



## Protests around Parliament

Standard Note: SN/HA/03658  
Last updated: 8 April 2008  
Author: Pat Strickland  
Home Affairs Section

---

The Government has published a draft Bill which would, if enacted, repeal provisions introduced in 2005 restricting protests in the vicinity of Parliament.

Under general public order legislation, the police must be given notice of marches where this is practicable. In certain circumstances, they can impose conditions, and even apply to have them banned. The position is different for static demonstrations, where there is no power to ban and notice does not have to be given. The police can still impose conditions in some circumstances, however.

For many years, there have been special provisions applying to protests in the vicinity of Parliament. These used to be contained in sessional orders to the police. Then, mainly in response to concerns about the long-term protest by Brian Haw in Parliament Square against Government policy in Iraq, new provisions in the *Serious Organised Crime and Police Act 2005* made it a criminal offence to demonstrate without authorisation in the vicinity of Parliament and allowed the police to impose conditions on demonstrators. Demonstrators have to give notice, and if this notice complies with the legal requirements, the police have to give authorisation, but conditions may be imposed on the demonstration.

Mr Haw successfully challenged the provisions in the High Court, arguing that the provisions do not apply to him because he started his demonstration before 1 August 2005, but this was overturned on appeal. He was then given permission to continue his demonstration under conditions set down by the police, but was later prosecuted for breaching those conditions, and had most of his placards confiscated in a police raid in May 2006. The case came to court in January 2007, but was dismissed, because the conditions were too vague and had not been authorised by a sufficiently senior officer. The first of these grounds was later upheld by the High Court. Mr Haw remains in place in Parliament Square, albeit with a smaller number of placards than he had before.

The Prime Minister Gordon Brown published a paper, the *Governance of Britain*, in July 2007 proposing a wide range of constitutional reforms. On the issue of protests in the vicinity of Parliament, this stated that the Government was aware of “strong views”, and that it would be consulting on changes. A consultation paper followed in October 2007, proposing an alignment of the provisions covering demonstrations and marches, and seeking views on whether special rules were needed for the vicinity of Parliament. The consultation closed on 17 January 2008. Then on 25 March 2008, the Government published a *Draft Constitutional Renewal Bill*, clause 1 of which would repeal the relevant provisions in the 2005 Act.

## Contents

A.	The general legislative framework	3
	1. Marches	3
	2. Public assemblies	3
B.	Sessional orders on protests around Parliament	4
C.	The <i>Serious Organised Crime and Police Act 2005</i>	4
D.	The regulations and the designated area	6
E.	Legal challenges	7
F.	The <i>Public Demonstrations (Repeals) Bill</i>	9
G.	Consultation on repeal and other changes	10

## A. The general legislative framework

At a national level, in England and Wales demonstrations and marches are governed by the *Public Order Act 1986*. Part 11 of this covers marches (“public processions”) and static demonstrations (“public assemblies”).

### 1. Marches

There are restrictions on public processions which are intended to:<sup>1</sup>

- Demonstrate support for or opposition to the views or actions of any person or body
- Publicise a cause or campaign; or
- Mark or commemorate an event.

Unless it is not reasonably practicable, organisers of marches have to give written notice to the police at least six clear days in advance. If the march is organised at short notice, then written notice has to be given as soon as reasonably possible. A senior police officer can impose conditions on a march if he reasonably believes it may result in serious disorder, serious damage to property, serious disruption to the life of the community or that the purpose is to coerce by intimidation.<sup>2</sup> Under section 13 of the Act, the chief officer of police can apply to the local authority for an order banning a march if he reasonably believes that imposing conditions will not prevent the march resulting in serious public disorder. The local authority may only make a banning order with the consent of the Secretary of State. In London, the Commissioner of the Metropolitan police may directly seek the consent of the Home Secretary for such an order.<sup>3</sup>

