

Government consultation on sections of the Serious Organised Crime and Police Act 2005 that place restrictions on freedom to protest around Parliament

A briefing paper on what the consultation is about and possible responses

Purpose of this paper – why it is important to respond to this consultation

This briefing paper has been put together by a collection of individuals who have campaigned against the restrictions on freedom to protest around Parliament that were brought in under the Serious Organised Crime and Police Act 2005 (SOCPA).

The purpose of this paper is to outline what the issues involved are and to encourage responses to the consultation.

The consultation provides an opportunity for individuals and organisations to:

1. oppose the ban on unauthorised protest and the restrictions on protest that can be imposed by the police in the vicinity of Parliament under sections 132-138 of SOCPA
2. state their concern about suggestions made in the consultation document in relation to 'harmonisation' of police powers to restrict, control or ban marches and assemblies across the whole of the UK.

The consultation document includes questions on the desirability of 'harmonising' powers that the police have to control marches and assemblies – not just around parliament but across the UK. This is a very worrying development. The danger is that the Government will be able to score media points for repealing unnecessary and draconian legislation, whilst in reality further tightening the screws on protest and dissent.

It is through the brave exercise of the fundamental democratic right to protest and assemble in dissent, without prior authority and often in spontaneous response to events on the ground, that not only the rights in question themselves but also through their very application the liberal and relatively democratic society in which we live, and which we are called to further improve, has been secured.

Preventing spontaneous protest and placing restrictions on freedom of assembly gives control of public space to the state and its security services, with grave consequences for the future of our society.

Benjamin Franklin once stated "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety". Please respond to the consultation.

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1. The consultation document and how to respond

The consultation document, *The governance of Britain; Managing protest around Parliament* (Oct 2007; CMND 7235) is available from <http://www.homeoffice.gov.uk/documents/cons-2007-managing-protest?view=Binary>

Responses must be sent in by **17 January 2008** to: ProtestaroundParliament@homeoffice.gsi.gov.uk

Managing Protest around Parliament
Public Order Unit
Home Office
5th Floor Fry Building
2 Marsham Street
London
SW1P 4DF

A summary of responses will be published by the Government including statistics on numbers of comments received and views expressed.

Responses can be made by individuals or groups. Organisations can give a summary of the people they represent. See the document for details on how to request that your response be treated confidentially.

2. The background context of this consultation

The history of SOCPA

The restrictions on protest that became law under the Serious Organised Crime and Police Act 2005 (SOCPA) were the result of a debate that started in Parliament in 2003 around the issue of Brian Haw's continuous peace protest in Parliament Square. It was proposed that new legislation was needed in order to deal with the protest as court challenges by various authorities had been unsuccessful and Brian Haw's protest was considered lawful under the then current legislation. Issues such as security and maintaining access to Parliament for MPs have subsequently been used to justify SOCPA but there already existed legislation and powers to deal with these concerns and there is little evidence to suggest SOCPA has, or even could, deal with these issues.

The initial draft of SOCPA would have allowed for protests to be restricted if they were 'spoiling the visual aspect' around Parliament in addition to a number of other reasons. This alone suggests that Brian Haw's protest was a, if not *the*, significant target for the new legislation. However, at the last minute – in what was probably a belated recognition of how unworkable and blatantly Brian-focussed such a law would be – the wording of the legislation was changed to 'disruption of life in the community'.

There have been many criticisms about the way that SOCPA passed into legislation (see www.repeal-socpa.info for more on the history of SOCPA) with much concern that an unworkable and controversial piece of legislation became law without proper consideration or debate.

