



House of Lords  
House of Commons  
Joint Committee on Human  
Rights

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# Demonstrating respect for rights? A human rights approach to policing protest

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**Seventh Report of Session 2008–09**

***Volume I***

*Report, together with formal minutes and  
written evidence*

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## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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### Current Staff

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### Contacts

All correspondence should be addressed to The Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2467; the Committee's e-mail address is [jchr@parliament.uk](mailto:jchr@parliament.uk)

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# Summary

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The Government should protect and facilitate the opportunity for people to protest peacefully. To fail to do so would jeopardise a number of human rights including the right to freedom of peaceful assembly and the right to freedom of expression.

We have found no systematic human rights abuses in the policing of protest but we have some concerns which can be addressed by legal and operational changes. Making these changes would further protect the rights of people who wish to protest in the UK.

## **Legal changes**

The Government should amend Section 5 of the Public Order Act. Reference to insulting words or behaviour should be removed. This change would allow the police to arrest people for using threatening or abusive language or behaviour but not for using insulting language or behaviour.

Counter-terrorism powers should never be used against peaceful protestors: the Government's guidance on stop and search powers in Section 44 of the Terrorism Act 2000 should make this clear.

The Government should protect the right to freedom of peaceful assembly around Parliament by repealing the Serious Organised Crime and Police Act 2005. Protest around Parliament should be governed by the Public Order Act 1986. However, the 1986 Act should be amended to deal with the specific circumstances of Parliament, so as to allow Parliamentarians and others to access and work in Parliament whilst protest is ongoing.

## **Operational changes**

The police and protestors need to focus on improving dialogue. The police should aim for "no surprises" policing: no surprises for the police; no surprises for protestors; and no surprises for protest targets.

Regular, relevant and up to date human rights training should be integrated into other police training. Police forces should ensure that there is sufficient human rights knowledge and understanding available to police officers to help avoid human rights breaches. They should review how they foster effective dialogue with protestors. Protestors should also, where possible, engage with the police at an early stage in their planning, in order to facilitate peaceful protest.

Tasers should never be used against peaceful protestors and the Government should make this commitment in its guidance on tasers. The Government should also report to Parliament every three months about the deployment and use of tasers, should monitor the health effects of tasers, and publish the results of that monitoring.



# 1 Introduction

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## Background

1. Peaceful protest has a long history in the United Kingdom and is a cornerstone of democracy. There have been a number of significant, well-publicised protests in recent years, including against military action in Iraq, both for and against the banning of hunting with dogs, for and against animal experimentation and in relation to climate change.

2. Many people value the right to protest, regarding it is an important way for citizens to express their opinions about a wide range of policy issues and to seek to influence the Government and other powerful organisations.<sup>1</sup>

3. The rights to peaceful assembly and to freedom of expression are enshrined in the European Convention on Human Rights (ECHR) (Articles 10 and 11). The Government is under an obligation to protect and promote these rights. It told us that “there should be no unnecessary restrictions on people’s rights to peaceful protest”.<sup>2</sup> These rights are not absolute, however, because protest invariably involves groups of people with competing interests, including protestors, the individuals and organisations that are protested against, the police, journalists and bystanders.

4. In this report, we consider the balance struck in law and in practice between the rights of the different groups involved in peaceful protest and make recommendations aimed at ensuring that the rights to freedom of assembly and expression are fully respected.

## Our inquiry

5. The Joint Committee on Human Rights has a longstanding interest in the protection, promotion and fulfilment of the right to peaceful protest. During the last Parliament, our predecessor Committee raised significant concerns about the potential restrictions on protest around Parliament when it scrutinised the Serious Organised Crime and Police Act 2005 (SOCPA).<sup>3</sup> These concerns have been borne out by the prosecution of peaceful protestors for failing to give advance notice of their protest to the police, as required under the Act. The Committee’s concerns extend more widely than the operation of SOCPA alone to the policing of protest more generally and to the operation of other policing powers in practice. We wished to probe whether these events were indicative of a trend towards eroding the right to protest or were a necessary reaction to increased security concerns.

6. We issued a call for evidence on 24 April 2008 seeking evidence on the following issues:

- the proportionality of legislative measures to restrict protest or peaceful assembly;
- existing powers available to the police and their use in practice; and

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<sup>1</sup> Ev 74, 77, 133 and 196.

<sup>2</sup> Ev 142, para 2.

<sup>3</sup> See in particular Fourth Report of Session 2004-05, *Scrutiny: First Progress Report*, HL Paper 26, HC 224; Eighth Report of Session 2004-05, *Scrutiny: Fourth Progress Report*, HL Paper 60, HC 388.

- reconciling competing interests of public order and protest.

7. The Committee received 49 memoranda, of which 21 were from individuals and 28 from organisations. Notably, the Committee has received a number of submissions from organisations who have not previously provided evidence to the Committee, particularly from businesses and individuals who have been the targets of protests. Most of this evidence is published in full in a separate volume to this Report

8. We held four formal evidence sessions. At our first evidence session, on 24 June 2008, we heard from Justice and Liberty. On 21 October 2008, we took evidence from protestors and those affected by protests, such as targets and journalists. At our third session, on 25 November 2008, we heard from representatives from various police bodies. At our final formal evidence session, on 9 December 2008, we heard from the Minister for Policing, Crime and Security, Vernon Coaker MP.

9. Our inquiry is focussed solely on *peaceful* protest, as this is protected by Article 11 ECHR.

10. As part of our inquiry, we visited France, Spain, Northern Ireland and the Metropolitan Police Central Communications Command Centre. The visits were extremely beneficial to us in forming a view on the practice of the UK in relation to policing protest. Both the Spanish and French systems have merits. We were impressed by the high value given to protest in Spain, and the tolerance of the authorities towards it. We were also interested to hear of the Spanish model for the quick determination of disputes about protests by the courts, the police simply becoming one party to a civil dispute. In France, we heard of the police's reliance on marshalls from within protest organisations: this facilitated communication between the police and protestors; and aimed at ensuring that protests passed off peacefully. In a number of respects, the UK adopts a different, and not necessarily more favourable, approach to both the countries we visited.

11. We are grateful to all those who have assisted with our inquiry.

## Structure of our Report

12. We provide a brief overview of the human rights principles and current UK law which govern protest in Chapter 2 before setting out some of the evidence we received about recent experiences of protest in Chapter 3. Chapters 4 and 5 focus on the legal framework, with Chapter 5 dealing exclusively with protest around Parliament. Chapter 6 considers operational policing issues.

## 2 Human rights principles and the legal framework for peaceful protest

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### Human rights principles

13. Under the Human Rights Act 1998 (HRA), the police and the Home Office are public authorities with obligations to comply with the rights set out in the European Convention on Human Rights (ECHR).<sup>4</sup> The state also has obligations to comply with international human rights standards set out in UN and regional treaties. These obligations should be considered in conjunction with the existing common law human rights standards.

### *Who is protected?*

14. It is important to note that the Government is required to secure, to everyone within its jurisdiction, the rights contained in the ECHR.<sup>5</sup> This includes protestors, the targets of protests, police and the general public.

### *Positive and negative obligations*

15. There are two types of human rights obligations owed by states: negative and positive. A positive obligation requires states to undertake specific preventive or protective actions to secure ECHR rights, whereas they must refrain from taking certain actions under a negative obligation. An example of a negative obligation would include not placing unnecessary obstacles in the way of individuals wishing to protest.<sup>6</sup> An example of a positive obligation would include facilitating counter protests or protests in the same geographical location. Positive obligations can require the state to take steps to protect individuals from the actions of other private parties (such as companies against whom people may wish to protest, or targets of protests against protestors).

### *Freedom of peaceful assembly*

16. Article 11 of the ECHR protects the participants and organisers of peaceful assemblies from interference by the state in their activities. In particular:

(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others...

(2) No restrictions shall be placed on the exercise of these 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 [...]

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<sup>4</sup> Section 6 Human Rights Act 1998.

<sup>5</sup> Article 1 ECHR.

<sup>6</sup> *Aldemir v Turkey*, App. No. 32124/02, 18 December 2007, para. 41 : "The Court also notes that States must not only safeguard freedom of peaceful assembly, but must also refrain from applying unreasonable indirect restrictions upon that right."

This right is closely mirrored by Article 21 of the International Covenant on Civil and Political Rights (1966) (ICCPR).

17. Article 11, as interpreted by the Courts, comprises two closely related rights: the right not to be prevented or restricted by the state from meeting and associating with others to pursue particular aims, except to the extent allowed by Article 11(2) (negative obligation); and the duty on the state to take positive measures, even in the sphere of relations between individuals, to ensure that the rights provided are secured (positive obligation).<sup>7</sup> Genuine, effective freedom of assembly cannot, therefore, 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.<sup>8</sup> Where individuals or businesses act in a way that undermines Article 11 rights, the state may be required to intervene to secure the protection of those rights.<sup>9</sup> However, the duty on the state to take positive measures to support peaceful assembly is not absolute.<sup>10</sup>

18. The right to freedom of assembly encompasses participation in private and public meetings,<sup>11</sup> processions,<sup>12</sup> mass actions, demonstrations, pickets and rallies.<sup>13</sup> It does not include participation in violent protests<sup>14</sup> but includes, for example, a sit-down protest on a public road even though traffic is disrupted as a result.<sup>15</sup> To determine whether a demonstration is peaceful, the courts will look at the intention of the organisers.<sup>16</sup>

19. Ordinarily, the right to freedom of assembly is not protected on private property of others.<sup>17</sup> However, in *Appleby v UK*, whilst finding no violation of the rights to freedom of expression or assembly where the applicants were prevented from leafleting in a private shopping centre, the European Court of Human Rights held:

Where, however, the bar on access to property has the effect of preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed, the Court would not exclude that a positive obligation could arise for the State to protect the enjoyment of the Convention rights by regulating property rights. A corporate town where the entire municipality is controlled by a private body might be an example.<sup>18</sup>

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<sup>7</sup> *Aldemir v Turkey*, App. No. 32124/02, 18 December 2007, para. 41. In *Platform "Artze fur das Leben" v Austria* (1991) 13 EHRR 204, the European Court of Human Rights held that freedom of assembly includes the right to protection against counter-demonstrations.

<sup>8</sup> *Platform "Artze fur das Leben" v Austria* (1991) 13 EHRR 204, para. 32; *Ouranio Toxo v Greece*, App. No. 74989/01, Judgment of 20 October 2005, para. 37, (the state is required to take measures to ensure that the right to protest does not effectively extinguish or paralyse the right of association). See also Panel of Experts on Freedom of Assembly of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE), *Guidelines on Freedom of Peaceful Assembly*, p. 16.

<sup>9</sup> *Gustafsson v Sweden* (1996) 22 EHRR 409, para. 45.

<sup>10</sup> *Platform "Artze fur das Leben" v Austria* (1991) 13 EHRR 204, para. 34.

<sup>11</sup> *Rassemblement Jurassien and Unité Jurassienne v Switzerland*, App. No. 8191/78, 17 DR 93.

<sup>12</sup> *Christians Against Racism and Facism v UK*, App. No. 8440/78, 21 DR 138.

<sup>13</sup> *Rai, Allmond and "Negotiate Now" v UK* (1995) 19 EHRR CD-93.

<sup>14</sup> *Ciraklar v Turkey*, App. No. 19601/92, 80 DR 46.

<sup>15</sup> *G v Germany*, App. No. 13079/87, 60 DR 256.

<sup>16</sup> *Christians Against Racism and Fascism v UK*, App. No. 8440/78, 21 DR 138.

<sup>17</sup> *Anderson v UK* [1998] EHRLR 218.

<sup>18</sup> *Appleby v UK*, App. No. 44306/98, 6 May 2003, para. 47.

20. Any interference with the right to freedom of assembly, must be “prescribed by law”, pursue one of the aims set out in Article 11(2) and be “necessary in a democratic society”. Given the essential nature of freedom of assembly and its relationship with democracy, the burden is on the state to provide “convincing and compelling reasons to justify an interference with this right”<sup>19</sup> and show that the interference was proportionate to the aim being pursued.<sup>20</sup>

21. Restrictions on freedom of assembly include a ban on a meeting,<sup>21</sup> or a restriction as to where it may take place<sup>22</sup> or prohibiting a demonstration in one location if the same demonstration is permitted in another.<sup>23</sup> The European Court of Human Rights has affirmed that where a state asserts that restrictions on protests are “necessary”, the Court must be satisfied that:

... the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts.<sup>24</sup>

22. The European Court of Human Rights has held that:

The freedom to take part in a peaceful assembly ... is of such importance that it cannot be restricted in any way, so long as the person concerned does not himself commit any reprehensible act.<sup>25</sup>

23. In a case in which a demonstration was opposed by the authorities on the basis of disruption to public order, the Court has also made clear 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.<sup>26</sup>

In our view, this should be interpreted as meaning that the police should be exceptionally slow to prevent or interfere with a peaceful demonstration simply because of the violent actions of a minority.

24. What counts as a legitimate reason for restricting the right to peaceful protest is found in case law,<sup>27</sup> some of which we cite below. The Panel of Experts on Freedom of Assembly of the Office for Democratic Institutions and Human Rights (ODIHR) and the Organisation for Security and Co-operation in Europe (OSCE) have produced *Guidelines on Freedom of Peaceful Assembly*. They are based on international and regional human

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<sup>19</sup> *Makhmudov v Russia*, App. No. 35082/04, 26 July 2007.

<sup>20</sup> See also Principle 4 of the ODIHR/OSCE *Guidelines*.

<sup>21</sup> E.g. *A Association and H v Austria*, App. No. 9905/82, 36 DR 187.

<sup>22</sup> *Rai, Allmond and “Negotiate Now” v UK* (1995) 19 EHRR CD-93.

<sup>23</sup> *Rai, Allmond and “Negotiate Now” v UK* (1995) 19 EHRR CD-93.

<sup>24</sup> *Makhmudov v Russia*, App. No. 35082/04, 26 July 2007, para. 65.

<sup>25</sup> *Ezelin v France* (1991) 14 EHRR 362, paras 51-53.

<sup>26</sup> *Oya Ataman v Turkey*, App. No. 74552/01, 5 December 2006, paras 41-42.

<sup>27</sup> See paras 25-27 below.

rights treaties, evolving state practice and general principles of law. Whilst these *Guidelines* are not strictly legally enforceable, they are useful as a guide to the appropriate human rights standards and the application of discretion by the state. In addition, courts often have regard to such standards.

25. In *Aldemir v Turkey*, the European Court of Human Rights held:

Any demonstration in a public place may cause a certain level of disruption to ordinary life and encounter hostility. This being so, it is important that associations and others organising demonstrations, as actors in the democratic process, respect the rules governing that process by complying with the regulations in force.<sup>28</sup>

26. Echoing this, the Court of Appeal recently held:

Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them. Sometimes they are wrongheaded and misconceived. Sometimes they betray a kind of arrogance: an arrogance which assumes that spreading the word is always more important than the mess which, often literally, the exercise leaves behind. In that case, firm but balanced regulation may well be justified.<sup>29</sup>

27. Considering the balance to be struck between the rights and interests of different groups or individuals, the OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly* state:

The regulatory authority has a duty to strike a proper balance between the important freedom of peaceful assembly and the competing rights of those who live, work, shop, trade, and carry on business in the locality affected by an assembly... Mere disruption, or even opposition to an assembly, is not therefore, of itself, a reason to impose prior restrictions on it. Given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe the rights and freedoms of others.<sup>30</sup>

28. Where organisers are required to obtain the police's authorisation in advance of a demonstration or to provide certain information about the protest, this does not constitute an interference with the right of freedom of assembly, if the purpose of doing so is to prevent violent assemblies and to protect peaceful demonstrations from disruption.<sup>31</sup> However, such regulation of protest should not represent a hidden obstacle to freedom of assembly.<sup>32</sup> Even if there is a notification requirement:

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<sup>28</sup> *Aldemir v Turkey*, App. No. 32124/02, 18 December 2007, para. 43.

<sup>29</sup> *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23, para. 43 (whether Byelaws which prohibited camping in the vicinity of atomic weapons establishment violated Articles 10 and 11 ECHR). See also ODIHR/OSCE *Guidelines*, para. 18, citing decision of Israeli Supreme Court, *Sa'ar v Minister of Interior and Police* (1979) 34(II)PD169 at 177-178, per Barak J.

<sup>30</sup> OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, paras 70-71.

<sup>31</sup> *Rassemblement Jurassien and Unité Jurassienne v Switzerland*, App. No. 8191/78, 17 DR 93.

<sup>32</sup> *Aldemir v Turkey*, App. No. 32124/02, 18 December 2007, para. 43. See also OSCE/ODIHR *Guidelines*, p.15.

In special circumstances when an immediate response might be justified, in the form of a demonstration, to a political event, 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 assembly.<sup>33</sup>

### **Related rights**

29. The right under Article 11 ECHR is closely related to freedom to manifest one's religion or beliefs (Article 9 ECHR, Article 18 ICCPR) and freedom of expression (Article 10 ECHR, Article 19 ICCPR).<sup>34</sup> Freedom of assembly and association are:

... fundamental right[s] in a democratic society and, like the right to freedom of expression ... one of the foundations of such a society.<sup>35</sup>

Article 10 is unique amongst ECHR rights in expressly stating (in paragraph 2) that “the exercise of these freedoms ... carries with it duties and responsibilities.” As with freedom of peaceful assembly, freedom of expression implies both positive and negative obligations on the state.

30. The right to liberty and security of the person is guaranteed by Article 5(1) ECHR which sets out an exhaustive list of the circumstances in which an individual may be deprived of his or her liberty. This is mirrored by Article 9 ICCPR. There are two possible circumstances in which an individual may be deprived of his or her liberty subject to a procedure prescribed by law which are applicable to protests:

*Article 5(1)(b)*: the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law.

*Article 5(1)(c)*: the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

31. This is to be distinguished from Article 2 of Protocol 4 to the Convention, which the UK has not ratified, but which provides for a right to liberty of movement within a state. In a recent case on the scope of Article 5(1), the House of Lords referred to previous Strasbourg and domestic case law and held:

The rights mentioned in Article 2 of Protocol 4 are relevant only in so far as they indicate that there is a distinction, for Convention purposes, between conditions to which a person may be subjected which are a restriction on his movement and those which amount to a deprivation of his liberty. The European Court has said that under its established case law Article 5 is not concerned with mere restrictions on

<sup>33</sup> *Bukta v Hungary*, App. No. 25691/04, 17 July 2007, para. 36.

<sup>34</sup> *United Communist Party v Turkey* (1998) 26 EHRR 121, para. 42: “The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11”.

<sup>35</sup> *Sidiropoulos v Greece* (1998) 27 EHRR 633, *Rassemblement Jurassien and Unité Jurassienne v Switzerland*, App. No. 8191/78, 17 DR 93; *Makhmudov v Russia*, App. No. 35082/04, 26 July 2007.

liberty of movement. They are governed by Article 2 of Protocol 4. This is an important distinction ... Article 2 of Protocol 4 is a qualified right. The protection that Article 5(1) provides against a deprivation of liberty is absolute ... Article 2 of Protocol 4 helps to put the ambit of this absolute right into its proper perspective.<sup>36</sup>

32. In addition, the ECHR prevents unjustified discrimination in the way that Convention rights are enjoyed (Article 14 ECHR). This is an overarching principle which applies to all ECHR rights. It encompasses both direct and indirect discrimination.<sup>37</sup> In addition, the ICCPR provides a *freestanding* equality guarantee.<sup>38</sup>

## Existing legal regime

33. There are a number of legal provisions which relate to the policing of protest. We set out the most significant ones below, focusing particularly on those which witnesses have brought to our attention.

### *Public order: general principles*

34. The Public Order Act 1986 is the principal law dealing with the policing of protest. It outlines the procedures that must be followed by organisers of a march or procession and the powers that the police have in relation to moving and static protests (the latter also known as assemblies).

