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January 2011

Thank you for the letter of 12 January to the Home Secretary regarding the Police Reform and Social Responsibility Bill. As the Minister responsible for the Bill, the Home Secretary has asked me to reply. I am grateful for the points you have raised and have responded to each in turn.

Parliament Square

1. Why are these measures necessary and limited to the area of Parliament Square Gardens?

The Government considers that these measures are necessary in the area of Parliament Square Garden because of the unique characteristics of this area. Parliament Square Garden is a World Heritage Site, situated directly opposite the Houses of Parliament, Westminster Abbey and the Supreme Court. Visitors and members of the public have varying reasons to wish to visit this site – whether as tourists, to see the Houses of Parliament and Big Ben; as a cultural experience, by visiting a World Heritage Site; as an individual interested in the democratic process, by seeing where Parliament is situated; or as someone who wants to express their point of view within sight and earshot of Parliament.

This means that we need to balance competing and legitimate needs of members of the public with members of Parliament who need to be able to carry out their daily work.

As this is a popular place, it is reasonable to ensure a level of control over the use of this space in order to ensure that no one particular person or group of persons can take over the area to the detriment of others.

For example, at present, there is an ongoing encampment in Parliament Square that many people find unsightly. This has the ability to spoil the public enjoyment of this unique location and even deter people from visiting this unique spot.

The Greater London Authority (GLA) has a statutory duty to keep Parliament Square Garden in good order and condition. It has powers to make such byelaws, to be observed by persons using Parliament Square Garden, as it considers necessary for securing the proper management of Parliament Square Garden, the preservation of order and the prevention of abuses there. There is evidence to show that byelaws have been breached. The Government's measures support the GLA in maintaining Parliament Square Garden's recognised status.

2. Why are existing measures in the Public Order Act 1986, including the ability of police to impose conditions on marches and demonstrations that become violent or which pose a serious threat to public order, inadequate to regulate protest around Parliament?

The Government does not consider that the existing measures in sections 12 and 14 of the Public Order Act are inadequate to regulate protest around Parliament. The Government agrees with the predecessor Committee (*JCHR 7th Report, 2008-09 Demonstrating Respect for Rights, paragraph 137*) that protest around Parliament should be governed by the Public Order Act, in particular through police powers to impose conditions under section 14. I am not able to provide examples of when Section 14 has been inadequate to protect against public disorder in the area around Parliament as it was specifically disapplied when sections 132 to 138 of the Serious Organised Crime and Police Act (SOCPA) came in to force. On repeal of SOCPA, section 14 will apply to demonstrations in the area around Parliament.

SOCPA powers have proved inadequate to deal with public disorder, which is why the Government is repealing them – recent examples include the Tamil demonstrations in 2009.

The byelaws in place, to secure the proper management of Parliament Square Garden, were shown to be unenforceable during the occupation of Parliament Square Garden by the Democracy Village encampment.

The Government's proposals are intended to prevent encampments and other disruptive activity on Parliament Square. The provisions apply to everyone – not just protestors. The area around Parliament is understandably one of the most protested areas in the country and space is limited for those wishing to protest or simply enjoy the amenities of the Square. The Government is seeking to preserve that space for everyone.

It is also important to note that the predecessor JCHR recognised there may be something different required in relation to Parliament Square, something more than the Public Order Act can currently provide:

"We recommend that the Home Office, the police, Westminster City Council and the parliamentary authorities should develop alternative arrangements to manage noise levels from protest in Parliament Square, including consideration of whether legislative change is necessary and whether maximum noise levels should be imposed and enforced effectively." (JCHR 7th Report, 2008-09 Demonstrating Respect for Rights, paragraph 133)

The conditions that can be imposed in relation to public assemblies (i.e. static demonstrations) under section 14 of the Public Order Act are limited to those about the place of the assembly, the maximum duration of the assembly and the maximum number of participants. The tests for imposing conditions include the need to prevent serious public disorder, serious disruption to the life of the community and serious damage to property.