The restrictions on protest in the vicinity of Parliament

Sections 132-128 of SOCPA ban any unauthorised protest in the 'designated area' around Parliament and allow the police to impose conditions on any demonstration. These powers only apply to assemblies, not to marches, which are covered by the Public Order Act 1986. SOCPA introduced the concept of a static demonstration which can consist of just one person, whereas the definition of an 'assembly' which is what the police can control under other public order legislation, is 2 or more people. Organisers of a static demonstration must give 6 days' notice and the police must in turn authorise the demonstration. Although the police are not allowed to ban a demonstration outright, they can impose conditions on it – in order to secure the operation of Parliament, provide unobstructed access to Parliament, to avoid serious disorder or serious damage to property, disruption to the life of the community, or a security risk, or a risk to the safety of the public. Restrictions can refer to place, time, duration, number of people, number and size of placards or banners (but not what they say) and maximum permitted noise levels. Section 137 of SOCPA imposes an outright ban the use of loudspeakers at demonstrations within the designated area.

The present boundaries of the 'designated area' were defined by the Home Secretary in an Order in July 2005. SOCPA states that this area shall be no 'more than one kilometre in a straight line from the point

nearest to it in Parliament Square'. The present boundary nearly extends to the full 1km allowed. A person guilty of an offence under Sections 132-138 of SOCPA can receive a penalty of up to £2500 and, if convicted of organising, 'imprisonment for a term not exceeding 51 weeks'.

The increase in police powers to control and restrict protest

The restrictions on protest around Parliament under SOCPA are part of a range of police powers to control protest that has significantly increased over recent years. Other sections of SOCPA introduced criminal trespass at 'designated sites' for a variety of reasons (including in the 'national interest') at a range of military, Government and crown properties. SOCPA also redefined the definition of harassment to allow it to be used more readily against campaigners. The police have increasingly used anti-terror, anti-social behaviour and anti-stalker legislation to stop and intimidate peaceful protestors around the country; these are unjustifiable instances of 'function creep' that see laws being used for purposes for which they were not intended. Injunctions and use of laws protecting private property are being used by companies to limit the expression of public concern at their activities or on their property. For example, where part of a town centre is re-developed as a shopping centre, space which was previously street or square may become a private pavement or courtyard. Or a park may be managed by a private company on behalf of a local authority. These new developments are all on top of the range of existing public order legislation that the police are able to draw on in order to control what they perceive as unlawful or non-peaceful behaviour.

Most recently, The Serious Crime Act 2007 has brought in an amendment to section 136 of SOCPA which means that anyone intentionally 'assisting or encouraging' an unauthorised demonstration in the vicinity of Parliament (an offence that could be interpreted very widely), is liable to a penalty of a maximum 51 weeks in prison or a £2500 fine.

Human rights law

Article 11 of the European Convention on Human Rights gives a right to assembly subject to certain exceptions. This was incorporated into English law in the Human Rights Act 1998. The consultation document acknowledges that the right to peaceful protest 'is a very long and respected tradition in the United Kingdom', but that this right has to be 'balanced' with other considerations. There are real concerns that the SOCPA restrictions on protest are not compatible with human rights law but until individual cases can be heard in Europe this issue will not be resolved. It would in any case be unrealistic and negligent to expect the Government to ensure compatibility of public order legislation with existing laws and conventions. It is through protest itself that freedoms of expression and assembly have been fought for and established and it would be unwise to assume that actions to protect those freedoms do not have to continue.

More emphasis on there being a positive right to protest would protect the rights enshrined in the European Convention on Human Rights from unjustifiable restrictions due to growing company control of formerly public spaces. A positive right to protest would protect protestors from the implied accusation that protest is in itself anti-social and from the illegitimate use of legislation designed to address social problems.

3. The consultation document: introduction and the real purpose of the consultation

The stated purpose of the Government's consultation paper is to review section 132-138 of SOCPA. It takes up the Prime Minister's statement in July 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 Square."
The Prime Minister, the Rt. Hon Gordon Brown MP, 3 July 2007

The Government states that this review is in the context of its commitment to 'constitutional renewal and to re-invigorating our democracy, as set out in the Green Paper, *The Governance of Britain*' (2007). The Government 'is aware of the strong views expressed in reaction to the provisions on demonstrations around Parliament' and the '*perception* among some groups that this legislation has undermined the right to demonstrate peacefully' (our emphasis).