35. Protest organisers must give the police advance notification of a march, except if the march is a common or customary local event, a funeral procession, or where it is not reasonably practicable to give advance notification (e.g. spontaneous protests or meetings which turn into marches).<sup>39</sup> The police have the power to impose conditions on public processions either before or during a march. Conditions may be imposed where the time, place, circumstances or route of the march are such that the officer believes them necessary:

- to prevent serious public disorder, serious damage to property or serious disruption to the life of the community, or
- where the purpose of the persons organising the march is the intimidation of others with a view to compelling them to do something they have no right to do or not to do something they are entitled to.<sup>40</sup>

36. These conditions may include changes to route or time, or limitations on numbers participating. Failure to provide advance notification of a public procession is an offence, as is failure to comply with conditions.

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<sup>36</sup> *Austin v Commissioner for the Metropolis* [2009] UKHL 5, para. 15 (whether containing protestors for number of hours complied with Article 5(1) ECHR). See also (*Gillan v Metropolitan Police Commissioner* [2006] 4 All ER 1041, para. 24 (stop and search of protestor and journalist outside arms fair under section 44 of the Terrorism Act 2000); *Guzzardi v Italy* (1980) 3 EHRR 333, per Sir Gerald Fitzmaurice (dissenting).

<sup>37</sup> *Belgian Linguistics Case* (1968) 1 EHRR 252; *Thlimmenos v Greece*, App. No. 34369/97, 6 April 2000, para. 44.

<sup>38</sup> Article 26 International Covenant on Civil and Political Rights 1966. See also Principle 6 of the ODIHR/OSCE *Guidelines*.

<sup>39</sup> Section 11 Public Order Act 1986.

<sup>40</sup> Section 12 Public Order Act 1986.

37. Unlike processions, there is no general requirement to give notice of a public assembly (i.e. a static protest) to the police.<sup>41</sup> However, under section 14 of the Public Order Act 1986 a senior police officer may place conditions on a static protest, similar to those which may be imposed in relation to marches.<sup>42</sup>

38. The Public Order Act also sets out a series of offences relating to protest, such as affray, violent disorder, riot, trespass on private land or behaviour which may cause harassment, alarm or distress. Section 5 has been particularly drawn to our attention by witnesses.<sup>43</sup> This provides that if someone uses threatening, abusive or insulting words or behaviour “within the presence of a person likely to be caused harassment, alarm or distress” and intends the words to be threatening, abusive or insulting or is aware that they may be, he or she may be guilty of an offence.<sup>44</sup>

### ***Protests or demonstrations at specified sites, including Parliament***

39. Protests around Parliament and some other designated sites are subject to the Serious Organised Crime and Police Act 2005. SOCPA criminalises protests, whether static or moving, which take place within the vicinity of Parliament or other designated areas without prior notification to, and authorisation by, the police.<sup>45</sup> In addition, the Act makes it a criminal offence to trespass on certain protected sites. These sites include nuclear facilities and certain other facilities which are designated by the Home Secretary if “it appears to the Secretary of State that it is appropriate to designate the site in the interests of national security.”<sup>46</sup> To date, this provision has mainly been used in relation to military facilities.<sup>47</sup> Sections 126 and 127 amend the Criminal Justice and Public Order 2001 to create an offence of harassment at a person’s home and permit the police to make directions requiring an individual to leave a person’s home and not return within a period of up to three months. Additionally, sections 145-49 make specific provisions, including a new criminal offence, relating to attempts to interfere with contractual relationships so as to harm animal research organisations.

40. Sections 132-138 of SOCPA provide for the following arrangements relating to static demonstrations in the vicinity of Parliament:

- Any person who demonstrates, or organises a demonstration, in the designated area without prior authorisation by the Metropolitan Police Commissioner, is guilty of an offence subject to penalty of imprisonment or fine or both.
- Six clear days’ written notice of a protest is required, where reasonably practicable, in order to gain authorisation.

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<sup>41</sup> Except in a designated area under the Serious Organised Crime and Police Act 2005. See below, para. 39.

<sup>42</sup> Section 14 Public Order Act 1986.

<sup>43</sup> Q 59; Ev 84, 161, para. 21, and 171.

<sup>44</sup> It is a defence to show that the conduct was reasonable, or that there was no reason to believe that any person who could see or hear the conduct was likely to be caused harassment, alarm or distress or that it took place in a private home and there was no reason to believe it would be seen or heard by anyone outside. See below, Chapter 4, paras 78-85.

<sup>45</sup> Sections 132-138 Serious Organised Crime and Police Act 2005.

<sup>46</sup> Section 128(3)(c) Serious Organised Crime and Police Act 2005.

<sup>47</sup> Sections 128-131 Serious Organised Crime and Police Act 2005.

- If correctly applied for, authorisation cannot be refused but conditions can be imposed.
- The “designated area” was later stipulated by Order: it stretches from Charing Cross in the north to Thames House in the south, and from New Scotland Yard in the west to Lambeth Palace Road, on the south side of the river, in the east.<sup>48</sup>

The Act also makes it a criminal offence to use a loudspeaker within the designated area, unless permission has been granted by Westminster City Council.<sup>49</sup> We discuss SOCPA in more detail in Chapters 4 and 5.

### **Stop and search powers**

41. A number of stop and search powers are used in relation to protests, including:

- The Police and Criminal Evidence Act 1984 - the police may stop and search people or vehicles where they have a reasonable suspicion that they are carrying certain stolen or prohibited items.<sup>50</sup>
- The Terrorism Act 2000 - commonly known as section 44 - the police may search people and vehicles in an area designated by a Chief Police Officer for articles that could be used in connection with terrorism. There need not be any grounds for suspecting the presence of such articles. Currently, the whole of Greater London is designated as such an area.

We discuss terrorism powers and make recommendations in Chapter 4.

### **Injunctions**

42. A number of witnesses, both protestors and targets, referred to the applicability and utility of obtaining injunctions under the Protection from Harassment Act 1997.<sup>51</sup> If someone pursues a course of conduct which amounts to harassment of another person and which he or she knows or ought to know amounts to harassment, he or she may be guilty of an offence. A “course of conduct” must involve: (1) in the case of conduct in relation to a single person, conduct on at least two occasions in relation to that person or (2) in the case of conduct in relation to two or more persons, conduct on at least one occasion in relation to each of those persons.<sup>52</sup> Conduct includes speech and publication of written material as well as other behaviour. Civil injunctions to restrain harassing conduct may be obtained by victims of such conduct or related persons.<sup>53</sup> We make recommendations about injunctions in Chapter 4.

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<sup>48</sup> Serious Organised Crime and Police Act 2005 (Designated Area) Order 2005 (SI 2005, No. 1537).

<sup>49</sup> Section 137 Serious Organised Crime and Police Act 2005.

<sup>50</sup> Section 1 Police and Criminal Evidence Act 1984.

<sup>51</sup> Ev 90, 94, 134 and 190.

<sup>52</sup> Sections 1 & 2 Protection from Harassment Act 1997.

<sup>53</sup> Sections 3 & 3A Protection from Harassment Act 1997.

### **Common law**

43. Under the common law, the police have a power of arrest for breach of the peace. In *Laporte*, the House of Lords considered the decision of the police to prevent a coach load of peace protestors from travelling to a protest at RAF Fairford and forcibly return them to London. The police sought to justify the legality of their decisions as actions reasonably taken to prevent a reasonably anticipated breach of the peace. The House of Lords concluded that the police's action in preventing the protestors from travelling to the demonstration and forcing them to leave the area was an interference by a public authority with the exercise of the protestors' rights under Articles 10 and 11 ECHR which was not prescribed by law, as the police did not believe that a breach of the peace was imminent.<sup>54</sup>

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<sup>54</sup> *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2007] 2 All ER 529.

## 3 Human rights issues

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44. In this Chapter we provide a brief overview of the human rights issues, identified by witnesses to our inquiry, associated with how protests operate in practice. The evidence was varied: police witnesses argued that human rights are central to the way protests are policed and that most protests proceed without any police involvement at all. On the other hand, protestors and journalists reported a number of specific incidents where they felt intimidated by the police, as well as a more general sense that the policing of protest had become more heavy-handed, both in terms of the numbers of officers deployed and the style of policing.

45. We were pleased to hear little evidence about peaceful protest becoming violent, which would have suggested a break-down in relations between protestors and police, and a threat to the human rights of all concerned. Indeed, we heard that violent protests were unusual: for example Huntingdon Life Sciences agreed that “most protests in the UK thankfully might be exciting, they might be noisy and they might be all sorts of things but seldom do they get violent”.<sup>55</sup>

### Issues

46. The main issues in relation to the policing of peaceful protest fall into the following categories: imposing conditions on protest; use of other police powers; numbers and attitudes of police and protestors; protest on private land; facilitation of protest; and the grounds for interfering with protest. We deal with each in turn below.

### *Imposing conditions*

47. The police said that they rarely imposed conditions on protest. As Deputy Chief Constable (DCC) Sue Sim, Association of Chief Police Officers public order lead, told us, “protests take place regularly across the country. There are very, very few that require conditions to be made against them”.<sup>56</sup> Acting Assistant Commissioner (AAC) Chris Allison MBE from the Metropolitan Police Service provided examples from the London area. Noting that there are 4,500 to 5,000 public order events in London each year,<sup>57</sup> he said that there had been only two events in the last 12 to 14 years where a formal condition had been imposed on a protest before it took place<sup>58</sup> and about 10 events where the police had imposed conditions during the protest.<sup>59</sup> Looking across the country as a whole, DCC Sim said that fewer than 70 notices under sections 12 and 14 of the Public Order Act had been issued in 2008 by the 38 police forces in England and Wales for which figures were available.<sup>60</sup> ACPO suggested that this showed that conditions were “used sparingly and

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<sup>55</sup> Q 69.

<sup>56</sup> Q 177.

<sup>57</sup> Q 193.

<sup>58</sup> Q 179.

<sup>59</sup> Q 215.

<sup>60</sup> The police power to impose conditions on protests is contained in the Public Order Act 1986: section 12 (public processions) and section 14 (public assemblies).

only when necessary, due to a failure to reach agreement with the protesting group concerned.”<sup>61</sup>

48. The police figures do not accord with the views of some witnesses to our inquiry, who suggested that the use of police powers against protestors had intensified in recent years.<sup>62</sup> We were told about conditions requiring protest organisers to arrange road closures and police demonstrations themselves,<sup>63</sup> and the imposition of new conditions, including at the last minute.<sup>64</sup>

### *Use of other police powers*

49. The National Union of Journalists (NUJ) suggested that the police are now more concerned with controlling and preventing demonstrations than facilitating protest.<sup>65</sup> Journalists and protestors referred to what they regarded as the increased use of police powers including:

- stop and search<sup>66</sup> (including under the Terrorism Act) to intimidate<sup>67</sup> and harass<sup>68</sup> and allow “police the opportunity to obtain identity, gain intelligence, prevent photography”;<sup>69</sup>
- intrusive photography and filming of protestors and journalists;<sup>70</sup>
- wide ranging seizures of property, including personal belongings;<sup>71</sup>
- use of legal powers not designed to deal with protests<sup>72</sup> such as inappropriate use of anti-social behaviour legislation;<sup>73</sup>
- overuse of breach of the peace;<sup>74</sup> and
- “function creep” in the use of the Protection from Harassment Act 1997 (for example to restrict protest outside company premises).<sup>75</sup>

They also referred to local authority restrictions, such as requiring third party insurance or licences for the use of sound equipment.<sup>76</sup>

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<sup>61</sup> Ev 192.

<sup>62</sup> Ev 107 and 175.

<sup>63</sup> Ev 99.

<sup>64</sup> Ev 99.

<sup>65</sup> Ev 175.

<sup>66</sup> Ev 105, 117 and 196.

<sup>67</sup> Ev 99 and 133.

<sup>68</sup> Ev 79 and 107.

<sup>69</sup> Ev 79.

<sup>70</sup> Ev 100, 123, 176 and 199.

<sup>71</sup> Ev 117, 120, 126 and 175

<sup>72</sup> Ev 196.

<sup>73</sup> Ev 106 and 196.

<sup>74</sup> Ev 105 and 176.

<sup>75</sup> Ev 106.

50. In addition, the National Union of Journalists told us that the police were conducting surveillance of journalists, denying them reasonable access to protests, ordering photographers or camera crews away from marches, moving photographers into marches, preventing journalists from leaving demonstrations (claimed to be justified sometimes by the police by reference to the Terrorism Act), not recognising press cards, and even assaulting journalists.<sup>77</sup>

51. In contrast, the Police Federation suggested that the powers available to the police should be the same for both moving and static demonstrations and that some existing powers should be extended.<sup>78</sup>

### ***Numbers and attitudes of police and protestors***

52. The police and the Home Office were concerned that there was sometimes poor, insufficient or non-existent communication between police and protestors, both in advance and on the day of the protest.<sup>79</sup> The police might therefore be unclear about the protestors' plans, including their route or the likely scale or duration of the protest. It also led to difficulties in marshalling protestors on the day if the organisers did not provide stewards.<sup>80</sup>

53. Those who were protested against were concerned that insufficient consideration was given to "victims" of a protest and perceived an imbalance between the rights of protestors and their targets.<sup>81</sup> Some witnesses complained of the nature of some protests. For example, the Association for the British Pharmaceutical Industry stated that "much of the protest continues to be intimidatory with masks being used, along with loud hailer and other mechanisms to confront and intimidate staff."<sup>82</sup> Compared to the protestors' complaint of over-policing, some targets complained of under-policing of protests.<sup>83</sup>

54. We heard claims from various protestors and human rights groups that the police had become more autocratic in recent years, using techniques such as penning in protestors and attempting to collect names and addresses of protestors, which could have the effect of intimidating and deterring protest.<sup>84</sup> Climate Camp pointed out that:

This is not like Southall in the 1970s where you have got a small group of police becoming very ill-disciplined and beating someone up on the street or killing someone, it is not like that. What you have got is hundreds of really petty incidents which cumulatively make going to a protest extremely unpleasant, potentially

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<sup>76</sup> Ev 106.

<sup>77</sup> Ev 176.

<sup>78</sup> Ev 187.

<sup>79</sup> E.g. Ev 146.

<sup>80</sup> Ev 142.

<sup>81</sup> E.g. Ev 74, 146, 178 and 197.

<sup>82</sup> Ev 91.

<sup>83</sup> Ev 178.

<sup>84</sup> Ev 79, 155 and 201; Q 129.

frightening or worrying and then the only way to challenge it would be hundreds of really petty complaints about different issues.<sup>85</sup>

Others referred to a disproportionate police response to peaceful demonstrations and the use of armed units.<sup>86</sup>

55. Some protest organisations felt that the number of police present at protests was increasing.<sup>87</sup> For example, the Campaign Against Arms Trade (CAAT) said:

Although CAAT has no documentary evidence with regards to the policing of its protests a decade or so back, individuals remember far fewer police attending smaller vigils ... Today, significant numbers of police attend even the small vigils, which are no different in size or nature from those in earlier times... Most of the police sit in vans, not doing anything. Their presence in such numbers is, however, unnerving for protestors, as well as tying up a large amount of police time and resources.<sup>88</sup>

However, both the Metropolitan Police and ACPO suggested that fewer police are now deployed on protests, rather than more.<sup>89</sup>

56. In addition, we heard claims that there was inconsistent policing practice, depending on who was demonstrating, the subject matter of the protest and the police area within which the protest took place.<sup>90</sup>

57. A number of witnesses told us of pre-emptive police action which prevented certain types of protest from reaching their targets.<sup>91</sup> The Home Office noted that the state may take pre-emptive action to prevent a march, but could not do so to prevent a static demonstration.<sup>92</sup> However, we heard from a number of witnesses who provided examples of the police taking action to stop protestors from reaching certain destinations or premises where they intended to demonstrate.<sup>93</sup> Few witnesses considered there to be a general need for the police to take pre-emptive action in the ordinary course of events. Situations where such action would be appropriate, according to witnesses, included a “genuine risk to life”,<sup>94</sup> “demonstrable proof of imminent violence”,<sup>95</sup> past experience suggesting that a group could engage in illegal activities or where there was solid evidence that criminal acts were planned,<sup>96</sup> but not non-violent protest.<sup>97</sup> Climate Camp referred to the problem of “overwhelming pre-emptive police operations” which, in its view, made safeguards in law

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<sup>85</sup> Q 155.

<sup>86</sup> Ev 107 and 112-127.

<sup>87</sup> E.g. Ev 98, 107 and 115.

<sup>88</sup> Ev 102, paras 12 & 13.

<sup>89</sup> Qq 180 & 203.

<sup>90</sup> Ev 155.

<sup>91</sup> Q 12.

<sup>92</sup> Ev 145; ss12 and 13 Public Order Act 1986.

<sup>93</sup> E.g. Qq 134-5 & 141.

<sup>94</sup> Ev 97.

<sup>95</sup> Ev 171.

<sup>96</sup> Ev 146.

<sup>97</sup> Ev 203.

and codes of practice theoretical and inadequate to protect rights to freedom of assembly or expression.<sup>98</sup> Dr Michael Hamilton and Dr Neil Jarman, academics and members of the OSCE Expert Panel on Freedom of Peaceful Assembly, referred to the Northern Irish jurisprudence on disorder suggesting that a more direct link between the likelihood of disorder and restrictions on protests needs to be made:

[We] ... believe there ought to be greater temporal and geographical imminence of disorder (akin to the US ‘clear and present danger’ test) to justify restrictions on an assembly ... neither a hypothetical risk of disorder, nor a risk of minor, sporadic or isolated incidents of disorder, should be used to justify sweeping prior restrictions.<sup>99</sup>

### **Public and private space**

58. A number of witnesses raised the issue of protest in “quasi-public” space: areas regarded as public which are, in fact, privately owned.<sup>100</sup> As the Campaign Against Criminalising Communities put it:

Whereas leafleting in a street is in principle legal, leafleting in a town square which has been re-developed as a shopping mall, or a park where the local authority has contracted out management to a private company, may attract prosecution for trespass. We believe that the right to protest should exist in any space to which the public have free access for shopping or recreation, regardless of whether it is managed by local authority or a private company.<sup>101</sup>

59. Both Milan Rai and Liberty recommended that there should be a legal right to protest in public spaces, including privately-owned semi-public spaces, such as privatised parks or city centre areas.<sup>102</sup> However, witnesses drew a distinction between privately owned space which was used by the public (such as a shopping centre) and purely private space (such as a person’s home).<sup>103</sup> Justice stated:

While legislative regulation to prevent intimidatory or coercive protest, and to regulate other protest to prevent excessive duration, noise etc., is legitimate for the vicinity of dwellings, the current legislation goes too far and makes even peaceful protest near a dwelling very difficult. It is therefore a disproportionate restriction upon the freedoms of expression and assembly.

...

While a person does have a right to privacy in the workplace, we believe that this justifies a lesser degree of regulation for protest in the vicinities of places of work than would be applicable to private dwellings... We believe that where privately

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<sup>98</sup> Ev 112.

<sup>99</sup> Ev 183.

<sup>100</sup> Ev 169.

<sup>101</sup> Ev 103 and 196.

<sup>102</sup> Ev 155 and 164.

<sup>103</sup> E.g. Ev 149.

owned land is open to the public in general, there should be a presumption that it be treated as a public space for the purposes of the right to protest.<sup>104</sup>

60. However, some witnesses from the business community had a different emphasis. For example, the Association of Electricity Producers told us that whilst it had no problem with lawful protest outside the perimeter of a power station, it considered that private property, such as power stations, needed to be better protected by the law.<sup>105</sup> When asked about policing of private space, AAC Allison said:

I have a fairly clear view that private places are private places. Our job is to police the public space and that is what we are resourced to do: therefore, I am not quite sure what would be gained by the giving people right to protest in, in effect, what is seen as a private area. It would create another area in which we would have to deploy police resources ... There is more than enough public space out there to enable people to protest in and that they do not need to go into the private areas.<sup>106</sup>

### ***Facilitating protest***

61. The majority of the evidence we received concluded that the state had a role in facilitating protest.<sup>107</sup> Some witnesses saw a role for the state in keeping rival groups apart<sup>108</sup> or educating society about “the valuable instrumental role protest can play.”<sup>109</sup> Liberty described the duty to facilitate the right to peaceful assembly as “a very strong obligation on the state”, requiring it not to put obstructions in the way.<sup>110</sup> Other witnesses disagreed with the concept of the state “facilitating” protest. Huntingdon Life Sciences, for example, said:

We do not see the necessity for the State to “facilitate” ... any more than this liberty or right presently provides unless, of course, it is a means to control the protest for safety reasons or to protect the conflicting rights of others.<sup>111</sup>

62. The Home Office described the state’s positive role in this way:

... to take reasonable and appropriate measures to enable lawful demonstrations to take place without the participants being subjected to physical violence or other threats from those who object to a demonstration.<sup>112</sup>

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<sup>104</sup> Ev 149, paras. 14-16.