### 2. Public assemblies

Public assemblies are defined as “an assembly of 2 or more persons in public place which is wholly or partly in the open air”. The *Anti-Social Behaviour Act 2003* lowered the threshold of what constituted a public assembly for these purposes from 20 people to 2.<sup>4</sup> This raised some questions during the course of the Bill, including from the Joint Committee on Human Rights.<sup>5</sup> In the Bill’s Lords committee stage, the then Home Office minister, Baroness Scotland, replied to concerns by stating that the provisions were intended to give the police the powers to deal with those assembling for intimidatory purposes, and not against those assembling peacefully.<sup>6</sup>

Unlike for public processions, there is no requirement under the *Public Order Act 1986* to give prior notice to the police of an assembly, and there is no power to ban one. However, section 14 does allow a senior police officer to impose conditions on a public assembly for

---

<sup>1</sup> Section 11, *Public Order Act 1986*

<sup>2</sup> Section 12

<sup>3</sup> Section 13(4)

<sup>4</sup> Section 57 *Anti-Social Behaviour Act 2003*

<sup>5</sup> Joint Committee on Human Rights, Fifteenth Report, *Scrutiny of Bills and Draft Bills: Further Progress Report*, HL 149/HC 1005 2002-2003, 13 July 2003, paragraphs 1.3-1.6, <http://www.publications.parliament.uk/pa/jt200203/jtselect/jtrights/149/14904.htm#a1> (site visited 8 February 2008)

<sup>6</sup> HL Deb 7 October 2003, c261-2

the same reasons that he could impose conditions on a march – i.e. if he reasonably believes that the assembly may result in serious disorder, serious damage to property or serious disruption to the life of the community, or that the purpose is to coerce by intimidation.

## **B. Sessional orders on protests around Parliament**

In the past, demonstrations and marches outside Parliament have been subject to sessional orders, which instructed the Metropolitan Police Commissioner to make sure that the passageways to and from Parliament are kept free of obstruction. The last such sessional order was passed on 17 May 2005.<sup>7</sup>

In 2003, the Procedure Committee conducted an inquiry into whether this order was appropriate in the light of recent experience of demonstrations. The Committee published its report in November 2003<sup>8</sup> and published the Government's response in May 2004.<sup>9</sup> It recommended that legislation to prohibit long-term demonstrations and to ensure access to the House was introduced.<sup>10</sup> The report was debated on 3 November 2004.<sup>11</sup>

## **C. The *Serious Organised Crime and Police Act 2005***

In a 2004 consultation paper on police powers, the Government indicated that it was considering further legislation. A protest by Brian Haw, who has occupied a spot outside the main gates of the Houses of Parliament since 2 June 2001, originally in protest over sanctions against and later against the Iraq war, was causing particular controversy. The Government consulted on whether it should legislate for powers to impose conditions in the vicinity of Parliament Square:

5.38 The Police already have a range of powers under existing criminal law and public order legislation to deal with violent and intimidatory action. The Government has taken action to allow the police to deal more effectively with smaller, disruptive demonstrations, wherever they occur. The Anti-social Behaviour Act 2003 amended the definition of the number of persons which constitutes a public assembly in section 16 of the Public Order Act 1986. This allows the police to place conditions on a public assembly of 2 or more people, rather than the previous figure of 20 or more people. Before imposing conditions, the senior officer must reasonably believe that serious disorder, serious damage to property or serious disruption to the life of the community might result or that the purpose of the demonstration is to coerce.

5.39 The Government believes that the police must have adequate powers in this area. One way in which powers could be made more effective would be to give the police the power to impose conditions on all demonstrations in the vicinity of Parliament Square. We would welcome views on the effectiveness of existing

---

<sup>7</sup> HC Deb 17 May 2005 c28

<sup>8</sup> Procedure Committee, *Sessional Orders and Resolutions*, 19 November 2003, HC 855 2002-03

<sup>9</sup> Procedure Committee, *Sessional Orders and Resolutions: The Government's Response to the Committee's Third Report of Session 2002-03*, 20 May 2004, HC 613 2003-04

