonstrate.

§ Provide funding to groups and individuals so that perceived unconstitutional acts by government or its agents may be challenged in the courts.

§ Recognise that keeping the arteries of freedom and democracy open is a costly and often untidy business.

3. BACKGROUND

People have been protesting in Parliament Square for centuries - by means of mass assembly, lone protest or by marching. Throughout the ages, the citizen viewed Parliament as the place where their collective or lone voice should be heard. It was, after all, the place where the legislators assembled to make laws that affected the people.

In recent years, the desire by the authorities to modify the public's right to demonstrate in Parliament Square was motivated by the actions of a Mr. Brian Haw. Mr. Haw, a protestor opposed to the invasion of Iraq, had been camped on the green opposite the Houses of Parliament on a continuous basis and declared he would stay there until British troops were withdrawn from Iraq. He gathered about him many placards decrying the government's actions and often, and repeatedly, regaled the people in Parliament by means of a loudhailer.

In response to these actions, the Procedures Committee (PC), whilst accepting that MPs were much divided on the issue, nevertheless recommended that:

'The Government should introduce appropriate legislation to prohibit long-term demonstrations and to ensure that the laws about access are adequate and enforceable.'

The Chairman of the committee stated that the evidence given by the Commissioner of Police (CMP) influenced this recommendation as did the evidence of the Sergeant at Arms who reported:

“Mr. Speaker has for some time been concerned about the use of Parliament Square for unsightly and occasionally disruptive demonstrations; and many Members have expressed the view that more recent demonstrations against the war in Iraq have constituted an unacceptable intrusion into their working environment”.

It is clear from reading the minutes of the committee's hearings plus the evidence of the police and their advisers and of The Speaker's representatives, that the drive for new legislation was focused on protecting those who work in Parliament from sustained and voluble protest from Mr. Haw, coupled with a desire that Parliament Square Green (PSG) should not become a home for permanent protestors and their seemingly endless, unsightly, accessories. Moreover, the police blamed lack of enforceable legislation as the reason they had been unable to keep clear all entrances to Parliament during some large protests.

3. BACKGROUND (continued)

Following the PC's recommendations, the government developed its own, more comprehensive, proposals. There is marked difference between what the CMP judged necessary, what the government initially proposed, and what was eventually enacted.

The sections', as finally drafted, had scant scrutiny in their passage through the Commons. MPs who opposed the legislation complained that, at committee stage, debate was curtailed and that the government often seemed to have no answers to many queries raised. On the day of the third reading of SOCPA, the government tabled new amendments. MPs were given forty-five minutes to debate the clauses, before being asked to vote.

These sections were contested in the courts by civil liberty groups but were eventually upheld by the High Court.

4. THE LAW IN ACTION

After protracted legal battles, which initially favoured Mr. Haw, the High Court ruled in favour of the government and as a result, Mr. Haw's site was much reduced under the direction of the new CMP. Haw was granted permission to stay but forbidden to use a loudhailer.

In the routine enforcement of these laws, the police have arrested, charged and imprisoned people for not having the Commissioners approval for the following actions:

- * A lone figure-standing mute in Whitehall dressed as Charlie Chaplin, wearing a glove inscribed with the words 'not aloud'

- * Two people standing near the Cenotaph, reading out the names of both The Fallen and the civilians killed in the Iraq war.

- *A single demonstrator standing opposite Downing Street with a placard quoting George Orwell.

- *Refusing not to display a placard with the four words 'the right to protest'.

In addition, 'the sections' were invoked by police when protesting pensioners were told to disperse, and numerous people have been threatened with arrest for variously sitting with a cake iced with the word 'peace'; wearing 'T' shirts with slogans; sporting lapel badges; holding picnics and wearing costumes.

Contrarily, anti-war protestors, who at Christmas, sang carols but carried banners on PSG green without permission, were not approached nor arrested by police. Similarly, a protestor symbolically burning 'Magna Carta' in full view of police was not interfered with. Interestingly, in both these incidents reporters from the national media were present.

The media of many countries have carried the telling image of people carrying blank placards in Parliament Square.

A group, led by Mark Thomas the comedian, applies every month to Charing Cross police station for individual permissions for multiple demonstrations by lone individuals. This is a show of dissent and is designed to demonstrate the waste of police resources resulting from this legislation. In a bizarre twist, the government spokesman in the Lords used the high figure of applications resulting from this stratagem, as proof that people were accepting of the procedure (see appendix A).

