LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Serious Organised Crime and Police Bill

Liberty's amendments for Committee Stage in the House of Lords

March 2005

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

www.liberty-human-rights.org.uk/resources/policy-papers/index.shtml

Parliamentarians may contact Gareth Crossman, Director of Policy at Liberty.

Direct Line: 020 7378 3654

Email: GarethC@liberty-human-rights.org.uk

INTRODUCTION

1. The 'Serious Organised Crime and Police Bill' (The Bill) is one of a raft of Home Office bills introduced during the 2004-2005 Parliamentary Session. The Home Office was allotted the lion's share of Parliamentary time and it is clear from comments made by the Home Secretary and the Prime Minister that crime and security are at the top of the political agenda. The Prevention of Terrorism Act 2005 was introduced in the middle of the legislative programme, rushed through Parliament with unprecedented speed and reduced time for debate on other bills. We are extremely concerned that the current legislative logjam is allowing bills to be passed without proper scrutiny. Much of this bill was not debated in Commons Committee. It is extremely worrying that bills are reaching the statute book without proper scrutiny.

2. This is of particular concern as the heightened security threat of recent years, coupled with anxiety over crime and anti-social behaviour, has resulted in legislation that undermines basic human rights entitlements. It is the duty of the state to protect those who live within its borders, but this duty must be balanced against individual rights of due process, privacy and freedom from arbitrary detention. We are extremely concerned that many of the measures contained in this Bill, particularly relating to arrest powers and restricting protest, give disproportionate power to the authorities and place excessive restriction on freedom.

3. Liberty's main comments relate to three clauses of the Bill. These relate to our principal areas of concern; extension of the power of arrest (Clause 106); the creation of an offence of incitement to religious hatred (Clause 124 and Schedule 10); and criminalisation of trespass (Clause 125). We are not proposing an amendment for Clause 124 and Schedule 10 as we support the amendments on 16 March tabled by Lord Lester of Herne Hill, Lord Hunt on Wirral and The Lord Bishop of Portsmouth. We also suggest a number of secondary amendments.

PRINCIPAL AMENDMENTS

Amendment 1

a) **Clause 106, page 72, line 10, after 'if' insert—**

'(a) the offence is an arrestable offence, or
(b)'.

b) **Clause 106, page 72, line 29, remove subsections (e) and (f), by deleting line 29 on page 72 to end of line 32.**

c) **Clause 106, page 73, line 3, at end insert -**

'( ) the offence is an arrestable offence'.

d) **Schedule 7, page 179, line 37, leave out Part 1**

e) **Schedule 7, page 184, line 1, leave out Part 3**

Briefing on Amendment 1

Background

Clause 106 amends S.24 of the Police and Criminal Evidence Act 1984 (PACE) by effectively making all offences arrestable. Currently, a police officer must determine whether he suspects a person of committing a non-arrestable, arrestable or serious arrestable offence. The powers available flow from that determination. In the Bill a police officer will determine whether any of the circumstances in a new S.25 (5) apply and then carry out a 'necessity' test to decide which of all possible powers to use. This was initially proposed in the Home Office Consultation *'Policing: Modernising Police Powers to Meet Community Needs'* ('the consultation'). This stated that:

> *'[The] basis of arrest remains diverse - it is not always straightforward or clear to police officers or members of the public when and if the power of*

arrest exists for offences at the lower end of seriousness,'[1] *and '[There] is a complex and often bewildering array of powers and procedures.'*[2]

The proposed solution to this problem, put into effect by Clause 106, is a 'straightforward, universal framework'[3] with powers of arrest extended to all offences. Liberty considers this proposed solution unacceptable and disproportionate to the problem identified. If police officers face difficulties in deciding whether they can arrest in a particular case, and they find the powers and procedures 'bewildering', this indicates a need for greater clarity and better police training, not a 'lowest common denominator' approach to arrest powers.