Section 14 does not give the police specific powers to limit encampments or noise equipment for public assemblies (irrespective of whether such encampments are related to protest or not) and, therefore, it is not possible to address these current issues in Parliament Square by using only the existing powers under the 1986 Act.

3. Explanation of reasons and proportionality of proposed measures, particularly in relation to the use of sleeping equipment or amplified noise equipment.

The Government considers that the unique situation of Parliament, as described above, means that it is justified to have a special regime in place for this small area. The evidence that the predecessor Committee heard, both from members of Parliament and those who work in the Houses of Parliament, about the disruption that encampments outside Parliament have caused to the work of Parliament (*JCHR 7th Report, 2008-09 Demonstrating Respect for Rights Chapter 5),* provides further justification. It is important to stress that this regime applies to all and not just to protestors. It is accordingly focused on promoting the use of Parliament Square and is not about regulating protest per se. The Government wants to ensure that the area in which the new regime applies is as small as possible so that it targets the problem of the unique situation of Parliament Square, without extending any further than necessary.

The Committee will be aware of both the tents and loudhailer issues from its daily work in Parliament. The Committee will therefore be aware that Parliament Square Garden is not a suitable area to be used for any sort of encampment and that the Democracy Village encampment caused significant damage to the Garden that has required considerable remedial works, during which time nobody could enjoy this unique space.

The Committee will also be aware that Mr Justice Williams in *Mayor of London –v- Rebecca Hall and Others* [2010] EWHC 1613 held, at paragraph 48, that *"I am satisfied that PSG [Parliament Square Garden] is wholly unsuited for camping; there is no sanitation…no running water…no public toilets open 24 hours daily in the immediate area…no safe means for cooking; a camp site is wholly incompatible with the location; it would deprive the public of the use of the total area of well-maintained lawn and gardens at the heard of British democracy and government and a world renowned WHS [World Heritage Site]"*.

I understand that the Metropolitan Police Service is no longer authorising demonstrations on the footway opposite Carriage Gates due to concerns about the limited space available. In effect, people who wish to demonstrate here are not able to do so due to the presence of the encampment.

The predecessor Committee recognised the concerns about the long term presence of encampments (*JCHR 7th Report, 2008-09 Demonstrating Respect for Rights paragraph 134)*, "*We have heard no good argument in favour of introducing an arbitrary limit on the duration of protests around Parliament, although we note the potential security concerns associated with the existence of the camp….. We are also concerned to ensure that the existence of long-term protests does not prevent or deter other people from protesting in Parliament Square.*"

The current encampment is preventing others from exercising their right to protest on the footways around Parliament Square Garden. Additionally, Mr Justice Williams in *Mayor of London –v- Rebecca Hall and Others* [2010] EWHC 1613 held, at paragraph 133 " I am satisfied … the use of Parliament Square Garden by tourists and visitors, by local workers by those who want to take advantage of its world renowned setting and by others who want to protest lawfully, is being prevented." Prohibiting tents and other sleeping equipment in this limited area will ensure that everyone has equal rights to enjoy that space.

The Government takes the view that there is no legitimate reason why Parliament Square Garden should become a campsite and that the restrictions that apply to anyone (not just protestors) erecting tents or having sleeping equipment are a proportionate manner in which to ensure that it does not become a campsite. Limiting the period for which anyone could erect tents or use sleeping equipment would not solve this since one person could simply replace another person, leading to a permanent encampment manned by different people. The damage to the Garden would remain, as would the problem of the area then being inaccessible to other members of the public.

The Government does not consider that this is a disproportionate interference with either Article 10 or 11, because the restriction in place for the legitimate aims of "the protection of the rights and freedoms of others" to access Parliament Square Garden, but also the protection of health and the prevention of crime (as noted in paragraph 133 of the HC judgment in Hall and Others). The Government considers that, although some individuals or

groups may wish to use tents or sleeping equipment as part of a protest, the limitation on this should not prevent the protest itself. On that basis, although it is accepted that it may interfere with Article 10 and 11 rights, the Government considers that, because of the very small geographical area in which this takes place and the fact that this provision does not prevent protest itself (rather it perhaps limits the way in which a protest can be carried out), this is proportionate to the legitimate aims.

