

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's response to the Joint Committee on Human Rights:

“Policing and Protest”

June 2008

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organizations. 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 for a, and undertake independent funded research.

Liberties policy papers are available at

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

Parliamentarians may contact:

Gareth Crossman

Director of Policy

Direct Line: 020 7378 3654

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

Jago Russell

Policy Officer

Direct Line: 020 7378 3659

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

Introduction

1. Liberty is delighted that the Joint Committee on Human Rights has decided to inquire into the human rights issues arising from policing and protest. Since its formation, peaceful protest has been at the core of Liberty's work. Indeed, we were founded in 1934 as the National Council for Civil Liberties, principally to monitor the policing of protests and in response to the use of police agent provocateurs to incite violence during the hunger marches of 1932. We continue to campaign against unjustified and disproportionate interferences with the right to protest, including through the courts, in Parliament and in the media.
2. This short response draws on Liberty's long and varied history of fighting for the right to peaceful protest. We consider why the right to peaceful protest is such an important part of the post-War human rights framework and plays such a vital role in democratic societies. Next, we look at some of the many and varied restrictions imposed on peaceful protest: (A) legislation specifically designed to restrict protest; (B) legislation which has, in practice, restricted peaceful protest; and (C) non-legislative restrictions on protest.

The Right to Peaceful Protest

3. From the lobbying and petitioning of the early anti-slavery movement, to the Chartist's first public meetings in the 1800s, through to the anti-war march of 2003, Britain has acquired and developed a vital political culture of peaceful protest and dissent. Central to this culture of protest has been the ability of ordinary people to organise, gather, collectively express their grievances, and agitate for reform.
4. In the recent case of *R (on the application of Laporte) v. Chief Constable of Gloucestershire*, Lord Bingham commented that the "approach of the English

common law to freedom of expression and assembly was hesitant and negative, permitting that which was not prohibited”.¹ The law is certainly no longer “hesitant and negative” in its protection of this important right. It is now expressly protected by the Human Rights Act 1998, enshrined in Articles 10 and 11 of the European Convention on Human Rights (the “**HRA**” and the “**Convention**” respectively).

5. Strasbourg case law provides an important reminder of the importance of freedom of expression and assembly. In *Steel and Others v United Kingdom*, freedom of expression was said to constitute “*an essential foundation of democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment.*”² In *Ziliberberg v Moldova*, the Court observed at the outset that “the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society.”³ Peaceful protest is important at an individual level, for personal self-fulfilment, and at a societal level, for a healthy democratic society.

6. The right to peaceful protest is not, however, absolute. First, Articles 10 and 11 of the Convention do not encompass “a demonstration where the organisers and participants have violent intentions which result in public disorder.”⁴ The Articles also expressly permit restrictions which are lawful, which pursue a legitimate aim (such as national security, public safety, the prevention of disorder or crime and protecting the rights and freedoms of others) and which are proportionate to that aim.⁵ These three tests of legality,

¹ [2006] UKHL 55, para 34

² (1998) 28 EHRR 603, para 101

³ (App no 61821/00, 4 May 2004, unreported), para 2

⁴ *G v Germany* (1989) 60 DR 256

⁵ Articles 10(2) and 11(2)

legitimate aim and proportionality are strictly applied by the courts in considering restrictions which are imposed on protest.⁶

7. The Court has, indeed, stated that it is the duty of member states to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully:⁷

“Genuine, effective freedom of peaceful assembly cannot ... be reduced to a mere duty on the part of the state not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11. ... Article 11 sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be.”⁸

Restrictions on Peaceful Protest

8. Restrictions on peaceful protest take many forms:
 - First, some legislation like provisions of the Public Order Act 1986 (“**POA**”) and Serious Organised Crime and Police Act 2005 (“**SOCPA**”) are specifically designed to regulate protest;
 - Secondly, laws designed to tackle other issues have, in practice, been used to restrain protest; and
 - Thirdly, importantly, non-legislative obstacles have been used to prevent and deter peaceful protest.

We consider below each of these types of restraint on peaceful protest. In particular we assess how far we consider them to constitute legitimate and proportionate restraints on this important right.

