



**Liberty's Briefing on the Constitutional  
Reform and Governance Bill for  
Committee Stage in the House of  
Commons**

**October 2009**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## **Liberty Policy**

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

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## Introduction

1. Many of the proposals in the Constitutional Reform and Governance Bill (the Bill) have their origins in the 'Governance of Britain' Green Paper published in July 2007. Proposals can also be traced to a White Paper on Constitutional renewal *The Governance of Britain – Constitutional Renewal* published in March 2008 and accompanied by a draft Bill. We expressed delight at the announcement then that the Government intended to repeal sections 132-138 of the *Serious Organised Crime and Police Act 2005* (SOCPA).<sup>1</sup> Liberty's concerns about these sections and their impact on peaceful protest outside the seat of our democracy are well documented.<sup>2</sup> We were also pleased to see the Government's apparent commitment in the White Paper to addressing constitutional issues around the role of the Attorney-General; in particular the Attorney-General's prosecution consent functions which have been the subject of significant public debate and controversy in recent years.

2. The present Bill received its first reading in the House of Commons on the 20<sup>th</sup> July 2009. It covers a wide range of issues, including among other things: ratification of treaties, management of the civil service, financial reporting to Parliament and provision for the suspension, resignation and expulsion of Members of the Lords. Notably and disappointingly, provision for reform of the role of the Attorney-General has been dropped altogether. In this briefing we focus on new rules for protests around Parliament. Liberty's suggested amendments are below. We note that these amendments have already been tabled by Liberal Democrat MP's David Howarth and David Heath. We also briefly explain the new rules on time limits for human rights actions against devolved administrations.

## Part 4 – Protest Around Parliament

### Amendment 1 – Part 4

Clause 32, page 16, lines 6-7, leave out sub-clause (2).
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<sup>1</sup> Following an earlier Home Office consultation 'Managing Protest Around Parliament' Part 1 of the draft Bill sought to repeal sections 132-138 SOCPA.

<sup>2</sup> See our 2008 response to Home Office consultation 'Managing Protest Around Parliament' available at: <http://www.liberty-human-rights.org.uk/publications/pdfs/managing-protest-around-parliament.pdf>

## **Amendment 2 – Schedule 4**

Page 48, line 1, leave out Schedule 4.

### **Effect**

3. This will remove clause 32(2) and Schedule 4 from the Bill.

### **Briefing**

4. Part 4 contains a number of proposals regarding individual protest and the rights of assembly within the vicinity of Parliament. Under section 32 of the Bill, sections 132 to 138 of SOCPA are removed. We are pleased that the Government has listened to concerns and proposes to repeal sections 132-138 of SOCPA. These sections introduced a number of oppressive restrictions on the right to protest. In particular, sections 132 and 134 criminalise unauthorised demonstrations in the vicinity of Parliament and allow limitations to be placed on the place, time, duration, size and noise levels of any demonstration. When sections 132-138 of SOCPA were introduced, we voiced concern that the measures were disproportionate and oppressive. We commented that:

*The right to peaceful protest goes to the heart of the British tradition of liberty. It is an indictment upon the Government that they seek to pass primary legislation which will end demonstrations near Parliament.*<sup>3</sup>

The right to peaceful protest is a direct means of holding the Government to account and is an important way of enforcing the right to freedom of expression.<sup>4</sup> Through exercising their right to peaceful protest, people are able to actively assert their membership of a democracy and engage with the democratic process. It is for these reasons that sections 132-138 of SOCPA have been so widely criticised and why activists from across the protest-spectrum have publicly highlighted the undemocratic and heavy-handed impact of the legislation. It is widely believed that the principal aim behind the Act was to remove or down-size the 24 hour peaceful vigil of Brian Haw,

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<sup>3</sup>See Liberty's House of Lords briefing on the Serious Organised Crime and Police Bill, 2005, available at: <http://www.liberty-human-rights.org.uk/pdfs/policy06/soc-committee-lords.PDF>

<sup>4</sup> The right to freedom of peaceful assembly and to freedom of association with others is protected by Article 11 of the European Convention on Human Rights (ECHR) as incorporated by the *Human Rights Act 1998* (HRA).

whose highly publicised protest against the UK's invasion of Iraq became an embarrassing thorn in the Government's side. When initially introduced, the Serious Organised Crime & Police Bill contained the power for a senior police officer to remove someone for "*spoiling the visual aspect or otherwise spoiling the enjoyment by members of the public*" of the area. While this specific provision was eventually removed, the final wording of the Act did allow for Brian Haw to be included within its scope resulting in the subsequent removal of a large part of his peaceful protest.