In relation to the loudspeakers and other amplified noise equipment, the Government considers that restrictions along the lines proposed are required in order to ensure that the rights and freedoms of others are adequately protected. The Government is concerned for members of the public who should be able to enjoy Parliament Square Garden peacefully; members of the public who wish to demonstrate or protest, either with or without using a loudhailer; and members of the public who wish to go about their lawful business without disturbance, including Members of Parliament. The Government accepts that this restriction can go more directly to individuals' Article 10 and 11 rights as there is a stronger argument to say that using a loudhailer, or something similar, is more commonly a scenario used in exercising Article 10 and 11 rights than setting up a tent. With this in mind, as the Government has no wish to prevent protest around Parliament, the Government has set up an authorisation scheme which enables loudhailers and the like to be authorised. This is considered necessary in order to ensure that that one or two individuals cannot usurp the rights of many others and it does not seem disproportionate for authorities to place limits on duration of use of a loudhailer. The details of this authorisation scheme are set out on the face of the Bill in order to ensure that this is clear and accessible to all.

4. We would be grateful if the Government would explain why it considers that the breadth of the discretion which it is proposed that GLA, Westminster City Council and the police will have in practice is appropriate and legally certain enough to satisfy the requirement that any restriction on protest be prescribed by law.

The Government is satisfied that the prohibited activities are clearly set out on the face of the Bill and readily accessible to anyone who may be in the controlled area. In addition, the Government considers it is more proportionate to ensure that, before anyone can commit an offence under these provisions, they must first be directed to remove the tent or stop using the loudhailer. This means that the person, before committing the offence, is warned that what they are doing is prohibited and therefore has the opportunity to stop doing it before any criminal liability attaches. The Government believes this ensures that the offences are both proportionate and enforceable, as they require a police officer or authorised officer of the Greater London Authority (GLA) or Westminster City Council (WCC) to be present at the scene. It also ensures that any particular circumstances of the individual can be taken into consideration, as appropriate in two ways – firstly, it is not mandatory for the authorised officer to issue a direction and, secondly, there is a defence of "reasonable excuse" for failure to comply. The

Government considers it appropriate for the provisions to be structured in this way to ensure that they are properly enforced.

5. Statutory power to use reasonable force for employees of the GLA and Westminster City Council to seize sleeping equipment or to remove any individual who appears to be breaching the prohibition on sleeping equipment or intends to breach those provisions.

The power to use reasonable force attaches only to the power of seizure – there is not a power in the provisions for GLA or Westminster City Council employees to remove an individual (whether using force or not). The Government considers that a power to use reasonable force is necessary and proportionate in order to ensure that the seizure powers are actually enforceable. Otherwise, it is unlikely that the seizure powers could be used unless the particular items were left unattended. The Government considers that it is right for these powers to be available to all those who are able to issue a direction, otherwise this would require more than one authority to be present for the duration of the direction and any seizure which seems unnecessary, costly and bureaucratic.

6. Safeguards to ensure that this power will be applied in a way which protects individuals from the disproportionate use of force and respects the individual right to life and the right to physical integrity.

This power is only available when exercising a power of seizure. In turn, the power of seizure is only available in relation to an item which appears to have been used (or is being used) in connection with an offence under clause 141. The offence under clause 141 can only be committed if a person, without reasonable excuse, fails to comply with a direction given under clause141. In other words, there are several steps that must be taken before any power to use reasonable force can be used. Therefore, the legislation itself ensures that this power can only used in limited circumstances and protects against the disproportionate use of the power.

