



THE GOVERNMENT REPLY TO
THE SEVENTH REPORT FROM THE
JOINT COMMITTEE ON HUMAN RIGHTS
SESSION 2008-09 HL PAPER 47, HC 320

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

**Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty**

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GOVERNMENT RESPONSE TO THE JOINT COMMITTEE ON HUMAN RIGHTS REPORT, *DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST*

INTRODUCTION

The Government provided an early response to the Report '*Demonstrating Respect for Rights? A human rights approach to policing protest*' on 20 April 2009. In keeping with the undertaking provided in that letter, a comprehensive response to the Committee's recommendations and conclusions is now attached.

It is important to reiterate that the Government welcomes the JCHR's report on what is a very important and sensitive area. As stressed in both the Home Office written memorandum and oral evidence to the Committee, the Government is committed to protecting and facilitating the right to peaceful protest.

Clearly events subsequent to the publication of the JCHR's Report have drawn the issues raised by the Committee into sharper focus. Concerns about the policing of the G20 protests and to a lesser extent the debates around the Tamil demonstration in Parliament Square, illustrate the human rights challenges implicit in the policing of protests and the impact that high profile national policing operations can have on public confidence in the police.

Though the Committee has reopened its enquiry, the Government has pressed ahead with a full response to the Committee's initial recommendations and conclusions. The Government will of course respond fully to any further recommendations.

Her Majesty's Inspectorate of Constabulary is to conduct a review which will directly address a number of the recommendations and conclusions of the JCHR Report. It will be assessing the effectiveness and impact of public order tactics with specific reference to containment, use of force, liaison with media and communication with public and protesters. It will examine the overall direction of public order goals, strategies and tactics in dealing with protests and demonstrations against the acknowledged principles of British policing. And it will examine the operational and legal context (including human rights legislation) for policing major protests. Its conclusions will accordingly directly inform both the Government and police response to a number of the JCHR's recommendations.

While it is right that concerns over police tactics are properly explored, we should not lose sight of the fact that over the course of G20 summit and in, for example, the march of the Tamils on 11 April, thousands of police officers demonstrated the highest levels of professionalism in facilitating the peaceful protest of thousands of protestors. Criminal activity and wider disruption to London was minimal and in the case of G20, the police also simultaneously maintained the high levels of security needed to protect those attending the Summit.

The attached response also addresses the JCHR's recommendations on the repeal of sections 132-138 of the Serious Organised Crime and Police Act 2005 (SOCAP) which govern protest around Parliament. The Government will be responding definitively on its ongoing commitment to repeal SOCAP in its response to the Report of the Joint Committee on the Draft Constitutional Renewal Bill. However the response provided here gives a clear steer on the direction of travel and will be of direct interest to the Joint Committee on the draft Constitutional Renewal Bill.

GOVERNMENT RESPONSE TO THE COMMITTEE'S RECOMMENDATIONS

The Committee made 35 conclusions and recommendations. Some of these recommendations have been grouped together for this response.

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)

The Government agrees with Recommendation 1 of the Committee's report. The starting point on policing protest is a presumption in favour of freedom of expression and freedom of assembly. The Government is committed to protecting those rights and indeed we are conscious of our duty to do so. We fully take on board that inconvenience or simple disruption are not sufficient grounds to restrict protests. This is reflected in the Public Order Act 1986 which allows conditions to be placed on demonstrations to prevent serious public disorder, serious disruption to the life of the community, serious damage to property or intimidation of others. Restrictions can only be imposed where they can be justified as being proportionate and strictly necessary to achieve this high threshold.

It is clearly desirable that the police and those wishing to protest co-operate with one another to avoid those mismatches in expectations which have been drawn out in the evidence to the Committee.

The police in their evidence to the Committee have shown that in relation to the large number of marches and protests taking place around the country, they use powers to impose conditions in advance of those events taking place, sparingly.

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)

The Government agrees that the rights of those protested against however unpopular and even unpalatable their cause may be should be safeguarded. The police's role is to balance their rights to go about their lawful business against the rights of those who wish to protest against them and against the rights of the wider community.

It is a difficult balance for the police to achieve as evidenced recently in Luton during the homecoming parade for the soldiers of the 2nd battalion Royal Anglian Regiment.

Not only were the rights of the soldiers safeguarded, but the rights of the protestors were also protected when they were subjected to a counter protest. That both the public and Parliament were divided on the policing approach in this case only illustrates the difficulties for the police in managing different interpretations of what the right balance is.