5. We are pleased then that this Bill proposes repealing sections 132–138 of SOCPA. However, the Bill contains replacement provisions that are of concern. Schedule 4 of the Bill amends the *Public Order Act 1986* (POA) by inserting a new section 14ZA. Proposed section 14ZA applies to public processions or public assemblies where the route or assembly is being held wholly or in part within the area around Parliament. It provides that the Secretary of State may by order made by statutory instrument specify "*requirements that must be met in relation to the maintaining of access to and from the Palace of Westminster*".<sup>5</sup> This order-making power is very broad; there is no clear definition of what would constitute a 'requirement', nor what is meant by 'maintaining access'. However, the proposed new section gives an example of the type of requirements that could be imposed, namely the number or location of entrances to the Palace of Westminster that must be kept open and the availability of access routes.<sup>6</sup> Putting aside for the moment whether such an order-making power is required, it is difficult to see what other requirements the Secretary of State might possibly need to make above and beyond the requirement that Parliament should be accessible. Despite this, there are no limits on what and how many requirements the Secretary of State can order – leaving a broad catch-all order-making power with significant potential for regulating and restricting protest around parliament.

6. Proposed section 14ZA also contains the second part of the government's proposed new mechanism for regulating protest around Parliament. Under the section a senior police officer would be able to impose conditions on a procession or assembly if he or she is of the 'reasonable opinion' that they are necessary for ensuring that the specified requirements (to be laid out in the Secretary of State's order) are met.<sup>7</sup> For a public procession the conditions that may be imposed include

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<sup>5</sup> See Schedule 4, paragraph 1, proposed new section 14ZA(3).

<sup>6</sup> See Schedule 4, paragraph 1, proposed new section 14ZA(4).

<sup>7</sup> See Schedule 4, paragraph 1, proposed new section 14ZA(2).

conditions about the route of the procession or conditions prohibiting the procession from entering any public place specified in the directions.<sup>8</sup> For a public assembly the conditions that may be imposed are conditions on: the place at which the assembly may be (or continue to be); its maximum duration and the maximum number of people allowed.<sup>9</sup>

7. While we do, of course, recognise the importance of maintaining access for parliamentarians, visitors, pedestrians and vehicles in the area around Parliament Liberty does not believe that the proposed new provisions are in any way necessary. There are already powers contained in the POA that give the police powers to manage public assemblies and processions. In fact, the conditions that can be imposed under new section 14ZA exactly mirror those that can already be imposed by senior police under Part II of the POA for assemblies and processions anywhere in the country.<sup>10</sup> While Liberty may not necessarily support the level of interference permitted under the POA or the sanctions involved, the law is already in place and contains, in our view, more than adequate powers to deal with assemblies and processions.

8. The only difference between the model proposed by the Government and the powers that already exist under the POA are the potential *purposes* for which conditions can be placed on protest. While the POA lists, on its face, the reasons for which a senior officer can impose conditions on protest, proposed new section 14ZA effectively leaves this dangerously open-ended by allowing conditions to be imposed to meet any of the requirements that might be set by the Secretary of State. This leaves a potentially wide police discretion for regulating protest around Parliament. In contrast, Part II of the POA, includes the purposes for which conditions might be made on its face and is more specific. Under this Part, a senior police officer can impose conditions on public assemblies where, having regard to the time or place and the circumstances in which any public assembly or public procession is being held or is intended to be held, he or she reasonably believes that it may result in "*serious public disorder, serious damage to property or serious disruption to the life*

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<sup>8</sup> See Schedule 4, paragraph 1, proposed new section 14ZA(7).

<sup>9</sup> See Schedule 4, paragraph 1, proposed new section 14ZA(8).

<sup>10</sup> Under section 132(6) of SOCPA, POA powers to place conditions on assemblies in the 'designated' area are repealed and replaced with SOCPA powers to place restrictions on protest. By repealing section 132-38 SOCPA this Bill would automatically reinstate the POA condition-making powers for the vicinity around Parliament.

of the community.”<sup>11</sup> We believe that the stated policy goal of the Government – to maintain access to parliament – is already covered by the purposes for which protest restrictions can already be imposed under the POA. In particular the police power to impose conditions on a procession or assembly where it is reasonably believed that the protest may result in serious disruption to the life of the community. Under the POA as it stands, the power to impose conditions on a protest would be activated if any serious or prolonged disruption to parliamentarians was reasonably envisaged or reasonably appeared to be taking place.

9. Indeed as regards processions, even further extensive restrictions are already in place under the POA. Under the POA organisers of public processions must notify the authorities at least six days before the procession is intended (unless not reasonably practicable to do so) with failure to do so constituting a criminal offence.<sup>12</sup> Further, under section 13 of the POA the police<sup>13</sup> can apply for an order prohibiting the procession for a period not exceeding three months. Another example of the stringent controls already accorded to police under the POA is found in section 16 (as amended by the *Anti-Social Behaviour Act 2003*) which now defines an assembly as consisting of “2 or more persons”<sup>14</sup>. While Liberty opposed this amendment at the time and maintains that the extended definition cannot be justified, the law and subsequent power nevertheless exist and undoubtedly make the POA sufficiently rigorous for the management of assemblies. In Liberty’s view these powers and conditions are generous and more than sufficient for police management of public assemblies within the vicinity of Parliament. It is unnecessary and disproportionate to seek to allow increased circumstances contained in secondary legislation and therefore lacking full Parliamentary debate, where conditions can be imposed on assemblies and processions around Westminster.

