

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's response to the Home Office
Consultation:
Managing Protest Around Parliament**

January 2007

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. Liberty is pleased to have the opportunity to respond to this Home Office Consultation “Managing Protest around Parliament” which primarily concerns the current framework governing the right to protest in the vicinity of Parliament (as regulated by Sections 132-138 of the Serious Organised Crime & Police Act 2005).
2. In this short response we focus on issues surrounding the review of the Serious Organised Crime & Police Act (SOCPA) as we believe that this is the most urgent and fundamental matter raised by the Home Office Consultation. While we make necessary reference to the Public Order Act 1986 (POA) we will not specifically be addressing any questions broached regarding the review of the POA.
3. 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 the Act, which together place onerous restrictions on the rights of individual protest and the rights of assembly within the vicinity of Parliament: the linchpin of British democracy.
4. During the passage of SOCPA and since, Liberty has actively campaigned for the repeal of sections 132-138, which disproportionately restrict the most fundamental and critical of all civil liberties
5. Liberty therefore welcomed comments made by Gordon Brown soon after he became Prime Minister in June 2007:

“While balancing the need for public order with the right to public dissent, I think it right – in consultation with the Metropolitan Police, Parliament, the Mayor of London, Westminster City Council and liberties groups – to change the laws that now restrict the right to demonstrate in Parliament Square¹”.

¹ The Prime Minister, the Rt. Hon Gordon Brown MP, 3 July 2007

6. Drawing on these comments and the initiation of the present Consultation, Liberty is hopeful that the Government is truly committed to repealing one of the most controversial and unpopular enactments of the past decade.

Importance of the Right to Protest

7. The right of peaceful assembly and protest is the lifeblood of any democracy. Peaceful protest is the direct means by which the corresponding right to freedom of expression can be enforced. Peaceful protest also reinforces the accountability of those who govern and it is the mechanism by which people are able to actively assert their membership of a democracy.
8. The UK has a long and proud history of peaceful protest. 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.
9. Central to this culture of protest has been the ability of ordinary people to organise, gather, collectively express their grievances, and agitate for reform. Also central to this culture has been the ability of protesters to do this outside the Houses of Parliament. Indeed the natural correlation between protest and place has been expressly acknowledged by the Home Secretary, the Rt Hon Jacqui Smith MP, in the foreword to the present Home Office Consultation Document:

“we are clear that there should be no unnecessary restrictions on people’s right to protest. This is particularly important in the vicinity of Parliament given that it is the forum of our democracy – the seat of our elected representatives”².

Liberty believes that 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. Over the past thirty years, the European Court of Human Rights has frequently asserted the fundamental right to peaceful assembly as protected under Article 11 of

² Home Office: Managing Protest Around Parliament, page 4

the Convention³. In so doing the Court has repeatedly stressed the link between this right, freedom of expression and the preservation of democracy:

“The Court’s supervisory functions oblige it to pay the utmost attention to the principles characterising a ‘democratic society’. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”. This means, amongst other things, that every “formality”, “condition”, “restriction” or “penalty” imposed in this sphere must be proportionate to the legitimate aim pursued”⁴.

11. The Court has also continually underscored the central importance of democracy to the European order:

“As has been stated many times in the Court’s judgments, not only is political democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only one compatible with it”⁵.

The inviolability of democracy developed under the Court’s jurisprudence has led to a relatively narrow margin of appreciation being accorded to States seeking to restrict Article 11 rights⁶.

³ Article 11(1) of the European Court of Human Rights states: “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests”.

⁴ Handyside v UK (1976) 1EHRR 737

⁵ The Case of the Moscow Branch of the Salvation Army v Russia (2006)

⁶ Under Article 11(2): “No restrictions shall be placed on the exercise of [Article 11(1) rights] other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”.