<sup>105</sup> Ev 91. See also Ev 134.

<sup>106</sup> Q 262.

<sup>107</sup> E.g. Ev 77.

<sup>108</sup> Ev 169.

<sup>109</sup> Ev 170.

<sup>110</sup> Q 23.

<sup>111</sup> Ev 146; see also Ev 155 and Qq 127-128.

<sup>112</sup> Ev 142.

### ***Protecting the rights of the targets***

63. As the Home Office themselves pointed out in its evidence, the job of policing is to balance competing interests.<sup>113</sup> We recognise that the police also have a role to protect the human rights of those who are the targets of protest. On some occasions this includes the lawful free speech or freedom of association of those considered to be extremists.<sup>114</sup> The Minister told us:

The police’s job is to try and ensure that you facilitate free speech. I do not think there should be a judgment made on the merits of whoever is speaking necessarily. I think the issue is about security of the people who are involved. It is about ensuring that free speech is maintained and that includes the right of people to speak balanced against the right of people to protest.<sup>115</sup>

AAC Alison told us, when asked about the duty of the police to allow lawful assembly:

I would not want somebody to be stopped going about their lawful business if we could have prevented it in some way but, again, we have to be proportionate about the way in which we do it. We have to ensure that we do the best we possibly can in those sorts of scenarios.<sup>116</sup>

### ***Legitimate grounds for interfering with protests***

64. As we noted above, a protest may only lawfully be interfered with on the basis of one of the aims listed in Article 11(2) ECHR, including the “rights and freedoms of others”. However, there was much dispute between witnesses as to the types of circumstances which would fall within these aims. Limits on the right that were suggested by some witnesses included “convenience” of others,<sup>117</sup> business “disruption”<sup>118</sup> and “unreasonable” protests.<sup>119</sup>

65. Huntingdon Life Sciences accepted that large protests would be bound to cause disruption, but suggested that public inconvenience should be a factor that is taken into account in policing protest and “that the routes of protests should be limited to have as little effect on the public as possible”.<sup>120</sup> The Police Federation suggested that “the increased threat of terrorism” meant that police should be able to place restrictions on protests.<sup>121</sup> The Metropolitan Police told us that the restrictions on the right to protest which could be imposed were those set out in legislation, principally the Public Order Act 1986.<sup>122</sup> Other witnesses strongly disagreed with this approach and suggested that a restrictive

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<sup>113</sup> Ev 144 paras 42-44.

<sup>114</sup> For example, the demonstration against BNP leader Nick Griffin and controversial historian David Irving speaking at the Oxford Union – [http://news.bbc.co.uk/1/hi/ukfs\\_news/hi/newsid\\_7700000/newsid\\_7706800/7706833.stm](http://news.bbc.co.uk/1/hi/ukfs_news/hi/newsid_7700000/newsid_7706800/7706833.stm).

<sup>115</sup> Q 38.

<sup>116</sup> Q 245.

<sup>117</sup> Ev 178.

<sup>118</sup> Ev 146.

<sup>119</sup> Ev 74.

<sup>120</sup> Q 87.

<sup>121</sup> Ev 187.

<sup>122</sup> Q 211.

interpretation should be given to the permissible aims for which protest could lawfully be interfered with.<sup>123</sup>

## Conclusion

66. The evidence we received inevitably focused on some of the largest and most controversial protests, which are the most difficult events to police. However, we also received evidence from some small longstanding protest groups. We were struck by the accounts of the use of a wide range of police powers against protestors and others involved with protest – such as journalists – as well as the significant mismatch between the perceptions of protestors and the police about the way in which protest is managed. These factors could serve to diminish, rather than facilitate, protest and also risk encouraging conflict rather than co-operation between protestors and the police. In addition to its positive duty, the state is required not to restrict protests unless it is justified as being both necessary and proportionate to do so in pursuance of a legitimate aim: this is a high threshold. Whilst protests may be disruptive or inconvenient, the presumption should be in favour of protests taking place without state interference, unless compelling evidence can be provided of legitimate reasons for any restrictions and those restrictions go no further than is strictly necessary to achieve their aim.

67. There is a clear need for the rights of those protested against – however unpopular their own cause may be – to be safeguarded such that they are able to go about their lawful business and that their own rights to free expression are not disregarded by those responsible for policing protests. There is some evidence that the police do not always get this balance right, perhaps by failing to identify the fundamental liberties at stake.<sup>124</sup>

68. In the past, there were good reasons for maintaining a strict distinction between private and public space, insofar as protests were or were not permitted. However, given the increasing privatisation of ostensibly public space, such as shopping centres, we consider that the situation has changed. Where preventing protest on private land to which the public routinely has access would effectively deprive individuals of their right to peaceful protest, the Government should consider the position of quasi-public spaces to ensure that the right to protest is preserved.

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<sup>123</sup> Ev 183.

<sup>124</sup> E.g. see above, page 25 onwards.

## 4 Legal reform: general

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69. Witnesses expressed a range of views about the human rights compatibility of current legislation dealing with protest. Some, like Huntingdon Life Sciences, concluded that current police powers are necessary.<sup>125</sup> The Association of the British Pharmaceutical Industry (ABPI) said:

The introduction of SOCPA 2005, improved policing and the use of injunctions has helped to protect companies, their employees, customers and suppliers from animal rights extremists, whilst allowing peaceful protest.<sup>126</sup>

Noting its collection of data since 2002 on attacks and protests by the animal rights movement, the ABPI said “this data clearly indicates that the new legislation, effective policing and use of civil injunctions has reduced the levels of attacks on peoples’ homes, while the level of protest has remained virtually unchanged.”<sup>127</sup> However, it is not clear to us whether the drop in attacks can be attributed solely to the new legislation, or to other factors such as the remand of some protestors or better policing.

70. On the other hand, others argued equally strongly that existing legislation failed to respect “the need to balance any competing rights or, in the case of protest, balance the right under Article 11(1) with wider social interests in Article 11(2)”.<sup>128</sup> David Mead, Senior Lecturer in Law at the University of East Anglia, suggested that insufficient attention has been given in the law on protest generally to the concept of rights:

English law relating to protest has been informed by the imperative of order maintenance alongside a political need to (be seen to) respond to individual events/perceived social ills (rather than as a structured and balanced framework) and not by any concept of rights.<sup>129</sup>

71. Some generic concerns, applying to a number of laws governing protest, were summarised by Justice in the following terms:

- overbroad or excessively vague legislation leading to wide discretion being given to police officers and an unclear line between lawful and unlawful conduct
- progressive and increasingly severe legislative limitation of the right to protest resulting in “a bewildering array of [overlapping] powers and offences in relation to protest activities” which decreases the foreseeability and predictability of the law;<sup>130</sup> and

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<sup>125</sup> Ev 146.

<sup>126</sup> Ev 88.

<sup>127</sup> Ev 89.

<sup>128</sup> Ev 169.

<sup>129</sup> Ev 170.

<sup>130</sup> Ev 149, para. 3: Including the offence under section 5 Public Order Act 1986, the Serious Organised Crime and Police Act 2005, the Protection from Harassment Act 1997, the Terrorism Act 2000 and the Anti-Social Behaviour Act 2003.

- reluctance of the courts to provide clear limits on overbroad powers under section 3 Human Rights Act 1998 (the duty to interpret legislation compatibly with human rights).<sup>131</sup>

72. Fleshing out concerns about overbroad legislation and its interplay with human rights standards, Justice told us:

Overbroad legislation is often justified on the basis that the police and other officials will not be able to use it in circumstances contrary to the Human Rights Act 1998 ... In effect the individual police officer or protestor is being asked to determine – sometimes in circumstances where an urgent response is required – whether his or her actions, while within the statutory power, are in accordance with the HRA. This is a complex question and clear guidance is necessary.<sup>132</sup>

73. Liberty argued that the starting point must be the legislation itself, not guidance on its application:

If you are going to ensure Convention compliance, it is the legislators that should do that at the outset. You should avoid passing legislation which is so broad that it could be applied in a non-Convention compliant manner. It is much better that narrow legislation is passed in the first place, rather than the police and other public bodies, who need to make a decision very quickly, having to decide themselves at the time whether they are acting in a Convention compliant manner or not.<sup>133</sup>

74. A number of witnesses pointed to legislation which was not specifically designed to deal with protests, but which had “since become part of the police’s toolkit.”<sup>134</sup> The stop and search power under the Terrorism Act 2000, the criminal offence of harassment and the use of civil injunctions have already been noted. Witnesses also referred to the use of anti-social behaviour orders and dispersal powers against protestors.<sup>135</sup>

75. The Minister accepted the need for greater clarity in relation to the exercise of police discretion stating:

Discretion is important and does happen in different circumstances across the country, but there is a need for greater clarity about how some of the powers of the police are used and how the officer on the beat uses the powers he has available to him.<sup>136</sup>

**76. We agree with the Minister that there needs to be greater clarity about how broad police powers are used. However, in our view, the better approach is to draft legislation itself in sufficiently precise terms so as to constrain and guide police discretion, rather**

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<sup>131</sup> Ev 149, para. 3. Examples of cases falling within the third category included *R (Singh) v Chief Constable of the West Midlands* [2006] EWCA Civ 1888 (dispersal of protestors under Anti-Social Behaviour Act 2003) and *R (Gillan) v Commissioner of Police for the Metropolis* [2006] UKHL 12.

<sup>132</sup> Ev 149.

<sup>133</sup> Q 56.

<sup>134</sup> Ev 196.

<sup>135</sup> Ev 151 and 162

<sup>136</sup> Q 308.

**than to rely on decision makers to exercise a broad discretion compatibly with human rights.**

77. Below we turn to consider the most significant legal provisions in this area and suggest ways in which they could be amended or applied differently in order to ensure that their impact on protest is more likely to be compatible in practice with the UK's human rights obligations.

## Public Order Act

78. The Home Office suggested that the Public Order Act enabled the police to strike a balance between competing rights.<sup>137</sup> It summed up its position by quoting from *Blackstone's General Policing Duties 2008*:

Public order law and the policing of it 'involves balancing opposing rights of individuals with one another against wider entitlements and requirements of society – a task that, in practical terms, can seem like trying to satisfy the insatiable.'<sup>138</sup>

79. Witnesses expressed different views as to whether the Public Order Act was sufficient for policing protests generally, or whether specific legislative solutions were required for specific areas. According to both ACPO and the Metropolitan Police, the Act was not suitable for policing everywhere as specific legislation was required for the area around Parliament.<sup>139</sup> Other witnesses disagreed.<sup>140</sup> We address this issue in the next Chapter.

80. A number of witnesses drew specific attention to section 5 of the Act, which criminalises "threatening, abusive or insulting" words or behaviour in certain circumstances.<sup>141</sup> Some witnesses said this section "can be used in a way which ... illegitimately stifles protest"<sup>142</sup> or has a chilling effect on free speech.<sup>143</sup> Liberty provided an example of the police citing section 5 of the Act where a young man demonstrating outside the Church of Scientology's London headquarters was issued with a summons by the police for refusing to take down his sign, which read "Scientology is not a religion, it is a dangerous cult". The police alleged that the use of the word "cult" violated section 5, although they did not subsequently proceed with a prosecution.<sup>144</sup>

81. The Metropolitan Police gave an example of the arrest under section 5 of a protestor at a free speech rally for wearing a picture of a cartoon depicting the prophet Mohammed, which had been published in the Danish press, explaining:

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<sup>137</sup> Ev 142.

<sup>138</sup> Ev 143.

<sup>139</sup> Qq 271 & 276.

<sup>140</sup> E.g. Q 45.

<sup>141</sup> See also above, Chapter 2, para. 38.

<sup>142</sup> Q 59.

<sup>143</sup> Ev 84, 158, para. 21 and Ev 171.

<sup>144</sup> Ev 158, para. 21.

That was during a very tense period ... we chose to wait until somebody came forward to us and said “I fear that that will cause a breach of the peace; I am offended by that” and then we took action against the individuals.<sup>145</sup>

82. We asked police witnesses whether they considered that existing police powers under section 5 were too broad or used too often. AAC Allison disagreed, suggesting that “if [people] felt that we were acting inappropriately or making excessive use of our powers then they had the right to challenge us about it.”<sup>146</sup>

83. As with freedom of assembly, freedom of expression imposes both positive and negative obligations on the state. We were pleased to note that the Home Office Minister, Vernon Coaker MP, accepted that “the police’s job is to try and ensure that you facilitate free speech”.<sup>147</sup> When we asked the Minister about potentially inappropriate uses of section 5, including an example where an Oxford student was arrested for allegedly calling a police horse “gay”, he said “I do not think section five should be used arbitrarily. It is an important power that the police have.”<sup>148</sup> He added “You do get these examples that are brought up which do sometimes make people wonder whether the power was used appropriately. I will take those examples back, talk to the police about them and see whether we can clarify and get some guidance out of it.”<sup>149</sup> The Minister agreed to raise with ACPO the examples which we had discussed and “see what sort of guidance and better support could be given to police officers with respect to the use of section 5.”<sup>150</sup>

84. There is an inextricable and fundamental link between the right to protest and free speech. We are concerned by the evidence that section 5 has, on occasions, been used to prevent people from freely expressing their views on matters of concern to them, and thereby has stifled otherwise legal, peaceful protest. Whilst we agree that people should be protected by existing laws preventing incitement on a number of grounds, free speech in the context of protest and dissent has long been protected by the common law because of its importance for the functioning of a democratic society. It is inevitable that some protests will cause others to be offended. As one witness told us, “protest is always going to upset somebody - that is the nature of protest”.<sup>151</sup>

**85. Section 5 of the Public Order Act gives the police a wide discretion to decide what language or behaviour is “threatening, abusive or insulting”. Whilst arresting a protestor for using “threatening or abusive” speech may, depending on the circumstances, be a proportionate response, we do not think that language or behaviour which is merely “insulting” should ever be criminalised in this way. Whilst we welcome the Minister’s agreement to discuss the examples we raised with ACPO in order to see whether guidance or support to police officers would improve matters, we do not consider that improving guidance will be sufficient to address our concern. We recommend that the Government amend section 5 of the Public Order Act 1986 so that**

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<sup>145</sup> Q 248.

<sup>146</sup> Q 250.

<sup>147</sup> Q 315.

<sup>148</sup> Q 301.

<sup>149</sup> Q 30.

<sup>150</sup> Q 301.

<sup>151</sup> Q 130.

**it cannot be used inappropriately to suppress the right to free speech, by deleting the reference to language or behaviour that is merely “insulting.” This amendment would provide proportionate protection to individuals’ right to free speech, whilst continuing to protect people from threatening or abusive speech. We suggest such an amendment:**

*Harassment, alarm or distress: insulting words or behaviour*

To move the following clause:

‘(1) The Public Order Act 1986 (c. 64) is amended as follows.

(2) In sections 5(1)(a) and 5(1)(b), the words “abusive or insulting” are replaced by “or abusive”.’

## Counter-terrorism powers

86. A significant number of witnesses expressed serious concerns at the use of counter-terrorism powers on protestors, particularly the power under section 44 of the Terrorism Act 2000 to stop and search without suspicion.<sup>152</sup> Witnesses suggested that the use of the powers contravened the OSCE/ODIHR *Guidelines*<sup>153</sup> which note:

Domestic legislation designed to counter terrorism or “extremism” should narrowly define these terms so as not to include forms of civil disobedience and protest; the pursuit of certain political, religious, or ideological ends; or attempts to exert influence on other sections of society, the government, or international opinion.<sup>154</sup>

87. The National Union of Journalists complained that the police had relied on the Terrorism Act 2000 to prevent journalists from leaving demonstrations.<sup>155</sup> Some witnesses noted that restrictions on peaceful protests were increasingly justified by reference to the security threat.<sup>156</sup> The following comment by David Mead reflects the views of a number of witnesses:

... there can be no justification to call upon anti-terrorism legislation to police protests/protestors and such use debases the very real threat terrorists are capable of posing to us all.<sup>157</sup>

88. High profile examples of the inappropriate use of counter-terrorism powers include: preventing Walter Wolfgang from re-entering the Labour Party conference in Brighton in 2005, following his physical ejection for heckling the then Foreign Secretary Jack Straw MP; and stopping and searching a protestor and a journalist at an arms fair at the Excel Centre in Docklands, East London in 2003.<sup>158</sup> Less well-known examples include the use of

<sup>152</sup> E.g. Ev 77, 99, 106, 107, 108, 155 and 203.

<sup>153</sup> Ev 184.

<sup>154</sup> OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, para. 77.

<sup>155</sup> Ev 175.

<sup>156</sup> Ev 103 and 107.

<sup>157</sup> Ev 155 and 169.

<sup>158</sup> The protestor and journalist challenged the police’s use of their counter-terrorism powers: *R (Gillan) v Metropolitan Police Commissioner* [2006] UKHL 12.

stop and search on demonstrators at military bases<sup>159</sup> or people wearing slogans on t-shirts.<sup>160</sup>

89. The Research Defence Society and the author and commentator Richard D. North both distinguished protestors (including animal rights extremists) from terrorists.<sup>161</sup> Mr North said “terrorism is a word we ought to reserve for some kind of insurgency, or guerilla or asymmetrical warfare”.<sup>162</sup> In contrast, Huntingdon Life Sciences argued in relation to protest against its activities by animal rights activists, however, that “insufficient consideration was given to counter-terrorism powers in what was widely considered in practice (but not in name) to be domestic terrorism”.<sup>163</sup>

90. When we asked police representatives whether it was appropriate to use counter-terrorism powers against protestors, AAC Allison replied that “there are occasions when we do need to use our counter-terrorism powers: I would say that that is why we have them”.<sup>164</sup>

91. Addressing the same question, the Minister was clear that counter-terrorism powers should only be used in relation to terrorism. He noted that the Prime Minister had ordered a review into the use of stop and search powers<sup>165</sup> and as a result new guidance had been published.<sup>166</sup> He pointed out, however, that:

If you have a big protest near a big power station or airport, [...] it is very difficult to say that under no circumstances should the police in those situations ever consider using a counterterrorism power when we all know it is perfectly possible for the legitimate protestors to be infiltrated by one or two who may have other desires....<sup>167</sup>

92. The new guidance on stop and search notes that the powers to stop and search under sections 43 and 44 of the Terrorism Act 2000 only allow an officer to “search for articles or evidence that relate to terrorism” and that “[the section 44] power should be used sparingly”.<sup>168</sup> In the light of the decision of the House of Lords in *Gillan*,<sup>169</sup> which concerned the use of the stop and search power on protestors and journalists outside an arms fair in the Docklands in London, the guidance states that stop and search should never be used to conduct arbitrary searches but should be based on objective criteria.<sup>170</sup> The guidance refers to protests, noting that section 44 may be appropriate for large public events that may be at risk from terrorism, but states “officers should also be reminded at

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<sup>159</sup> Ev 107 and 162.

<sup>160</sup> Ev 103.

<sup>161</sup> Ev 178 and 188.

<sup>162</sup> Ev 178.

<sup>163</sup> Ev 147.

<sup>164</sup> Q 269.

<sup>165</sup> Ev 107.

<sup>166</sup> Qq 296 & 329.

<sup>167</sup> Qq 342 & 344.

<sup>168</sup> National Policing Improvement Agency, *Practice Advice on Stop and Search in Relation to Terrorism*, 2008, pp. 11 and 13.

<sup>169</sup> [2006] UKHL 12.