⁶ *Laporte*, [2006] UKHL 55 (para 37), *The Sunday Times v United Kingdom* (No 2) (1991) 14 EHRR 229, para 51; *Hashman and Harrup v United Kingdom* (1999) 30 EHRR 241, para 32

⁷ *Plattform “Ärzte für das Leben” v Austria* (1988) 13 EHRR 204

⁸ *Ibid*, para 32

Targeted Statutory Limitations

SOCPA

9. Like the JCHR, Liberty raised serious concerns with several clauses contained in the Serious Organised Crime & Police Bill when it was first introduced in 2004. Of primary concern were the provisions, now contained in Sections 132-138 of SOCPA, which together place onerous restrictions on the rights of individual protest and the rights of assembly within the vicinity of Parliament. The fact that these specifically relate to the area around Parliament is of particular concern. The importance of the right to peaceful protest cannot be divorced from the right to do so in locations where protest will be best heard.

10. Under SOCPA those wishing to protest in the vicinity of Parliament are now subject to obligations and potential restrictions that go far beyond the rules governing peaceful assembly elsewhere in the country. Liberty believes that these exceptional powers and duties are individually onerous and collectively oppressive. For example under Section 134 there exists a very low threshold for the imposition of conditions on demonstrations, requiring, for example, a senior police officer to have only a reasonable belief that the demonstration may cause: “a hindrance to any person wishing to enter or leave the Palace of Westminster”⁹. Any reasonably sized demonstration is likely to “hinder” someone’s access to Westminster at least temporarily. Consequently this provision is framed so widely that any medium-sized demonstration in the vicinity of Parliament can have conditions imposed upon it.

⁹ The police may also impose conditions on assemblies in the designated area if they consider it necessary to prevent: (a) hindrance to any person wishing to enter or leave the Palace of Westminster, (b) hindrance to the proper operation of Parliament, (c) serious public disorder, (d) serious damage to property, (e) disruption to the life of the community, (f) a security risk in any part of the designated area, (g) risk to the safety of members of the public (including any taking part in the demonstration). It is worth noting that the fifth of these reasons further broadens the police’s already wide discretion to impose conditions under the Public Order Act (1986): under the POA the police can impose conditions to prevent “*serious* disruption to the life of the community” (emphasis added). This is further discussed at paragraph 17.

11. Further, the blanket requirement of notification at least 6 days in advance for demonstrations in the vicinity of Parliament unduly restricts spontaneous protest: a category of protest that should be at the very heart of any authentic democracy. If freedom of expression is to be meaningful in any sense it cannot be controlled or managed to such an extent as to effectively undermine its impact. If an important event or vote in Parliament is announced at short notice protesters will not be able to meet SOCPA's six day notification requirement. In some cases demonstrators may not even be able to give the 24 hour notice that is the absolute minimum permitted when six days is not reasonably practicable. The European Court of Human Rights has recently considered a case in which a domestic court upheld a police decision to close down a necessarily spontaneous demonstration on the basis that no prior notification had been given. In the case the Court found that:
- “in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly”¹⁰
12. Once the authorities have decided that conditions can be imposed they have the power to determine the timing of demonstrations, the size of banners to be used and the permissible noise levels, on top of conditions that can already be imposed under the POA. Taken together, the conditions that can be imposed are intrusive and comprehensive, with the potential to undermine the effective impact of a demonstration. Liberty further believes that these conditions, when coupled with the criminal sanction for non-compliance, have a dangerous chilling effect on demonstrations. If the organisers of a demonstration are informed that only 500 people may attend and they believe

¹⁰ *Bukta and Others v Hungary (2007)*

that over 1000 will arrive, they are likely to cancel rather than risk committing a criminal offence. While it is a defence that the size was beyond the organisers control this may well not help them if they had a suspicion, albeit slight, that there could be larger attendance.