Abroad, other, more repressive regimes, point to our new laws prohibiting protest without state police approval, when they are criticised for arresting dissidents who try to demonstrate.

5. KEY QUESTIONS

In formulating this paper, I took into account the points and many of the questions contained in the Home Office pamphlet, but, in addition, I considered the following:

1. The credibility of the claim that the sections impede, deter, or prevent terrorists attacks.

2. The veracity of the statement that, hitherto the police did not have sufficient powers to ensure that people having business in the Houses of Parliament could go about their business unmolested.
3. The fairness, or otherwise, of one man (or one cause), monopolising the whole of the southern edge of Parliament Square Gardens (PSG) facing Parliament, with a display unlimited in size and for an indefinite duration.
4. The desirability that our representatives should be able to silence, or have removed, inconvenient and untidy citizens who wish to demonstrate.
5. Whether or not a citizen should need the approval of the state (or its agents) to protest about the state's activities.
6. Why the government conceived of all the limitations contained in 'the sections' when neither the police nor the PC had requested such sweeping laws.
7. How to cater for the 'elf an' saffty' issues that arise from spontaneous demonstrations.

6. DISCUSSION

(1) Preamble

It is curious that nowhere in the paper 'Managing Protest around Parliament' is there an explanation as to why the government introduced such stringent restrictions far in excess of those asked for by the MPC and the PC. The only acknowledgement is the statement that the governments 'proposals were 'partly based' on these recommendations. It would have been useful to know the governments thinking and motivation for such a major redrafting. Particularly when the minister had told the PC that there was nothing she wanted to add or resile from the MPC's submission (see appendix B).

The other puzzle concerns the Home Office paper. In complete contrast to all the other thousands of words uttered and written on the subject of the sections, not once does the pamphlet ever refer to the root cause of the legislation, for nowhere is Mr. Brian Haw or his permanent encampment ever referred to.

Yet the world knows that Parliament brought in these new laws to remove the nuisance of one man who had found loopholes in the existing legislation. In so doing, many believe they seriously besmirched our reputation for upholding free speech. Laws aimed at one individual or sect, tend to have dire, unintended, consequences, never imagined by the originators.

It may be that we live in the best democracy in the world, but like it or not, we now have a system where a political party not chosen by over 75% of the electorate governs us all. The party in power can - and does - enact laws, which fundamentally change our constitution and our way of life.

It could be argued that, given their share of the vote, our current government has less legitimacy for their legislation than that achieved by the National Socialists in Germany who secured over 40% of the electoral role and had parliamentary majorities when introducing many of their heinous laws.

It is surely right, that people challenge the actions of the executive, because Parliament rarely does. Indeed, the very same MPs who were in favour of the sections will presumably now troop through the lobby having been told to change their minds - such is the power of the executive.

The foregoing, coupled with the low regard politicians are now held, would explain why the number of people seeking to demonstrate will, no doubt, increase. The government should facilitate this healthy outlet of peaceful demonstration in every way that it can; rather than stifle protest by imposing myriad rules and regulations.

To many, the right to unconditional protest is not in the state's gift - they see it as a fundamental right and, learning from history, one that must be defended.

(2) Security

The insistence on obtaining prior permission to demonstrate in Parliament Square cannot be justified on security grounds. For a start, Parliament is not the only 'very obvious target' in London - there are dozens - and the issuing of a piece of paper from a police constable at Charing Cross police station - doesn't in any way guarantee that a protestor (lone or in a group) will not commit terrorist acts in the vicinity.

It is difficult to imagine that seeking permission six days in advance would impede plans for a terrorist attack. Indeed, it could be argued that a permit could provide a perfect cover for nefarious intentions - far better than just turning up with a bomb. In his evidence to the committee, the then CMP never once suggested this system. From the author's personal experience, it is impossible for the police to search and question all PSG visitors and it is quite clear that C.X police do not know whether a permit seeker is genuine. It is therefore difficult to see how issuing of a permit thwarts terrorist activity.

(3) Going about their business

All those with business in parliament, should be able to go about unhindered and they should not be subject to a continuous loud cacophony that would distract them from their jobs.

There has been a stated legal opinion, not rebutted by the government, that even before the introduction of the sections, the police already had sufficient powers to deal with anyone impeding those with business in the House. Indeed, if it were not the case, then it is difficult to imagine how Hon. Members have managed for these past centuries.