In 2002 a comprehensive PACE Review[4] examined the problem of confusion over arrest powers, but rejected the extreme proposal to remove distinctions between differing types of offence as 'arrestable', 'serious arrestable' and 'non arrestable' Instead, the following action was recommended:

> *'The Review recommends creating a definitive list of powers to arrest, complemented by information on how they can and should be applied. This should link to more enhanced training.'*[5]

We believe the recommendations of the PACE Review should be the basis for any reform of PACE. If the current nuanced framework is confusing for some officers, then the appropriate and proportionate way to tackle this is to clarify that framework and provide linked training.

Clause 106 represents a move away from consent based policing towards policing by discretion. The dangers of extending powers and relying on discretion have been recently demonstrated through the use of greater powers of stop and search. Section 44 of the Terrorism Act 2000 (TA) allows for the exercise of stop, search and other powers without any need for suspicion. The entirety of the greater metropolitan area

---

[1] At para. 2.2, p. 4.
[2] At para. 2.3, p. 4.
[3] See para. 2.5, p. 4.
[4] See *Report of the Joint Home Office/ Cabinet Office Review of PACE* (2002), para. 2, page 9 (hereafter "PACE Review").
[5] PACE Review, para. 23, p. 21.

of London has been subject to the use of these powers on a rolling basis for nearly four years.[6] In 2002-2003 the number of people of Asian background subjected to S.44 searches rose by over 300%. Concern over this grossly disproportionate rise has been expressed not only by civil liberty, human rights and racial justice groups, but by the police themselves. Giving evidence to the Home Affairs Committee the Metropolitan Police Authority (MPA) said that it had been given 'powerful evidence' that it was having a 'hugely negative impact' on community relations. The MPA added:

> *"Section 44 powers do not appear to have proved an effective weapon against terrorism and may be used for other purposes, despite the explicit limitation expressed in the Act… It has increased the level of distrust of our police. It has created deeper racial and ethnic tensions against the police. It has trampled on the basic human rights of too many Londoners. It has cut off valuable sources of community information and intelligence. It has exacerbated community divisions and weakened social cohesion."*[7]

Liberty believes that moves towards unfettered discretion will result in the arbitrary exercise of policing powers.

We do not believe that the introduction of Clause 106 is in the interests of the Police. We cannot see how the difficulty that some officers may have in determining whether they can exercise a given power will be improved by making all offences arrestable. To correctly use discretion an officer should consider whether their interference with the person's rights is legitimate, necessary and proportionate. Essentially this is a Human Rights Act (HRA) assessment of the use of powers in each case, and whether the interference with the individual's rights under Articles 5 (right to freedom from arbitrary detention) and 8 (right to privacy) is justified. If officers are currently unable to determine whether they can exercise arrest on the basis of seriousness, the imposition of such an analysis will not simplify matters. We suggest that expecting individual constables to exercise their discretion in a manner compatible with

---

[6] The Home Secretary may authorise a designated zone for the purpose of s. 44 TA if he satisfied that it faces a particular risk of terrorist attack, but such an authorisation may last for a maximum of 28 days; since February 2001 the Home Secretary has constantly renewed his designation for the greater London metropolitan area every 28 days.
[7] Evidence from MPA to the Home Affairs Committee, 8 July 2004.

domestic and Strasbourg case law (on the spot when making a decision whether or not to arrest) would expose them to a new range of 'complex and bewildering' information. If the response to this is to focus on additional training for constables to enable them to exercise their discretion in a manner compatible with the HRA, we would again query why the PACE Review recommendation of clarification of the existing framework and enhanced training was not followed.

Clause 106 also introduces an expanded power of 'citizens arrest' through an amended S.24A of PACE. Liberty agrees with the concerns expressed by the Police Federation in their response to the Home Office policing consultation. Exercise of a power of arrest necessarily involves restrictions on freedom. It is best carried out by someone who has been properly trained. The danger in introducing this expanded power (leaving aside the potential physical dangers to both arrestee and arrested) is that it is extremely unlikely that anyone carrying out arrest will be aware of the extent of power permitted in the new S.24A. While there may be an increased awareness among the public that they can carry out arrests, it is extremely unlikely that everyone who uses the powers has read and understood the limits imposed by S.24A.