13. The Home Office has referred to a number of factors which in their view could justify the different arrangements provided for in SOCPA, including: to allow the business of Parliament to proceed unhindered; to manage a security risk; and to ensure equal access to the right to protest.¹¹ The Home Office has also indicated that the status of Parliament Square as a World Heritage Site should be taken into account when considering the need a need to “manage” protest. Liberty questions whether there were, in fact, different objectives behind the legislation which may not have been legitimate from a human rights perspective.¹²

14. Putting aside the question of whether these provisions of SOCPA pursued a legitimate aim for human rights purposes, it is difficult to see how the restrictions and conditions permitted under the Act can pass any test of proportionality. This test can be summarised as whether the State has adopted the least intrusive way of achieving the legitimate aim having regard to all the circumstances. In assessing the balance of proportionality the powers already in place under the POA as well as the fundamental and critical nature of the right of peaceful assembly must be borne in mind. Liberty believes that Section 132(7)(e) is inherently disproportionate as it determines that one person can constitute a demonstration within the meaning of the Act.

¹¹ The Home Office Consultation Document on the future of Sections 132-138 (*Managing Protest Around Parliament*) emphasises that Sections 132-138 of SOCPA sought to build on Sessional Orders which require the Commissioner of the Metropolitan Police to make ensure that the passageways to and from Parliament are kept free from obstruction: “[SOCPA] did not emerge out of a vacuum...the absolute essence of democracy is that the people’s elected representatives should be able to meet freely...in turn this imperative requires that these elected representatives should get to the place they meet – freely, and then meet in a peaceable atmosphere”.

¹² It is widely believed that the principal aim behind the Act was to remove or downsize the 24 hour peaceful vigil of Brian Haw, whose highly publicised protest against the UK’s invasion of Iraq became an embarrassing thorn in the Government’s side.

As a result SOCPA catches demonstrations that are entirely unconnected with the stated purpose of the legislation. The single-person demonstration of Brian Haw perfectly illustrates SOCPA's disproportional definition of "assembly".

15. SOCPA is also disproportionate in its criminalisation of those that fail to notify the authorities or abide by conditions imposed by the police (Section 132(1) and 134(7)). The widely publicised convictions of Maya Evans and Milan Rai effectively demonstrate the disproportionate nature of the criminal sanction imposed for failure to notify. Liberty does not believe that an automatic criminal sanction can be justified.

16. In light of SOCPA's unjustified and disproportionate impact on the right of peaceful protest, Liberty welcomed comments made by Gordon Brown soon after he became Prime Minister in June 2007 indicating that SOCPA restrictions will be reviewed.¹³ Liberty further welcomes the Government's proposals to repeal sections 132-138 SOCPA, as contained in the White Paper on Constitutional Renewal published in March 2008¹⁴. However, while accepting the overwhelming call for the repeal of sections 132-138, the White Paper leaves open the possibility of additional provisions "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". The Paper seeks the views of Parliament on whether such additional provisions are required. Liberty would urge that the fundamental importance of the right to protest in the vicinity of Parliament is weighed heavily against any consideration of additional provisions that may affect this right.

¹³ 3rd July 2007

¹⁴ The White Paper can be accessed at: <http://www.justice.gov.uk/docs/constitutional-renewal-white-paper.pdf>

Public Order Act 1986

17. Before the enactment of SOCPA, powers to prevent public disorder and regulate public assemblies which apply elsewhere in the country applied equally in the vicinity of Parliament. These are primarily contained in the Public Order Act 1986 (the “**POA**”).

18. Under the POA a senior police officer has the power to impose conditions as to: the place at which an assembly may be held; its maximum duration; or the maximum number of persons who may constitute it.¹⁵ These conditions may be imposed where a senior police officer reasonably believes that the assembly may result in: serious public disorder; serious damage to property; serious disruption to the life of the community; or that the purpose of the assembly is to coerce by intimidation.¹⁶ The third of these: “serious disruption to the life of the community” is vague and potentially confers on the police a large discretion to impose conditions. We are concerned that, in practice, this worryingly uncertain phrase could be interpreted very broadly so as to allow, for example, conditions to be imposed whenever a planned assembly has the potential to cause inconvenience to the public.