<sup>170</sup> National Policing Improvement Agency, p. 14.

briefings that stop and search powers under the Terrorism Act 2000 must never be used as a public order tactic.”<sup>171</sup> The only reference to human rights is contained in the section of the guidance on the contents of the community impact assessment: it suggests that “the requirements of the Human Rights Act 1998” should be included in the community impact assessment.<sup>172</sup> Although not specifically referring to journalists, the guidance states that the Terrorism Act 2000, even where a section 44 designation is in place, does not prevent people from taking photographs. In addition, although film and memory cards may be seized as part of a search, officers do not have a legal power to delete images or destroy film.<sup>173</sup>

**93. Whilst we accept that there may be circumstances where the police reasonably believe, on the basis of intelligence, that a demonstration could be used to mask a terrorist attack or be a target of terrorism, we have heard of no examples of this issue arising in practice. We are concerned by the reports we have received of police using counter-terrorism powers on peaceful protestors. It is not clear to us whether this stems from a deliberate decision by the police to use a legal tool which they now have or if individual officers are exercising their discretion inappropriately. Whatever the reason, this is a matter of concern. We welcome the Minister’s comments that counter-terrorism legislation should not be used to deal with public order or protests. We also welcome the recommendation in the new guidance to human rights being included in community impact assessments. We recommend that the new guidance on the use of the section 44 stop and search power be amended to make clear that counter-terrorism powers should not be used against peaceful protestors. In addition, the guidance should make specific reference to the duty of police to act compatibly with human rights, including, for example, by specifying the human rights engaged by protest.**

94. Concerns have recently been expressed in the media that a new provision in the Counter Terrorism Act 2008 makes it a criminal offence to take and publish a photograph of a police officer. Section 76 of the 2008 Act makes it an offence to elicit or attempt to elicit information about an individual who is or has been a constable “which is of a kind likely to be useful to a person committing or preparing an act of terrorism.”<sup>174</sup> As the Explanatory Notes to the Counter Terrorism Bill correctly stated, the new offence will only be committed where the information in question is “such as to raise a reasonable suspicion that it was intended to be used to assist in the preparation or commission of an act of terrorism, and must be of a kind that was likely to provide practical assistance to a person committing or preparing an act of terrorism.”<sup>175</sup> That is the effect of a decision of the Court of Appeal in a case in 2008<sup>176</sup> interpreting the same statutory language in the separate terrorism offence of possessing a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism.<sup>177</sup>

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<sup>171</sup> National Policing Improvement Agency, p.17.

<sup>172</sup> National Policing Improvement Agency, p. 23.

<sup>173</sup> National Policing Improvement Agency, p.19.

<sup>174</sup> Inserting new s. 58A into the Terrorism Act 2000.

<sup>175</sup> Explanatory Notes, para. 233.

<sup>176</sup> *R v K* [2008] EWCA Crim 185.

<sup>177</sup> Section 58 Terrorism Act 2000. The Court of Appeal held (at paras 13-14) that it is not legitimate under section 58 for the Crown to seek to demonstrate, by reference to extrinsic evidence, that a document, innocuous on its face (such as a copy of the London A-Z), is intended to be used for the purpose of committing or preparing a terrorist act.

95. We therefore do not share the concerns expressed in the media that the new offence criminalises taking photographs of the police. However, we do regard as significant the fact that this is being widely reported as a matter of concern to journalists. Legal uncertainty about the reach of criminal offences can have a chilling effect on the activities of journalists and protestors. **We therefore recommend that, to eliminate any scope for doubt about the scope of the new offence in section 76 of the Counter Terrorism Act 2008, guidance be issued to the police about the scope of the offence in light of the decision of the Court of Appeal, and specifically addressing concerns about its improper use to prevent photographing or filming police.**

## Injunctions

96. Some witnesses welcomed the increased use by companies of injunctions against protestors<sup>178</sup> which “allow their employees to go about their lawful business without intimidation, while balancing the ability of ... protestors to lawfully protest”.<sup>179</sup> Huntingdon Life Sciences praised the use of injunctions as “one of the most effective tools in controlling various criminal and tortious protest activity” but noted the cost and inconvenience of obtaining them.<sup>180</sup>

97. Liberty and some protestors pointed out, however, that injunctions can stop protest without an opportunity being provided for protestors to put forward their case.<sup>181</sup> We received evidence from two witnesses about the injunction granted to NPower in relation to its proposal to use lakes in Oxfordshire for disposing of ash from a local power station. Dr Peter Harbour, from Save Radley Lakes, complained that the company’s application for an injunction was heard without him being given notice, was based on accusations against him which had not been brought to the attention of the police, and was impossible for him to challenge because of the cost of applying to the High Court.<sup>182</sup> We also heard from a photo journalist, Adrian Arbib, who had been issued with an injunction which prevented him from taking photographs at the same site. He successfully challenged the injunction in the High Court, which led to the media being excluded from its scope.<sup>183</sup>

98. The Practice Direction to Part 25 of the Civil Procedure Rules requires anyone making an application for an injunction without notice to the other side to explain in the evidence supporting the application the reason why notice was not given.<sup>184</sup> Even where notice is not given, unless secrecy requires it, the person or organisation against whom the injunction is sought should ordinarily be notified informally of the proposed application.<sup>185</sup> Although the general rule in civil proceedings is that hearings will be in public,<sup>186</sup> this rule is reversed for a number of types of proceedings, including applications under the

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<sup>178</sup> Ev 88, 94, 135 and 188.

<sup>179</sup> Ev 88.

<sup>180</sup> Ev 88, 94 and 146.

<sup>181</sup> Q 59.

<sup>182</sup> Ev 139.

<sup>183</sup> Ev 87.

<sup>184</sup> Practice Direction to Part 25 Civil Procedure Rules, para. 3.4.

<sup>185</sup> Practice Direction to Part 25 Civil Procedure Rules, para. 4.3.

<sup>186</sup> Civil Procedure Rules, r. 39.2.

Protection from Harassment Act 1997, which will be listed in the first instance in private<sup>187</sup> unless the judge orders otherwise.<sup>188</sup>

99. We appreciate that injunctions bring benefits to those who have experienced violent and intimidatory protest, especially at their homes. However, we are concerned that the Protection from Harassment Act 1997 (which was not designed to deal with protestors, but has developed over time to encompass this area of activity) has the potential for overbroad and disproportionate application. We do not consider that, in the usual course of events, there is any pressing need for applications against protestors to be made without providing the possibility for protestors to make representations on the proposed injunction. This is particularly so given the potential risk of substantial costs faced by protestors who seek to amend or revoke an injunction once it has been granted.

100. We recommend that the Government reverse the presumption that hearings for protection from harassment injunctions are held in private, where they relate to the activities of protestors. Practice Direction 39 to the Civil Procedure Rules should be amended to make clear that applications for injunctions relating to protests are not covered by paragraph 1.5. In addition, and applying the same reasoning, we recommend that Practice Direction 25 be amended to ensure that applications for injunctions relating to protest activities may not be made without notice being given to any individuals or organisations named on the application. These recommendations will assist the courts in ensuring that injunctions against protestors are necessary and proportionate within the context of the rights to freedom of speech and peaceful assembly.

## Protest in designated areas under SOCPA

101. We deal with protest around Parliament, which is a designated area under SOCPA, in the next Chapter. In this section, we consider other designated sites under section 128 of the Act, such as nuclear facilities.

102. Many witnesses were concerned that there should not be a blanket ban on protest in designated areas.<sup>189</sup> Dr Michael Hamilton and Dr Neil Jarman pointed out that such bans:

... risk being disproportionate because (1) they preclude a timely assessment of the specific facts of a given case, (2) their geographical boundaries may go beyond that which could routinely be said to raise concerns which relate to “legitimate aims” (such as national security), and (3) their reach often extends to entirely innocuous activities.<sup>190</sup>

103. A number of witnesses were unconvinced that criminalising trespass on nuclear and designated facilities was proportionate, nor that it added anything to existing criminal

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<sup>187</sup> Practice Direction to Part 39 Civil Procedure Rules, para. 1.5.

<sup>188</sup> Practice Direction to Part 39 Civil Procedure Rules, para. 1.8.

<sup>189</sup> Ev 185, 196 and 203.

<sup>190</sup> Ev 185.

law.<sup>191</sup> Justice criticised the fact that section 128 permitted the Secretary of State to designate any site in the interests of national security:

It is a perfect example of what we have indicated post the Human Rights Act of legislation not containing any specific safeguards in relation to necessity. The common argument of Parliamentary draftsmen is of course any powers have to be exercised consistently with Convention rights and interpreted consistently with Convention rights, but there is nothing in section 128 which requires the Secretary of State to consider whether it is necessary to designate a site.<sup>192</sup>

104. Some witnesses advocated the repeal of section 128 of SOCPA, suggesting that the Public Order Act 1986 and other existing law was sufficient.<sup>193</sup> As Milan Rai said:

I cannot see why we should be making walking around peacefully a criminal activity, wherever it is taking place. If someone is taking implements to blow something up or whatever, we will capture that under other laws. Simply walking around peacefully, which is what that law is about, I do not see why we should have a law banning that.<sup>194</sup>

105. On the other hand, the Association of Electricity Producers and Drax Power Limited suggested that it would be proportionate to extend section 128 SOCPA to include coal-fired power stations, which were not automatically covered.<sup>195</sup>

106. When our predecessor Committee scrutinised the Serious Organised Crime and Police Bill during its passage through Parliament, it expressed doubts about whether the provision would, in practice, be operated in a manner compatible with the ECHR or that appropriate safeguards were in place to ensure compatibility, short of challenge before the courts.<sup>196</sup>

107. We wrote to the Minister on 13 November 2008 to ask him whether section 128 remains necessary in relation to protected and designated sites and why general public order or criminal law was insufficient to deal with protest around protected and/or designated sites. We received his reply very shortly before we agreed this Report.<sup>197</sup>

**108. Many of the concerns which we expressed during the passage of the Bill which became the Serious Organised Crime and Police Act 2005 have been borne out in practice: we do not have confidence that section 128 has been implemented in a manner compatible with Convention rights, or that appropriate safeguards are in place to secure compatibility. We recommend that section 128(3)(c) be amended to permit the Home Secretary to designate sites on the grounds of national security only where it is**

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<sup>191</sup> Ev 77, 97, 107 and 155.

<sup>192</sup> Q 51.

<sup>193</sup> Qq 53-54.

<sup>194</sup> Q 166.

<sup>195</sup> Ev 92 and 135.

<sup>196</sup> See in particular Fourth Report of Session 2004-05, *Scrutiny: First Progress Report*, HL Paper 26, HC 224 and Eighth Report of Session 2004-05, *Scrutiny: Fourth Progress Report*, HL Paper 60, HC 388, especially paras 2.68-2.69.

<sup>197</sup> Ev 67-69.

necessary to do so. An amendment to section 128, which we may wish to table for debate in Parliament when an appropriate opportunity arises, is suggested below:

*Offence of trespassing: designation of sites*

To move the following clause:

“(1) Section 128 of the Serious Organised Crime and Police Act 2005 (c. 15) is amended as follows.

(2) In subsection (3)(c), after “appropriate” the words “and necessary” are inserted.”.

## Cyber protest

109. Several witnesses drew attention to the problems that could be caused by forms of internet or email protest. David Taylor MP told us that he received approximately 6,500 emails in advance of a debate in the House of Commons on the expansion of Heathrow Airport, which seriously interfered with his work and led to the loss of constituency emails.<sup>198</sup> Huntingdon Life Sciences also has experience of internet protest and noted that there was often an international dimension, which made it more difficult for the police to intervene effectively.<sup>199</sup> A number of witnesses, including the Minister, agreed that the best way to deal with this issue was to use the existing criminal law to deal with underlying criminal behaviour.<sup>200</sup> **We recommend that the police should be proactive in using the existing criminal law to prosecute protestors who are carrying out threatening or abusive protest via the internet. Further, we recommend that the Home Office review the existing law to ensure that it adequately protects both the rights of protestors and those who are targeted by such protests.**

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<sup>198</sup> Ev 194.

<sup>199</sup> Q 108.

<sup>200</sup> Qq 108, 162 & 331.

## 5 Legal reform: protest around Parliament

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### Background

110. Parliament is a focus for protest and nowhere is the question of how to balance competing rights more acute than in the streets around the Palace of Westminster. The Government said that “Parliament’s status as the natural focus for the electorate to express its views” had been “very strongly articulated” in its recent consultation on the law applying to protest around Parliament.<sup>201</sup> The rights to peaceful assembly and to freedom of expression must, however, be balanced against the requirement of Members, staff and the public to gain access to the Houses of Parliament to go about their work; nor can one group exercise its right to protest to the exclusion of other groups.

111. The debate on the legal framework for protest around Parliament dates back to 2001, when Mr Brian Haw began his “permanent peace protest” in Parliament Square against US and UK military action in Afghanistan and Iraq.<sup>202</sup> His action attracted notice because of its duration, the development of a “peace camp” opposite Carriage Gates – the main vehicle entrance to the House of Commons – and the protracted use by Mr Haw and others of loudspeakers which were audible in some parliamentary buildings. In addition, a number of major demonstrations relating to the military action again raised the question of how access to Parliament could be maintained.

112. The House of Lords passes a “Stoppages Order” at the beginning of each parliamentary session which requires that the Metropolitan Police Commissioner “do take care that the passages through the streets leading to this House be kept free and open and that no obstruction is permitted to hinder the passage of Lords to and from this House during the sitting of Parliament.”<sup>203</sup> It is communicated to the Commissioner by Black Rod and is intended to trigger police action under section 52 of the Metropolitan Police Act 1839.<sup>204</sup>

113. Until 2005, the Commons passed a similar Sessional Order. This practice was discontinued following an inquiry by the Procedure Committee in 2003 which concluded that the police lacked powers to enforce the 1839 Act and that, as a result, the Sessional Order was “misleading”.<sup>205</sup> The Committee recommended that new legislative provision

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<sup>201</sup> Ev 144.

<sup>202</sup> *Report of the Joint Committee on the Draft Constitutional Renewal Bill, Session 2007-08, Volume II, HL Paper 166-II, HC 551-II (hereafter *Joint Committee on the Draft Constitutional Renewal Bill, Evidence*), Ev 02, p211, para. 5.*

<sup>203</sup> House of Lords Minutes of Proceedings, 3 December 2008.

<sup>204</sup> *Joint Committee on the Draft Constitutional Renewal Bill, Evidence, Ev 12, pp213-14.* The section reads as follows: “It shall be lawful for the commissioners of police from time to time, and as occasion shall require, to make regulations for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets and thoroughfares within the metropolitan police district, in all times of public processions, public rejoicings, or illuminations, and also to give directions to the constables for keeping order and for preventing any obstruction of the thoroughfares in the immediate neighbourhood of her Majesty’s palaces and the public offices, the High Court of Parliament, the courts of law and equity, the magistrates’ courts, the theatres, and other places of public resort, and in any case when the streets or thoroughfares may be thronged or may be liable to be obstructed.”

<sup>205</sup> Procedure Committee, Third Report, Session 2002-03, *Sessional Orders and Resolutions*, HC 855, Chapter 3.

was required and this led to the introduction of new legislation on protest around Parliament in the Serious Organised Crime and Police Bill, which became law in 2005.

### SOCPA in practice

114. Our predecessor Committee published two Reports on SOCPA during its passage through Parliament. The Committee described the clauses about protest around Parliament as “a sledgehammer to crack a nut” which would have been unjustifiable and disproportionate interferences with the Convention rights to freedom of expression and assembly.<sup>206</sup> Whilst the Government brought forward some concessions, the Committee remained concerned about this part of the Act.<sup>207</sup>

115. There have been a number of controversial prosecutions under SOCPA involving peaceful, low-key protestors who declined to provide advance notification of their activities. Perhaps the most notable were the prosecutions of Maya Evans and Milan Rai for undertaking an unauthorised protest in October 2005, which consisted of reading aloud at the Cenotaph the names of British soldiers and Iraqi civilians killed during the conflict in Iraq. In addition, attempts to use SOCPA to end Mr Haw’s protest failed.<sup>208</sup> The difficulty with determining what constitutes a demonstration under the Act was illustrated in the evidence we received from the comedian, Mark Thomas. He said he was required to seek authorisation for “protests” involving standing in Parliament Square with a banner in support of the British Legion and, on another occasion, standing with a small group of friends wearing red noses in support of Comic Relief. He contrasted this with examples of protests which the police appeared to have defined as political “media events” or publicity stunts which had not required advance notification, although, in his view, they seemed little different from small-scale acts of protest which had led to prosecutions under SOCPA.<sup>209</sup> For example, Conservative Party campaigners organised an event outside Downing Street, where they dressed as Father Christmases wearing Gordon Brown masks.<sup>210</sup>

116. We drew some of the examples that we had heard about to the Minister’s attention and asked him to explain the distinction between demonstrations in Parliament Square, to which SOCPA had been applied, and publicity stunts, which had not been subjected to SOCPA. The Minister responded:

The key difference is that Nelson Mandela and Gordon Brown, when they were unveiling the statue or whatever they were doing, were not demonstrating in Parliament Square. With others, even if it was a publicity stunt, people were looking as to whether they were demonstrating.

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<sup>206</sup> Fourth Report of Session 2004-05, *Scrutiny: First Progress Report*, HL Paper 26, HC 224, para. 1.138.

<sup>207</sup> Eighth Report of Session 2004-05, *Scrutiny: Fourth Progress Report*, HL Paper 60, HC 388, para. 2.77.

<sup>208</sup> *Director of Public Prosecutions v Haw* [2007] EWHC 1931 (Admin).

<sup>209</sup> Ev 194.

<sup>210</sup> Ev 194.

Was it a publicity stunt or a demonstration? That is where you start dancing on the head of a pin. I personally see lots of things as publicity stunts and they are quite amusing. You would not stop them because that is part of the life blood of democracy, to use humour and caricature in order to make a political point. That has been done through the centuries. It is a perfectly reasonable thing to do. Are we saying somebody is using that to demonstrate or simply as a publicity stunt?<sup>211</sup>

117. The Home Office noted that the legislation on protest around Parliament has not been found by the courts to be incompatible with the Human Rights Act.<sup>212</sup> It also drew attention to a European Court of Human Rights case – *Rassemblement Jurassien Unité v Switzerland* – where the court ruled that “subjecting peaceful demonstrations to a prior authorisation procedure does not encroach upon the essence of the Article 11 right which can be regulated in its exercise”.<sup>213</sup> However, the Court has also held that such regulation of protest should not represent a hidden obstacle to freedom of assembly.<sup>214</sup>

118. The evidence we received during our inquiry was overwhelmingly of the view that the SOCPA provisions relating to protest around Parliament should be repealed. This accorded with the responses to the Government’s own consultation exercise, 95 per cent of which favoured repeal.<sup>215</sup> Baroness Mallalieu, President of the Countryside Alliance, said “unsightly as a protest may be, the right to protest must be protected ... I am unpersuaded that the area round Parliament should be treated differently than anywhere else in the country”.<sup>216</sup> Striking a different note, however, Richard D. North criticised protestors who tried to “trump” Parliament and the democratic process and described protest that invaded Parliament as “the very worst sort of protest”.<sup>217</sup>

119. While generally supportive of the SOCPA powers,<sup>218</sup> the parliamentary authorities have commented on continuing problems with noise levels from protests in Parliament Square. The Serjeant at Arms told the Joint Committee on the draft Constitutional Renewal Bill that the police “do not have any powers to stop the noise” and that the process for tackling excessive noise levels with Westminster City Council was too slow: the police “are looking for some powers to be able to deal with the problem on the day”.<sup>219</sup> Baroness Mallalieu, however, commented in her written evidence on the importance of using loudspeakers to communicate with the crowd in a major protest and the problems caused during a Countryside Alliance demonstration in 2004 by the prohibition on the use of loudspeakers in Parliament Square.<sup>220</sup>

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<sup>211</sup> Qq 310-311.

<sup>212</sup> See e.g. *Blum v Director of Public Prosecutions* [2006] EWHC 3209 (Admin), which concerned the appeals by Milan Rai, Maya Evans and two others.

<sup>213</sup> *Rassemblement Jurassien Unité v Switzerland*, App. No. 8191/78, 17 DR 93, paras 23-5.

<sup>214</sup> *Aldemir v Turkey*, App. No. 32124/02, 18 December 2007, paras 46-47.

<sup>215</sup> *Governance of Britain: Managing Protest around Parliament*, October 2007, Cm 7235, para. 12.