It is possible that a formalised statutory power of arrest, for persons other than police officers, is intended to allow those with quasi police powers such as Community Support Officers greater scope to act more like the police. We reiterate our concern that policing powers are best exercised by those properly trained. In addition to those holding quasi police powers, we presume that the new S.24A will be regularly exercised by those with no police training at all. It is now likely that private security firms and store detectives will be expected to carry out arrests.

The Amendment

The existing Section 24 of PACE provides unqualified powers of summary arrest in the case of arrestable offences. Arrestable offences are described generally in subsection 24 (1)(a) and (b) of PACE (fixed sentences and those punishable by five or more years imprisonment) and specifically in Schedule 1A (a variety of other offences not falling into (a) and (b) but determined suitable for arrest). Constables enjoy these powers in all circumstances, whether the offence has been, is being, or is about to be

committed (or there are reasonable grounds for thinking that that is the case). The powers of non police officers to arrest are more limited.

The current Section 25 PACE confers powers on constables only in connection with non arrestable offences if it appears that service of a summons is impracticable or inappropriate, 'because any of the general arrest conditions is satisfied'. The conditions are set out in subsection S.25 (3). The first three conditions relate to names and addresses. The fourth condition arises where a constable 'has reasonable grounds for believing that arrest is *necessary* to prevent the relevant person' doing one of five things, which include causing injury to himself. The fifth condition has a similar 'necessity' test relating to the protection of children.

The powers in S.25 require the constable to come to a view about the matters mentioned, to know what those matters are and to understand the concept of 'reasonable grounds' to believe something. Consequently, it is more problematic to exercise the powers relating to *non* arrestable offences than arrestable offences. We suggest that this might be one of the reasons why these powers are only available for fully trained police officers.

Clause 106 replaces Sections 24 and 25 with new Sections 24 and 24A. The first deals only with constables; the second only with other persons. The constables' existing powers are replaced with powers based on the old S.25, that is, that the constable has reasonable grounds for believing that for any of the reasons mentioned in the new S.24 (5) it is necessary to arrest the person in question. The reasons in S.24 (5) (a) to (d) correspond broadly to those in the old S.25. The new S.24 (e) and (f), however, are very broad, 'to allow the prompt and effective investigation of the offence or of the conduct of the person in question' and 'to prevent any prosecution for the offence from being hindered by the disappearance of the person.'

We question whether any case could arise that would not be covered by those broad reasons, and believe that the new powers effectively permit constables to arrest for any offence.

The powers of non police officers to arrest are conferred in similar form in S.24A, but with a narrower list of reasons. The consultation paper *'Policing: Modernising Police Powers to Meet Community Needs'* suggests that the problem is one of complexity 'at the lower end of seriousness'. So far as this related to statutory powers of arrest it is difficult to see why S.24A is less complicated**.**

The amendments will limit this broad extension of policing powers by -

- **reinstating an unqualified power to arrest for arrestable offences (and retaining the definitions of those offences and the use of the expression 'arrestable offence' elsewhere in the statute book (amendments 1.a, 1.b, 1.d and 1.e);**

- **Limiting the scope of the catch-all reasons given in the new Section 24(5) (e) and (f) (amendment 1.c).**

Amendment 2

To support the amendment put down on 16 March tabled by Lord Lester of Herne Hill, Lord Hunt on Wirral and The Lord Bishop of Portsmouth.

Briefing on Amendment 2

Liberty has serious concerns about Clause 119 of, and Schedule 10 to, the Bill which extend the present 'racial hatred offences' in Part 3 of the Public Order Act 1986 (POA) to cover the broad and vague concept of stirring up 'religious hatred'. Criminalising even the most unpalatable, illiberal and offensive speech should be approached with extreme caution in a democracy. The criminalisation of expressed opinions is often directed at the vulnerable communities it was designed to protect. It also has the potential to make 'free speech martyrs' of extreme political parties. There is a plethora of public order, violent, and property offences directed at those who strive to turn hate into intimidation or other action against people. Many of these are already aggravated if the behaviour is religiously motivated.