<sup>10</sup> *Ibid*, paras 21-22

<sup>11</sup> HC Deb 3 November 2004 cc 370-

legislation and whether extending the power to impose conditions in this way would be desirable.<sup>12</sup>

The Government summarised responses to the consultation on this point as follows:

Police stakeholders and the Mayor of London supported the proposal recognising that current police powers to deal with demonstrations in Parliament Square were insufficient. Some legal groups and members of the public considered that the proposal was unnecessary as existing public order legislation applied to Parliament Square and the proposal could be seen as a restriction on protest.<sup>13</sup>

Sections 132 -138 of the *Serious Organised Crime and Police Act 2005* introduced these powers. The provisions were introduced at report stage to replace those which had originally been in the Bill.<sup>14</sup> Originally, the provisions would have permitted the police to exercise powers to control behaviour which might have had certain results, including hindering the proper operation of Parliament or “spoiling the visual aspect” of the area. Both Liberal Democrat and Conservative Members had criticised this as being unworkably subjective during the Bill’s committee stage.<sup>15</sup>

The Act created a new offence of demonstrating without authorisation in a “designated area.” This area is defined by order, but must be within one kilometre of Parliament Square. Under the provisions, people organising the demonstration have to give the police at least 24 hours notice in writing, and if “reasonably practicable” they will have to give six days’ notice. If the notice complies with the requirements set out in the legislation, then the Metropolitan Police Commissioner has to give authorisation, but he may impose conditions on those taking part in or organising a demonstration, if he reasonably believes they are necessary for the purpose of preventing any of the following:

- hindrance to any person wishing to enter or leave the Palace of Westminster,
- hindrance to the proper operation of Parliament,
- serious public disorder,
- serious damage to property,
- disruption to the life of the community,
- a security risk in any part of the designated area

Under the provisions, it is an offence not to comply with a condition or to diverge from the particular requirements set out in the authorisation. However, there is a defence if a person can prove that failure arose from causes beyond his control or from something done with the agreement or by the direction of a police officer. The senior officer at the scene may impose extra conditions or to vary the conditions imposed by the Commissioner if he or she believes

---

<sup>12</sup> Home Office, *Modernising Police Powers to Meet Community Needs*, August 2004, <http://www.homeoffice.gov.uk/documents/cons-mod-police-power-081004/modernise-police-powers-081004?view=Binary>, site visited 8 February 2008

<sup>13</sup> Home Office, *Policing: Modernising Police Powers to Meet Community Needs Summary of Responses*, January 2005, <http://www.homeoffice.gov.uk/documents/cons-mod-police-power-081004/police-powers-responses-081004?view=Binary> site visited 8 February 2008

<sup>14</sup> HC Deb 7 February 2005 cc 1286-1308

<sup>15</sup> SC Deb (D) 20 January 2005 cc434-6

this to be necessary for preventing the problems listed above. The Act also bans the use of loudspeakers in the designated areas – one of the features of Mr Haw’s protests - although there is a list of exceptions (for example, in emergencies, or by the emergency services). The maximum penalty for the offence for the organiser of the demonstration is 51 weeks’ imprisonment or a fine of £2, 500. For others, it is a £1,000 fine.

## **D. The regulations and the designated area**

The provisions were brought into effect in two stages. The new offence was introduced from 1 August 2005, and the requirement to give notice for demonstrations starting on or after this time was introduced from 1 July 2005.<sup>16</sup> The area covered was set out in another order, which was laid on 10 June and came into force on 1 July.<sup>17</sup> Section 138 of the Act sets a limit of one kilometre from Parliament Square. Conservative and Liberal Democrat Members moved amendments in committee to try and restrict this maximum to either 100 or 250 metres.<sup>18</sup> Responding, the Minister stated:

I understand where the hon. Members (...) are coming from on this issue. We intend to lay an order with a precise area to be covered, and we intend to consult with the Metropolitan Police. It will cover the area where the demonstrations will disrupt the work of Parliament and hinder access to the House. Parliament could mean Millbank, 1 Parliament Street or Norman Shaw. We have to map out the buildings of Parliament that would be affected. Unfortunately 1 km may be excessive, but 100 m or 250 m might not incorporate some of those other buildings.<sup>19</sup>

There were similar debates in the Lords.