<sup>216</sup> Ev 128 and 129.

<sup>217</sup> Ev 181.

<sup>218</sup> *Joint Committee on the Draft Constitutional Renewal Bill, Evidence*, Qq 479-81.

<sup>219</sup> *Joint Committee on the Draft Constitutional Renewal Bill, Evidence*, Q 466.

<sup>220</sup> Ev 128.

## Current proposals

120. The Government announced in July 2007 that it would review the current law on protest around Parliament and proposed in the draft Constitutional Renewal Bill to repeal sections 132 to 138 of SOCPA.<sup>221</sup> It invited Parliament to consider whether specific provisions, over and above those contained in the Public Order Act, were required to manage protest around Parliament.<sup>222</sup>

121. The Metropolitan Police acknowledged that the current legislative framework creates “some challenges” and called for “any new regime to provide clarity ... that can be clearly understood by those who wish to protest, those who work in the area, and the police who have to manage the protest”.<sup>223</sup> In oral evidence, AAC Allison argued that protest around Parliament should continue to require advance notification.<sup>224</sup> Other witnesses, however, questioned whether any additional provision was required, over and above the existing Public Order Act.<sup>225</sup>

122. In a written submission, the Mayor of London said he did not agree that “Parliament Square Garden should be used as a free campsite, creating an unsightly public health hazard of offence to thousands of Londoners and visitors who use this public space every day”. He drew attention to the costs to the Greater London Authority in maintaining and cleaning up Parliament Square and argued in favour of limiting the duration of protest there, possibly using new byelaws passed under section 236A of the Local Government Act 1972 as amended by the Local Government and Public Involvement in Health Act 2007.<sup>226</sup>

123. Malcolm Jack, the Clerk of the House of Commons, and Jill Pay, Serjeant at Arms, in evidence to the Joint Committee on the draft Constitutional Renewal Bill, argued that prior notice of demonstrations in streets adjacent to parliamentary buildings (and on the Thames, adjacent to the Palace of Westminster) should be a legal requirement in order to guarantee unimpeded access to the parliamentary estate for Members, staff and the public and to control the use of intrusive sound systems. Mr Jack suggested that reliance on the Public Order Act alone would provide “little effective control” of these areas and no means of controlling the use of loudspeakers and related equipment. In addition, he suggested that protest on “pavements and roadways adjacent to Carriage Gates, St Stephen’s Entrance, Peers Entrance and Black Rod’s Garden Entrance” should be prohibited.<sup>227</sup> He also called for a ban on overnight or permanent demonstrations on Parliament Square, because they are unsightly and pose a security risk.<sup>228</sup> The Clerk of the Parliaments and Black Rod broadly supported the position of the Commons Clerk and Serjeant.

124. The Joint Committee on the draft bill came to the following conclusions:

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<sup>221</sup> *The Governance of Britain – Constitutional Renewal*, March 2008, Cm 7342-II, clause 1.

<sup>222</sup> *The Governance of Britain – Constitutional Renewal*, March 2008, Cm 7342-I, para. 29.

<sup>223</sup> Ev 173.

<sup>224</sup> Q 205.

<sup>225</sup> E.g. Q 45.

<sup>226</sup> Ev 168 and 169.

<sup>227</sup> And see *Joint Committee on the Draft Constitutional Renewal Bill, Evidence*, Q 460, and Ev 02, paras 17-20.

<sup>228</sup> *Joint Committee on the Draft Constitutional Renewal Bill, Evidence*, Q 469.

- Sections 132 to 138 of SOCPA should be repealed.
- Members of Parliament, staff and the public should have unrestricted access to Parliament, via four key entry points: Black Rod's Garden and Portcullis House for pedestrians and Carriage Gates and Peers Entrance for vehicles.
- The police might not have adequate powers to maintain this level of access. The police, Home Office and other interested parties should work together to resolve this but the Committee was not persuaded that an outright ban on protest on the pavement and roadway outside Parliament was necessary.
- The legal framework relating to protest around Parliament should not distinguish between sitting and non-sitting days, but the rules could be interpreted more liberally on non-sitting days because protests would be likely to cause less disruption then.
- The Home Office and parliamentary authorities should work together to develop a coherent framework for managing noise from protest, with a statutory power to move an individual or confiscate sound equipment as a minimum requirement.
- There should be a "careful and comprehensive review of permanent protests, especially in light of the possible redevelopment of Parliament Square".
- There should be no legal requirement to obtain prior authorisation from the police before protesting near Parliament.
- The police should continue to have a power to impose conditions on demonstrations in Parliament Square to prevent a security risk but not to impose conditions on grounds of public safety, which should in future be dealt with under the Public Order Act.
- The adequacy of police powers of arrest would be clarified as part of a review of the Police and Criminal Evidence Act 1984.<sup>229</sup>

## Our recommendations

125. Articles 10 and 11 of the ECHR and well-established case law require that any restrictions on the rights to protest and to peaceful assembly must be both necessary and proportionate to a legitimate aim. This is a high threshold which does not permit restrictions which are merely convenient or helpful. If measures already exist (such as under the Public Order Act) which could adequately deal with protest around Parliament, this would significantly reduce the likelihood that additional restrictions would be considered to be both necessary and proportionate.<sup>230</sup> **Measures for dealing with protest around Parliament must comply with the European Convention on Human Rights, including the need for the law to be predictable and certain so as not to be arbitrary.**

126. **In our view, the maintenance of access to Parliament is a persuasive reason to restrict the rights to protest and to freedom of assembly within the areas directly**

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<sup>229</sup> Joint Committee on the Draft Constitutional Renewal Bill, paras 391-403.

<sup>230</sup> See above, paras 20-28.

**around the Palace of Westminster and Portcullis House.** As the Clerk of the House of Commons pointed out, “Parliament is the sovereign body of the country and it is in a unique position”.<sup>231</sup> Members must be able to access the building to participate in debates and vote and staff must be able to support their work. **We also share the view of the parliamentary authorities that legislation on protest around Parliament should not differentiate between sitting and non-sitting days, in order to ensure that there is clarity and legal certainty for Members, the police and the public, although the way in which protest is policed should take account of the likely level of disruption to parliamentary activity.**<sup>232</sup>

127. **We share the view expressed by a range of witnesses that the Serious Organised Crime and Police Act 2005 provisions should be repealed, principally because they have proved too heavy-handed in practice, are difficult to police, and lack widespread acceptance by the public.** Before considering whether fresh legislation is necessary, to supplement the Public Order Act, we consider four issues which lie at the heart of this debate.

### **Advance notification of protests**

128. One of the innovations of SOCPA was the requirement for protests to be notified in advance to the police, so that they could then be authorised. A consequence of this approach has been the criminalisation of peaceful protestors, such as Ms Evans and Mr Rai, and the outlawing of spontaneous protest.<sup>233</sup> Elsewhere in this Report we set out the advantages of protestors and police engaging in dialogue, to ensure that protests run smoothly and safely. These benefits apply equally to protest around Parliament but we are not persuaded that a legal requirement to notify protests in advance is necessary or proportionate to maintain access to Parliament or to achieve any other legitimate aim. **Advance notification of protest around Parliament should be encouraged by the Metropolitan Police, in order to facilitate safe protest, but should not be a legal requirement and no sanction should apply to those who choose not to notify the police of their intention to protest solely by reason of that choice.**

### **Access**

129. Access to Parliament for Members has long been the central concern of parliamentarians and the police in the management of protest around Parliament. The Metropolitan Police called for “some clear, unequivocal directions about what access to this building means so that everybody understands”.<sup>234</sup> The parliamentary authorities have indicated the four entrances which should be kept open at all times and raised the prospect of an outright ban on protest in their immediate vicinity.<sup>235</sup> Eric Metcalfe of Justice

<sup>231</sup> *Joint Committee on the Draft Constitutional Renewal Bill, Evidence*, Q 452.

<sup>232</sup> *Ibid*, Qq 450-51.

<sup>233</sup> Qq 17 & 223-230.

<sup>234</sup> Q 272.

<sup>235</sup> See above, para. 123.

supported the idea of a cordon around specific entrances, “in times of very vigorous protests”.<sup>236</sup>

130. We agree that access to Parliament must be maintained at all times, by means of the entrances specified by the parliamentary authorities. We are not persuaded, however, that this can and should be achieved by banning protest on specific areas of road and pavement. A legislative solution would run the risk of criminalising innocuous acts of peaceful protest – for example, an entirely peaceful protest on a non-sitting day outside Portcullis House – and could attract protestors who were keen to test the boundaries of the law, or who would welcome prosecution in order to publicise their cause. An outright ban would also be likely to breach the ECHR for being a disproportionate response to the problem of maintaining access.

**131. We recommend that the parliamentary authorities work with the police to develop clear conditions which can be imposed on protestors under the Public Order Act, amended if necessary to achieve this aim, to ensure that access is maintained at all times. Conditions might include requiring protestors to keep clear of the vehicular access points, to permit access to Parliament and to ensure public safety around the gates.** This would be a more flexible means of throwing a cordon around Parliament during times of vigorous protest than can be provided for in primary legislation and need not unduly restrict small scale protests or protest on non-sitting days. Such an approach would, in our view, be more likely to be accepted by protestors than another “sledgehammer to crack a nut”. We consider possible problems with the Public Order Act below.

## Noise

132. Noise levels from the long-standing protest in Parliament Square are a continuing cause of concern to a significant number of Members of Parliament. For example, Julian Lewis MP raised the issue in Parliament earlier this year, noting that:

Westminster City Council has admitted that its permission to make broadcasts from the Square ran out almost a year yet [sic], in anticipation of a statement from the Government, it has done nothing about it.<sup>237</sup>

133. The parliamentary authorities have stated that the police lack powers to intervene to deal with an excessively noisy protest.<sup>238</sup> One possible approach would be to regulate the use of loudspeakers in Parliament Square using conditions under the Public Order Act, backed up by an explicit power to confiscate equipment. There may be difficulties, however, in determining the appropriate maximum noise level from a protest and measuring if it has been exceeded. **We recommend that the Home Office, the police, Westminster City Council and the parliamentary authorities should develop alternative arrangements to manage noise levels from protest in Parliament Square, including consideration of whether legislative change is necessary and whether maximum noise levels should be imposed and enforced effectively.**

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<sup>236</sup> Q 44.

<sup>237</sup> HC Deb, 15 January 2009, col. 395.

<sup>238</sup> See above, para. 123.

### ***Long-term protest***

134. The “peace camp” on Parliament Square may justifiably be described as unsightly but it in no way hinders the effective working of Parliament. **We have heard no good argument in favour of introducing an arbitrary limit on the duration of protests around Parliament, although we note the potential security concerns associated with the existence of the camp. We share the view of the Joint Committee on the draft Constitutional Renewal Bill that the police power in the Serious Organised Crime and Police Act 2005 to impose conditions relating to security issues should be continued for the area around Parliament. We are also concerned to ensure that the existence of long-term protests does not prevent or deter other people from protesting in Parliament Square. The police should have the power to impose conditions on protests in order to facilitate protest by others – for example, where more than one protest takes place in Parliament Square on the same day.**

135. We note that the Greater London Authority may consider creating new byelaws to manage protest in Parliament Square, including to limit the duration of protests. Given the potential significance of these new byelaws for the rights to freedom of expression and assembly, we recommend that section 236A of the Local Government Act 1972 be amended to set out the framework for balancing relevant interests.

136. We recommend that the Authority involve the police, Westminster City Council and the parliamentary authorities in discussions about any new byelaws; and that any new restrictions on the rights to freedom of assembly and expression are not disproportionate.

### ***Supplementing the Public Order Act***

137. We consider that protest around Parliament should be governed by the Public Order Act, in particular the police power to impose conditions on protests under section 14. There is a case, however, for amending section 14 to deal with the specific circumstances of Parliament. Although the Public Order Act could be invoked if protestors sought to prevent people from entering Parliament, it is unlikely to be of assistance where there is doubt as to whether the “purpose” of the organisers is “to intimidate others”. Consequently, **we recommend that the Public Order Act should be amended to enable conditions to be placed on static protests where they seriously impede, or it is likely that they will seriously impede, access to Parliament.** We set out an amendment to achieve this, below.

### ***Amendments to the Policing and Crime Bill***

138. It is now four years since Parliament had the opportunity to debate the law on protest around Parliament, since which time the provisions passed in 2005 have been widely discredited. Debate on this issue now would ensure that the Government could hear and reflect on the views of both Houses while drawing up its own proposals and would encourage the Government to conclude its own consideration of the matter without undue delay.

139. We intend to table amendments on protest around Parliament to the Policing and Crime Bill in order to prompt debate in both Houses. The amendments we suggest below are essentially probing amendments, based on our recommendations, rather than a fully worked-out scheme for tackling the problems we have discussed. **Crucially, we note that the onus is on the Government to bring forward the necessary reform which commands the support of the police, the parliamentary authorities and the local authorities.**

*Protest around Parliament: repeal of provisions in the Serious Organised Crime and Police Act 2005*

To move the following clause:

“In the Serious Organised Crime and Police Bill 2005 (c. 15), sections 132 to 138 are repealed.”

*Imposing conditions on public assemblies: Parliament*

To move the following clause:

“(1) The Public Order Act 1986 (c. 64) is amended as follows.

(2) At the end of section 14(1)(a) there is inserted “, if it takes place in the designated area or areas, it is a security risk, or”.

(3) After section 14(1)(b) there is inserted the following paragraph:

“(c) it is taking place or will take place in the designated area or areas and will seriously impede, or be likely to seriously impede, access to the Houses of Parliament,”.

(4) After section 14(2) there is inserted the following subsection:

“(2A) In subsection (1) “the designated area or areas” means the area or areas specified as such by the Secretary of State:

(a) by description, by reference to a map, or in any other way; and

(b) which lie within 300 metres of the perimeter of the Palace of Westminster or Portcullis House”.

## 6 Operational policing: human rights and policing of protest

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140. This Chapter assesses the police's understanding of human rights and the extent to which operational policing currently ensures that the police uphold and support human rights when policing protests. It considers changes which may be required to operational policing in order to address some of the issues identified in Chapter 3.

### Understanding of human rights by the police

141. All police witnesses told us that they believed that human rights principles had become part of every area of police work. DCC Sim considered that the HRA helped rather than hindered policing:

Policing now is about considering the Human Rights Act for every aspect of policing, it is not just about protests... From our very basic probationary training, officers are taught the Human Rights Act, they are taught about proportionality, they are taught about necessity, they are taught about being able to justify their decisions... The commanders' courses that we have introduced recently ... have human rights writ large throughout them and all the courses that we do in relation to public order training all have that as well. But it actually aids because it allows officers to understand the way that policing and the general country is meant to be run.<sup>239</sup>

142. AAC Allison considered that existing common law rights had been codified in the HRA, but suggested that this was beneficial, as it meant that there was now one framework which could ensure greater national consistency.<sup>240</sup>

143. Police representatives suggested to us that officers had a good understanding of the application of human rights to their work. Reflecting the views of officers on the ground, PC Hickey of the Police Federation suggested that officers saw human rights as “part of their daily job ... it is a part of the law and they understand that it is for them to put it into practice”.<sup>241</sup> He also noted that police officers themselves have human rights, saying “they have the right to go to work and expect to come home safely in the same condition in which they went to work.”<sup>242</sup>

144. Looking at police practice from the outside, some witnesses commented on the effect that they perceived that the HRA had made on policing. Huntingdon Life Sciences suggested that, from their point of view, its initial impact had been negative but that this had now improved. It claimed that after the Human Rights Act came into force:

... there was initially a climate of fear amongst police officers in relation to potential breaches of Articles 10 and 11 [ECHR]. As law enforcement agencies have become

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<sup>239</sup> Q 183.

<sup>240</sup> Q 200.

<sup>241</sup> Q 186.

<sup>242</sup> Q 253.

more familiar with these provisions, and as (through time) the Human Rights Act has bedded in, we see this as less of an issue.<sup>243</sup>

**145. We are pleased to hear that the police consider that the Human Rights Act helps, rather than hinders, effective policing. We also recognise that police officers have human rights themselves, which the state is required to protect. We hope that the positive messages about human rights which we heard from the officers from whom we took oral evidence are reflected in police forces across the country.**

146. AAC Allison referred to the mnemonic “PLAN” meaning, “proportionate, legal, accountable and necessary” which, he said, was used at all stages of decision making to account for the decisions which the police make.<sup>244</sup> Police representatives referred to the need to “balance”<sup>245</sup> the rights of protestors with the rights of other people to “go about their normal everyday business”.<sup>246</sup> The Minister repeated that there was a balance to be struck<sup>247</sup> asking “what right does somebody have to stop me doing something in order that they can protest?”.<sup>248</sup>

147. Considering how to balance competing rights, the OSCE/ODIHR *Guidelines* state:

The regulatory authority has a duty to strike a proper balance between the important freedom of peaceful assembly and the competing rights of those who live, work, shop, trade, and carry on business in the locality affected by an assembly. That balance should ensure that other activities taking place in the same space may also proceed if they themselves do not impose unreasonable burdens. Mere disruption, or even opposition to an assembly, is not therefore, of itself, a reason to impose prior restrictions on it. Given the need for tolerance in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe the rights and freedoms of others. This is particularly so given that freedom of assembly, by definition, amounts only to temporary interference with these other rights.<sup>249</sup>

**148. The police and Home Office, along with other witnesses, are correct to assert that there is a balance to be struck between the rights of protestors and others. However, this is only half the story. Human rights law makes clear that the balance should always fall in favour of those seeking to assert their right to protest, unless there is strong evidence for interfering with their right. Inconvenience or disruption alone are not sufficient reasons for preventing a protest from taking place, although they may be good reasons to reroute it or place other conditions upon it. Given the value of the right to protest, a certain amount of inconvenience or disruption needs to be tolerated.**

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<sup>243</sup> Ev 147.

<sup>244</sup> Q 185.

<sup>245</sup> Qq 194 & 198.

<sup>246</sup> Q 203.

<sup>247</sup> Q 303.

<sup>248</sup> Q 306.

<sup>249</sup> OSCE/ODIHR *Guidelines*, paras. 70-71.

## Police training and accountability

149. We asked police representatives to explain the steps which could be taken if it was felt that officers were failing to meet their human rights obligations during a protest. AAC Allison referred to this becoming evident in the post-protest debrief, stating that “we are challengeable in the courts”.<sup>250</sup> PC Hickey was not aware, however, of human rights concerns emerging as part of debriefings following protests. He agreed with AAC Allison that such matters would emerge in evidence if a case went to court.<sup>251</sup>

150. ACPO referred to the role of senior officers in ensuring human rights compliance:

If our commanders, the sergeants, the inspectors see acts being undertaken that fall within the misconduct regulations then we would expect our commanders to act.<sup>252</sup>

151. The Police Federation representative agreed:

There is an expectation on every police officer to report any wrongdoing or any matter that is deliberately against the law conducted by a police officer, and that would go from the constable rank all the way through.<sup>253</sup>

However, he also noted:

I do not think [the complexity] of what we are dealing with here can be underestimated, and there will be genuine mistakes made and I think the important thing is that officers who make genuine mistakes are not blamed, that they are learnt from and that officers and everyone can move on from that. What is important is that that does not then become an embedded culture of risk aversion because officers doing their duty fear that they are going to be blamed when they do that.<sup>254</sup>

152. Police representatives informed us of the training that officers received at probationary and specialist levels, including on human rights. The Minister told us of efforts by ACPO to get greater consistency through training:

ACPO have tried to [get greater consistency across the country in terms of how demonstrations are policed] through the training of police officers when they join the service through their probationary training, through their intermediate training, and also through various public order command courses that the police run to try and ensure that there is this consistency and you do not get some of this unwarranted difference, which ... is not due to discretion... The NPIA is also trying to bring about greater consistency with respect to the policing of protests across the country.<sup>255</sup>

153. The National Extremism Tactical Coordination Unit (NETCU), which “aims to promote a coordinated response to domestic extremism by providing tactical advice to the

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<sup>250</sup> Q 194.

<sup>251</sup> Q 187.

<sup>252</sup> Q 195.

<sup>253</sup> Q 196.

<sup>254</sup> Q 197.