Liberty accepts that free speech is not completely unlimited. Most democracies regulate pornography, defamation, confidence and intellectual property, for example. The existing offences relating to inciting *racial* hatred recognise the need to balance competing imperatives. However, race is recognised by visual (and immutable) characteristics, whereas religion is identified by a body of ideas and practices. This makes the broad criminalisation of 'religious hate speech' far more dangerous to freedom of conscience and expression. The line between hatred for a system of ideas and hatred for its proponents is fine and subjective.

Liberty believes that much of the anti-Muslim sentiment promoted by parts of the far right constitutes racial, rather than religious, hatred. This was demonstrated by the recorded views of the leader of the British National Party, when, after making an anti-Muslim speech, he said "I could get seven years for what I've said to you tonight". He clearly defined his own views as falling into incitement to racial hatred.

Muslims are currently extremely vulnerable in British society. By accidents of history, genealogy and judicial interpretation, the *race* hatred offences are said to protect Jewish and Sikh people but not Muslims. If the Home Office seeks to address this anomaly by way of criminal statutory amendment, it should first consider amendments to the existing race hatred offences to protect Muslims from *race hatred* properly so-called. We seek to achieve this through the suggested amendment.

This amendment would apply to any religion where there is a link that can be established with a racial group. It would clearly not apply to those religions or beliefs without a racial association. A successful prosecution under the amended 1986 POA effectively requires the religiously based threat, abuse or insult to be racially motivated. We believe this will both provide effective protection against inappropriate prosecution and allay free speech concerns.

The Amendment

Part 3 of the POA criminalises a range of offences relating to racial hatred. Racial hatred is defined in Section 17 as 'hatred against a group of persons in Great Britain

defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins'. The same definition is used in Section 28 of the Crime and Disorder Act 1998 and in Section 3 of the Race Relations Act 1976. It has been interpreted in *Mandla v Dowell Lee [1983] 1AER 1062* (and other cases) as not including religious groups, though some religious groups - such as Sikhs and Jews – fall within the definition of 'racial' as the courts have determined that they possess common racial characteristics.

The offences in Part 3 of the POA penalise the use of threats, abuse or insults where racial hatred is either intended, or likely, to result. There is no reason to read Section 18(1) for example – 'a person who uses threatening, abusive or insulting words or behaviour' – as limited to behaviour that is specifically *racist*, so long as the intention, or likely effect, is to stir up racial hatred. Therefore, abuse of Islam, if intended or likely to result in hatred of, for example, Arabs or Pakistanis (or both), could constitute an offence.

It is interesting that the Home Office make this point in connection with the racially aggravated offences in the Crime and Disorder Act 1998[8]:

'2.4 It is important however to investigate whether an offence, which may appear to be motivated by religious hostility, also contains a racist element. Section 28(3) clarifies the test set out in section 28(1)(a) and (b) to emphasise the fact that the test of what amounts to "racially aggravated" requires that the racial hostility is ***"wholly or partly"*** *a motivating factor. It follows that even if there is a religious hostility provided that part of the hostility is racist then the offence is covered by these provisions.*

2.5 In some cases, for example, where the victim may be described by the perpetrator as a "Muslim", it will emerge that the hostility arises from the perpetrators perception of the victim's race rather than any knowledge of the victim's religion. In this way an attack on a Muslim for example, would be covered by the

[8] See http://www.homeoffice.gov.uk/docs/racagoff.html.

Act's provisions provided part of the motivation was based on racial motivation or hostility.'

Lord Lester's amendment restricts criminalisation to those situations where it is an appropriate response to a specific social need, while providing a genuine safeguard for free speech.

Amendment 3

a) Clause 125, page 90, line 13, remove from ';or' to end of line 15.

b) Clause 125, page 90, line 16, at end insert -

'( ) The Secretary of State may not designate a site if the public has access to it or to any part of it.'

c) Clause 125, page 90, line 19, at end insert—

'(b) that he had entered, or was on, the site as a trespasser'.