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)

The Government acknowledges the Committee's concern about the impact on the right to protest from increasing privatisation of public space. We shall consider this issue in consultation with local authorities and organisations such as Liberty who provided evidence on this particular issue to ensure that the right to protest is not being prejudiced.

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)

The Government accepts that public order legislation provides the police with wide discretion and considers that it is essential that police officers have clear guidance and training in use of those discretionary powers.

The Government is committed to providing more discretion to police officers as it set out in the Police Reform programme. This recognises that the police need to be enabled to exercise greater professional judgement and to take a common sense approach to policing rather than being constrained by overly proscriptive legislation and process. The Government also considers that in trying to be precise in drafting legislation there is a risk of creating legislation to address a particular high profile issue, which has unforeseen and counter-productive consequences in dealing with a different scenario.

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)

The Government has been considering carefully the concerns raised by the Committee around the use of Section 5 of the Public Order Act by the police and its impact on freedom of expression, raising the Committee's concerns with the Association of Chief Police Officers and the Ministry of Justice.

While we consider that the Committee's recommendation has merit in the context of the policing of protest, the implications of the amendment are potentially far reaching for the policing of lower level disorder on the street, and for the racially and religiously aggravated section 5 offences. We shall report back to the Committee, once we have conducted further consultation with stakeholders.

In the short-term, ACPO will seek to address the concerns of the Committee in its redraft of the *Keeping the Peace* manual which provides guidance on public order policing.

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)

The Government is clear that counter-terrorism powers should only be used for counter terrorism purposes.

The National Policing Improvement Agency (NPIA) issued revised guidance on section 44 in November 2008. The guidelines make it clear that the Terrorism Act 2000 powers must only be used to stop and search people in relation to terrorism and should never be used to conduct arbitrary searches. These powers must be used fairly and responsibly with respect for the people being searched and without unlawful discrimination. NPIA's advice while not explicit in regards to peaceful protests, extends to all situations where stop and search could be used. As has been noted in the report, people engaged in terrorism need to prepare. Reconnaissance and surveillance are a regular part of terrorist preparation, and all forms of assembly can be used to mask such behaviour. Any further amendments to the guidance will need to be discussed with the Association of Chief Police Officers and police service more widely.

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)

We agree with the Joint Committee's recommendation that guidance should be issued to the police about the scope of section 58A of the Terrorism Act 2000 in relation to photography. The Home Office has been engaging with stakeholders including the National Union of Journalists and the Amateur Photographic Magazine in order to gain a wider perspective of the impact that section 76 is having on both the media and the public. The Home Office is currently in the process of drafting a circular to all police forces on the new offence setting out what the policy intention is behind it and making clear that it does not criminalise

legitimate photographic or journalistic activity. It is proposed that a draft of the circular will be sent to all stakeholders before being officially published.

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)

The Government notes the Committee's concerns in this area. Although the Protection from Harassment Act was introduced primarily to tackle stalking, the offence of harassment extends to *any* form of persistent conduct which causes another person alarm or distress. So the range of behaviour that is capable of constituting an offence under the 1997 Act is potentially very wide.

The 1997 Act contains adequate safeguards to prevent innocent people from being caught by the offences that it creates. There needs to be a course of conduct which causes harassment, either intentionally, or where a person ought to have known what the effect of his actions would be. There are, moreover, defences if the course of conduct was:

- pursued for the purpose of preventing and detecting crime;
- pursued under any enactment or rule of law, or to comply with any condition or requirement imposed by any person under any enactment; or
- in the circumstances, reasonable.

The Protection from Harassment Act is not intended to criminalise people who campaign lawfully against particular activities or businesses and the Government does not believe it has this effect. The Government notes the evidence which has been submitted to the Committee by the Save Radley Lakes campaign setting out concerns about the way in which an injunction was granted by the High Court and served against the campaign. While the Government would not wish to dispute the evidence submitted, we are not convinced of the need to amend the Civil Procedure Rules in the absence of further evidence of a problem in this area. The Government would be happy to look at this if further evidence of a problem were provided. We agree with the Committee that the courts should ensure that injunctions are necessary and proportionate within the context of rights to freedom of assembly and free speech.