19. 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”.¹⁷ Liberty opposed the amendment to this definition at the time and we continue to do so. While we acknowledge that the police should have appropriate powers to deal with violent protests, we have always been concerned about the way in which these powers give rise to criminal sanction for behaviour that would not in itself be unlawful, but for the imposition of conditions. The fact

¹⁵ Section 14(1) Public Order Act (1986)

¹⁶ Ibid

¹⁷ Section 16, Public Order Act (1986). Previously an assembly was defined as consisting of “20 or more persons”.

that, previously, over 20 people were required to trigger the powers was at least a concession to the fact that it would only be appropriate for them to be used when there were a substantial number of people involved. It is now the case that if a senior police officer decides that two people could cause disorder, he could order that a third person could not join them and if an extra person did appear the 'organiser' will commit an offence punishable by up to three months imprisonment. We are not aware of the reasoning for this change in the law and we maintain that the extended definition cannot be justified.

20. Under the POA organisers of public processions must notify the authorities at least six days before the procession is intended, with failure do so constituting a criminal offence¹⁸. There is no such notification requirement for organisers of a public assembly. 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 and can see no reason why the distinction which exists in the rest of the country should not also exist in the vicinity of Parliament.

21. Liberty has recently had cause for concern in relation to the application of section 5 of the POA. Under section 5 a person is guilty of an offence if he: (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a

¹⁸Section 11, Public Order Act (1986)

person likely to be caused harassment, alarm or distress thereby. On 10th May 2008, a young person was issued a summons by the City of London Police for refusing to remove his sign which read: “Scientology is not a religion, it is a dangerous cult.” The boy was taking part in a group protest outside the Church of Scientology’s central London headquarters and the police said that his use of the word “cult” violated section 5. Although City of London police later informed the boy that the prosecution would not be pursued, Liberty has concerns over police policy in this area and the chilling effect of such cases on legitimate free speech.

Other Statutory Limitations

22. A number of other statutory powers have in practice been used to restrict protest. In many cases the use of these broader statutory powers was not foreseen when legislation was passed and the implications of the powers on the right to protest was not, therefore, considered by Parliament. A detailed and exhaustive examination of such powers is beyond the scope of this short submission. Instead, there follows a brief description of some of the most notable and high-profile examples:

Section 44 Terrorism Act 2000

23. Under Section 44 of the Terrorism Act 2000, if a senior police officer believes that it is “expedient for the prevention of acts of terrorism”, he can grant powers to police officers to search people for “articles of a kind which could be used in connection with terrorism”. Once these powers have been granted there is no requirement that the officers exercising it should have reasonable (or even unreasonable) grounds for believing that the people that they search have done or will do anything wrong. Furthermore, although the original authorisation has to relate to preventing terrorism, it appears that stops and searches under Section 44 have been used against protesters who are in no way suspected of involvement in terrorism or of carrying articles which could

be of use in connection with terrorism. Schedule 7 of the Terrorism Act provides similar powers at ports and airports.

24. The broad, discretionary stop and search power under Section 44 has, in practice been used to restrict peaceful protest:

- In September 2003, protestors at an arms fair in east London were stopped by the police under Section 44 of the Terrorism Act. The police initially denied that they had used Terrorism Act powers at all. In the ensuing litigation, it was revealed that Section 44 authorisations had been in force for the whole of Greater London continuously since February 2001. Section 44 allowed the police to stop and search them without the need for any suspicion that they had committed an offence. Section 44 was also routinely employed during the policing of demonstrations at Fairford and Welford, Gloucestershire, in 2003.¹⁹
- The 82-year-old Walter Wolfgang was famously ejected from the 2005 Labour Party conference after heckling Jack Straw. When he attempted to return to the hall, he was prevented from doing so under Section 44. The officers concerned controversially interpreted their stop-and-search powers as including the authority simply to stop individuals without going on to search them.

Anti-Social Behaviour Legislation

25. Anti-Social Behaviour Orders (ASBOS) can be imposed on individuals found to have carried out anti-social behaviour. 'Anti social behaviour' is defined as "behaviour likely to cause harassment, alarm or distress". ASBOS can contain any conditions deemed necessary to prevent a repeat of the behaviour. On occasion peaceful protest has been considered to fall within this very broad statutory definition and ASBOs have been used against protestors.