Briefing on Amendment 3

We are extremely concerned by the new offence created by Clause 125. This will allow the Secretary of State to designate a site if it is: Crown land; belongs to the monarch or heir to the throne; or if the Secretary of State believes it appropriate for designation on national security grounds. It will be an offence to trespass on a designated site[9]. We do not anticipate the first two grounds are likely to be relied on frequently as they cover specific areas, although they would presumably be used to target members of organisations such as 'Fathers for Justice' whose members broke into the grounds of Buckingham Palace in September 2004. However, we believe that the third ground will allow the Government to effectively criminalise trespass. There is no attempt to define what constitutes 'national security' and no threshold for the Secretary of State to satisfy. The Bill allows designation to take place without any justification of why the Secretary of State believed it was appropriate. The only

[9] Although there is a defence if the person did not know, or did not have reasonable cause to expect, that the site was designated.

restriction is a requirement that the Attorney General agree with the Secretary of State's designation. This will mean there is an implicit requirement that s/he is satisfied that a prosecution would be in the public interest.

While we are pleased that the Attorney General is given a veto, Clause 125 remains cause for concern. We imagine that a number of recent protests, such has those opposing the war in Iraq or the criminalisation of foxhunting, could be described as raising 'national security' interests. With no need for justification the power to designate and deny access to an area can be utilised on a purely subjective belief. Within the designated area the police will be allowed to arrest and detain[10]. Liberty believes that the creation of this offence is evidence of a trend towards marginalisation and criminalisation of legitimate protest.

Amendment

Clause 125 only applies when a person has entered as a trespasser. It will not be applicable to public spaces. However, it is likely that there are many places where demonstrations might take place which are privately owned but lack demarcation as to where private ownership begins. A protest outside an arms fair, for example, will probably be on land owned by the host of the fair, although it will be easily accessible by the public and will appear to be public land. Our changes to this Clause restrict its use so that the Secretary of States' discretion is fettered, trespass is only criminalised in specific circumstances, and criminalisation can only be made to those who are aware they are trespassing.

Amendment a) removes Clause 125 (3) (c). This restricts the arbitrary power given to the Home Secretary, ensuring only Crown lands or those belonging to the monarch or heir to the throne are covered. If trespass is to be criminalised, it should be restricted to clearly identifiable areas. It is worth emphasising that there are already a number of trespass offences which mean that anyone who does more than merely trespass will be criminalised. For example, anyone who 'obstructs' or 'disrupts' any activity on the

---

[10] And of course be able to utilise ancillary powers such as taking a DNA sample

land will be committing an offence under Sections 68 and 69 of the Criminal Justice and Public Order Act 1994.

Amendment b) ensures that the Secretary of State cannot designate a site if the public normally have access to it. For example, if the public are presently allowed onto a piece of Crown land, that permission must be withdrawn before an order can be made that would criminalise the trespass. This is necessary to prevent designation resulting in a person on the land being criminalised for entering an area where they would normally be entitled to be.

Amendment c) extends the existing defence contained in Clause 125 (4). The current defence would not protect someone who knows that there is an area of land that is designated but is unsure where the boundary lies and has unintentionally crossed into the designated zone. Much private land to which the public has general access does not have an obvious barrier. This amendment will allow a defence for the person who was not aware that they had entered a designated zone.

SECONDARY AMENDMENTS

Amendment 4

Liberty supports amendments put down by the Police Federation relating to Clauses 116 and 117 (Staff Custody Officers) and Clause 118 and Schedule 8 (Powers of designated and accredited persons).

Briefing

Clause 116 allows for civilian staff to be designated as staff custody officers for the purposes of PACE. We have a practical concern with this proposal. The custody officer is the custodian of PACE. They are responsible for the wellbeing of those under arrest and must ensure adherence to PACE requirements. The function is invariably carried out by an experienced police sergeant. If a civilian officer is allowed to carry out the role we have serious doubts that they will be able to provide the same protection. It is easy to imagine a situation where a civilian officer could be placed under pressure to overlook beaches of PACE by senior CID officers. We agree

with the Police Federation and doubt they would be as effective in resisting this pressure as an experienced police officer.