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)

The Government does not agree with this recommendation. The Secretary of State is already required to designate only sites that are deemed “appropriate” to protect in the interests of national security. This decision is subject to parliamentary scrutiny. Assurances given at the time that the power to designate sites for criminal trespass would be used sparingly have been adhered to strictly. Thirteen Ministry of Defence sites and a further sixteen Royal, Governmental or Parliamentary sites have been designated. In addition, all licensed nuclear sites were designated by an amendment to SOCPA by section 12 of the Terrorism Act 2006. The Government considers that this does not amount to a disproportionate application of the Secretary of State’s use of the power nor an incremental expansion of the number of sites falling under the offence.

We understand that the Joint Committee wishes to deem designation “necessary” in relation to the requirements of the Human Rights Act. This is already one of the factors that is taken into account whenever a decision is made as to whether or not a designation is “appropriate”.

The Joint Committee refers to the concerns expressed during the passage of the Serious Organised Crime and Police Bill. At that time, the Joint Committee stated:

“The power...may extend to open land as well as buildings and their immediate vicinity, and so far as it restricts people’s access to land to which they would otherwise have had rights of access for purposes of pleasure or political action it may engage the right to freedom of peaceful assembly and freedom of expression under ECHR Articles 10 and 11”.

No open land that was previously accessible to the public has been designated, except in one instance, where a public right-of-way has been preserved. None of the designated sites had previously allowed free public access. Although the Palace of Westminster permitted, and continues to permit, the general public to enter in the course of legitimate democratic business, in 2004, activists attempting to disrupt the work of the House were immediately removed. We therefore do not consider that the Joint Committee’s concerns of 2004 have been borne out.

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)

The Government believes that existing law already protects the rights of protestors and those who are targeted via the internet. What is illegal offline, is illegal online and additionally there are specific offences in the Computer Misuse Act 1990 to address on-line attacks.

However, investigating those who are using the internet to threaten and abuse their targets poses particular challenges for the police in terms of identifying the individuals who may, for example, locate their websites abroad where the UK does not have jurisdiction

and where the action itself may not be illegal. Although there are limits to the extent of investigation that can take place, the police have successfully used evidence from a number of websites which have assisted prosecutors to prove cases of intent and conspiracy.

The Government does and, of course, will continue to keep the existing law under review.

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)

The Government agrees with the Committee's recommendations and has been reviewing the law on protests around Parliament since July 2007 as part of our constitutional renewal programme. Following the Home Office public consultation, *Managing Protests around Parliament*, we announced in March 2008 our intention to repeal Sections 132 to 138 of the Serious Organised Crime and Police Act 2005. We also invited Parliament to consider what additional measures were needed to ensure that access to Parliament was maintained or that excessive noise did not disrupt Parliament.

The central thread running through the Government's approach to reviewing the legislative framework which governs protests around Parliament has been "what is distinct about Parliament" that might justify different provisions to those that apply anywhere else in the country. We have concluded that the ability of Parliament to exercise its democratic functions provides the only possible grounds for distinct provisions to apply.

The Government recognises that the police need clarity on Parliament's expectations in terms of allowing it to exercise its democratic functions, and that the police need the powers to fulfil Parliament's expectations.

The Government agrees the legal framework regulating access should apply on sitting and non-sitting days. One system will provide clarity for police, protestors and users of Parliament about the boundaries of lawful protest.

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)

We agree with the Committee's recommendation that prior notification where possible should be encouraged. Evidence to the Committee has noted that it is in everyone's interest to notify in advance – protestors, police and public. We are committed to working with

police and campaign groups to promote the advantages of advance notification, and pursuing a voluntary notification scheme.

In deciding to repeal sections 132 to 138 of SOCPA we are seeking to get away from a compulsory notification scheme and the subsequent offence which is created of protesting without notification. It is clear from the consultation the Government undertook that a compulsory prior notification scheme was deeply resented and regarded as criminalisation of protest.

As the recent Tamil protests have demonstrated, a compulsory prior notification scheme is impractical when communities feel very strongly about an issue and want to make their views known quickly.

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)

The Government agrees that a minimum level of access to the Houses of Parliament needs to be maintained to allow Parliament to exercise its democratic functions. We intend to bring forward proposals that give the police powers to secure a level of access to Parliament which is both commensurate with Parliament's expectations and which does not restrict legitimate protest.

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)

The Government is liaising with Westminster City Council, the Greater London Authority and the parliamentary authorities on identifying the powers that exist to deal with noise from loudhailers and the development of alternative arrangements to manage excessive noise from protests.

Clearly, we need to keep in mind the Committee's assessment that, "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."

We are not aware of any evidence that noise around Parliament has stopped Parliament exercising its democratic functions.