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<sup>11</sup> See section 14 of the POA.

<sup>12</sup> Section 11 of the POA. While Liberty strongly opposes the criminal penalty imposed for failure to notify of a public procession, we can see a logical reason for the distinction that has been drawn between public assemblies and public processions. Public processions necessarily involve the use of roads, can potentially clash with other processions and are likely to cause greater disruption than static assemblies, making prior notification more apt to allow the authorities to make necessary practical arrangements. While maintaining that the criminal penalty for failure to notify of a public procession is disproportionate, Liberty acknowledges the reason for the functional distinction.

<sup>13</sup> Within the city of London, the Commissioner of Police for London can apply to the Secretary of State for an order prohibiting the procession. Outside of the city of London the chief of police is able to apply to the council for the order.

<sup>14</sup> Previously an assembly was defined as consisting of “20 or more persons”.

10. The problem with the Government's approach is that in apparently seeking to put right mistakes made in SOCPA it is, perhaps unintentionally, creating scope for unjustified restrictions on protest to continue. The gains made under the current model in this Bill include: the removal of the need for prior authorisation in advance of any static demonstration;<sup>15</sup> the removal of restrictions on the number and size of the banners and placards used;<sup>16</sup> the removal of maximum permissible noise levels<sup>17</sup> and removal on the ban on the use of loudspeakers by protesters.<sup>18</sup> However by allowing conditions to be imposed to meet whatever requirements might be set out by the Secretary of State in an order will potentially undo any gains made for free expression and protest and could allow for an unintended heavy-handed operational approach on the ground. It is difficult to see why additional discretionary powers are required. Powers already exist to prevent serious disruption to parliamentarians and others entering the Palace of Westminster. It is also worth remembering that parliamentarians have underground access to Parliament and do not necessarily need to pass through the over ground 'vicinity' of Parliament to gain access. Also, any planned sizeable assembly due to take place in Parliament Square (of the type capable of causing a hindrance to parliamentarians) would be widely publicised in advance, allowing the police the opportunity to impose conditions if they see fit and allowing for parliamentarians to plan their access arrangements.

11. Protests will always have the effect of irritating those they seek to influence and, from time to time, inadvertently inconveniencing those they do not. When framing restrictions to the right to protest, irritation and inconvenience must not be seen as a trump card. Indeed to do so essentially goes against the deal at the centre of a liberal democracy - namely that there is no right not to be inconvenienced, offended or irritated from time to time. This is true whether you are a politician or a member of the public.

#### *Restrictions outside Palace of Westminster*

12. Schedule 4 of the Bill also proposes introducing new section 14ZC to be inserted into the POA allowing the Secretary of State to make an order by statutory instrument to specify a building or an area situated outside the Palace of

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<sup>15</sup> See SOCPA, section 132.

<sup>16</sup> See SOCPA, section 134.

<sup>17</sup> See SOCPA, section 134.

<sup>18</sup> See SOCPA, section 137.

Westminster where a parliamentary meeting is taking place.<sup>19</sup> Assemblies or processions within the vicinity of this specified building or area can then be subject to the same restrictions and conditions as explained above in relation to Westminster. The Secretary of State can make an order specifying requirements that must be met in relation to the maintaining of access to and from the specified building during any week the building is, or is planned to be, used by a House of Parliament. The same arguments apply here. Namely that powers already exist under the POA to prevent serious disruption to parliamentarians and others. It is also worth highlighting that new section 14ZC could result in conditions being imposed on an assembly or procession which has been planned for the beginning of the week, when the meeting of a House of Parliament will not take place until the end of the week. It is difficult to see how an assembly or procession which is being held a number of days before any parliamentary meeting (and which will be concluded before the parliamentarians meet) will affect access to the meeting.

## **Part 5 - Human Rights claims against Devolved Administrations**

13. Part 5 of the Bill amends the *Northern Ireland Act 1998* and the *Government of Wales Act 2006* so that they now mirror section 7(5) of the *Human Rights Act 1998*. This lays down time limits for human rights claims against ministers. A person can not bring any proceedings in a court or tribunal in respect of an act unless the proceedings fall within the prescribed time limits – a period of one year beginning with the date on which the act took place or a longer period as the court or tribunal considers equitable having regard to all the circumstances. These new sections will apply to any proceedings brought after the section comes into force and any proceedings in respect of an act taking place before the section come into force. Liberty has no comment to make on these proposed amendments.

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<sup>19</sup> See Schedule 4, paragraph 1, proposed new section 14ZC.