The Foreword to the consultation document by the Home Secretary Jacqui Smith, states that 'there should be no *unnecessary* restrictions on people's right to protest' (our emphasis) and stating that this is 'particularly important' around Parliament.

However, in the document's introduction it is stated that the Government not only wishes to 'seek views on the framework governing the right to protest around Parliament' but that it is also 'looking at the wider context of legislation governing protests and demonstrations in the UK'. This hints at a wider agenda of reviewing, and increasing yet again, public order legislation in general in the area around Parliament, if not in the country as a whole.

4. Questions asked by the consultation document

The document poses 8 questions to be consulted on:

Public Protest – the Legislation Framework

Q1: The Government believes peaceful protest is a vital part of a democratic society, and that the police should have powers to manage public assemblies and processions to respond to the potential for disorder. Should the powers generally in relation to marches and assemblies be the same?

Q2. Do you agree that the conditions that can be imposed on assemblies and marches should be harmonised?

Protest in the vicinity of Parliament

Q3. Is special provision needed for static demonstrations and marches around Parliament and if so what?

Q4. Are there any other considerations the Government should take into account?

Encouraging and managing the Right to Protest

Q5: Do you have views on the model that should apply for managing demonstrations around Parliament?

Q6: Do you consider that a prior notification scheme should apply to static demonstrations in the vicinity of Parliament? Should any scheme only apply to static demonstrations over a certain size? And if so, what size of demonstration?

Q7: Do you agree that conditions in order to prevent a security risk or hindrance to the operation of Parliament should remain in relation to demonstrations in the vicinity of Parliament?

Q8: Do you have a view on the area around Parliament that any distinct provisions on the right to protest should apply to?

5. Responding to the consultation

A. 'Harmonisation' of public order legislation

The threat of new powers to control assemblies

In addition to consulting about legislation applying to protests in the vicinity of Parliament the document is also gauging opinion on the broader framework of powers that control marches and assemblies across the UK. Not only is this oblique approach unacceptable (will this 'consultation' on the wider framework be taken as justification for major change in public order legislation?) but any suggestion of 'harmonisation' is extremely worrying.

Under the Public Order Act 1986 police can require a minimum of 6 days' notice of a march, although spontaneous marches with no notice are permitted; organisers should tell police as soon as practicable. There is no requirement for advance notice of an assembly (outside of the SOCPA designated area). An assembly is defined as 2 or more people in the open air.

Police may impose conditions on a march, or an assembly, under the Public Order Act if they think it will entail serious damage to property, serious disruption to life of community, serious disorder, or coercion by intimidation. If they think imposing conditions will not prevent serious disorder, they can apply to the Home Secretary for an order under section 13 of the Public Order Act to ban the march. But an assembly cannot be banned. Moreover the powers to control assemblies are weaker than those for controlling marches; police can control the place of an assembly but not its duration or its size. It is a crime to take part in a banned march if you know it's banned, or to fail to comply with conditions imposed, either on an assembly or on a march.

Taking into account the increase in control that the police have sought and used on protests over recent years, it is likely that the police would want their powers to control assemblies across the UK to be the same as their current powers to control marches. Any 'harmonisation' between powers to control marches and assemblies will inevitably lead to further restrictions on freedom of assembly – with gatherings of as few as 2

people, or even individuals, subject to arbitrary police interference. Authorisation may need to be sought from the police for simply handing out leaflets in your local high street. Assemblies, as well as marches, could be restricted, controlled or even banned if brought in under the Public Order Act which would be a significant extension of even the SOCPA provisions. Content of placards or banners on assemblies could be controlled (as is currently the case can for marches) to prevent disorder, creating an unacceptable level of police censorship.

Although the document goes on to say that 'excessively strict' conditions imposed on an assembly could be challenged in court under the Human Rights Act, this would be long after the event and an individual risks criminalisation, and penalties, first.