The police's claim that the 1839 law was 'toothless' is disputed. It has been suggested that this was but an excuse for the sub-standard policing on one or two occasions when the police, who were dealing with large demonstrations, barred access to Parliament on 'elf an' saffty' grounds.

Furthermore, the avalanche of new powers given to the police over the last decade should have silenced all claims as to the lack of legislative teeth. They now have powers to stop, search and question on a scale unseen since wartime.

The outright ban on loudhailers is far too draconian. It does no harm for our paid representatives to hear protestors. It is not for MPs to silence dissenters. After all, before standing for election, parliamentary candidates should have had the wit to know that loud protests take place outside Parliament, and have done for centuries. This ban should be eased to allow amplification devices to be used in a responsible manner and from time to time.

(4) 'Permanent' Protest

It cannot be right that one protestor can monopolise the whole of the prime site of protest to the exclusion of other causes and do it on a permanent basis. Nor can it be desirable that the whole of PSG becomes a permanent campsite for a particular campaign. There should be no 'permanent' sites in order that others have the opportunity to protest. It is not difficult to facilitate - I would recommend that protestors be limited to (say) 18 hours per day. At the end of the allotted time, they would be required to leave the Square and not return for six hours taking all their belongings with them. They would be free to return as often as they wished.

In this way, others would have the opportunity of securing the 'prime' sites for protest and, of necessity; the amount of display material will be self-regulated since it would need to be carried off on a daily basis.

By this device the right to on-going protest is maintained, Parliament is spared 'permanent' and 'unsightly' protests, and unwieldy bureaucratic systems are avoided.

(5) Prior Permission

In the main, the system that was in place prior to the introduction of the sections, worked well. Of course, some endeavoured to circumvent the regulations, others ignored them totally. And that situation pertains today, and will doubtless occur in the future. There will always be some who will seek to find loopholes, and there will always be loopholes - as the current protestors have proved.

Single or small groups of demonstrators should not be compelled to give advance notification of a demonstration in PSG. The concern expressed about possible multiplicity of single or small protests does not bear scrutiny. As the police will verify, this rarely happens and if it does, it is not necessarily a threat to health and safety. Surely the police have sufficient resources to hand that can deal with any situation in respect of this 'very obvious' target?

Recent history has demonstrated that no amount of legislation is a substitute for adequate and effective policing. That no law will prevent determined people with a sense of injustice, from attempting to influence events - and that peaceful protest is probably the most benign form. This should be encouraged, not stifled by putting obstacles in the way. Prior notification is one such obstacle.

(6) A Pretty Place

It is of course desirable that PSG is kept as attractive as possible - but so should all of London.

Contrary to what the Home Office pamphlet states, Parliament Square is not a World Heritage Site (see appendix E), but if it were, UNESCO would want the centuries old democratic traditions to continue because that is the true heritage. It should not be forgotten that the exercise of democracy and the expression of liberty can often be a costly and untidy business but it is a price we should be willing to pay.

As to enhancing the attractiveness of PSG, many around the world, regardless of their political stance, see something rather noble happening in PSG. It is the actions of one man, who for over five years has maintained his vigil/ protest outside the mother of parliaments. No doubt, historians will contrast this with the fact that our government had originally intended to ban people and demonstrations from the square if they were judged to detract from its aesthetic setting. This proposal was eventually withdrawn, but only because it placed too great a burden on the discretion

of the police to decide what constituted unsightly people or displays. Thus, was one of our ancient liberties so nearly set aside by the sartorial judgment of a junior functionary of the state.

(7) 'Break the law to make the law'

It is all very well for the Home Office to baldly state that the Human Rights Act 'prevents the imposition of excessively strict conditions on an assembly as they would be open to challenge through the courts'. Yet there is no indication as to where the funding for such a challenge would come from.

It could be argued that the only reason this matter is under review is the adverse global media coverage resulting from the enforcement of the sections on demonstrators who deliberately broke the law. It is regrettable that we still have a situation where, consistently, people find it necessary to commit a criminal act to bring perceived injustice to the legislator's attention. Thus, we come full circle, because if the executive make it more difficult for people to air their grievances, as they do by limiting demonstrations, then it may well lead to more law breaking.

The government should consider establishing a commission to which people could apply for funds with a view to challenging legislation in the courts. This would obviate the need to seemingly break the law in order to test the validity of the legislation.

