

# Managing Protest Around Parliament

## Response

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**Co-signed by**

## **Introduction**

Given the critical importance of the right to demonstrate peacefully in a democracy, many were dismayed by the provisions introduced by the Serious Organised Crime and Police Act 2005 to manage protest around Parliament. There remains a widely held view that it is inappropriate to require protesters to obtain permission from an organ of the State before being allowed to assemble peaceably to communicate their views to it.

## **Public Protests - The Legislative Framework**

As noted by the consultation document, it seems sensible to review the measures that exist to manage protest nationwide before considering what special provisions should exist, if any, to manage protest around Parliament. The experience gained by the police since the Public Order Act 1986 was passed, particularly as regards the management of groups of people travelling to and from static assemblies, seems to indicate that it would be reasonable to harmonise the powers that exist to manage protest across the country.

The powers that exist to manage marches and assemblies should be harmonised, but this harmonisation must be in a liberal direction: in a manner that protects the right to demonstrate freely. The powers given to the police to restrict protest should be the absolute minimum required.

In particular, the differing requirements to give advance notice are confusing and in many cases unnecessary. There should be no requirement to give the police advance notice of a demonstration unless it is likely to require their attention. A public assembly, for which no advance notice is currently required, could be extremely disruptive and it may be appropriate for the police to impose conditions upon it. Under current legislation, they may not have the opportunity to do so until the event is in progress, by which time, it may be too late to impose conditions which may be sensible. Conversely, a march, for which advance notice is usually required, could consist of a mere handful of people with a banner walking down Whitehall: something that is highly unlikely to require a police presence or the imposition of conditions. In such situations it is unnecessary for the police to be informed in advance.

A universal requirement to give advance notice is a blunt instrument. When considering if notice should be required, its necessity should be the test. Although the size of a demonstration would not be the only factor to be considered in determining if the police needed to be informed in advance, it is probably the major one, and it is reasonable to base a requirement for prior notice on the likely size of the demonstration, as mentioned in paragraph 4.4 of the consultation document.

Among the measures which should be repealed is the power to ban a march or a public assembly. Given that senior police officers can impose upon a march whatever conditions he feels are necessary, the power to ban should never be required. The conditions which can be imposed upon assemblies are also more than sufficient. These conditions, if imposed harshly, could be tantamount to a ban anyway. The explicit power to ban is excessive.

The conditions that may be imposed on protests under the Public Order Act are appropriate. It is proper that the police should have sufficient powers to manage the logistical problems that demonstrations can create, as well as to ensure that demonstrations remain peaceful and orderly.

When imposing conditions, the onus must be on the police to show that they are necessary. Many regard the police as biased against protesters, rightly or wrongly. To avoid this perception when conditions are imposed, not only must the conditions be given in writing, but also the reasons for them.

Additionally, the basis for conditions must be firmer than mere "reasonable belief". This standard is too difficult to challenge. The police should be required to demonstrate that they have specific and reliable intelligence or evidence that makes conditions necessary: it is not appropriate for them simply to err on the side of caution. A precautionary approach is not proportionate to the chilling effect it can have on protest.

Extra powers to restrict the content and size of banners are not necessary. The Public Order Act already makes it an offence to cause alarm, harassment or distress in a public place. It is arguable that, if anything, demonstrators should be exempt from these provisions. Powers to control the use or content of banners would give rise to concern that conditions imposed upon demonstrations might be politically motivated, as was alleged to be the case during the 1999 state visit of Chinese President Jiang Zemin, where the police prevented demonstrators from waving banners and used police vans to obscure them.

Furthermore, recent successful prosecutions of protesters carrying placards inciting criminal offences in relation to Islamic extremism demonstrate that existing legislation is sufficient, and that additional parallel restrictions are unnecessary.

## **Protests Around Parliament**

It is certainly the case that the management of protests around Parliament raises unique issues for the police to address; however, it is also the case that the police have wide discretion to impose conditions on demonstrations. These powers should be sufficient to address the problems that protest around Parliament raises.

Existing Public Order Act powers allow for numbers of demonstrators to be limited. Limiting the number of people involved in a demonstration near Parliament should ensure that free access to the Palace of Westminster is always possible. Powers to place limitations on the time and place of a demonstration should be as effective for the prevention of disorder, damage and disruption around Parliament as they are elsewhere. The exercise of these powers should also be sufficient to address issues of security and safety.

The only remaining concern, then, is the proper operation of Parliament: in other words, to prevent noise from demonstrations causing excessive disruption to the work of Parliament. The Serious Organised Crime and Police Act introduced the offence of operating a loudspeaker in the designated area. This is, perhaps, the one new measure that should be retained, but with qualifications. If it is to be retained, the size of the designated area should be reduced. It is not necessary to ban the use of a loudspeaker on Northumberland Avenue in

defence of Parliament: it is too far away. It is also not necessary for loudspeakers to be banned completely, as only their continuous or excessive use presents the risk of disruption.

To ensure the proper operation of Parliament is a sensible reason to impose conditions. Security concerns are also reasonable, but it is essential that the police are accountable for any decision made to impose conditions on a protest, and concerns over the confidentiality of police intelligence could make it very difficult for any judicial review or public inquiry to be effective. As previously mentioned, any restrictions on protest due to concerns over security should be a result of specific intelligence or an objective assessment of past experience rather than merely excessive caution. Peaceful, democratic protest should not be restricted by precautionary measures against a general threat.

To restrict protest on the grounds that Parliament Square is a World Heritage Site is fatuous. The validity and symbolism of Parliament is reinforced by vibrant protest in its vicinity.

The powers that exist to manage protest around Parliament at the moment are excessive, and almost certainly contribute to growing cynicism in the political process. Sections 132-138 of the Serious Organised Crime and Police Act contain provisions that are capricious, such as the power to restrict the number and size of placards and the explicit inclusion of a person demonstrating by himself, which were clearly included in the Act to silence Brian Haw, a particularly vocal and visible anti-war campaigner. The Act has also been used to prosecute Maya Evans and Milan Rai, who were arrested, prosecuted and convicted after conducting a small, peaceful, non-disruptive demonstration in the designated area. This demonstration created none of the problems that the Act addresses, and yet still criminalised those that took part in it. This is clear evidence that it is drafted too widely.

Of the additional powers introduced by sections 132-138 of the Serious Organised Crime and Police Act, most exist in parallel with powers introduced by the Public Order Act. With the possible exception of restrictions on the operation of loudspeakers, the powers which do not are not necessary. The issues specified in s.134(3)(a-g) of SOCPA can be mitigated by imposing conditions, as permitted by the Public Order Act, to limit the duration, size and location of demonstrations. The usefulness of these powers would be much extended by a new requirement that the police are notified in advance of any demonstration likely to be over a certain size. This expansion of the Public Order Act should render the provisions introduced by SOCPA in 2005 unnecessary.

Whatever the intent of Parliament in passing the provisions in SOCPA, there is a wide belief among the public that conducting legitimate protest near the UK's seat of democracy runs the significant risk of arrest and prosecution. Many peaceful and legitimate protesters now feel the need to weigh up the risks and consequences of arrest when demonstrating because of the wide powers given to the police, which many feel are exercised unfairly and without transparency.

Reform is essential to address this worrying and growing perception.