B. How SOCPA has, or has not, worked

The law is applied discriminatorily

Since the ban on unauthorised demonstrations in the 'designated area' around Parliament (approximately 1km around Parliament) came into force in August 2005 the law has not been applied by the police in an impartial fashion. For example, some larger demonstrations have not been policed at all or only in a token way while smaller ones have often attracted heavy handed policing. The policing also seems to vary depending on the issue the protest is concerned with. Perhaps they do not have the resources to apply the law equally but built into SOCPA is the capacity for the police to make political decisions about which protest needs to be controlled with conditions – an unacceptable encroachment on freedom of expression. Furthermore, the conditions which SOCPA allows the police to impose on a protest are not applied in a similar way across similar protests and have been shown to be highly flawed. In January 2007 a case against Brian Haw for not complying with the conditions collapsed when the judge ruled that the terms were not significantly clear. The police may both impose a set of conditions and police them without any legal oversight and which can only be scrutinised once a person is facing a criminal charge in court. Moreover these conditions can only be questioned once a person is facing a criminal charge. The conditions can also be changed without notice on the day by any senior police officer – a power that could defeat even the most law abiding organiser of a demonstration.

The definition of what constitutes a protest is not clear

Nowhere in the SOCPA legislation does it state what constitutes a demonstration. Do placards have to be involved or can the wearing of a political t-shirt be a demonstration? The law is not clear on when a protest is actually taking place, leaving this up to the police to interpret and for the courts to decide. Similarly, at what point does someone join a demonstration – if they stand and watch for a few minutes? Anyone could end up with a criminal conviction without realising they were protesting.

How SOCPA stops protest

Individuals have been criminalised for unauthorised protest, many others have been harassed by the police as they attempt to stage peaceful protests, and the police have sought to impose arbitrary and unworkable conditions – that much is evident. Also in evidence is that the bureaucratic time-scale of SOCPA (a notice period of 6 days or 24 hours at the very least) stops altogether an important feature of any society – that people should be able to gather together spontaneously in response to events. What is far less easy to gauge however is the effect that the ban on unauthorised protest has had on people's willingness to participate. If the public perception is that it is no longer legal to protest around Parliament and they think they could be arrested and end up with a criminal conviction, or they do not want to engage with the bureaucracy necessary in order to protest legally, then that will have a 'chilling effect' on legitimate protest. Fewer people will consider that they are in a position to participate and that is not good for democracy.

SOCPA places a blanket ban on the use of loudspeakers on demonstrations. This goes a long way to neutralise the effect of all protest in an attempt to stop the use of megaphones by Brian Haw.

The consultation document states that demonstrators are 'able to challenge decisions' using judicial reviews – most likely, many months after both the event and a conviction. This is hardly an avenue that most people would consider themselves able or willing to take.

Significant public and parliament concern about restricting freedom to protest

In addition to widespread public concern, many parliamentarians, civil liberties organisations and journalists have been stating what is wrong with SOCPA since before it was passed into legislation. These concerns materialised as individuals were arrested and criminalised for peaceful acts of protest. In October 2005 Maya Evans and Milan Rai were arrested and were later the first to be convicted under SOCPA for reading out

names of Iraqi and British dead (killed in the invasion and occupation of Iraq) opposite Downing Street. There have been many arrests and many others have been reported to the CPS (which can result in the individual being later charged). Although fewer people have eventually been charged with SOCPA offences and even fewer tried, and some SOCPA cases have collapsed, this itself suggests that the system is not prepared to apply the law to the letter, that it is being used inconsistently for political purposes and that the law is an unworkable one. One group of individuals convicted of unauthorised protest are now taking their case to the European Court of Human Rights. In 2007 Baroness Miller of Chilthorne Damer, Liberal Democrat spokesperson for Home Affairs, introduced a Private Members Bill to repeal the restrictions on protest around Parliament and around military bases under SOCPA.