<sup>255</sup> Q 307.

police service, and information and guidance to industry and government”,<sup>256</sup> suggested that:

One of the obstacles ... is the lack of understanding of protest and knowledge of the legislation allowing officers to deliver good practice on a consistent basis. This is particularly so at spontaneous demonstrations.<sup>257</sup>

154. It suggested that public order training, undertaken by all police officers, should include practical scenarios on dealing with spontaneous demonstrations where officers may have grounds to apply conditions on protestors. NETCU also suggested that public order tactical advisors should be provided to advise and support front line officers (as happens in the Metropolitan Police and some other larger forces).<sup>258</sup>

155. A number of witnesses expressed concerns at the difficulties in complaining about, or appealing against, police action leading up to, or on the day of, a protest. Issues can usually only be addressed after the event, which is generally too late to resolve matters satisfactorily. As Climate Camp argued: “practical, enforceable remedies for protestors are very limited, and – at the point the protest is happening – virtually non-existent”.<sup>259</sup> They recommended the introduction of “an independent scrutiny mechanism with the power to evaluate objectively the evidence base of any purported risk to public order to ensure that resourcing decisions are proportionate to the threat posed”.<sup>260</sup> During its visit to Madrid, the Committee heard that appeals against decisions relating to protests (such as their timings or routes) could be rapidly determined by the Spanish courts in order to resolve issues before protests take place.

**156. Officers at all levels need to be supported in carrying out their legal and professional duties. Training is vital to ensuring that this happens. We recommend that human rights training should be integrated into other training, rather than provided as a discrete component, and that it should be regular, relevant and up to date. Objective evidence on the extent to which training in human rights awareness had been successful would be valuable. We recommend that the Home Office or ACPO commission independent research into the extent of police knowledge and awareness of the human rights engaged by the issue of protest.**

**157. We are disappointed by suggestions from some witnesses that resolution of disputes often depends on those affected taking costly and time consuming court action against police. Legal action where officers are in breach of their human rights obligations, whilst important, is not appropriate to deal with systemic problems nor a good basis from which to learn lessons for the future. It is also damaging to future relations between protestors and the police and does not allow protestors the swift response that may sometimes be required, if they are to achieve their aim of a timely and persuasive demonstration. We recommend that the Government develops a quick**

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<sup>256</sup> National Extremism Tactical Coordination Unit ([www.netcu.org.uk](http://www.netcu.org.uk)).

<sup>257</sup> Ev 73.

<sup>258</sup> Ev 73.

<sup>259</sup> Ev 115, para. 29; Q 157.

<sup>260</sup> Ev 113, para. 7.

**and cost free system for resolving complaints and disputes in advance of protests taking place.**

## Good practice

158. We received a significant number of examples of good practice in relation to the policing of protests. As one protest group told us, “there are some very good police around and very reasonable and who will almost go overboard in trying to do their duty to enable a demonstration to go ahead without problems”.<sup>261</sup> Examples of good practice cited by witnesses included:

- the decision of the Derry Commander in Northern Ireland not to use plastic bullets in public disorder situations;<sup>262</sup>
- policing at Faslane;<sup>263</sup>
- the creation of a dedicated operational police team by Cambridgeshire Constabulary in response to protests by Stop Huntingdon Animal Cruelty against Huntingdon Life Sciences;<sup>264</sup>
- dialogue between police and protestors in advance;<sup>265</sup>
- proactive use of section 14 of the Public Order Act 1986;<sup>266</sup>
- good police-community relations and confidence in policing (Northern Ireland);<sup>267</sup>
- policing parades in Northern Ireland relying on negotiation, human rights considerations and accountability;<sup>268</sup>
- policing at Menwith Hill air base before 2007<sup>269</sup>
- improved cross-boundary co-operation and mutual aid between police forces;<sup>270</sup> and
- the creation of, and support from, the National Extremism Tactical Coordination Unit.<sup>271</sup>

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<sup>261</sup> Q 158.

<sup>262</sup> Ev 94.

<sup>263</sup> Ev 203.

<sup>264</sup> Ev 146.

<sup>265</sup> E.g. Ev 92, 94, 127, 142 and 191: “The vast majority of protests are undertaken with collaboration between the police and organisers where the two parties work together to ensure that the event occurs in a reasonable and safe manner. More controversial events normally involve individuals who do not wish to cooperate or consult with authorities and, at times, actively seek or encourage confrontation.”

<sup>266</sup> Ev 146.

<sup>267</sup> Ev 183.

<sup>268</sup> Ibid.

<sup>269</sup> Ev 97.

<sup>270</sup> Ev 146 and Q 90.

<sup>271</sup> Ev 146.

159. Whilst such examples deserve recognition, our impression is that it is difficult to ensure consistently high practice which respects human rights and that practice varies from force to force and, to some extent, from officer to officer. **Greater consistency of practice across police forces is, in our view, essential and could be achieved if debriefing after protests, to ensure that lessons are learnt, routinely deals with human rights issues. This would be enhanced by agreeing to engage the organisers of protests as part of that debriefing. We would encourage good joint working between forces to facilitate the sharing of information, intelligence, expertise and resources. Comprehensive systems need to be put in place within and between forces to ensure that lessons (both good and bad) are regularly drawn from police practice and disseminated broadly.**

160. We were pleased to hear from DCC Sim about the work that ACPO does, at officer level, to ensure that good practice is disseminated throughout the different police forces. The ACPO Public Order Guidance has an important role to play.<sup>272</sup> The human rights statement at the beginning of the Guidance states that “in the application of any policies, strategies, tactics or operations contained in this guide, the police service will comply with the principles of the ECHR”, continuing:

Strategies and policies contained within this guide which could interfere with an individual’s rights, have been identified as necessary for the following reasons:- preventing crime and disorder, public safety; and protecting the rights and freedoms of others.

It is inherent within this guide that there is a potential to engage Articles 1, 2, 3, 5, 6, 8, 9, 10 and 11 of the Human Rights Act 1998, thus interference with an individual’s rights.

In each and every case where a recommendation has been made or good practice given, it is made with the strongest legal basis, with actions being proportionate, with the least intrusive and the least damaging option chosen.<sup>273</sup>

161. The guidance is for the assistance of Chief Officers, Operational Commanders, Tactical Advisors and Tactical Trainers.<sup>274</sup> However, it is necessary that all officers, at all levels, are aware of good practice and guidance. To this extent, the role of chief officers in communicating a message of respect for human rights is crucial. As Neil Hickey, from the Police Federation told us:

The attitude and actions of the police on the ground depend to some degree upon the senior officer in charge.<sup>275</sup>

**162. As we have already noted, good leadership from the top of the police down is vital to ensuring respect for human rights in any policing operations, including policing protests. This will also help to ensure consistent good practice across police forces. We recommend that any officer who is involved, in whatever way, with policing protests, should have access to accurate and helpful guidance on how to police compatibly with**

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<sup>272</sup> ACPO Manual of Guidance, Public Order: Standards, Tactics and Training, Centrex, March 2004.

<sup>273</sup> ACPO Manual of Guidance, p. 8.

<sup>274</sup> ACPO Manual of Guidance, p. 8.

<sup>275</sup> Ev 77.

**human rights standards. ACPO and the Police Federation should give consideration as to how this can best be achieved, engaging all police officers involved in this area of police work.**

### ***Lessons from Northern Ireland***

163. We visited Northern Ireland as part of our inquiry and met various representatives of the Police Service of Northern Ireland (PSNI), its human rights lawyer and one of the human rights advisors to the Northern Ireland Policing Board. We pay tribute to their efforts in trying to ensure that policing of contentious parades and protests accords with human rights standards.

164. The Independent Commission on Policing in Northern Ireland was set up as part of the Good Friday Agreement. It recommended the creation of new accountability structures, and said that human rights and community policing should underpin all of the work carried out by the PSNI:

There should be no conflict between human rights and policing. Policing means protecting human rights.<sup>276</sup>

165. As ACC Duncan McCausland, whom we met, has written:

Human rights sit at the very heart of the conception, planning, execution and control of every aspect of the operations of the Police Service of Northern Ireland ... Human rights is a critical benchmark by which the PSNI measures the impact of its actions.<sup>277</sup>

166. Dr Michael Hamilton and Dr Neil Jarman, members of the OSCE/ODIHR Panel of Experts on Freedom of Assembly, have described the experience in Northern Ireland as “a shift from escalated force to negotiated management models of protest policing”.<sup>278</sup> Both AAC Allison<sup>279</sup> and DCC Sim distinguished the political situation in Northern Ireland from that in England and Wales, but DCC Sim noted that she had close contact with Northern Ireland officers on public order issues.<sup>280</sup> The Minister considered that a lesson to be drawn from Northern Ireland was that:

You do not have to choose between strong, effective policing or the human rights approach. You can marry the two.<sup>281</sup>

167. We took a number of lessons away from our visit to Northern Ireland, most particularly that:

- the PSNI’s aim was to have “no surprises” on either side when policing protests;

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<sup>276</sup> Independent Commission on Policing in Northern Ireland, 1999.

<sup>277</sup> McCausland, D., *Policing Parades and Protest in Northern Ireland* [2007] EHRLR 212.

<sup>278</sup> Ev 183.

<sup>279</sup> Q 204.

<sup>280</sup> Q 203.

<sup>281</sup> Q 51.

- the force employed a dedicated human rights lawyer who can provide human rights advice to all police officers;
- leadership within the police must be fully committed to implementing human rights within the force;
- human rights is explicitly referred to within the PSNI's policy;<sup>282</sup>
- the PSNI's Code of Ethics sets out a comprehensive code of conduct for all police officers, based on the ECHR and other international human rights instruments relating to policing. Violation of the Code may constitute a disciplinary offence; and
- the approach taken by police in terms of dress and equipment is designed to reduce tension.

168. In England and Wales, there is no dedicated human rights lawyer providing advice to ACPO, although there are lawyers in individual police forces who can advise on all aspects of law, including human rights. In addition, IPOC (Intermediate Public Order Command) commanders and trainers are able to provide human rights advice to other officers.<sup>283</sup>

**169. Whilst we recognise that the political and historical situation in England and Wales is different from that in Northern Ireland, there are undoubtedly lessons that can be drawn from the Northern Irish experience of policing contentious protests whilst trying to ensure respect for human rights. Given the record of the PSNI in policing protest, we recommend that police forces in England and Wales evaluate the expertise of their legal advisers to ensure that there is sufficient human rights knowledge and understanding available to all levels of the police on a daily basis to help the police avoid human rights breaches. We also recommend that the Home Office consider whether police contracts and disciplinary procedures pay sufficient recognition to the duty of officers to act compatibly with human rights.**

### *Monitoring police compliance*

170. Since March 2008, police authorities in England and Wales have been required to monitor police compliance with the Human Rights Act 1998 in all areas of their work.<sup>284</sup> This duty is identical to the duty which has been placed on the Northern Ireland Policing Board since 2000.<sup>285</sup> The Association of Police Authorities very recently issued *Human*

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<sup>282</sup> Quoted in McCausland, above, p. 212: "It is our aim to provide a high quality, effective policing service to all the people of Northern Ireland... In policing public events this aim will be to the fore. The human rights of all those affected by such events will be central to all stages of police preparations and subsequent actions. It is recognised that not all human rights are absolute rights and in some instances the rights of individuals must be balanced with those of others, including those of differing and wider communities."

<sup>283</sup> Q 190.

<sup>284</sup> Police Authorities (Particular Functions and Transitional Provisions) Order 2008 (SI 2008/82).

<sup>285</sup> Section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000. The human rights advisers to the Policing Board have produced a human rights monitoring framework, annual reports on the compliance of the PSNI with the HRA and two reports on the policing of parades in which serious violent disorder occurred. Northern Ireland Policing Board, *Report on the Policing of the Ardoyne Parades 12<sup>th</sup> July 2004* and *Report on the Policing of the Ardoyne Parades 12<sup>th</sup> July 2005 and the Whiterock Parade 10<sup>th</sup> September 2005*.

*Rights Guidance for Police Authorities*.<sup>286</sup> The Guidance notes that complying with the new duty is mandatory, but that it is a matter for each authority as to how it chooses to comply with the obligation.<sup>287</sup> It proposes two stages to monitoring compliance with the HRA: firstly, the development of meaningful standards against which the performance of the police can be measured and secondly, the actual process of monitoring the performance of the police against those standards.<sup>288</sup>

171. We understand from ACPO that HM Inspectorate will inspect all 43 police authorities in 2009. ACPO suggested that one aspect of the inspection should consist of monitoring police authorities' compliance with this new duty.<sup>289</sup> **We agree. Having seen and heard from those working in Northern Ireland about the positive effect of this duty, we recognise it as a valuable tool in enhancing human rights compliance by the police. We will continue to monitor its application and effectiveness, and intend to review the report of the HM Inspectorate of Constabulary when it is published later this year.**

## Dialogue and prior notification of protests

172. A common theme which emerged during the inquiry was the importance of good dialogue, communication and co-operation between police and protestors; police and third parties; and protestors and those against whom they are protesting. It was widely accepted that effective dialogue in both directions was more likely to lead to a peaceful and trouble free protest.<sup>290</sup> As ACPO told us, "the vast majority of protests are undertaken with collaboration between the police and organisers where the two parties work together to ensure that the event occurs in a reasonable and safe manner. More controversial events normally involve individuals who do not wish to cooperate or consult with authorities and, at times, actively seek or encourage confrontation".<sup>291</sup>

173. Drawing on the experience of protests in Northern Ireland, British Irish Rights Watch told us of the importance of dialogue as a means for balancing rights:

The key lesson learnt from Northern Ireland is the need to balance the conflicting rights which emerge in such scenarios. The method to achieve this is through dialogue between those seeking to protest and the police. As such, the creation of draconian legislation which cuts into this dialogue can only undermine efforts to balance conflicting rights. A dialogue will also enable the police to make appropriate operational decisions, on the day, enabling the development of a policing strategy tailored to each event to be created (and learnt from) rather than responding to events as they happen.<sup>292</sup>

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<sup>286</sup> Association of Police Authorities, *Human Rights Guidance for Police Authorities – Monitoring Compliance with the Human Rights Act 1998*, January 2009.

<sup>287</sup> Association of Police Authorities, *Human Rights Guidance for Police Authorities*, p.5.

<sup>288</sup> Association of Police Authorities, *Human Rights Guidance for Police Authorities*, p.5.

<sup>289</sup> Q 207.

<sup>290</sup> E.g. Ev 92, 94, and 127.

<sup>291</sup> Ev 191.

<sup>292</sup> Ev 94.

174. The Metropolitan Police said that the “biggest challenge, which ends up with the biggest problem for all ... [is] as a result of us not having dialogue with the organisers because they refuse to have dialogue with us”.<sup>293</sup> Echoing the Police Service of Northern Ireland’s desire for “no surprises” for anyone involved in a protest (whether police, protestor or target), the Metropolitan Police saw ongoing dialogue between the police and the protest organiser, before and during the protest, as being important so that they could deal with “what ifs”.<sup>294</sup>

175. Considering the suggestion by protestors that the police’s stance to protests has deteriorated over recent years, ACPO accepted that protestors could feel that the police are asking more questions of protestors than they did previously, but suggested that this was well intentioned and designed to facilitate protest:

Our approach over the years ... has become much more communicative ... there is much more of an open dialogue and that is what we expect and that is what we train ... I think it is quite right if people are saying “The police are communicating with us far more, asking us more questions “ – I think they are right. But it is with a view to being able to aid protests to take place so that not only are the protestors allowed to protest but also the third party, the public in general are able to go about their business without being either intimidated by protestors or feeling that there is an overly heavy police presence.<sup>295</sup>

176. Given that there appears to be fairly widespread acceptance of the utility of good communication between protestors and police, what prevents it from happening effectively? Witnesses provided a number of answers. Some witnesses suggested that the police’s stance towards, and treatment of, protestors appears to differ depending on their attitude to the substance of the protest.<sup>296</sup> This may be a factor which hinders effective communication. The National Extremism Tactical Co-ordination Unit thought that there was sometimes “unwillingness to communicate between organisers and police”.<sup>297</sup> The Campaign for the Accountability of American Air Bases described their previously positive experiences with the police of organising bi-annual protests and how this dialogue had broken down before a recent protest took place. Contrasting their earlier experiences with more recent events, they said:

Each year, at the two major demonstrations and having carefully liaised with [North Yorkshire Police], we have walked round the base at Menwith Hill ... The police have accompanied us, enabling the protest to happen and have been very helpful in the past, the police have closed roads so that the protestors can proceed and the right to protest upheld.

Last year, things were suddenly very different. A month before the demonstration on 4 July 2007, we received a Home Office document entitled “Organisers’ Responsibilities” which set out the ‘duties’ of the organisers. One of the clause said

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<sup>293</sup> Q 205.

<sup>294</sup> Q 232.

<sup>295</sup> Q 180.

<sup>296</sup> Qq 158/9.

<sup>297</sup> Ev 72.

that the organisers were now responsible for the ‘policing’ of the demonstration. For example, it was the responsibility of the organisers if roads needed to be closed ... it was an impossible task.

We had two meetings with [North Yorkshire Police] and the [Ministry of Defence Police Agency] who warned us that further conditions would be put on the demonstration. We would not be permitted to walk round the base. The police said that the A59 road was ‘too dangerous’. We questioned this at the meeting, as it seemed to us that nothing had changed from previous years... We were disappointed therefore when conditions were suddenly imposed by [North Yorkshire Police] and we were prevented from walking round the base which was to be part of the protest on 4 July 2007.<sup>298</sup>

177. We also received other evidence of what appeared to be relatively effective dialogue between the police and protestors breaking down during the protest itself. Described by DCC Sim as a “tactical error” and a “communication mistake”, we heard of last minute changes to the route of Climate Camp’s 2008 protest at Kingsnorth power station, despite prior agreement with the police.<sup>299</sup>

178. At present, people wishing to conduct a moving protest anywhere in the country, or a static protest within the vicinity of Parliament or other SOCPA designated areas, are required to notify the police in advance of their intention to protest. This is one way of trying to ensure that there is some dialogue between protestors and the police. Some witnesses have suggested that the system of prior notification should be implemented for all protests, as it “would help the police to provide the right level of response and good practice to demonstrations”.<sup>300</sup> However, as ACPO recognised, whilst it might be desirable to make dialogue compulsory through some form of notification requirement, it is not possible to force people to speak to the police.<sup>301</sup> Liberty and others suggested that making notification of protest around Parliament compulsory deterred some protestors from cooperating with the police at all.<sup>302</sup>

179. The European Court of Human Rights has accepted that authorisation or notification requirements for public protests may be justified on the grounds of public order or national security, but such regulations should not represent a hidden obstacle to the freedom of peaceful assembly.<sup>303</sup> The Minister said that the important point was “to make sure that that [sic] dialogue [between police and protestors] is of good quality and that there is trust and people listen to each other and take action appropriately”.<sup>304</sup>

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<sup>298</sup> Ev 97.

<sup>299</sup> The protestors had agreed with the police that they would process from their camp to the power station and back. The route and timing of the procession had been agreed. Twenty minutes before the procession was due to conclude, an order was given by one of the police helicopters to the protestors to disperse. They were told that if they did not do so, police horses, dogs and batons would be used against them. Ev 112.

<sup>300</sup> Ev 72.

<sup>301</sup> Q 223.

<sup>302</sup> Q 17 and Ev 158. See also Chapter 5 above on protest around Parliament specifically.

<sup>303</sup> *Aldemir v Turkey*, App. No. 32124/02, 18 December 2007, paras 40-43. This is reiterated in the OSCE/ODIHR *Guidelines*, p. 15.

<sup>304</sup> Q 290.

180. We have already recommended against retaining the present system of compulsory prior notification of protests around Parliament. We see no reason to introduce such a requirement elsewhere in the UK. In our view, insisting on prior notification of protests is a disproportionate interference with the right to protest and is more likely to discourage some protestors from cooperating with the police than to encourage effective dialogue.