Community Support Officers (CSOs) were originally proposed in the Police Reform Bill 2002. Liberty expressed concerns that once they had been introduced, extensions of their powers would inevitably follow. Clause 118 and Schedule 8 propose this extension. CSOs will now be able to exercise a variety of new powers including, search, seizure, entry and detention. If these provisions are passed we are confident that a future policing or criminal justice bill will propose yet further extension. Liberty understands that policing bodies such as the Police Federation are extremely concerned by these proposals and appreciates their comments. Certain policing powers should remain the preserve of those who have full and appropriate training. We imagine the Government will seek to advance these measures by citing examples of situations where it would have been helpful for CSOs to have these ancillary powers. However, this is to miss the point. CSOs should only be used in a supporting role. If there are examples of situations where the exercise of extra powers would have been of use, then this is an argument for a greater number of police officers, not for an extension of the powers of CSOs. We urge Committee members to avoid further likely extension by adopting the amendment put forward by the Police Federation.

Amendment 5

a) Clause 129, page 92, line 21, remove subsection 1(c), by deleting from 'or' to end of line 23

b) Clause 129, page 93, line 10 remove subsection 1(7) (e) by deleting from beginning of line 10 to the end of line 13

c) Clause 131, page 94, line 1 remove subsection (3) (a) by deleting lines 1 and 2

d) Clause 131, page 94, line 10 after 'impose' insert 'reasonable'.

Briefing

Clause 129 criminalises unauthorised demonstrations in the vicinity of Parliament. When the Bill was originally introduced it allowed a senior police officer to remove someone from the vicinity of Parliament if they are, among other things, 'spoiling the visual aspect, or otherwise spoiling the enjoyment by members of the public' of the area. It was an offence imprisonable for up to a year to fail to comply with a direction. These powers were being introduced specifically to remove protestors such as Brian Haw from Parliament Square.

This has now been rewritten to remove all reference to 'spoiling the visual aspect'. While it will still ensure the criminalisation of Brian Haw, the new clause is also far more restrictive and disproportionate. It will now be an offence for any unauthorised demonstration to take place up to a kilometre from Parliament Square. The only defence is that the person believed that authorisation has been given. Clause 130 sets out the process for seeking authorisation while Clause 131 allows stringent restrictions to be placed upon any demonstration.

Clause 131 (2) states that if notice is given properly the Police Commissioner 'must give authorisation'. We imagine that the Government will argue that this will not lead to excess restriction on protest rights. However, the scope of restriction permitted by Clause 131 (4) (a) is extremely wide. There can be limitations on place, time, duration, size and noise. This will allow any demonstration to effectively be neutered. In order to impose conditions, the Commissioner must reasonably believe that there might be the chance of any of the consequences in Clause 131(3) arising. These include 'hindrance to any person wishing to enter or leave the palace of Westminster'. It is difficult to imagine any demonstration of any size which would not result in such a hindrance. Recent demonstrations against the war in Iraq or against the criminalisation of hunting with hounds are likely to have had tight restrictions placed upon them as to make them unviable, especially as there is no appeal against the imposition of a condition. If the organisers of a demonstration are informed that only 500 people may attend and they believe that over 1000 will arrive, they are likely to cancel as otherwise they will commit an offence. While it is a defence that the size was beyond the organisers control this may well not help them if they expected a

large attendance. 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.

It is difficult to see how Clause 129 can be compatible with Article 11 HRA (the right to freedom of peaceful assembly and association). This requires that any restriction on this right be for a legitimate purpose and proportionate measure. The list of legitimate purposes is: in the interest of national security or public safety; for the prevention of disorder or crime; for the protection of health and morals or; for the protection of rights and freedoms of others. The largest demonstrations might raise public safety issues but it is difficult to see how others might legitimately be restricted. Even if there were an attempt by the Government to shoehorn Clause 129 into one of these purposes we cannot imagine it would pass any test of proportionality.

If clause 129 and accompanying clauses are to become law there should be specific limitations. It should only apply to demonstrations of more than one person (so that it cannot be used to criminalise Brian Haw) and the ability to place restrictions should be limited.