Continuing protest and concern over SOCPA have prompted the Government to publish this consultation paper. This in itself is an achievement and should be taken as an opportunity to push the message home with as many responses to the consultation as possible.

C. Summary of points that could be made in response to the consultation

At the simplest level, the answer to the questions posed by the consultation could all be 'no', i.e. special powers are not needed for protests around Parliament and there should be no harmonisation of powers around the policing of assemblies and marches (which would inevitably mean more restrictions on assemblies). Here is a summary of some points that could be made:

General:

- The ban on protest without police authorisation (the right to assembly under the European Convention on Human Rights) is unacceptable in a democracy
- There is a substantial, and growing, array of legislation and provisions already in place, giving the police powers to control protestors throughout the UK. Around Parliament the Sessional Orders are in place to ensure access by MPs and bye laws exist to protect the 'World Heritage Site' of Parliament Square.
- A requirement to give notice of protests, in the designated area or elsewhere, is unacceptably bureaucratic and threatens to criminalise spontaneous protest and to make people feel unable or unwilling to participate; it thus interferes with the right of assembly under the European Convention on Human Rights.
- There should be a positive right to protest, with a special quick, cheap and easy procedure for people to complain against the police if this right is infringed rather than a long and expensive court process.
- In our view, the use of anti-terror, anti-social behaviour or anti stalking legislation against demonstrators constitutes an unjustifiable instance of 'function creep'. A positive right to protest would protect protestors from the implied accusation that protest is in itself anti-social and from the illegitimate use of legislation designed to address social problems.
- For the purpose of regulations controlling assemblies, all open-air spaces accessible to the public should be treated in the same way regardless of who owns or manages them. Private security guards controlling such spaces should be required to respect the rights of those using them in the same way as police in charge of streets.

On 'harmonisation':

- There should be no 'harmonisation' of the public order legislation relating to marches and assemblies as this will lead to considerably more control of assemblies across the UK and further limits on the right to protest which will be incompatible with human rights law.
 - Assemblies could potentially be banned under 'harmonisation'. This would give the police powers to arrest someone simply for handing out leaflets about a local issue on their high street, even if it was law abiding in every respect.
 - Censorship of placards/banners is absolutely unacceptable unless there is a clear offence of incitement to violence or racial/religious hatred.
- 'Harmonisation' could see the unacceptable conditions that are currently included in SOCPA applied to assemblies across the UK e.g. by limiting placards, limiting noise, time, place, duration, etc.

On protest around Parliament:

Parliament is and should be the focus for protest in this country. It is where decisions that affect every one of us are taken and where views need to be exchanged by all peaceful means.

Sections 132-138 of SOCPA have proved to be ill-defined, hard to implement and discriminately and inconsistently applied.

What is the evidence that security risk has been reduced around Parliament as a result of SOCPA? None is provided in the consultation document.

The ban on loudspeakers in the designated area is unacceptable because it makes protest ineffective. It is now almost impossible for people to hear speeches at demonstrations or for large groups of people to be addressed by organisers. This is a significant infringement on freedom of assembly.

The arguments for SOCPA do not justify the extent of the 'designated area' which covers almost all government buildings and much else besides.

The police have used their powers under SOCPA to harass peaceful protestors and convict them as criminals.

This government has stated that it is proud of the country's democracy and the consultation document says 'we need to ensure that all groups have the opportunity to protest peacefully at the seat of the UK elected Parliament'. But it also wants this to be consistent with the Parliament area as a World Heritage site and visitor attraction. The right to protest is a vital part of our 'heritage' which should not be screened from public view for the sake of controlling the incidence of small 'disruptions' or the desire to create a sterile tourist attraction. In any case, Brian Haw's protest, which commands a huge amount of respect, is an attraction for visitors from far and wide.

6. Further information

The www.repeal-socpa.info website has details about the SOCPA legislation and how it passed onto the statute books with links to all relevant documents and debates. It also has a list of further links for information on what has happened since SOCPA came into force and on campaigning against SOCPA.

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