181. We recommend that police forces review how they foster effective dialogue with protestors, with a view to ensuring that the Minister's aim of good quality, trustworthy communication is achieved as often as possible. National guidance should have a part to play in achieving this. The police should take proactive steps to ensure that dialogue is encouraged, but that it is made clear to all that such dialogue is voluntary. In this spirit, protestors themselves should also, where possible, engage with the police at an early stage in their planning, in order to facilitate peaceful protests. It is in the interests of protestors, the police, targets and the general public for there to be effective communication and co-operation between the police and protestors.

## Style of policing

182. A number of witnesses commented on their perception that the style of policing had changed in recent years.<sup>305</sup> One criticism was that the ratio of police to protestors was excessive. Climate Camp claimed that 1,500 police were deployed against 1,000 protestors during the 2008 camp,<sup>306</sup> some of them in riot gear, suggesting that this was very different to the experience of demonstrators in the past:

Ten to fifteen years ago demonstrations would have a couple of bobbies on the side walking along the demonstration and the riot vans would be parked around the corner; nowadays the police will swamp the protest, not necessarily carrying shields but sometimes with helmets and certainly with their jumpsuits – they swamp the protest with riot police. Again at Climate Camp there was a striking example where there were 23 people stood at a fence, lots of them looking like hippies basically, playing guitar and singing; you looked across and there were two or three rows of police armed with truncheons, shields, helmets, ready as if to have a riot.<sup>307</sup>

183. DCC Sim outlined the ideal scenario from ACPO's point of view:

... we police by consent and the British bobby in a British bobby's uniform is the image that we want to have for all protests. If we have intelligence which suggests that our officers are going to be in danger, the public are going to be in danger, then I would expect [officers] to be kitted out differently; but if we are talking about an understanding where there is no intelligence to suggest that there is going to be any trouble at all then I would expect it to be policed in normal British police uniform.<sup>308</sup>

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<sup>305</sup> See Chapter 3 above, paras 52-57.

<sup>306</sup> Ev 115.

<sup>307</sup> Q 129.

<sup>308</sup> Q 235.

184. In relation to the Metropolitan Police, AAC Allison told us of the risk assessment that is undertaken in advance of deploying officers in protective equipment:

We do not put the officers out in protective equipment where the risk assessment is low. There are very, very few occasions on public order events, certainly within the capital, where we deploy in protective equipment... It is not offensive equipment, it is protective equipment. It protects officers and I have a duty of care to people who are employed by the Commissioner to make sure that they are not injured on these events.<sup>309</sup>

185. The Police Federation drew attention to the need to protect the safety of officers at demonstrations, arguing that officers “expect to come home safely in the same condition in which they went to work”.<sup>310</sup>

186. The Police Service of Northern Ireland told us that police officers in Northern Ireland dress in normal uniform where possible, to avoid escalating situations. Backup officers in protective equipment are kept in reserve. AAC Allison was not convinced that this approach would be beneficial elsewhere in the UK:

If you have are going to have two sets of officers, so one set is going to be on the front line and one set is going to be on reserve and you come in and deploy, that is a massive investment in terms of your officers who have been taken away from other bits of policing. If the intelligence is there that says people within this particular group are such that they are likely to attack us, therefore we need protective equipment, our view is that we should not wait to get one or two officers injured as a result, but what we should do is right at the front put officers out in protective equipment.<sup>311</sup>

This view does not reflect the extensive experience in Northern Ireland. When we put protestors’ concerns to the Minister, he accepted that what officers wore when policing demonstrations had an impact on how some people behaved.<sup>312</sup>

**187. We are concerned that protestors have the impression that the police are sometimes heavy-handed in their approach to protests, especially in wearing riot equipment in order to deal with peaceful demonstrations. Whilst we recognise that police officers should not be placed at risk of serious injury, the deployment of riot police can unnecessarily raise the temperature at protests. The PSNI has shown how fewer police can be deployed at protests, in normal uniform, apparently with success. Whilst the decision as to the equipment used must be an operational one and must depend on the circumstances and geography in the particular circumstances, policing practice of this sort can help to support peaceful protest and uphold the right to peaceful assembly and we recommend that the adoption of this approach be considered by police forces in England and Wales, where appropriate.**

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<sup>309</sup> Q 256.

<sup>310</sup> Q 253.

<sup>311</sup> Q 257.

<sup>312</sup> Qq 286-87.

## Tasers

188. The use of weapons by the police is one which raises human rights issues. In 1998, the UN Committee Against Torture expressed concern at the use of plastic bullet rounds in Northern Ireland as a means of riot control and recommended that such use be discontinued.<sup>313</sup> Commenting on the use of Attenuating Energy Projectiles (AEPs) in Northern Ireland, our predecessor Committee noted that their use raised clear human rights concerns in principle, but that use of AEPs in riot situations could be justified as a proportionate response to serious violence which threatens the lives of the police or the public. It recommended that the use of AEPs should be subject to close scrutiny to ensure that these conditions are met and that there is clarity and consistency in the guidelines applying to their use.<sup>314</sup>

189. During the course of our inquiry, the Home Secretary announced her decision to make taser electro-shock weapons available to specially trained police officers in all forces in England and Wales, following a Home Office pilot in a number of police areas.<sup>315</sup> Commenting on the announcement, Amnesty International, which has previously expressed concerns about the use of tasers, called on the Government to guarantee that tasers would only be available to firearms officers and a limited number of specially trained officers across the UK. It also called on the Home Office to demonstrate how the use of tasers is compatible with the UK's obligations under international human rights laws.<sup>316</sup>

190. We asked DCC Sim, Deputy Chief Constable of Northumbria Police, which participated in one of the pilots, to comment on the proposals and in particular on the use of tasers in public order or protest situations. Responding, DCC Sim stated that tasers issued to specially trained units (STUs) should only be deployed:

... when officers or the public are facing, or likely to face serious violence... I do not see any situation when STUs would be deployed to a protest, indeed the very nature of taser is such that it should not be deployed against large numbers of people and officers are trained to use other options when dealing with these situations.<sup>317</sup>

191. The Home Office Minister agreed with ACPO on this matter stating:

I cannot envisage a situation in which taser, which has a very short range anyway, irrespective of the moral argument around it, practically would be something that would be useful. I cannot see a situation in which it would be appropriate to use taser to control demonstration or protest.<sup>318</sup>

192. We were pleased to hear the Minister's and ACPO's unequivocal statements that tasers should not be used on protestors. We understand from the Minister that guidance on the use of tasers will be produced jointly by ACPO and the Home Office. We

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<sup>313</sup> *Concluding Observations of the Committee Against Torture: United Kingdom of Great Britain and Northern Ireland*, 17 November 1998, A/54/44.

<sup>314</sup> Nineteenth Report of Session 2005-06, *The UN Convention Against Torture*, HL Paper 185-I, HC 701-I, para. 181.

<sup>315</sup> 24 November 2008.

<sup>316</sup> *Tasers: Only best-trained officers should have Tasers*, says Amnesty, Press Release, 24 November 2008.

<sup>317</sup> Ev 192.

<sup>318</sup> Q 61.

**recommend that guidance on the use of tasers, to which officers should be required to have regard, should make clear that the weapons should not be used against peaceful protestors. In addition, we recommend that quarterly reports be made to Parliament on the deployment and use of tasers, including the reasons for their use in specific incidents. The Government should continue to monitor the medical effects of the use of tasers and publish its findings.**

## Police relations with journalists

193. The National Union of Journalists drew our attention to the particular problems faced by journalists, especially photo-journalists, when covering demonstrations.<sup>319</sup> Although recognising that there were some examples of good practice when police engage with the media, the NUJ suggested that this was rare<sup>320</sup> and particularly criticised the work of the police Forward Intelligence Team:

What we are seeing is a group of journalists who regularly cover protests being stopped and searched, way away from the protest, being photographed, having information recorded about what they are wearing, where they are going, who they are working for and so on, and it is creating an intimidatory atmosphere that means people are less likely to go out and cover protests. If we are all saying that publicity is one of the reasons for protest, actually what the police are doing here is undermining that freedom of the media and the ability of the protestors to be able to get their message across via the media.<sup>321</sup>

194. Whilst ACPO/media guidelines have been agreed between police and the Union, the NUJ suggested that they were “useless because the police on the street do not know anything about them”.<sup>322</sup> Jeremy Dear, General Secretary of the NUJ, told us that he wanted the Home Office to make sure that the police abided by the guidelines, rather than force journalists to challenge police practice in the courts.<sup>323</sup> He also advocated better training of police and better enforcement of the guidelines such as through police employment contracts.<sup>324</sup>

195. The Campaign Against the Arms Trade alleged that police appeared to be encouraging journalists not to cover some demonstrations, such as those at the premises of an arms manufacturer, as it would be “irresponsible” to do so.<sup>325</sup>

196. The NUJ wrote to the Home Secretary expressing concern at police surveillance of journalists<sup>326</sup> and subsequently had a meeting with the Minister, Vernon Coaker MP.

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<sup>319</sup> See above, para. 50.

<sup>320</sup> Q 90.

<sup>321</sup> Q 97.

<sup>322</sup> Q 99.

<sup>323</sup> Q 102.

<sup>324</sup> Q 105.

<sup>325</sup> Ev 101, para. 21.

<sup>326</sup> Extract from NUJ letter to Home Secretary dated 22 May 2008: “We have serious concerns about the activities of the Metropolitan Police’s Forward Intelligence Team (FIT Team) in monitoring and recording the activities of bona fide journalists, especially photographers. A number of members have alleged that the police’s surveillance action amounts to virtual harassment and is a serious threat to their right to carry out their lawful employment”; reproduced in full in Ev 177.

Following the meeting, the ACPO/media guidelines were revised and the Minister wrote to the NUJ stating:

We have addressed this directly in the revised guidance making it clear that the Terrorism Act 2000 does not prohibit people from taking photographs or digital images. The guidance also makes it clear that film and memory cards may be seized as part of a search but officers do not have a legal power to delete images or destroy film.<sup>327</sup>

197. The Minister also told us that the NUJ had been invited to talk to ACPO and to attend demonstrations with the police to advise them on possible changes to procedures.<sup>328</sup>

198. When we asked police representatives about the concerns surrounding police relations with journalists, the Metropolitan Police told us that “it is in all of our operation orders that journalists have a right to operate and we would not seek to stop it... We fully accept that we are accountable and we can be photographed and they have a right to operate and we try to ensure that that message gets to all of our officers all of the time”.<sup>329</sup>

199. The OSCE/ODIHR *Guidelines* note the important role that journalists play in covering demonstrations and protests:

Journalists have an important role to play in providing independent coverage of public assemblies. As such, they must be distinguished from participants and be given as much access as possible by the authorities.<sup>330</sup>

**200. It is unacceptable that individual journalists are left with no option but to take court action against officers who unlawfully interfere with their work. Journalists have the right to carry out their lawful business and report the way in which demonstrations are handled by the police without state interference, unless such interference is necessary and proportionate, and journalists need to be confident that they can carry out their role. The public in turn have the right to impart and receive information: the media are the eyes and ears of the public, helping to ensure that the police are accountable to the people they serve. Effective training of front line police officers on the role of journalists in protests is vital. Police forces should consider how to ensure their officers follow the media guidelines which have been agreed between ACPO and the NUJ, and take steps to deal with officers who do not follow them.**

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<sup>327</sup> Letter of 3 December 2008 from Vernon Coaker MP to Jeremy Dear, General Secretary of the National Union of Journalists.

<sup>328</sup> Q 292.

<sup>329</sup> Q 252.

<sup>330</sup> OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, p. 17.

## 7 Conclusion

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201. Peaceful protest should be facilitated and protected: to fail to do so would jeopardise a number of rights, including the right to freedom of peaceful assembly (Article 11 ECHR) and the right to freedom of expression (Article 10 ECHR). Some peaceful protests, because of their size or nature, will require policing: sometimes to keep protestors and members of the public safe, and sometimes to allow counter-protests.

202. We have not found any systematic human rights abuses as a result of the policing of protest in the UK. Legislation also broadly protects individuals' right to protest. However, we recommend some small changes to the law to improve protection of those rights, including the right to freedom of expression. Furthermore, the law governing protest around Parliament should be overhauled in order to protect the right to protest and ensure public safety, whilst allowing Parliamentarians to continue with their work.

203. We are concerned by the numerous reports that policing of protest has become more heavy-handed in recent years. We appreciate that the police should not be placed in potentially dangerous situations without appropriate support and note that the police sometimes question protestors with the intention of opening dialogue. However, people who wish to protest peacefully should not have the impression that police are attempting to stop protest going ahead.

204. Both the police and protestors should focus on effective dialogue. The police should aim to have “no surprises” policing: no surprises for the police; no surprises for protestors and no surprises for protest targets. For such an approach to work there must be attempts on all sides to build trust. Conflicts and disagreements may well arise, but a relationship based on trust requires conflicts to be dealt with quickly and without cost to protestors. In this Report, we made recommendations intended to improve police operations and to encourage the police to further develop a human rights approach to policing of protest.

205. We conclude that these changes to the way the police operate should strengthen the right to protest and improve the way it is policed in the future.

## Conclusions and Recommendations

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1. The evidence we received inevitably focused on some of the largest and most controversial protests, which are the most difficult events to police. However, we also received evidence from some small longstanding protest groups. We were struck by the accounts of the use of a wide range of police powers against protestors and others involved with protest – such as journalists – as well as the significant mismatch between the perceptions of protestors and the police about the way in which protest is managed. These factors could serve to diminish, rather than facilitate, protest and also risk encouraging conflict rather than co-operation between protestors and the police. In addition to its positive duty, the state is required not to restrict protests unless it is justified as being both necessary and proportionate to do so in pursuance of a legitimate aim: this is a high threshold. Whilst protests may be disruptive or inconvenient, the presumption should be in favour of protests taking place without state interference, unless compelling evidence can be provided of legitimate reasons for any restrictions and those restrictions go no further than is strictly necessary to achieve their aim. (Paragraph 66)
2. There is a clear need for the rights of those protested against – however unpopular their own cause may be – to be safeguarded such that they are able to go about their lawful business and that their own rights to free expression are not disregarded by those responsible for policing protests. There is some evidence that the police do not always get this balance right, perhaps by failing to identify the fundamental liberties at stake. (Paragraph 67)
3. In the past, there were good reasons for maintaining a strict distinction between private and public space, insofar as protests were or were not permitted. However, given the increasing privatisation of ostensibly public space, such as shopping centres, we consider that the situation has changed. Where preventing protest on private land to which the public routinely has access would effectively deprive individuals of their right to peaceful protest, the Government should consider the position of quasi-public spaces to ensure that the right to protest is preserved. (Paragraph 68)
4. We agree with the Minister that there needs to be greater clarity about how broad police powers are used. However, in our view, the better approach is to draft legislation itself in sufficiently precise terms so as to constrain and guide police discretion, rather than to rely on decision makers to exercise a broad discretion compatibly with human rights. (Paragraph 76)
5. Section 5 of the Public Order Act gives the police a wide discretion to decide what language or behaviour is “threatening, abusive or insulting”. Whilst arresting a protestor for using “threatening or abusive” speech may, depending on the circumstances, be a proportionate response, we do not think that language or behaviour which is merely “insulting” should ever be criminalised in this way. Whilst we welcome the Minister’s agreement to discuss the examples we raised with ACPO in order to see whether guidance or support to police officers would improve matters, we do not consider that improving guidance will be sufficient to address our concern. We recommend that the Government amend section 5 of the Public Order Act 1986 so that it cannot be used inappropriately to suppress the right to free speech, by deleting the reference to language or behaviour that is

merely “insulting.” This amendment would provide proportionate protection to individuals’ right to free speech, whilst continuing to protect people from threatening or abusive speech. We suggest such an amendment. (Paragraph 85)

6. Whilst we accept that there may be circumstances where the police reasonably believe, on the basis of intelligence, that a demonstration could be used to mask a terrorist attack or be a target of terrorism, we have heard of no examples of this issue arising in practice. We are concerned by the reports we have received of police using counter-terrorism powers on peaceful protestors. It is not clear to us whether this stems from a deliberate decision by the police to use a legal tool which they now have or if individual officers are exercising their discretion inappropriately. Whatever the reason, this is a matter of concern. We welcome the Minister’s comments that counter-terrorism legislation should not be used to deal with public order or protests. We also welcome the recommendation in the new guidance to human rights being included in community impact assessments. We recommend that the new guidance on the use of the section 44 stop and search power be amended to make clear that counter-terrorism powers should not be used against peaceful protestors. In addition, the guidance should make specific reference to the duty of police to act compatibly with human rights, including, for example, by specifying the human rights engaged by protest. (Paragraph 93)

7. We therefore recommend that, to eliminate any scope for doubt about the scope of the new offence in section 76 of the Counter Terrorism Act 2008, guidance be issued to the police about the scope of the offence in light of the decision of the Court of Appeal, and specifically addressing concerns about its improper use to prevent photographing or filming police. (Paragraph 95)

8. We appreciate that injunctions bring benefits to those who have experienced violent and intimidatory protest, especially at their homes. However, we are concerned that the Protection from Harassment Act 1997 (which was not designed to deal with protestors, but has developed over time to encompass this area of activity) has the potential for overbroad and disproportionate application. We do not consider that, in the usual course of events, there is any pressing need for applications against protestors to be made without providing the possibility for protestors to make representations on the proposed injunction. This is particularly so given the potential risk of substantial costs faced by protestors who seek to amend or revoke an injunction once it has been granted. (Paragraph 99)

9. We recommend that the Government reverse the presumption that hearings for protection from harassment injunctions are held in private, where they relate to the activities of protestors. Practice Direction 39 to the Civil Procedure Rules should be amended to make clear that applications for injunctions relating to protests are not covered by paragraph 1.5. In addition, and applying the same reasoning, we recommend that Practice Direction 25 be amended to ensure that applications for injunctions relating to protest activities may not be made without notice being given to any individuals or organisations named on the application. These recommendations will assist the courts in ensuring that injunctions against protestors are necessary and proportionate within the context of the rights to freedom of speech and peaceful assembly. (Paragraph 100)

10. Many of the concerns which we expressed during the passage of the Bill which became the Serious Organised Crime and Police Act 2005 have been borne out in practice:

we do not have confidence that section 128 has been implemented in a manner compatible with Convention rights, or that appropriate safeguards are in place to secure compatibility. We recommend that section 128(3)(c) be amended to permit the Home Secretary to designate sites on the grounds of national security only where it is necessary to do so. We suggest an amendment to section 128. (Paragraph 108)

**11.** We recommend that the police should be proactive in using the existing criminal law to prosecute protestors who are carrying out threatening or abusive protest via the internet. Further, we recommend that the Home Office review the existing law to ensure that it adequately protects both the rights of protestors and those who are targeted by such protests. (Paragraph 109)

**12.** Measures for dealing with protest around Parliament must comply with the European Convention on Human Rights, including the need for the law to be predictable and certain so as not to be arbitrary. (Paragraph 125)

**13.** In our view, the maintenance of access to Parliament is a persuasive reason to restrict the rights to protest and to freedom of assembly within the areas directly around the Palace of Westminster and Portcullis House. We also share the view of the parliamentary authorities that legislation on protest around Parliament should not differentiate between sitting and non-sitting days, in order to ensure that there is clarity and legal certainty for Members, the police and the public, although the way in which protest is policed should take account of the likely level of disruption to parliamentary activity. (Paragraph 126)

**14.** We share the view expressed by a range of witnesses that the Serious Organised Crime and Police Act 2005 provisions should be repealed, principally because they have proved too heavy-handed in practice, are difficult to police, and lack widespread acceptance by the public. (Paragraph 127)

**15.** Advance notification of protest around Parliament should be encouraged by the Metropolitan Police, in order to facilitate safe protest, but should not be a legal requirement and no sanction should apply to those who choose not to notify the police of their intention to protest solely by reason of that choice. (Paragraph 128)

**16.** We recommend that the parliamentary authorities work with the police to develop clear conditions which can be imposed on protestors under the Public Order Act, amended if necessary to achieve this aim, to ensure that access is maintained at all times. Conditions might include requiring protestors to keep clear of the vehicular access points, to permit access to Parliament and to ensure public safety around the gates. (Paragraph 131)

**17.** We recommend that the Home Office, the police, Westminster City Council and the parliamentary authorities should develop alternative arrangements to manage noise levels from protest in Parliament Square, including consideration of whether legislative change is necessary and whether maximum noise levels should be imposed and enforced effectively. (Paragraph 133)