A map produced for “illustrative purposes only” showed the designated area.<sup>20</sup> Over most of the area, the limit is between 700 and 750 metres from Parliament Square, although is much nearer to the square at some points, and gets closer to 1km away at others. The regulation was debated in the Lords on 14 July 2005. The Liberal Democrat peer, Lord Dholakia, complained that the area was too large:

In reality, what started as demonstrations in Parliament Square has now resulted in a massive exclusion of almost all protest activity from Trafalgar Square to Lambeth Bridge and from Horse Guards Parade to St. Thomas' Hospital. Did any one of us really believe that this is what the Government had in mind? Well, in reality, that is precisely what we have got. If any member of your Lordship's house is wondering what it looks like on the map, then they can look at the website. May I ask the Minister to confirm that there is no dispute about the area that I have outlined? Suffice to say at this stage, there is no legitimate reason for extending the area in this way.<sup>21</sup>

The Home Office minister, Baroness Scotland, responded as follows:

---

<sup>16</sup> *The Serious Organised Crime and Police Act 2005 (Commencement No. 1, Transitional and Transitory Provisions) Order 2005*, SI 2005/1521

<sup>17</sup> *Serious Organised Crime and Police Act 2005 (Designated Area) Order 2005*, SI 2005/1537

<sup>18</sup> SC Deb (D) 20 January 2005 cc434

<sup>19</sup> c439

<sup>20</sup> This is no longer available on the Home Office website, but the Metropolitan Police website has one at [http://www.met.police.uk/publicorder/protest\\_march.htm](http://www.met.police.uk/publicorder/protest_march.htm)

<sup>21</sup> HL Deb 14 July 2005 c GC150

The order defining the precise area to be covered has now been laid and came into force on 1 July, but, as noble Lords will accept, it is considerably less than one kilometre from Parliament. That order was drawn up following discussions with the Metropolitan Police and we have ensured that Trafalgar Square is excluded from the designated area. This matter caused great concern in both Houses and we have honoured the implicit understanding that Trafalgar Square would be excluded.

During the passage of the Serious Organised Crime and Police Bill we had extensive discussions about all these matters. The Government believes that a notice period is an essential part of the provisions so that the commissioner is able to consider the circumstances of a demonstration and its likely effect on the work of Parliament and the security of the area around it. The commissioner can set these conditions, which are appropriate and proportionate, and he must be able to do so in advance. The Government have recognised that, as noble Lords have said, there may be occasions when demonstrations are organised as a response to events which could not have been foreseen. It was for that reason that we shortened the notice period to 24 hours in exceptional circumstances. But we do not believe that we should remove the notice period completely.

It is a long-standing tradition in this country that people are free to gather together and to demonstrate their views provided that they do so within the law. Equally, access to Parliament must be maintained and those living and working in and around Parliament should be able to do so in safety and free from harassment. There is, of course, a balance to be struck between protecting the rights of those working in and around Parliament and the rights of protestors. But let me be clear, a penalty of imprisonment—which is a maximum of three months now and will be 51 weeks in the future—together with fines, is the maximum penalty that can be imposed in relation to these matters. Any punishment less than that is appropriate dependent on the nature and extent of the culpability demonstrated to have occurred.