Amendments a) and b) will remove references to single person demonstrations so that the powers may only be used against demonstrations of more than one person. Amendment c) removes the justification for conditions that they are necessary to prevent hindrance to any person entering or leaving Westminster Palace. It is difficult to see ho any demonstration might not have this effect. The justifications listed b) to g) provide sufficient scope for imposing restrictions where appropriate. Amendment c) imposes a condition that any requirement be reasonable. This is an appropriate requirement which will not be an excessive limitation. We do not anticipate the police would wish to place any unreasonable restriction upon a demonstration. This amendment will also make compatibility with the ECHR more likely. If there is a requirement that a requirement is reasonable, it is more likely to be proportionate.

Amendment 6

Clause 138, page 99, line 39, delete Clause 138

Briefing

Clause 138 of the Bill removes the presumption in favour of placing restrictions on press reporting of criminal proceedings following a child or young person's breach of an Anti-Social Behaviour Order (ASBO). This presumption is replaced with a power of the court to direct that reporting should be restricted to maintain the defendant's anonymity. The removal of the presumption is of considerable concern. Article 40(2)(b)(vii) of the United Nations Convention on the Rights of the Child (UNCRC) states that defendants under the age of 18 should have a right to privacy at all stages of criminal proceedings. No justification has been given for removing the presumption of reporting restrictions or for failing to comply with the UNCRC. No explanation has been given as to why this change applies only to proceedings involving ASBOs. There is no justification for the privacy rights of children and young persons in ASBO-related criminal proceedings receiving lesser protection than those in other proceedings. This is particularly the case when one considers that the activity leading to the criminal charge of breaching an ASBO may be an activity that in any other circumstance would be perfectly legal.

Amendment 7

a) Clause 142, Page 103, line 23, remove subclause (3) (b) by deleting line 23

b) Clause 143, Page 104, Line 44 remove subclause (5) (b) by deleting lines 44 and 45

Briefing

New Clauses relating to economic protest were introduced when the Bill was published in the House of Lords. Clauses 142 and 143 create offences of 'interference with contractual relationships so as to harm animal research organisation' and 'intimidation of persons connected with an animal research organisation' respectively.

They are similar offences in that they criminalise ‘relevant acts’[11] that are intended to stop someone fulfilling a contractual relationship or which would otherwise interfere with a relationship with an animal research organisation.

Our principal concern is what constitutes a ‘relevant act’. For both offences these are defined as ‘an act amounting to a criminal offence’, or ‘tortuous act causing B to suffer loss or harm of any description’. If the act is in itself a crime then these offences will amount to aggravated offences. We do not have a particular issue with this although there is no explanation of why only animal research organisations are targeted. We are however extremely concerned that tortuous acts are being criminalised.

This will blur the distinction between criminality and legitimate protest. It is relatively easy to commit a tort, either knowingly or unknowingly. For example, trespass is a tort. If peaceful protestors are demonstrating outside an animal research centre, or outside a company that provides supplies to a centre, they will be trespassing if they stand on private land. Similarly if they are handing out leaflets, these might arguably be defamatory. Even if the leaflet is not defamatory, but aimed at persuading a company not to continue supplying an animal research centre, it could result in the tort of inducing a breach of contract. Many torts are never actioned as there is little point in seeking damages against someone who has simply walked on your land. This does not mean the tort has not been committed. The second aspect of the requirement is that it has caused ‘loss or damage of any kind’. As the whole purpose of such protest is to cause economic loss this should not be difficult to establish.

There is a tradition of legitimate economic protest in the United Kingdom. People who objected to apartheid in South Africa refused to buy goods from that country. There may be members of this Government who boycotted South African goods. The criminalisation of economic protest is inappropriate and disproportionate. Those who make threats against suppliers, employees and so on will be committing offences and it is appropriate that criminal sanction can be used against them. Those who merely

[11] or criminalise a threat that another will commit a relevant act

hand out leaflets should not be made into criminals. It is insufficient to give a guarantee that that people will not be charged unless appropriate. This is simply making a subjective decision as to what is ‘good protest’ and ‘bad protest’. There should be certainty within the criminal law to protect peaceful protest.

The suggested amendment removes any reference to ‘tortuous acts’ so that only criminal offences will remain in the scope of these clauses.

Gareth Crossman
Policy Director
Liberty