As for the disproportionate use of force, there are two safeguards against this in the provision itself. Firstly the provision makes it clear that the power is to use reasonable force; any disproportionate force is very unlikely to be "reasonable" and therefore not authorised by this provision. Secondly, the provisions make it clear that force can only be used if necessary. Again, this safeguards against the arbitrary use of force. All those who can use the power must abide by the safeguards on the face of the Bill and otherwise risk legal claims for an unlawful use of force. In addition, all those authorised to use the power are public authorities under section 6 of the HRA 1998 and are therefore obliged to act in a manner which is compatible with Convention rights.

On this basis, the Government is satisfied that the way in which the provisions are drafted mean that the provisions themselves guard against any disproportionate interference with both Article 2 and Article 8.

Arrest warrants for universal jurisdiction offences

7. Full explanation of the Government's view that a departure from ordinary criminal procedure is required in relation to the offences covered by Clause 151. In particular:

a) **Purpose of the proposed restriction on the power of the magistrate to issue a warrant and reasons that the proposed restriction is proportionate and justified.**

The proposed departure from the usual procedure is modest, affecting a very few cases of crimes under the law of England and Wales committed elsewhere. Unlike the proposal canvassed by the previous Government, it does not abrogate the right of private prosecution in universal jurisdiction cases – private prosecutors will still be able to apply for the issue of a warrant. Moreover, the power of the Police and Crown Prosecution Service (CPS) to investigate and prosecute alleged offences is entirely unaffected.

The Government considers it unsatisfactory that a warrant might be issued in a case where there is no realistic prospect of a viable prosecution taking place, especially in relation to a grave crime alleged to have been committed outside the United Kingdom by a person whose sole connection with this country might be his presence here as a visitor. The proposed change is designed to obviate that risk and is proportionate.

b) **Explanation of the decision that these provisions are necessary now, rather than when the offences were incorporated into domestic law.**

The problem is that the test applied by the court is much less onerous than that applied by the CPS in deciding whether a case should proceed. It was only after a warrant was issued in a universal jurisdiction case, some years ago, that the implications of that discrepancy became apparent.

c) **Evidence relating to the Government's position, including any statistics on the use of the power of arrest in connection with crimes of universal jurisdiction or details of any cases where the Government considers that the existing magistrates' power has been used inappropriately.**

Information about applications of this kind is not recorded, but staff at the City of Westminster Magistrates' Court, where such applications are generally heard, are aware of ten applications for arrest warrants in respect of universal jurisdiction offences in the last ten years. It is public knowledge that two of these applications were granted. However, the Government's argument is not about the number of warrants that have been issued, nor that warrants have been issued improperly. The Government's concern is that warrants are *capable* of being issued in respect of grave offences in circumstances where there is no real prospect that a viable prosecution will ensue.

8. How an applicant will secure the consent of DPP in an ordinary case and safeguards to ensure that the decision of the DPP is taken in a timely way.

The arrangements for securing consent will be a matter for the independent DPP, who could be expected to be mindful of time constraints in making the decision.

9. The continuing role of the Attorney General in relation to the prosecution of international crimes in the UK.

The Government does not currently propose to change the requirement for the Attorney General's consent to prosecutions for certain offences under our law which are committed elsewhere. When granting consent to any prosecution, it is the well-established constitutional position that the Attorney acts independently of Government, applying prosecutorial principles. In cases where he decides to seek the views of Ministerial colleagues on relevant public interest considerations that may legitimately inform his consent decision, such as (if this arose in an individual case) the implications for national security of prosecuting or not prosecuting, the decision is and remains his alone. These are extremely grave crimes of international importance. As a professional lawyer with a constitutional role at the heart of Government in maintaining the rule of law, the Attorney General is well placed to take these decisions with propriety.

10 and 11. Use of this Bill to rationalise the role of the DPP in relation to these offences, ensuring that any prosecution decisions in relation to international crimes are taken by the DPP acting as the UK independent prosecuting authority.

For the reasons set out above, the Government does not consider that it would be appropriate to transfer the consent function in relation to prosecution of these offences to the DPP.

I hope this response provides the further information required by the Committee for consideration of the Bill. Should you have any further queries, please do not hesitate to contact me.

NICK HERBERT