7. CONCLUSION

This administration is to be congratulated for having the courage to reappraise this law so recently enacted. It is to be hoped that if it learns nothing else from this consultation, the government will come to see that legislation rushed through Parliament without full debate and scrutiny, often leads to bad law.

These are fearful times. The public look to their legislators for calm and considered judgment. I hope we now see it.

19 May 2008

Addendum

Letter published in The Sunday Times July 1st 2007

Dear Sir,

'Brown to allow Iraq protests' - June 24Th

It struck me that the headline for your exclusive ('Brown to allow Iraq protests') aptly describes the state we're in. It just shows how far we have travelled - it is front-page news when the government allows people to protest!

Whilst I personally applaud the move, doesn't this starkly illustrate the enfeeblement of Parliament that has occurred in recent times? Clearly, Mr Brown has no doubt that his MPs will do as they are

told; change their minds; and repeal the legislation that their former Prime Minister instructed them to support less than three years ago

Our method of government is beyond presidential. After all, a president's actions are normally constrained by a constitution. Here, our Prime Minister can do anything he likes if his party slavishly allows - and the evidence of the last ten years is that they generally do.

On the very day of your story, Gordon Brown announced in his acceptance speech that he wants the government to 'give more power to Parliament' - note that he sees it within his gift. It would be richly ironic if a man with no mandate (succeeding a Prime Minister backed by less than a quarter of the electorate) undertakes constitutional reform to protect our rights. If he does nothing else, Mr Brown's place in history would be assured if he really does deliver us from a democratic system so fatally flawed that it allows our liberties to be curtailed at the behest of the largest party of the day.

As your article makes clear, he certainly has the power.

19th May 2008

APPENDIX A

Contrary to the fear expressed by many noble Lords that demonstrations would not take place or that in some way democracy was imperilled because of the authorisation requirement, one should note that the opposite appears to have happened: more demonstrations are taking place than before.

Lord Davison of Glen Coa 23nov

APPENDIX B

Mr Burnett: Just very quickly, we have discussed with the Commissioner the business of balance, which you have referred to, and the creation of an eyesore in Parliament Square and the annoyance caused to members and staff by the use of loudhailers. Is there, in general terms, anything you would like to add to or resile from in what the Commissioner said in evidence to us?

NO.Hazel Blears July 2003

APPENDIX C

Memorandum by Metropolitan Police

PROPOSALS FOR STATUTORY CHANGE IN CONNECTION WITH SESSIONAL ORDERS

PAPER FOR THE CONSIDERATION OF THE HOUSE OF COMMONS PROCEDURE COMMITTEE

This paper is intended as a brief summary of the views of the Metropolitan Police Service as outlined to the Committee in evidence by Sir John Stevens on 8 July 2003.

1. RECENT DEVELOPMENTS

1.1 A number of recent events have exposed limitations on the current arrangement to protect the business of Parliament and access to the Palace of Westminster.

Problems can be set out under three heads:

1.1.1 Concerns have been raised by Members that on a number of occasions they have been unable to gain access to Parliament due to demonstrations in Parliament Square;

1.1.2 The use of voice amplification devices has disrupted Parliamentary debates;

1.1.3 Some of the protests in Parliament Square have become permanent in nature, in particular that of Mr Brian Haw, exacerbating problems with obstruction and noise nuisance.

1.2 Further the police are concerned with an increased terrorist threat in the area, which has led to the creation of a Government Security Zone intended to reduce the risk to the public in a defined area, which includes the Palace of Westminster.

1.3 These problems have highlighted limitations not only with the use of Sessional Orders but also limitations in the substantive statutory powers available to the police.

2. ISSUES IDENTIFIED WITH CURRENT POSITION

2.1 The method employed to comply with the Sessional Orders (to keep passage through the streets leading the Houses of Parliament free and open and to allow no obstruction to hinder the passage of Members and Lords) is the issue of directions under section 52 of the Metropolitan Police Act 1839. There are a number of problems with the use of Commissioner's directions:

2.1.1 The Act is antiquated and not designed for modern day protests and issues. The age of the provision also means that it was not drafted to take account of the rights to peaceful assembly and freedom of expression.

2.1.2 Disobedience to a direction is not an arrestable offence and section 54 does not create a statutory power of arrest.

2.1.3 Section 52 should only be used "from time to time, and as occasion shall require" and therefore the issue of identical directions at the beginning of every session arguably ultra vires.

