department for
culture, media
and sport

Government Response to the Public Consultation on the Royal Parks and Other Open Spaces (Amendment) (No. 2) Regulations 2012

February 2012

improving
the quality
of life for all

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Contents

Section 1: Government Response

Introduction

1. The Government would like to thank everyone who took the time to respond to the public consultation on the Royal Parks and Other Open Spaces (Amendment) (No. 2) Regulations 2012[1]. We received a small number of responses to this consultation and these can be found on the DCMS website.

2. The initial consultation was published on the DCMS website. There were also links to it from The Royal Parks website, as well as from the consultations on bye laws in relation to similar seizure powers led by Westminster City Council and the Greater London Authority. We also informed a number of stakeholders of the consultation directly.

3. The consultation builds on the intention set out at the introduction of the *Police Reform and Social Responsibility Act 2011* ("2011 Act") to introduce new powers of seizure to the Royal Parks land around Parliament.

Laying of regulations

4. The Government has decided to go ahead with the regulations, for the reasons explained more fully below.

5. The Government has made amendments to the draft regulations consulted on. Most of these have not been amendments of substance, but have been reorganisation of the regulations into a better form. The key amendments of substance have been to remove the provision applying the regulations to existing encampments, and to provide that none of the activities listed are to be considered prohibited activities if done by someone with the prior written approval of the Secretary of State. Neither change was proposed in the responses to the consultation, but have been decided necessary by the Government. The former change avoids possible retrospective effect of the regulations. The latter change will ensure the regulations do not interfere with traditional uses of parts of the parks, where approval has been given in the past for the erection of marquees for ceremonial events.

[1] http://www.culture.gov.uk/consultations/8710.aspx

Responses to consultation

6. We received five responses to the consultation. These are anonymised and published in **Annex A**.

7. The Department for Work and Pensions who have an office near Parliament Square wrote they had no issues with the proposals and no comments to make.

8. The remaining four were individuals objecting in principle to the draft regulations. A summary of the main objections are set out below:

    - Powers preventing encampment as a form of legitimate protest are unnecessary and should not be implemented in any area.

    - Tents are essential to legitimate overnight protest and should not be seized by the Police.

    - Loud-hailers and other amplifying equipment are essential tools to rally, organise and address political demonstrations and should not be seized by the Police.

9. Most objections to the regulations focused on protecting encampment as a form of protest generally, rather than specifically in relation to the parks specified in the consultation.

10. However, one objection acknowledged that the new regulations do not significantly alter the legislation already on the books, but felt that both the new and the old legislation went too far. The objector considered that the 2011 Act was being used as a precedent for the new regulations, but that such use had not been justified by the Government as regards its extension to the parks specified in the consultation.

Government response

11. The draft regulations do not take a view on the legitimacy of one form of protest over another. It is already an offence to make or give a public speech (other than in Speakers' Corner, the area traditionally reserved for such activity), take part in assemblies or processions, use amplified noise equipment, or camp on the Royal Parks land without the prior written approval of the Secretary of State for Culture, Olympics, Media and Sport ("Secretary of State"). As such, the regulations do not restrict further the ability of protest than is already the case.

12. The regulations do introduce new seizure powers in relation amplified noise equipment and camping equipment. These are proposed to enable police to seize property in connection with prohibited activity on the Royal Parks land around Parliament.

13. The extension of the coverage of the seizure powers to areas in the vicinity of Parliament Square was signalled in Parliament during the passage of the Police Reform and Social Responsibility Bill. The explanatory notes on the Lords Amendments to the Bill, as brought from the House of Lords on 20 July 2011, said at paragraph 51:

> "Amendment 53 would amend the Parks Regulation (Amendment) Act 1926 to enable current seizure powers contained in the Royal Parks (Trading) Act 2000 to be applied in relation to the enforcement of any offences under the 1926 Act. This would cover other areas around Parliament Square not covered by Part 3 of the Bill, or by Westminster City Council or Greater London Authority byelaws - for example the lawn area around the statue of George V, Victoria Tower Gardens and the Jewel Tower. Amendments 56, 57 and 59 are consequential on amendment 53."