Problems with SOCPA

12. The Government will be familiar with the national anger and disquiet caused by the enactment of SOCPA. Sections 132-138 have been widely criticised and activists from across the protest-spectrum have publicly highlighted the undemocratic and heavy-handed impact of the legislation.

13. Liberty's opposition to the restrictions imposed by SOCPA is manifold. 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 country⁷. To summarise, the current framework governing static demonstrations around Parliament differs from the general position in the rest of the country in the following ways:

- Prior notification and authorisation are required at least 6 days in advance of any static demonstration.
- A demonstration in the vicinity of Parliament can consist of a single person.
- The reasons for which police may impose conditions on assemblies in the vicinity of Parliament are wider than the reasons for which conditions can be imposed elsewhere. The additional reasons include: to prevent a security risk; to prevent hindrance to any person wishing to enter or leave the Palace of Westminster; and to prevent hindrance to the proper operation of Parliament.
- The range of conditions that can be imposed extends beyond size, duration and place and includes: the times at which the demonstration can take place; the number and size of the banners and placards used; maximum permissible noise levels.
- The use of loudspeakers by protesters is banned.

14. 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 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*". Any

⁷ See Section 14 of the Public Order Act (1986)

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.

15. 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 given⁸. 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”.

16. Additionally, the number and nature of conditions that can be imposed on static demonstrations has the potential to neuter peaceful protest in the vicinity of Parliament. 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, undermining the impact of protest and thereby its exercise.

⁸ *Bukta and Others v Hungary (2007)*

17. 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 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

18. 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. While Liberty may not support the level of interference permitted under the POA, the law exists, and in our view provides the police with more than adequate powers to manage public assemblies. For example 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 it⁹. 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 intimidation¹⁰.

19. In Liberty's view these powers and conditions are generous and more than sufficient for police management of public assemblies. 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"¹¹. 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.

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

⁹ Section 14(1) Public Order Act (1986)

¹⁰ Ibid

¹¹ Section 16, Public Order Act (1986). Previously an assembly was defined as consisting of "20 or more persons".

offence¹². 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.

Article 11 ECHR

21. The right to freedom of peaceful assembly is protected under Article 11 of the Human Rights Act 1998 (HRA). However, this right is not absolute and under Article 11(2) the right to freedom of assembly can be restricted when there is (1) a legitimate reason for the restriction and (2) the measure imposed is necessary in a democratic society. In relation to the first limb of this test, the list of legitimate purposes for the restriction of the right includes: the interests of national security or public safety; the prevention of disorder or crime; the protection of health and morals or; the protection of rights and freedoms of others.
22. 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 unhindered¹³; to manage a security risk; and to ensure equal access to the right to protest. The Home Office has also indicated that the status of

¹² Section 11, Public Order Act (1986)

¹³ The Home Office Consultation Document 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”.

Parliament Square as a World Heritage Site should be taken into account when considering the need a need to “manage” protest¹⁴.

23. While the Government may be able to shoehorn these stated aims into the legitimate categories permitted under Article 11(2), Liberty questions whether there were, in fact, different objectives behind the legislation which may not have been legitimate from a human rights perspective:

- 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, 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 section of his peaceful protest [see further paragraph 26].
- Liberty also believes that the scope of SOCPA (i.e. the criminalisation of lone protesters) undermines the official justifications given by Government. It is illogical to suppose that a single person demonstration could either: hinder the business of Parliament; pose a security risk; or compromise the equal right of protest. Liberty believes that this necessarily calls into question the authenticity of the Government’s stated aims.

24. 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.

25. According to the second limb of Article 11(2), any restriction which pursues a legitimate aim also has to be “necessary in a democratic society”. In determining whether measures can be deemed necessary, the proportionality of the measure has

¹⁴ While the Home Office concedes that the existing bye-laws for Parliament Square provide “appropriate protections” for the World Heritage status at present, the fact that this features in the Consultation Document raises alarm bells that further tenuous and weak justifications are being sought for limiting the right to protest in Parliament Square.

to be considered. 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.