**18.** We have heard no good argument in favour of introducing an arbitrary limit on the duration of protests around Parliament, although we note the potential security concerns associated with the existence of the camp. We share the view of the Joint Committee on the draft Constitutional Renewal Bill that the police power in the Serious Organised Crime and

Police Act 2005 to impose conditions relating to security issues should be continued for the area around Parliament. We are also concerned to ensure that the existence of long-term protests does not prevent or deter other people from protesting in Parliament Square. The police should have the power to impose conditions on protests in order to facilitate protest by others – for example, where more than one protest takes place in Parliament Square on the same day. (Paragraph 134)

19. We note that the Greater London Authority may consider creating new byelaws to manage protest in Parliament Square, including to limit the duration of protests. Given the potential significance of these new byelaws for the rights to freedom of expression and assembly, we recommend that section 236A of the Local Government Act 1972 be amended to set out the framework for balancing relevant interests. (Paragraph 135)

20. We recommend that the Greater London Authority involve the police, Westminster City Council and the parliamentary authorities in discussions about any new byelaws; and that any new restrictions on the rights to freedom of assembly and expression are not disproportionate. (Paragraph 136)

21. We consider that protest around Parliament should be governed by the Public Order Act, in particular the police power to impose conditions on protests under section 14. There is a case, however, for amending section 14 to deal with the specific circumstances of Parliament. We recommend that the Public Order Act should be amended to enable conditions to be placed on static protests where they seriously impede, or it is likely that they will seriously impede, access to Parliament. (Paragraph 137)

22. Crucially, we note that the onus is on the Government to bring forward the necessary reform which commands the support of the police, the parliamentary authorities and the local authorities. (Paragraph 139)

23. We are pleased to hear that the police consider that the Human Rights Act helps, rather than hinders, effective policing. We also recognise that police officers have human rights themselves, which the state is required to protect. We hope that the positive messages about human rights which we heard from the officers from whom we took oral evidence are reflected in police forces across the country. (Paragraph 145)

24. The police and Home Office, along with other witnesses, are correct to assert that there is a balance to be struck between the rights of protestors and others. However, this is only half the story. Human rights law makes clear that the balance should always fall in favour of those seeking to assert their right to protest, unless there is strong evidence for interfering with their right. Inconvenience or disruption alone are not sufficient reasons for preventing a protest from taking place, although they may be good reasons to reroute it or place other conditions upon it. Given the value of the right to protest, a certain amount of inconvenience or disruption needs to be tolerated. (Paragraph 148)

25. Officers at all levels need to be supported in carrying out their legal and professional duties. Training is vital to ensuring that this happens. We recommend that human rights training should be integrated into other training, rather than provided as a discrete component, and that it should be regular, relevant and up to date. Objective evidence on the extent to which training in human rights awareness had been successful would be valuable. We recommend that the Home Office or ACPO commission independent

research into the extent of police knowledge and awareness of the human rights engaged by the issue of protest. (Paragraph 156)

**26.** We are disappointed by suggestions from some witnesses that resolution of disputes often depends on those affected taking costly and time consuming court action against police. Legal action where officers are in breach of their human rights obligations, whilst important, is not appropriate to deal with systemic problems nor a good basis from which to learn lessons for the future. It is also damaging to future relations between protestors and the police and does not allow protestors the swift response that may sometimes be required, if they are to achieve their aim of a timely and persuasive demonstration. We recommend that the Government develops a quick and cost free system for resolving complaints and disputes in advance of protests taking place. (Paragraph 157)

**27.** Greater consistency of practice across police forces is, in our view, essential and could be achieved if debriefing after protests, to ensure that lessons are learnt, routinely deals with human rights issues. This would be enhanced by agreeing to engage the organisers of protests as part of that debriefing. We would encourage good joint working between forces to facilitate the sharing of information, intelligence, expertise and resources. Comprehensive systems need to be put in place within and between forces to ensure that lessons (both good and bad) are regularly drawn from police practice and disseminated broadly. (Paragraph 159)

**28.** As we have already noted, good leadership from the top of the police down is vital to ensuring respect for human rights in any policing operations, including policing protests. This will also help to ensure consistent good practice across police forces. We recommend that any officer who is involved, in whatever way, with policing protests, should have access to accurate and helpful guidance on how to police compatibly with human rights standards. ACPO and the Police Federation should give consideration as to how this can best be achieved, engaging all police officers involved in this area of police work. (Paragraph 162)

**29.** Whilst we recognise that the political and historical situation in England and Wales is different from that in Northern Ireland, there are undoubtedly lessons that can be drawn from the Northern Irish experience of policing contentious protests whilst trying to ensure respect for human rights. Given the record of the Police Service of Northern Ireland in policing protest, we recommend that police forces in England and Wales evaluate the expertise of their legal advisers to ensure that there is sufficient human rights knowledge and understanding available to all levels of the police on a daily basis to help the police avoid human rights breaches. We also recommend that the Home Office consider whether police contracts and disciplinary procedures pay sufficient recognition to the duty of officers to act compatibly with human rights. (Paragraph 169)

**30.** Having seen and heard from those working in Northern Ireland about the positive effect of this duty, we recognise it as a valuable tool in enhancing human rights compliance by the police. We will continue to monitor its application and effectiveness, and intend to review the report of the HM Inspectorate of Constabulary when it is published later this year. (Paragraph 171)

31. We have already recommended against retaining the present system of compulsory prior notification of protests around Parliament. We see no reason to introduce such a requirement elsewhere in the UK. In our view, insisting on prior notification of protests is a disproportionate interference with the right to protest and is more likely to discourage some protestors from cooperating with the police than to encourage effective dialogue. (Paragraph 180)

32. We recommend that police forces review how they foster effective dialogue with protestors, with a view to ensuring that the Minister's aim of good quality, trustworthy communication is achieved as often as possible. National guidance should have a part to play in achieving this. The police should take proactive steps to ensure that dialogue is encouraged, but that it is made clear to all that such dialogue is voluntary. In this spirit, protestors themselves should also, where possible, engage with the police at an early stage in their planning, in order to facilitate peaceful protests. It is in the interests of protestors, the police, targets and the general public for there to be effective communication and co-operation between the police and protestors. (Paragraph 181)

33. We are concerned that protestors have the impression that the police are sometimes heavy-handed in their approach to protests, especially in wearing riot equipment in order to deal with peaceful demonstrations. Whilst we recognise that police officers should not be placed at risk of serious injury, the deployment of riot police can unnecessarily raise the temperature at protests. The Police Service of Northern Ireland has shown how fewer police can be deployed at protests, in normal uniform, apparently with success. Whilst the decision as to the equipment used must be an operational one and must depend on the circumstances and geography in the particular circumstances, policing practice of this sort can help to support peaceful protest and uphold the right to peaceful assembly and we recommend that the adoption of this approach be considered by police forces in England and Wales, where appropriate. (Paragraph 187)

34. We recommend that guidance on the use of tasers, to which officers should be required to have regard, should make clear that the weapons should not be used against peaceful protestors. In addition, we recommend that quarterly reports be made to Parliament on the deployment and use of tasers, including the reasons for their use in specific incidents. The Government should continue to monitor the medical effects of the use of tasers and publish its findings. (Paragraph 192)

35. It is unacceptable that individual journalists are left with no option but to take court action against officers who unlawfully interfere with their work. Journalists have the right to carry out their lawful business and report the way in which demonstrations are handled by the police without state interference, unless such interference is necessary and proportionate, and journalists need to be confident that they can carry out their role. The public in turn have the right to impart and receive information: the media are the eyes and ears of the public, helping to ensure that the police are accountable to the people they serve. Effective training of front line police officers on the role of journalists in protests is vital. Police forces should consider how to ensure their officers follow the media guidelines which have been agreed between ACPO and the National Union of Journalists, and take steps to deal with officers who do not follow them. (Paragraph 200)

# Formal Minutes

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**Tuesday 3 March 2009**

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness	John Austin MP
Lord Dubs	Dr Evan Harris MP
Lord Morris of Handsworth	Mr Virendra Sharma MP
The Earl of Onslow	Mr Richard Shepherd MP
Baroness Prashar	

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Draft Report (*Demonstrating respect for rights? A human rights approach to policing protest*), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 205 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Eighth Report of the Committee to each House.

*Ordered*, That the Chairman make the Report to the House of Commons and that Lord Dubs make the Report to the House of Lords.

Written evidence was ordered to be reported to the House for printing with the Report.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

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[Adjourned till Tuesday 10 March at 1.30pm]

## List of Witnesses

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### Tuesday 24 June 2008

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**Dr Eric Metcalfe**, JUSTICE and **Mr James Welch**, LIBERTY

Ev 1

### Tuesday 21 October 2008

**Mr Jeremy Dear**, National Union of Journalists, **Mr Andrew Gay**, Huntingdon Life Sciences and **Mr Richard D North**, Fellow of the Social Affairs Unit

Ev 16

**Mr Phil McLeish**, Climate Camp, **Ms Lindis Percy**, Campaign for the Accountability of American Bases and **Mr Milan Rai**, Justice Not Vengeance

Ev 26

### Tuesday 25 November 2008

**Deputy Chief Constable Sue Sim**, Northumbria Police and ACPO public order lead, **Acting Assistant Commissioner Chris Allison MBE**, Metropolitan Police Service and **PC Neil Hickey**, Police Federation of England and Wales

Ev 35

### Tuesday 9 December 2008

**Mr Vernon Coaker MP**, Minister for Policing, Crime and Security and **Mr Christian Papaleontiou**, Public Order Unit, Home Office

Ev 55

## List of written evidence

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1	Letter to Mike O'Brien MP, Minister of State, Department for Energy and Climate Change from the Chairman, dated 13 November 08	Ev 67
2	Letter from Vernon Coaker MP, Minister of State, Home Office to the Chairman, dated 6 January 09	Ev 67
3	Letter from the Chairman to Vernon Coaker MP, dated 20 January 09	Ev 68
4	Letter to the Chairman from Vernon Coaker MP, dated January 09	Ev 68
5	Letter from Michael Jabez Foster MP Chairman of the Joint Committee on the Draft Constitutional Renewal Bill, dated June 08	Ev 70
6	Letter to Michael Jabez Foster MP, dated July 08	Ev 70
7	Letter to Superintendent Steve Pearl, National Extremism Tactical Coordination Unit, dated 11 November 08	Ev 72
8	National Extremism Tactical Coordination Unit	Ev 72
9	Agricultural Biotechnology Council	Ev 74
10	Aldermaston Women's Peace Campaign	Ev 77
11	Mr Stuart Andrews	Ev 80
12	Mr Adrian Arbib	Ev 87
13	Association of the British Pharmaceutical Industry	Ev 88
14	Association of Electricity Producers	Ev 91
15	British Fur Trade Association	Ev 92
16	British Irish Rights Watch	Ev 94
17	Campaign for the Accountability of American Bases	Ev 97; 100
18	Campaign Against Arms Trade	Ev 101
19	Campaign Against Criminalising Communities	Ev 103
20	Campaign for Nuclear Disarmament	Ev 107
21	Children's Rights Alliance for England	Ev 109
22	Mrs Wendy V R Clark	Ev 110
23	Climate Camp	Ev 112
24	Climate Camp (Reports)	Ev 116
25	Countryside Alliance	Ev 127
26	Elinor Croxall	Ev 133
27	Drax Power Limited	Ev 134
28	Mr Simon Gould	Ev 137
29	Mr Brian W Haw	Ev 138
30	Dr Peter Harbour	Ev 139
31	Home Office	Ev 142
32	Huntingdon Life Sciences	Ev 146; 149
33	JUSTICE	Ev 149; 153
34	Justice Not Vengeance	Ev 155
35	Liberty	Ev 158; 164
36	Shelly Lea	Ev 167
37	Mayor of London	Ev 168
38	Mr David Mead	Ev 169
39	Metropolitan Police Service	Ev 173

40	National Union of Journalists	Ev 175
41	Mr Richard D North	Ev 178; 182; 183
42	Dr Michael Hamilton and Dr Neil Jarman	Ev 183
43	Police Federation of England and Wales	Ev 187
44	Research Defence Society	Ev 188
45	Ms Lynn Sawyer	Ev 190
46	Deputy Chief Constable Sue Sim, Association of Chief Police Officers (ACPO)	Ev 191; 192
47	Professor John Stein	Ev 192
48	David Taylor MP	Ev 193
49	Mark Thomas	Ev 194
50	Barbara Tucker	Ev 195
51	Marc Vallée	Ev 195
52	Voices in the Wilderness UK	Ev 196
53	Wickham Laboratories	Ev 197
54	Westminster City Council	Ev 198
55	Yorkshire Campaign for Nuclear Disarmament	Ev 198
56	Angie Zelter	

## List of unprinted evidence

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The following memoranda have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives, and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Email and dvd from Rikki Blue

Email from Mr David Hansen

## List of Reports from the Committee during the current Parliament

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First Report	The UN Convention on the Rights of Persons with Disabilities	HL Paper 9/HC 93
Second Report	The Work of the Committee in 2007-08	HL Paper 10/HC 92
Third Report	A Bill of Rights for the UK? Government Response to the Committee's Twenty-ninth Report of Session 2007-08	HL Paper 15/ HC 145
Fourth Report	Legislative Scrutiny: Political Parties and Elections Bill	HL Paper 23/ HC 204
Fifth Report	Counter-Terrorism Policy and Human Rights: Annual Renewal of Control Orders Legislation 2009	HL Paper 37/HC 282
Sixth Report	UN Convention on the Rights of Persons with Disabilities: Government Response to the Committee's First Report of Session 2008-09	HL Paper 46/HC 315
Seventh Report	Demonstrating respect for rights? A human rights approach to policing protest	HL Paper 47/HC 320

### Session 2007-08

First Report	Government Response to the Committee's Eighteenth Report of Session 2006-07: The Human Rights of Older People in Healthcare	HL Paper 5/HC 72
Second Report	Counter-Terrorism Policy and Human Rights: 42 days	HL Paper 23/HC 156
Third Report	Legislative Scrutiny: 1) Child Maintenance and Other Payments Bill; 2) Other Bills	HL Paper 28/ HC 198
Fourth Report	Government Response to the Committee's Twenty-First Report of Session 2006-07: Human Trafficking: Update	HL Paper 31/ HC 220
Fifth Report	Legislative Scrutiny: Criminal Justice and Immigration Bill	HL Paper 37/HC 269
Sixth Report	The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 38/HC 270
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume I Report and Formal Minutes	HL Paper 40-I/HC 73-I
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume II Oral and Written Evidence	HL Paper 40-II/HC 73-II
Eighth Report	Legislative Scrutiny: Health and Social Care Bill	HL Paper 46/HC 303
Ninth Report	Counter-Terrorism Policy and Human Rights (Eighth Report): Counter-Terrorism Bill	HL Paper 50/HC 199
Tenth Report	Counter-Terrorism Policy and Human Rights (Ninth report): Annual Renewal of Control Orders Legislation 2008	HL Paper 57/HC 356

Eleventh Report	The Use of Restraint in Secure Training Centres	HL Paper 65/HC 378
Twelfth Report	Legislative Scrutiny: 1) Health and Social Care Bill 2) Child Maintenance and Other Payments Bill: Government Response	HL Paper 66/HC 379
Thirteenth Report	Government Response to the Committee's First Report of Session 2006-07: The Council of Europe Convention on the Prevention of Terrorism	HL Paper 67/HC 380
Fourteenth Report	Data Protection and Human Rights	HL Paper 72/HC 132
Fifteenth Report	Legislative Scrutiny	HL Paper 81/HC 440
Sixteenth Report	Scrutiny of Mental Health Legislation: Follow Up	HL Paper 86/HC 455
Seventeenth Report	Legislative Scrutiny: 1) Employment Bill; 2) Housing and Regeneration Bill; 3) Other Bills	HL Paper 95/HC 501
Eighteenth Report	Government Response to the Committee's Sixth Report of Session 2007-08: The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 103/HC 526
Nineteenth Report	Legislative Scrutiny: Education and Skills Bill	HL Paper 107/HC 553
Twentieth Report	Counter-Terrorism Policy and Human Rights (Tenth Report): Counter-Terrorism Bill	HL Paper 108/HC 554
Twenty-First Report	Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 days and Public Emergencies	HL Paper 116/HC 635
Twenty-Second Report	Government Response to the Committee's Fourteenth Report of Session 2007-08: Data Protection and Human Rights	HL Paper 125/HC 754
Twenty-Third Report	Legislative Scrutiny: Government Replies	HL Paper 126/HC 755
Twenty-Fourth Report	Counter-Terrorism Policy and Human Rights: Government Responses to the Committee's Twentieth and Twenty-first Reports of Session 2007-08 and other correspondence	HL Paper 127/HC 756
Twenty-fifth Report	Counter-Terrorism Policy and Human Rights (Twelfth Report): Annual Renewal of 28 Days 2008	HL Paper 132/HC 825
Twenty-sixth Report	Legislative Scrutiny: Criminal Evidence (Witness Anonymity) Bill	HL Paper 153/HC 950
Twenty-seventh Report	The Use of Restraint in Secure Training Centres: Government Response to the Committee's Eleventh Report	HL Paper 154/HC 979
Twenty-eighth Report	UN Convention against Torture: Discrepancies in Evidence given to the Committee About the Use of Prohibited Interrogation Techniques in Iraq	HL Paper 157/HC 527
Twenty-ninth Report	A Bill of Rights for the UK?: Volume I Report and Formal Minutes	HL Paper 165-I/HC 150-I
Twenty-ninth Report	A Bill of Rights for the UK?: Volume II Oral and Written Evidence	HL Paper 165-II/HC 150-II
Thirtieth Report	Counter-Terrorism Policy and Human Rights (Thirteenth Report): Counter-Terrorism Bill	HL Paper 172/HC 1077
Thirty-first Report	Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008	HL Paper 173/HC 1078
Thirty-second Report	Scrutiny of Mental Health Legislation: Government Response to the Committee's Sixteenth Report of	HL Paper/ HC 1079

## Session 2007-08

**Session 2006–07**

First Report	The Council of Europe Convention on the Prevention of Terrorism	HL Paper 26/HC 247
Second Report	Legislative Scrutiny: First Progress Report	HL Paper 34/HC 263
Third Report	Legislative Scrutiny: Second Progress Report	HL Paper 39/HC 287
Fourth Report	Legislative Scrutiny: Mental Health Bill	HL Paper 40/HC 288
Fifth Report	Legislative Scrutiny: Third Progress Report	HL Paper 46/HC 303
Sixth Report	Legislative Scrutiny: Sexual Orientation Regulations	HL Paper 58/HC 350
Seventh Report	Deaths in Custody: Further Developments	HL Paper 59/HC 364
Eighth Report	Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005	HL Paper 60/HC 365
Ninth Report	The Meaning of Public Authority Under the Human Rights Act	HL Paper 77/HC 410
Tenth Report	The Treatment of Asylum Seekers: Volume I Report and Formal Minutes	HL Paper 81-I/HC 60-I
Tenth Report	The Treatment of Asylum Seekers: Volume II Oral and Written Evidence	HL Paper 81-II/HC 60-II
Eleventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 83/HC 424
Twelfth Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 91/HC 490
Thirteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 105/HC 538
Fourteenth Report	Government Response to the Committee's Eighth Report of this Session: Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9 order 2007)	HL Paper 106/HC 539
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 112/HC 555
Sixteenth Report	Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights	HL Paper 128/HC 728
Seventeenth Report	Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers	HL Paper 134/HC 790
Eighteenth Report	The Human Rights of Older People in Healthcare: Volume I- Report and Formal Minutes	HL Paper 156-I/HC 378-I
Eighteenth Report	The Human Rights of Older People in Healthcare: Volume II- Oral and Written Evidence	HL Paper 156-II/HC 378-II
Nineteenth Report	Counter-Terrorism Policy and Human Rights: 28 days, intercept and post-charge questioning	HL Paper 157/HC 394
Twentieth Report	Highly Skilled Migrants: Changes to the Immigration Rules	HL Paper 173/HC 993
Twenty-first Report	Human Trafficking: Update	HL Paper 179/HC 1056