¹⁹ See "Casualty of War: 8 Weeks of Counter-Terrorism in Rural England", July 2003 (<http://www.liberty-human-rights.org.uk/issues/pdfs/casualty-of-war-final.pdf>)

- In January 2005, Heather Nicholson, a leading animal rights activist, was given a 5 year anti-social behaviour order to keep her away from animal research laboratories. She was barred from going within 500 metres of Huntingdon Life Sciences' sites in Cambridgeshire and Suffolk and prevented from approaching other firms linked to the research. In particular the ASBO prevents Ms Nicholson from contacting the owners, shareholders or employees of Huntingdon Life Sciences or their families.
 - Lindis Percy, a 63 year old midwife from Hull, gained notoriety in November 2004 when she climbed the gates of Buckingham Palace shortly before George Bush's visit to London. A dedicated peace campaigner, Lindis organises a weekly protest at Menwith Hill airbase in Yorkshire. Menwith Hill plays a key role in the American missile defence system. Lindis is among the many concerned citizens who have pursued non-violent protest at the base for years. In 2005 the Ministry of Defence police and North Yorkshire police made a joint application for an ASBO, in which they accused Lindis of frightening, harassing and alarming the community. While the ASBO was not granted in this case, the judge did warn that there could be circumstances where ASBOs may be used against those engaging in political or other protests if they indulged in "intimidating behaviour".
26. Other powers designed to deal with anti-social behaviour have been used to restrict peaceful protest. Section 50 of the Police Reform Act 2002 gives the police the power to demand the name and address of anyone they have reason to believe has acted antisocially. It is an offence to refuse to give your name and address or to give false details. Section 30 of the Anti-Social Behaviour Act 2003 gives police and community support officers the power, within designated areas, to disperse any group of two or more people whose behaviour they think is likely to cause harassment, alarm or distress to members of the public. Failing to disperse, or returning to the area, constitutes a criminal offence.

Protection from Harassment Act 1997

27. The Protection from Harassment Act 1997 (PHA) was introduced initially to deal with 'stalkers'. However, it has been used extensively against protesters. Under Section 1 PHA it is an offence for a person to pursue a "course of conduct" which harasses, and which the person knows or ought to know amounts to harassment. Harassment is not defined, but includes conduct which causes 'alarm and distress'. The Serious Organised Crime and Prevention Act 2005 (SOCPA) introduced Section 1A PHA which extends the definition of harassment to include conduct on one occasion only, provided that it involves the harassment of two or more persons and is done with the intention of persuading them to do something that they are entitled not to do or not to do something which they are entitled to do. A crowd of people protesting against a company or public official is likely to cause 'alarm and distress'. A single act of protest that targets one company may involve the harassment of several employees, and so breaches this section.
28. In addition to the criminal offence, the PHA allows those who apprehend that they may be victims of harassment to apply to the court for an injunction prohibiting that harassment. An injunction is a civil remedy, but the breach of the injunction is a criminal offence. Companies have been known to apply for very broad injunctions to prevent any sort of protest against them. These powers were brought to the public attention last year when injunctions were obtained by RWE NPower to prevent protests against the proposal to allow the company dump waste in a local beauty spot, Radley Lakes, Oxfordshire.²⁰ These injunctions were not granted against identified individuals or groups but "contra mundum", i.e. against anyone with notice of the injunction. Later in 2007 BAA also sought a broad injunction to prevent protest about Heathrow.

²⁰ Cf "A glut of barristers at Westminster has led to a crackdown on dissent: The harassment law now being used against anti-dumping protesters in Oxfordshire is turning into the riot act of our day", *Guardian*, March 6th 2007.

