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Response to the Home Office consultation on managing protest around Parliament

RESPECT THE RIGHT TO PROTEST: DON'T HARMONISE ITS CRIMINALISATION

Q1: The Government believes peaceful protest is a vital part of a democratic society, and that the police should have powers to manage public assemblies and processions to respond to the potential for disorder.

Should the powers generally in relation to marches and assemblies be the same?

The right to peaceful assembly is enshrined in the European Declaration of Human Rights and should be protected as a positive right. In view of this right, it would be logical for conditions regarding marches to be liberalised rather than those on assemblies to be tightened. The right to protest should be protected as a positive element of a democracy. Several UK laws have been often used in ways which breach this right. Such breaches can be challenged only through judicial review, which is time-consuming and costly. Instead there should be a positive right to protest, with a quick, cheap and easy procedure for people to complain against the police or other parties if this right is infringed.

Legislation supposedly aimed at threats to the public (terrorism, stalking and anti-social behaviour) has been used instead to control peaceful protest, even to criminalise protesters. This is a clear case of 'function creep' which threatens to criminalise and intimidate what should be normal forms of political expression in a democratic society. We are also concerned about the use of injunctions being sought by private companies to limit the expression of public concern against their activities. The right to protest must include the possibility of non-violent picketing outside company premises or company meetings using placards, leaflets and speeches to make a point.

Privatisation of public space has also restricted the right to political expression. Whereas leafleting in a street is in principle legal, leafleting in a town square may attract prosecution for trespass if the area has been re-developed as a shopping mall, or where the local authority has contracted out management of a park to a private company. We believe that the right to protest should exist in any space to which the public have free access for shopping or recreation, regardless of whether it is managed by local authority or a private company. Company security personnel charged with protecting such a space should be expected to respect this right and not to expel people who are leafleting or holding placards, any more than police would prevent them from assembling in a public street. It should also be clear to demonstrators who is giving them instructions and to whom those giving instructions are accountable.

For example, on the occasion of the 'Make Poverty History' march in Edinburgh in July 2005, when uniformed private security guards were telling people that they could not use certain exits from the Meadows, it was not clear whether these guards were acting on behalf of the police, or the local authority which manages the park, or the organisers of the event. Nor was it clear what authority or powers they had to tell people not to use those exit routes which offered the quickest access to shops, even when participants who had been waiting two hours or more only wanted to leave the area temporarily to buy drinking water.

The legal concept of a positive right to peaceful assembly would address all these concerns. It should be protected by a fast-track complaints procedure against action which infringes this right, whether this is action by police, local authority or private company personnel.

We feel that the Public Order Act 1986 already went too far by making it possible to criminalise marches and their organisers on the grounds, for example, that their scale exceeded the expectations of the organisers, or that placards were brought along which did not conform to organisers' or stewards' directions. Although the POA purports to address problems of 'disorder', the definition of what is likely to constitute 'disorder' is subjective, and in practice football crowds or persons leaving a nightclub may be treated much more permissively than protestors. The POA's unjust powers to restrict marchers should be removed – not extended to assemblies.

Q2. Do you agree that the conditions that can be imposed on assemblies and marches should be harmonised

We are disturbed by the fact that the Home Office consultation document purports to consider the possible liberalisation of SOCPA powers close to Parliament, yet the document contains a 'Trojan horse' proposal to increase police powers to control assemblies. Currently police can impose conditions on a march under section 13 of the Public Order Act 1986 if they think it will entail

serious damage to property, serious disruption to life of community, serious disorder, or coercion by intimidation. These conditions can in theory include limitation of the content or wording of placards, etc., as well as conditions about the duration and number of participants in a march. To generalise POA powers, which we have criticised under Question 1, to assemblies would make them even more unjust.

'Harmonisation' of the powers to control assemblies to match the higher level of control now applicable to marches would further limit the right to protest. It could also generalise the requirement for advance notice to all assemblies, regardless of the location. Any such extension would be unjust and unacceptable. We feel that any harmonisation should instead reduce the powers to control marches, for the reasons given under Question 1.

If powers similar to those available under the Public Order Act to control marches were made applicable to assemblies, for example the ability to control duration, numbers of persons and content of placards, this would probably lead to activities all over the country to defend the right to protest, replicating in many ways the protests which have occurred in the 'designated zone' near Parliament since SOCPA was implemented. This would result in a great deal of wasted time and resources for the police – all for the sake of protecting the government from the public, rather than protecting the public from any harm.