It is to be applied only to those who do not comply with the conditions and to the organisers of the event—not the demonstrators but those who organise the event.<sup>22</sup>

The regulations were debated in the Commons Second Standing Committee on Delegated Legislation on 12 October 2005.<sup>23</sup>

## **E. Legal challenges**

On 29 July 2005, Brian Haw successfully challenged the provisions in the High Court. He argued that the new law did not apply to him because section 132(1) of the Act state that the offence of demonstrating without authorisation applies “if, when the demonstration starts, authorisation for the demonstration has not been given”.<sup>24</sup> Similarly section 133(2) referred to the need for notice to be given before the demonstration is to start. The Commencement Order attempted to deal with this by providing that these sections would come into force for the purposes of demonstrations *continuing* or starting after 1 August 2005, but the court ruled that the relevant articles of the Order were ultra vires and made and order quashing

---

<sup>22</sup> Ibid cGC157

<sup>23</sup> <http://www.publications.parliament.uk/pa/cm200506/cmstand/deleg2/st051012/51012s01.htm>

<sup>24</sup> Parliament Square protestor wins right to challenge ban”, *Guardian*, 26 July 2005

them.<sup>25</sup> However, the court of appeal overturned the decision in May 2006, on the grounds that the parliamentary intention was clearly to regulate all demonstrations within the designated area, whenever they had begun, so that in context the provision included demonstrations started before the commencement of the Act.<sup>26</sup>

Mr Haw was reportedly given permission to continue his demonstration on 8 May 2006 under terms set down by the police, which included limiting his protest to within an area 3m wide by 3m high and 1m deep.<sup>27</sup> On 23 May 2006, the police removed the majority of the placards in an exercise involving 78 officers. There were accusations of heavy handedness in a number of press articles.<sup>28</sup> The Commissioner for the Metropolitan Police told the Metropolitan Police Authority that the cost of the exercise had been were £7,200 (£3,000 on overtime £4,200 on transport, catering and erection of road signs).<sup>29</sup> Later there was a clarification that there had been an additional "opportunity cost" (i.e. the salary costs of the officers involved) of £20,237, making a total cost of over £27,000.<sup>30</sup> In July 2007, a report delivered to the Metropolitan Police Authority by the Metropolitan Police Service showed the total cost of the operation as being £111,200.<sup>31</sup> The BBC quoted an explanation from an MPS spokesperson:

The figure included in the report is more than four times greater than the £27,000 previously estimated. However, that original figure did not reflect the cost of extra police patrols of the area in days following the raid.

"The final cost incorporates the high visibility patrols over the following days to ensure any subsequent but related protests did not break the law, obstruct movement in and around the area or disrupt the important business of parliament," a Scotland Yard spokesman said.

A further 358 officer shifts were devoted to these "high visibility" patrols.<sup>32</sup>

Following the raid, Mr Haw was prosecuted for breaching the conditions of his protest. However, on 22 January 2007, Westminster Magistrates Court dismissed the case, with the judge reportedly stating that the conditions were invalid because they had been ordered by an officer of a lower rank than the Commissioner, Sir Ian Blair, and because they lacked

---

<sup>25</sup> *R(Haw) v Secretary of State for the Home Department and another*, Queen's Bench Division, 29 July 2005

<sup>26</sup> *R (on the application of Brian Haw) v (1) Secretary of State for the Home Department (2) Commissioner of Police for the Metropolis (2006)*, [2006] EWCA Civ 532; "Control of demonstrations in Parliament zone," Times Law Report, 15 May 2006.

<sup>27</sup> See for example, "Parliament protestor's legal win" BBC 27 January 2007, <http://news.bbc.co.uk/1/hi/england/london/6287091.stm>, and "Protest Allowed", *Times*, 31 May 2006

<sup>28</sup> "A heavy hand to silence a government critic", *Telegraph*, 24 May 2003, "Met criticised over cost of removing Iraq placards", *Independent*, 26 May 2006

<sup>29</sup> MPA Minutes 25 May 2006  
<http://www.mpa.gov.uk/committees/mpa/2006/060525/minutes.htm?qs=1&qu=Brian+Haw&nh=1&sc=1&dr=1&ar=&po=&fo=&lv=&pg=1&hl=1>

<sup>30</sup> MPA minutes 29 June 2006, <http://www.mpa.gov.uk/committees/mpa/2006/060629-agm/minutes.htm?qs=1&qu=%22Brian+Haw%22&nh=1&sc=1&dr=1&ar=&po=&fo=&lv=&pg=1&hl=1>

<sup>31</sup> "Sir Ian Blair in cost blunder", *The Times*, 27 May 2006  
MPS, *Cost implications of Public Order Events*, Report 14, 19 July 2007, <http://www.mpa.gov.uk/committees/f/2007/070719/14.htm>, see Annex 1 at <http://www.mpa.gov.uk/downloads/committees/f/070719-14-appendix01.pdf>.