14. The provisions of the 2011 Act itself (though not specifically its extension beyond Parliament Square) were the subject of considerable scrutiny and debate in Parliament, including at the Joint Committee on Human Rights, before they were passed into law in their present form. The provisions in the regulations are more limited than those in the 2011 Act, given the offences are subject to a smaller maximum fine (level 1 on the standard scale, as opposed to level 5 in Parliament Square under the 2011 Act), and that they can only be enforced by the police, and not by authorised officers of GLA or WCC. Similarly the seizure power in the parks can only be exercised by the police, and not by authorised officers of GLA or WCC.

15. Further, the Government has sought to be restrained, by extending the regulations only to the degree considered necessary at this time to deal with matters central to Parliament Square, given the new offences are very similar to existing offences, given they apply only in the parks in the vicinity of Parliament Square, rather than throughout the Royal Parks, and given the seizure powers apply only to those limited offences.

16. Following discussion with the Greater London Authority, Westminster City Council and the Metropolitan Police, the Government considers that a power of seizure in the parks is necessary to facilitate joined up enforcement of the offences in the parks and the other areas around Parliament Square, given the risk of displacement of encampments from one area to an area under the management of another authority. The difficulty arising from lacking such powers provided by the 2011 Act is evidenced by the significant difficulties and delays experienced by the GLA in trying to enforce its byelaws in Parliament Square.

17. The Government is committed to better protecting the land in the vicinity of Parliament Square over which the Secretary of State has the power to make regulations. The Government intends to proceed with the regulations.

Appendix A: Responses to Consultation

Respondent A

The Department for Work and Pensions were copied into the consultation papers for this by the Home Office, which provides a link to your site that shows you as the contact. We have an office in Tothill St but no premises directly on Parliament Sq or Trafalgar Sq. We are grateful for the opportunity to consider the proposals and have shared them with our estates services provider, who provides building access/security services. We have no issues with these proposals and no comments to make.

Respondent B

As I am against the Byelaws in principle, I have no comment on the size of designated areas other than it is unnecessary and therefore effectively too large.

"The Government does not wish to prevent legitimate protest" is, in the context of these proposals, a magnificent Orwellianism.

For ten years, the authorities waged a failed war on Brian Haw, but these Byelaws, had they been available earlier, would have swept him away in an instant. His iconic decade-long peaceful protest is known and admired throughout the world, and yet, shamefully, with these proposed powers Government would have been able to erase Brian's historic achievement.

The Government claims it is concerned at the "new threat" of urban camping, and "see no place for tents in a legitimate protest". Have they not heard of Greenham Common; do they not know of equivalent permanent protests carried on, and tolerated, outside government buildings for many years in other Western democracies including Australia and the USA?

For a committed full-time campaigner, willing to put their normal life on hold as a sacrifice to the greater good, a tent is essential for survival.

We are living in extraordinary times - an 'end of Empire' orgy of lawlessness, when comparatively small numbers of the richest and the most greedy on this planet, lead us into illegal wars and plunder our pockets. The rule of law, and the illusion of democracy, are being shattered, as we enter wars on the flimsiest of evidence and excuses, with no democratic mandate. Meanwhile, our tax inspectors, taken out for cosy champagne lunches, allow major corporations to avoid billions of pounds of tax at a stroke, as our so-called 'deficit' (of those missing billions of pounds) is addressed through vicious ideological attacks on social services, education, health and welfare, youth services, old age provision, and public enterprise.

In response to all the above injustice, small numbers of dedicated, peaceful, committed, and well-meaning citizens are meeting together in camps to discuss solutions, make proposals, form a visible presence to others (including the media), and to protest against the undemocratic, un-mandated, and destructive actions of a few. This 'occupy' movement began with the Arab Spring, which has been cheered on by Western powers. Were these laws enacted in these Arab countries, our media would be condemning their governments for sweeping away peaceful protest by force, seizure and forfeiture, and yet the Government wants to introduce them here.