The argument for 'harmonisation' made in the consultation paper is partly based on the apparent difficulty of distinguishing between an assembly and a march – e.g., where a crowd is assembling to march, or has finished marching and is listening to speeches, or cannot swiftly disperse after a march because of considerations of congestion. As we have often observed, however, 'crowd management' problems are actually created by the police. For example, sometimes tube stations have been closed in the vicinity of assembly and ending points of a march, presumably in order to prevent demonstrators using public transport in large numbers. This forces people to walk to and from the march, thus crowding the pavements along the access roads. In another example, the 'Make Poverty History' march in Edinburgh, on the occasion of the Gleneagles summit in July 2005, attracted a crowd of dozens of thousands of would-be marchers, all of them peaceful and amongst them many parents with children. Yet a large proportion of them were penned into the Meadows park by metal barriers, with police and private security guards preventing people from leaving in the direction of the city centre except in a tiny trickle through a funnel between the barriers. The result was that some marchers arrived back in the park, having walked the planned route, before others had even been allowed to leave, and some would-be participants never got to march at all. The whole demonstration therefore took far longer, and involved far more police, than if the crowd had been allowed to exit the park in larger groups.

We are also concerned about the use of the Prevention of Harassment Act 1997, in which we detect an element of 'function creep'. In the absence of powers to control the duration of an assembly or numbers participating under powers designed to control demonstrations, Sussex police and the arms manufacturer EDO sought to restrict protests outside the EDO factory near Brighton to ten people, for a mere two and a half hours per week, also requiring them to remain silent. Fortunately, the company request for this injunction was rejected by the courts. The establishment of a positive right to protest would prevent the time of the courts from being wasted by attempts like this to test alternative legal routes to the limitation of protest.

Protest in the vicinity of Parliament

Q3. Is special provision needed for static demonstrations and marches around Parliament and if so what?

The present requirements for advance notice of even one-person demonstrations under SOCPA 2005 are unjust, unworkable and a waste of time for the police. They create the impression that protest close to the UK seat of government is inherently dangerous, allow the police to turn such protest into a crime, and prevent legitimate political expression, particularly when events call for spontaneous protest. These requirements should be repealed.

We believe that there are no valid grounds for any restrictions specific to the area around Parliament. Police already have general nation-wide powers to deal with obstruction, which can be used to protect persons or vehicles needing access to the Palace of Westminster or other buildings in the vicinity of Parliament, as well as special powers to protect Parliament when in session. No additional powers should be required to preserve access to Parliament.

Q4. Are there any other considerations the Government should take into account?

The current ban on the use of loudspeakers under SOCPA is unacceptable, because without loudspeakers it is impossible for people to hear speeches. This makes protest ineffective and impedes its proper function of intelligent argument and debate in a public place. By contrast, there is very little restriction on noise from public entertainment in Trafalgar Square, and none at all on traffic noise close to Parliament. Therefore it appears that the ban on loudspeakers aims to restrict protest rather than to promote a quiet working environment in local offices.

Encouraging and managing the Right to Protest

Q5: Do you have views on the model that should apply for managing demonstrations around Parliament?

We support Baroness Miller's *Public Demonstrations (Repeals) Bill*. We do not think there should be any new "special provisions" for static demonstrations and

marches around Parliament. Our answers to questions 1 to 4 and question 6 are also relevant to this question and provide our reasons for this view.

The grass area in Parliament Square should be preserved as an open-access space for leisure, visitors and for assemblies. It should not be fenced, as this has been used as an excuse to prevent access in recent months, which reduces the public amenity value of the space for recreational and tourism purposes as well as for assemblies.

Q6: Do you consider that a prior notification scheme should apply to static demonstrations in the vicinity of Parliament? Should any scheme only apply to static demonstrations over a certain size? And if so, what size of demonstration?
There is no justification for an advance notice requirement, which unjustifiably restricts the right to peaceful assembly, as enshrined in the ECHR. Any concern to ensure adequate police manpower in advance of a large assembly is spurious, since in practice the appearance of a large crowd in the designated zone would almost always be preceded by a march or an event in a nearby area such as Trafalgar Square, and the police would therefore be able to anticipate it.

Q7: Do you agree that conditions in order to prevent a security risk or hindrance to the operation of Parliament should remain in relation to demonstrations in the vicinity of Parliament?

As stated in the answer to question 3, the pre-SOCPA powers against obstruction were already adequate. The additional powers under SOCPA appear to have been motivated to restrict protest, rather than to prevent obstruction, and they should be repealed. This repeal should include the amendment made to section 138 of SOCPA under the Serious Crime Act 2007, to impose penalties on persons 'assisting or encouraging' an unauthorised demonstration in the vicinity of Parliament. Any legitimate concern about obstruction to people or vehicles entering or leaving the Palace of Westminster logically only applies to the carriageway and pavement within 50-100m of the entrance and does not logically apply to any pedestrian area which is separated from that pavement by moving traffic.

Q8: Do you have a view on the area around Parliament that any distinct provisions on the right to protest should apply to?

This question is redundant in the light of our answer to question 7.