<sup>32</sup> BBC News, *Protester raid cost police £111k*, 13 July 2007, <http://news.bbc.co.uk/1/hi/england/london/6897656.stm>

clarity.<sup>33</sup> Following an appeal heard in August 2007, the High Court upheld the court's finding that the conditions lacked clarity, and were therefore ultra vires and/or incompatible with articles 10 and 11 of the European Convention on Human Rights. However, the High Court found that the Commissioner was within his rights to delegate his statutory power to impose conditions.<sup>34</sup>

Mr Haw's original posters were recreated in an art exhibition, entitled *State Britain*, at the Tate,<sup>35</sup> which won the artist, Mark Wallinger, the Turner Prize. His campaign is also the subject of a play.<sup>36</sup>

## **F. The *Public Demonstrations (Repeals) Bill***

The Liberal Democrat peer, Baroness Miller of Chilthorne Damer, introduced a Private Member's Bill in the Lords on 23 November to repeal a number of offences which impose restraints on public demonstrations, including demonstrations in the vicinity of Parliament. During the Bill's second reading debate, Baroness Miller explained her reasons for introducing the Bill:<sup>37</sup>

I am very sorry that the noble Baroness, Lady Scotland, is not in her place. I fully understand the reason and I am grateful to the noble and learned Lord, Lord Davidson of Glen Clova, for taking this on. But if the noble Baroness were in her place, she might say that she was puzzled why I, who usually speak on environmental matters and did not take part during the passage of the SOCPA, should introduce this Bill. It is because many young people at the start of their careers through to ageing pacifists have said, "Well, I feel like coming up to Parliament and demonstrating, but you just cannot demonstrate there any more like you used to be able to, can you?". They either think that the right has been lost entirely or they are unsure of how they can be legally able to take part. If an organiser gets it wrong, those taking part are implicated, so people are frightened off. Just being arrested will affect your life for ever. For instance, you lose immediately the right to a visa waiver to the USA, even though you may be innocent of any offence.

The effect of these SOCPA clauses has been to cast a great chill across demonstrating peacefully in the designated zone. As my noble friend Lady Williams of Crosby said,

"Parliament is properly described as 'the people's house'".—[Official Report, 14/7/05; col. GC 154.]

Now, the people have to watch what they wear, hold or shout outside their House or they may be arrested, charged and face a jail sentence of 51 weeks or a fine of £2,500. The situation was foreseen by my noble friend Lord Dholakia when he said:

---

<sup>33</sup> "Police wrong to remove protest", *Times*, 23 January 2007 and "Parliament protester's legal win", BBC, 22 January 2007, <http://news.bbc.co.uk/1/hi/england/london/6287091.stm>

<sup>34</sup> "Commissioner has power to delegate conditions", *Times*, 11 September 2007

<sup>35</sup> "Tate's anti-war display crosses legal line into no-protest zone", *Guardian*, 15 January 2007

<sup>36</sup> "Brian Haw: the West End show", *Independent*, 1 February 2008

<sup>37</sup> HL Deb 26 January 2007 c 1368-9

“What initially started as a debate about demonstrations in Parliament Square has now resulted in legislation which will create “fortress Whitehall”, where no one can protest without permission”.—[Official Report, 14/7/05; col. GC 149.]

The purpose of my Bill is to restate the presumption in favour of the citizen and to ensure that the right to peacefully demonstrate outside their Parliament is not conditional.