26. 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. As a result SOCPA catches demonstrations that are entirely unconnected with the stated purpose of the legislation. As discussed at paragraph 23, the demonstration of Brian Haw perfectly illustrates SOCPA's disproportional definition of "assembly":

BRIAN HAW

Brian Haw began a one-man continuous demonstration against the Government's foreign policy in 2001. Although the courts initially determined that Mr Haw was exempt under SOCPA (his demonstration having commenced before the enactment) this decision was overturned.

On 23rd May 2006, with no prior warning, the police acted to force Brian Haw to comply with restrictive conditions created under SOCPA. The authorities removed the majority of his display in an operation involving 78 officers and at the cost of £28,000. Among other things the police removed art works of significant value, personal items belonging to Brian and supporters as well as legal papers. In so doing the police successfully undermined his right to peaceful protest.

27. 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)). While the requirement to notify of a demonstration per se may not be considered disproportionate under Article 11¹⁵ the question of proportionality in this context is inextricably linked to the definition given to "a demonstration". It is almost certain that an automatic criminal sanction for failure to notify would be considered heavy-handed and grossly disproportionate under the current definition given to a "demonstration". In the case of *Christian Democratic People's Party v Moldova* (2006) the European Court of Human Rights stressed:

¹⁵ *Rassamblément Jarrasien Unite v Switzerland* 17 DR 93, 119 (1979) EcomHR

“in a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion”. Furthermore: *“The dominant position which the Government occupies makes it necessary for it to **display restraint in resorting to criminal proceedings**, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media”* (emphasis added)¹⁶.

The widely publicised convictions of Maya Evans and Milan Rai effectively demonstrate the disproportionate nature of the criminal sanction imposed for failure to notify:

MAYA EVANS AND MILAN RAI

Maya Evans & Milan Rai were arrested in front of the Cenotaph on Whitehall on 25th October 2005 for reading the names of servicemen and Iraqi civilians killed since the invasion of Iraq. They were charged, convicted and fined under section 132 of SOCPA: Maya for “participating in an unauthorised demonstration” and Milan for “organising an unauthorised demonstration”.

The pair were arrested, convicted and fined again in May 2007 for organising and participating in another peaceful yet “unauthorised” demonstration within 1km of Parliament. After refusing to pay both fines (totalling £600) Milan was sentenced to 14 days imprisonment.

Having been refused leave to appeal their convictions to the House of Lords, Maya Evans and Milan Rai have now lodged an appeal at the European Court of Human Rights to determine if their convictions are compatible with the rights of freedom of expression and assembly as protected under Articles 10 & 11 of the ECHR. Liberty is representing Milan Rai in his appeal.

Liberty does not believe that an automatic criminal sanction can be justified.

28. Section 137 places a blanket ban on the use of a loudspeaker by a protester in the vicinity of Parliament¹⁷. This section alone imposes a severe restriction on the ability of peaceful protesters to co-ordinate, express themselves collectively and protest effectively. The significance of this prohibition; its unqualified nature¹⁸; and the lack of practical justification makes Section 137 arguably disproportionate under Article 11.

¹⁶ *Christian Democratic People’s Party v Moldova (2006)*.

¹⁷ While exceptions to the ban do exist these are reserved for Emergency Services, the Local Authority and for other administrative purposes. There are no permitted circumstances when a loud speaker can be used during the course of a demonstration.

¹⁸ *Ibid*

29. The wide and vague category of reasons for which conditions can be imposed on protests coupled with the broad range of conditions available constitutes another disproportionate means of achieving SOCPA's stated aims. In outlining the obligations of the State under Article 11 the European Court of Human Rights has ruled that: "*States must not only safeguard the right to assemble peacefully but also refrain from applying unreasonable indirect restrictions upon that right*"¹⁹. In practice this has been interpreted to mean that "*where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance*"²⁰. Under the POA a senior police officer may impose conditions on: the *place* at which an assembly may be; the maximum duration of an assembly; the maximum *number of persons* who may constitute it²¹. SOCPA also contains the power to make these conditions and further allows for conditions to be made concerning the times at which a demonstration takes place; the number and size of the banners and placards used; as well as maximum permissible noise levels. In Liberty's view the POA already allows for significant restrictions and this makes additional restrictions allowed under SOCPA both unnecessary and excessive.