Other Legislation

29. Other pieces of legislation, not intended or aimed at governing protest, have been used to impose additional obligations on those seeking to protest:

- The Licensing Act 2003 has been used to restrain protests which involve the use of music. There is an exemption where the use of music is incidental to a non-licensable activity but there have been disputes about when exactly this exemption applies.
- The Environmental Protection Act 1990 makes it a criminal offence to distribute free printed matter in designated areas without prior consent.²¹ There is an exemption for leaflets distributed for charitable or political purposes but this exemption has been interpreted very narrowly and the legislation has been used to prevent protesters handing out leaflets.
- The following example shows how the Road Traffic Regulation Act 1984 has also been used to restrict peaceful protest:

²¹ Section 94B and Schedule 3A of the Environmental Protection Act 1990 (as inserted by Section 23 of the Clean Neighbourhoods and Environment Act 2005)

Students at St George's Roman Catholic High School, Worsley

In February 2008, Liberty took up the case of 3 schoolchildren in Worsley who had organised a march to protest against the closure of their school. Negotiations had taken place between the schoolchildren and the police about the route and time of the march which were agreed in accordance with the Public Order Act. However, subsequent discussions with Salford City Council resulted in a charge of £1866.45 being imposed on the students by the Council for the march. The amount of the charge was said to cover (a) the Council's Urban Traffic Control Unit's charges for switching traffic lights to red (b) the Council's Legal Services Department's legal documentation costs and (c) the "vehicles, manpower, signage etc" to be provided by the Highway Services Team. The Council is arguing that the charge can be levied because a road would have to be closed in order for the march to take place. They are claiming that such a road closure is authorised by s 16A of the Road Traffic Regulation Act 1984 (which applies to "sporting events, social events or entertainment") and that by virtue of section 3 of the Local Authorities (Transport Charges) Regulations 1998, a charge can be levied on the "promoter" of the relevant event.

Non-Statutory Restrictions

30. In addition to the large volume of legislative interference with protest, there also exists a raft of non-statutory restrictions and hurdles for those wishing to organise peaceful protests. While, in theory, many of these hurdles could be challenged for incompatibility with Articles 10 and 11, Liberty is concerned that they could dissuade protesters from organising a demonstration, and in so doing, effectively stifle free speech rights. We consider below only a few of the many non-statutory restraints that can infringe on peaceful protest:

- *Local Authority Guidelines* – In May 2008 Liberty sought to organise a peaceful protest in the vicinity of Parliament. We discovered that along with the requirement for SOCPA authorisation, further permission (from various authorities) was required in order to protest peacefully in other areas around Parliament. In particular, permission from the GLA was required in order to

organise a peaceful protest in Parliament Square. Among other things, GLA guidelines prescribe that:

- Applications for a public gathering or static protest must be permitted 5 working days in advance (with longer notice periods required for “large or complex proposals”).
- Not more than one public meeting in Parliament Square is allowed on the same day.
- Public gatherings and static protests in Parliament Square cannot last longer than 3 hours and must be in daylight hours.
- Public Liability Insurance (minimum £5 million cover) is required for public gatherings and static protests in Parliament Square. The public liability insurance certificate must be provided to the GLA five days before the planned protest. This is prohibitively expensive.
- Banners may not be attached to any part of Parliament Square.

Permission is also required in order to protest on College Green or Old Palace Yard – both strategically important locations for protest around Parliament. To protest on these locations, permission must be sought from the Houses of Parliament and certain restrictions can be imposed²².

- *Bye-laws* – Determined at the local level, bye-laws can place unnecessary and unjustified restrictions on protest. Often they list certain activities that cannot be engaged in, such as erecting “any structure”²³ or taking “photographs or any other recordings of visual images”²⁴. In practice this can mean, for example, that protesters are unable to set up a stall to display their campaigning materials.

31. These guidelines and bye-laws are imposed by public authorities who claim that certain rules are practical and necessary to regulate the use of land that

²² For example, only 12 persons are allowed to protest on College Green at any one time.

²³ Trafalgar Square and Parliament Square Byelaws

²⁴ Ibid

is under their control. Liberty is concerned that in dealing with their logistical challenges, public authorities are failing to properly consider their duties under the Human Rights Act (1998). Under the HRA, public bodies are required to protect the rights of freedom of speech and freedom of assembly and to only permit restrictions that are proportionate and that fall within specified “legitimate aims” such as national security and the prevention of disorder and crime. Instead, as the examples above illustrate, restrictions and conditions are imposed by public authorities for reasons of logistical convenience.

Jago Russell and Isabella Sankey, Liberty