For the Government, Lord Davidson of Glen Clova argued that since the relevant sections of the Act had come into force, the police “have used their powers to facilitate peaceful protest”.<sup>38</sup> He went on to state that, according to the Metropolitan Police, there had been relatively few convictions under the Act since 1 August 2005, but by contrast nearly 1, 400 demonstrations had taken place with authorisation:

I was going to indicate the number of convictions that have taken place between 1 August 2005 and December 2006. I am told by the commissioner that there have been 15 convictions and one caution for taking part in an unauthorised demonstration in the designated area, one conviction for using a loud hailer in the designated area and one conviction for organising an unauthorised demonstration. The commissioner indicates that during the same period—this is an interesting figure—1,379 demonstrations have taken place with an authorisation. Demonstrations by, for example, the Pensions Action Group, Unison, Peace Appeal, the Make Poverty History campaign and the Campaign Against Climate Change have all taken place. The commissioner has imposed conditions on very few of the demonstrations. 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.

The Bill made no further progress.

## **G. Consultation on repeal and other changes**

There was press speculation around the time Gordon Brown was declared leader of the Labour Party that he would reverse the legislation restricting demonstrations outside Parliament.<sup>39</sup> On 3 July 2007, less than a week after he became Prime Minister, Mr Brown published his proposals for constitutional reform in a Green Paper, *The Governance of Britain*.<sup>40</sup> Further background on this is contained in Library Research Paper 07/72.

The Green Paper stated that the Government was aware of “strong views” on the issue of restricting protests around Parliament, and that it would be consulting on changes.<sup>41</sup>

164. The ability of citizens to campaign and protest is essential to a democracy. No government should place unnecessary restrictions on this right. For decades the Commons sessional orders effectively prohibited demonstrations in an area around Westminster when Parliament was sitting. However, the Government is aware of the strong views expressed in reaction to the provisions on protests around Parliament

---

<sup>38</sup> Ibid c 1391

<sup>39</sup> “Brown to allow Iraq protests”, *Sunday Times* 24 June 2007

<sup>40</sup> Ministry of Justice, *The Governance of Britain*, July 2007, Cm 7170

<sup>41</sup> Ibid, page 48

introduced in sections 132-138 of the Serious Organised Crime and Police Act 2005, both in terms of the principle behind these restrictions and how they have operated in practice. The current restrictions require protesters to obtain authorisation from the police before demonstrating in the vicinity of Parliament and to abide by any conditions imposed by the police on a demonstration.

165. Freedom of expression is a fundamental British value, and the right to peaceful protest has long been regarded as an important component of the liberties of British citizens. This right is also protected by Articles 10 and 11 of the European Convention on Human Rights, 29 incorporated into UK law by the Human Rights Act 1998.

166. The Government will therefore consult widely on the provisions in the Serious Organised Crime and Police Act with a view to ensuring that people's right to protest is not subject to unnecessary restrictions. This review will need to reflect the security situation and allow the business of Parliament to proceed unhindered, but will be conducted with a presumption in favour of freedom of expression. In return, protesters will of course need to obey the law and relevant bylaws.

The Home Office published a consultation document in October 2007.<sup>42</sup> The consultation document noted that the police had raised practical concerns about the different regimes applying to marches and assemblies, in particular the difficulties of distinguishing between the two when groups travel to an assembly point. It proposed aligning the conditions, which would give the police "greater discretion when managing assemblies", and stated that the *Human Rights Act 1998* would "prevent the imposition of excessively strict conditions on the assembly as they would be open to challenge under Article 11 (right to freedom of assembly and association)."

The document noted a number of factors which needed to be considered in relations to protests around Parliament:

- The need to allow the business of Parliament to proceed unhindered, balanced against the argument that Parliament is and should be a focus for demonstrations
- Security risks
- Equal rights for all groups to protest peacefully

It went on to ask whether special provision was needed for static demonstrations and marches around Parliament, and if so what.