Repeal or Replacement of SOCPA

30. Liberty is concerned by the unconvincing justifications for maintaining special restrictions around Parliament that continue to feature in the Home Office Consultation Document. In particular the Consultation Document discusses the need for a framework that will allow groups equal access to the right to protest; safeguard MPs access to Parliament; and manage a security risk. Liberty would have grave concerns over any new framework which unnecessarily restricts the right of assembly and which cannot be demonstrated to be necessary to protect the rights of others or manage security.

¹⁹ *Oya Ataman v Turkey (2006)*

²⁰ *Ibid*

²¹ Section 14, Public Order Act (1986)

31. If the Government is contemplating alternative powers for “managing protest” in the vicinity of Parliament, these measures must fully comply with both criteria contained under Article 11(2). This means that the Government must provide a legitimate aim; and that any restriction imposed must be proportionate having regard to the powers that already exist under the POA and the importance of the right to protest in Parliament Square.

Equal Right to Protest

32. In Liberty’s view the public is currently, rightly, far more concerned with restrictions on their ability to protest in Parliament Square than any issue over the equal right to protest. The Government has not yet substantiated this hypothetical concern and Liberty is not aware of evidence of this problem arising prior to the enactment of SOCPA. We therefore believe that this may be a spurious justification raised with a view to limiting the extent to which SOCPA is repealed.

Security Risk

33. The Government has also indicated that the security risk around Parliament may justify retaining additional restrictions on the rights of demonstrators in that area. While Liberty accepts that Parliament may be a target for those seeking to attack the UK, there are continuous, stringent security safeguards already in place to protect the Houses of Parliament from such a risk. Liberty believes that the Government has failed to establish why a group of peaceful demonstrators poses any more of a security risk than the large numbers of student or tourist groups that pass through the vicinity of Parliament on a daily basis. We also find it difficult to see how the SOCPA requirements would deter anyone intending to attack Parliament. Further, the powers contained in the POA are intended and sufficient to prevent “serious public disorder” or “serious damage to property” during the course of a public assembly should the threat of either arise.

Business of Parliament to proceed unhindered:

34. It is crucial to remember that parliamentarians have underground access to Parliament and do not actually need to pass through the over ground “vicinity” of Parliament to gain access. It is also worth remembering that any 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 opportunity to make necessary arrangements with regard to access.

35. The Government has stressed that giving police additional powers to enforce Sessional Orders²² was a primary impetus behind SOCPA. In considering whether the police actually need additional powers to enforce Sessional Orders, it is important to remember that the POA already contains the power for a senior police officer to impose conditions when he or she considers that an assembly may cause “*serious disruption of the life of the community*”²³. This power would be activated if any serious or prolonged disruption to parliamentarians was reasonably envisaged. Given the practicalities outlined at paragraph 34, as well as the POA power to impose conditions, Liberty does not consider that any additional powers are necessary for the enforcement of Sessional Orders.

Conclusion

36. In Liberty’s view the POA already contains more than sufficient powers to manage all of the Government’s stated aims in retaining exceptional restrictions. With this in mind, Liberty believes that the disproportionate framework currently governing peaceful protest in the vicinity of Parliament should be wholly dismantled with immediate effect. The Government has consistently failed to make any coherent case as to why supplementary legislation is required to regulate protest around Parliament as opposed to the rest of the country.

Isabella Sankey

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²² See further footnote 12

²³ Section 14, Public Order Act (1986)