For these amazing, visionary protestors, tents are simply tools of their campaigning trade. Without the tents, the whole nature of their protest would be undermined, and the very power of their activism would be purposefully destroyed. For the Government to claim that this Byelaw is not an attack on protest is either a carefully constructed lie, or is an ill-thought out and easily-corrected misunderstanding.

The recent protest camps have not been without problems, mostly due to the unfortunate fact that even in our rich Western democracy, our society still has issues of homelessness, destitution, drug dependence and alcoholism. The camps have on occasion attracted people suffering these problems, partly through providing an apparently safe haven and a rare space characterised by respect and understanding. But despite such issues, the recent encampments are notable for their absolutely sincere attempts to minimise disruption, to co-operate with and negotiate with land-owners, and to adapt to the needs of genuine public concern. If it were otherwise, then perhaps the Government might have an excuse to legislate, but only if and when other legitimate laws failed to deal with truly anti-social or destructive intent.

This legislation can be seen as part of an on-going ideological battle between the interests and requirements of the rich and powerful against the real needs of the majority of people in society, and against true democracy and justice.

If the Government go ahead with these proposals, do they really think that they will be able to legislate protest from our streets? Instead, they will be criminalising decent people. With their powers of seizure and the use of force, they will be condoning shameful repressive violence to clear away civilised and peaceful protest. They will in effect be issuing a declaration of war on ordinary people, and they will be coming down on the side of injustice.

As cuts hit deeper into public provision, it may be that some of you deciding on these proposals will find an urgent need to protest when your own livelihoods and pensions are stolen. If you side with repression now, perhaps you will regret it when you find your own voices diminished and silenced later.

As well as for all the reasons given before, I would add that loud-hailers and other amplifying equipment are absolutely essential tools to rally, organise and address political demonstrations. This, as you have acknowledged in your notes, is why demonstrations are specifically exempted from the 1990 Environmental Protection Act.

To try to outlaw, criminalise, and allow seizure and forfeiture of such items, and to still maintain the falsehood that you are not attempting to stifle protest is frankly an insult, and anyone voting for this measure is participating in this manifest lie.

Respondent C

Overnight protest should not be criminalised, tents or any other property should not be seized.

Imposing this law against only shows how afraid the law making bodies are of dissent within democracy. It is worrying and even scary.

Thanks for reading.

Respondent D

I would like to give my response to the Consultation on Royal Parks and Other Open Spaces. I will list my answers according to the questions numbered in Section 2 of the consultation document.

I do not feel that any Royal Parks or indeed any other areas should be covered by byelaws of the kind proposed.

See my reasons below.

No.

See above.

I do not agree with the creation of this offence.

See response below.

No.

Since the proposed offences have not been sufficiently justified there should not be additional powers introduced to enforce them.

No.

Response to Question 6

The proposed new byelaws do not significantly alter the legislation already on the books, but I feel that both the new and the old legislation go too far. The ability to carry out long-term protests (over 24 hours) is an important element of our right to protest in general, and in practical terms tents and sleeping equipment are necessary for this form of protest. It is clear that a ban on tents and similar structures would in practice constitute a heavy crackdown on long-term protests per se, given that it would be inhumane to expect someone to carry out such a protest without any form of shelter.

The consultation document does not give any specific explanation of what is deemed to be harmful about long-term protests requiring camping and sleeping equipment, instead simply asserting that such protests are ‘disruptive’. The document does not explain why a protest camp which anyone is welcome to visit or pass through would constitute a disruption of others’ use of an area. Of course some will always disagree with the presence and/or aims of such a camp, but this is not in itself sufficient reason for a camp to be removed unless the camp’s activity is directly harmful or prejudicial towards others using the area. The latter issue would be covered by different legislation and so does not require new byelaws.