The document went on to seek views on the possible frameworks which could apply if it was accepted that there is a need for distinct arrangements. This included discussion of:

- A prior notification mechanism (where this was possible) along the lines of that which applies in Trafalgar Square
- The possibility that this mechanism might only apply to assemblies over a certain size (although the cumulative effect of simultaneous "small" demonstrations would have to be considered)

---

<sup>42</sup> Home Office, *Managing Protest around Parliament*, 25 October 2007, <http://www.homeoffice.gov.uk/documents/cons-2007-managing-protest?view=Binary>, site visited 4 February 2008

- What criteria for imposing conditions should apply – for example, preventing security risks or hindering the proper operation of Parliament
- What sorts of conditions should be imposable
- What the geographical boundaries for any special provisions around Parliament should be

The consultation's closing date was 17 January 2008.

On 25 March 2008 the Ministry of Justice published three documents as Cm 7342.

- White Paper setting out the main proposals following consultations
- Analysis of consultations received
- The Draft Constitutional Renewal Bill, together with Explanatory Notes.

The analysis of the consultations made clear that the vast majority of respondents were in favour of a straightforward repeal of the relevant provisions of the *Serious Organised Crime and Police Act 2005*.

11. The Government received 512 responses during the 12 week consultation period. Representations were received from 25 campaign groups, from six MPs and two Peers, from a number of other interested stakeholders including the Metropolitan Police Service, the Greater London Authority, Westminster City Council and the Law Society of Scotland. However, most responses – over 90 percent – were received from members of the public.

12. The vast majority of responses – over 95 percent – either explicitly or implicitly called for the straight repeal of sections 132 to 138 of the Serious Organised Crime and Police Act (SOCAP), rejecting arguments that a distinct framework for managing protest around Parliament could be justified on security grounds, or on grounds that the business of Parliament needed special protection, or by a need to safeguard wider public enjoyment of the space.

13. There was a clear and strongly articulated view that sections 132 to 138 of the Serious Organised Crime and Police Act, and in particular the requirement to notify the police in advance, have restricted and stifled spontaneous protest in the area around Parliament. There was also a clear view expressed by members of the public that the area around Parliament is special in that it is the focus of political protest and that nowhere is the right to protest and voice one's views more important than at the seat of Parliament itself.<sup>43</sup>

The White Paper stated that the provisions would be repealed, but that Parliament would be consulted on what safeguards might still be necessary to ensure its work would not be disrupted:

25. The Government has considered the arguments on how best to balance competing rights in the context of a dynamic security situation and proposes to repeal sections 132-138 of the Serious Organised Crime and Police Act 2005.

---

<sup>43</sup> MoJ, *The Governance of Britain – Analysis of Consultations*, Cm 7342-III, 25 March 2008

26. Given the strength of feeling in responses to the consultation document on potential restrictions on legitimate protest, and in the absence of greater evidence of a policing problem, the Government will not pursue harmonisation of the sorts of conditions that can be placed on marches and assemblies in the Public Order Act 1986.

27. In moving to repeal sections 132-138 of the Serious Organised Crime and Police Act, the Government nonetheless takes seriously the need to ensure that the operation of Parliament is safeguarded. For many years this principle has been given expression in sessional orders which provided the Metropolitan Police with clarity on the House's expectations on the Commissioner.

28. The Government believes that 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.

29. The Government therefore 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 that, for example, excessive noise is not used to disrupt the workings of Parliament.

30. The Government reiterates the commitment behind our consultation on managing protests around Parliament to ensure that people's right to protest is not subject to unnecessary restrictions.

31. Clauses to reflect these proposals can be found in the draft Constitutional Renewal Bill (CM 7342-2).<sup>44</sup>

The provisions to repeal sections 132-138 are in clause 1 of the draft bill.<sup>45</sup>

---

<sup>44</sup> MoJ, *The Governance of Britain – Constitutional Renewal*, Cm 7342-I, March 2008, p 14

<sup>45</sup> <http://www.justice.gov.uk/docs/draft-constitutional-renewal-bill.pdf>