2.1.4 As a result of 2.1.1-2.1.4 above, no prosecutions have been brought for many years. The provision therefore lacks teeth.

2.2 Other substantive police powers do not cover the situations that have arisen over recent months. For example, section 14 of the Public Order Act 1986 enables conditions to be imposed on public assemblies. However a public assembly is defined by section 16 as comprising 20 or more persons and the conditions that can be imposed relate only to the place where the assembly takes place, the maximum numbers attending or the maximum duration.

2.3 On a number of recent occasions groups of just under 20 persons have deliberately exploited the number requirement in section 14 to evade its operation. Section 14 also only operates where such assembly may result in intimidation, serious public order, serious property damage or serious disruption to the life of the community. It does not therefore begin to address the main aim of the Sessional Order, which is to ensure good access to the Houses of Parliament ie to prevent obstruction. It also does not address issues around the use of loudhailers at assemblies.

APPENDIX C continued

2.4 Sections 33-36 of the Terrorism Act 2000 provide police powers to designate and demarcate a specified area as a cordoned area for the purposes of a terrorist investigation but do not allow for the imposition of such cordons as a preventative measure ie when intelligence is received of an imminent attack on a target in or around the Palace of Westminster, or indeed elsewhere.

3. PROPOSED STATUTORY CHANGES

3.1 Whether any statutory amendment or enactment is to be recommended and how such recommendation would be implemented is of course a matter for the Committee and Parliament. The MPS would wish to be involved in any consultative process.

3.2 The following suggestions are made however to address the issues arising:

3.2.1 On the uppermost level, in the event of intelligence of an imminent terrorist threat, an amendment to the Terrorism Act 2000 to enable preventative cordons to prohibit pedestrian and vehicular access in order to ensure public safety;

3.2.2 An amendment to section 14 of the Public Order Act to:

- extend police powers to protests involving less than 20 persons, where such protests raise the same consideration as to the intimidation or the risk of serious public disorder, serious damage to property or serious disruption to the life of the community;
- enable the imposition of such conditions as are necessary, to bring it into line with section 11 (relating to processions)-this would enable steps to be taken in relation to the use of loudhailers.

3.2.3 An amendment to the Metropolitan Police Act 1839, or a replacement provision, to update police powers to enable access to the Palace of Westminster to be kept clear of obstruction and to prohibit the deliberate or wilful disruption of the business of government by noise amplification devices. It needs to be borne in mind that sections 52 and 54 are not limited to the Palace of Westminster and the MPS is keen not to lose the wider ability to make directions for other events in the Notting Hill Carnival. However, the wider use needs to be on an ad hoc basis only whereas it appears that the provision in relation to the Palace of Westminster should be a standing power, available whenever the House is sitting. In respect of all uses, there is a need for a specific statutory power of arrest to be created so that the provision is effective.

4. PERMANENT PROTESTS

4.1 None of the above addresses the issue of permanent protests in Parliament Square. In relation to Mr Haw, the MPS is keeping the position, and in particular the application of section 137 of the Highways Act 1980, under review.

4.2 One of the matters that has been looked at is the applicability of the Trafalgar Square and Parliament Square Garden Byelaws and it may be of interest to the Committee that our reading of section 2 of those byelaws is that the area covered by the Byelaws, as defined by reference to the Parliament Square (Improvement) Act 1949, does not include the relevant sections of the east and south pavements. The amendment of the Byelaw (or more probably the Act) would extend the ability of the police, the GLA and the Mayor to protect the central garden in Parliament Square from this type of long-term invasion

Appendix D

Jack Straw (Lord Chancellor, Ministry of Justice) [Link to this](#) | [Hansard source](#)

I understand and am grateful for the hon. Gentleman's comments, which my right hon. Friend the Home Secretary, whose happy task it is to conduct this review, will certainly bear in mind. Having been Home Secretary when we had the Stop the City protests, which were very violent and disruptive-on one occasion people dug up the whole of Parliament square-I discovered that the legal ownership of that piece of land is a nightmare, as different bits of it belong to different owners with different rights in respect of it. If I might make my own suggestion to my right hon. Friend the Home Secretary, one of the things that we have to ensure is that any new legal framework in respect of demonstrations there takes proper account of those legal ownership issues.

APPENDIX E

Dear Mr Steadman,

Please find enclosed the map of the World Heritage property clearly indicating the boundaries of the Westminster Palace, Westminster Abbey and St Margaret's Church inscribed in the World Heritage List since 1987.