Given that such a serious restriction on the right to protest is being proposed, it would seem necessary for DCMS to give a fuller and more detailed account of why it feels that such measures are necessary. In the absence of any such information the consultation begins to look like part of a trend of general prejudice against long-term protests such as the Occupy camps. The claims of public disorder and obstruction of the highway made against these camps have been highly

exaggerated: the protesters at the camp near St Paul's, for example, have consistently worked with the police and the local authorities to keep the camp within an area that does not impede the movement of members of the public. Protesters have also been proactive in dealing with and if necessary expelling those disruptive individuals who have entered the camps. You will surely agree that such individuals are sadly to be found engaging in public disorder in streets across London, and the blame for this cannot be laid at the door of those organising non-violent static protests.

Even if it were true that tents ought to be banned in the proposed areas, the wording of the proposed byelaws is vague and could be used to attack a wide range of activities. Section 3A(2)(b)(ii) extends the proscription of tents to include 'any other structure that is designed, or adapted… for the purpose of… staying in a place for any period' (my emphasis). This is extremely vague and could be used to refer to almost anything, for example a camping chair which an old or infirm protester has set up for five minutes in order to briefly rest. To remove such objects would be unreasonable and aggressive towards peaceful protest. Laws worded in this way are not acceptable.

In summary, none of the proposed new byelaws relating to tents and similar structures should be enacted, and the existing byelaws should themselves be opened up to reconsideration. If DCMS wishes to consult on such laws then it must produce and make readily accessible a detailed and convincing body of evidence demonstrating that the nature of long-term static protests is sufficiently dangerous to warrant an extreme restriction on our right to practice them. As a free and democratic society we must be at pains to avoid such restrictions, and my own experience and knowledge indicates nothing to necessitate them. In the absence of the necessary evidence the present consultation cannot be used as the basis for enacting new byelaws. The precedent set by PRASRA cannot be seen as meaningful unless the application of similar laws in the locations proposed by DCMS can be justified in the ways that I have described.

I would be interested to read any response you have to this criticism.

Respondent E

I realise that technically (since it's after midnight) I have missed the end-of-consultation date but wanted to submit my comments just in case, since your working day will not have begun yet.

I am writing to you with comment regarding: "Consultation on the Royal Parks and Other Open Spaces (Amendment) (No. 2) Regulations 2012"

I am mainly concerned over the provisions adopted from the Police Reform and Social Responsibility Act with respect to overnight encampments, seizure of property and the effect of these byelaws on the ability to carry out peaceful protest. I would like to submit my comment as part of the consultation on the new regulations.

Whilst I can understand the wish to keep important public spaces free for general use, I do think that peaceful protest is - in itself - one of the most important uses these national spaces can be put to. As such, whilst I can see the inconvenience of having protest encampments, I am not comfortable with the ongoing changes to prevent protesters remaining on site or erecting protest-related structures, so long as these are safe and non-destructive to the public space in the long term. I realise that these provisions have been introduced originally by the PRSRA, however I do not think it is necessary to spread those practices beyond the existing area covered by that Act (which I personally feel is somewhat over-reaching already). I would prefer to see peaceful protest of all forms permitted in our capital city - including encampments in the (relatively rare) cases that the protesters have the

motivation to participate in them - unless there is an absolutely overwhelming reason why this cannot be the case in very specific locations.

Reinforcing my concern in this area is the impression that these provisions were originally designed to target certain active protest groups in London, such as the anti-war and Occupy movements. This has seemed in part to be due to the publicity they have received and their proximity to Parliament itself. I am uncomfortable with the idea that laws might be created on the basis of targeting - for any reason - specific political protest groups and think that this would create a bad appearance and an unsettling precedent. Moreover, those long-term protests that have occurred do not seem to have expanded unmanageably or sparked problematically large numbers of other permanent protests, so it seems like an overreaction to pre-emptively restrict this form of protest so widely.

I hope that you will consider my comments and I wish you good luck with the consultation.

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