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)

We support the Committee's view that there is no good argument to support introduction of arbitrary limits on the duration of protests around Parliament. The Government is clear that placing a restriction on demonstrations simply because of their length would be inconsistent with the State's duty to facilitate lawful protest. We doubt that such a measure would be compatible with ECHR and is unlikely to be enforceable.

In response to the Committee's recommendation that the police power in SOCPA to impose conditions relating to security issues should be continued for the area around Parliament, the Government agrees with the Metropolitan Police view that the security threat is not limited to Parliament. We are additionally considering whether security concerns are better dealt with through provisions and measures that are designed to improve security. Since SOCPA came into force the physical security measures around the Palace of Westminster has been upgraded.

We are also mindful of other recommendations of the Committee that powers to deal with counter-terrorism issues should not be used against peaceful protestors.

The Government does not agree with the Committee's recommendation regarding the police having a power to impose conditions on protests in order to facilitate other protests. We have received no evidence to suggest that such a power is necessary and recent events would suggest that the area around Parliament can support multiple protests.

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)

The Government is committed to working with the full range of partners to ensure a co-ordinated approach is taken to the repeal of SOCPA. This includes how local byelaws interact with public order legislation.

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)

The Government agrees with this recommendation. If sections 132 to 138 of SOCPA are repealed, static demonstrations will be governed by section 14 of the Public Order Act. As the Government has set out in our response to recommendation 16, we agree that a minimum level of access to the Houses of Parliament needs to be maintained to allow Parliament to exercise its democratic functions. We intend to bring forward proposals that give the police powers to secure a level of access to Parliament which is both commensurate with Parliament's expectations and which does not restrict legitimate protest.

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)

The Government agrees that in reforming the law in this area, it is vital to have the support of the police, parliamentary authorities and local authorities and we are continuing to work with them in developing our reforms. The Government remains committed to bringing forward repeal as soon as Parliamentary time allows.

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)

The Government supports the Committee's recommendation and we shall support ACPO to build on the positive human rights messages that the Committee heard in evidence.

The ACPO Public Order and Public Safety Group have established a Human Rights Working Group. This Group will be led by a senior officer from the Police Service of Northern Ireland who has extensive operational experience in considering human rights in the arena of protest. It will undertake a wide programme of work including a review of public order training courses to ensure human rights issues are brought to the fore.

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)

The Government agrees with the Committee's conclusion. We fully take on board that inconvenience or simple disruption are not sufficient grounds to restrict protests. This is reflected in the Public Order Act 1986 which allows conditions to be placed on demonstrations to deal with *serious* public disorder, *serious* disruption to the life of the community, *serious* damage to property or intimidation of others. Restrictions can only be imposed where they can be justified as being proportionate and strictly necessary to achieve this high threshold.

The recent protest by the Tamils on Parliament Square is a good example of a protest which has caused some disruption to members of the public and Parliamentarians but which the police have managed effectively.

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)

ACPO and the National Policing Improvement Agency are keen to integrate human rights training into existing public order training at all levels, and there are a number of workstreams where this will be taken forward:

- Full reviews of the Initial Public Order Commander (IPOC), the Advanced Public Order Commander (APOC) course and the review of the Public Order Advisor Programme which will be complete and ready for release to the Police Service by the end of 2009.
- Review and consolidation of the ACPO Manual of Guidance on 'Keeping the Peace' and the new National Police Public Order Training Curriculum which ACPO hopes will be ready for release in 2010.

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)

The Government agrees that better negotiation and improved dialogue between police and protestors in advance of protests can only assist in resolving disputes and managing expectations.

The Government notes the Committee's recommendation to develop a system for resolving complaints and disputes in advance of protests taking place and will feed it into the current HMIC Review into G20.

ACPO in its evidence was clear that it would welcome exploring the establishment of a body similar to the Parades Commission in Northern Ireland in overseeing disputes as well as exploring widening the role of the Local Authority. We would of course need to be careful not to create a mechanism for resolving disputes which ultimately constrains the ability of police to impose conditions on the day of a protest in response to rapidly changing situations.

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)

The police are committed to reviewing and examining their tactics and operations continually to ensure they can continue to meet the difficult challenge of balancing people's rights to peaceful protest while keeping the peace and maintaining public safety. This is evidenced by the Commissioner's decision to invite HMIC to review the tactics involved in policing of the G20 protests.

The National Policing Improvement Agency have conducted structured debriefs of a number of public order deployments. The policing operation conducted by Kent Police of the Camp for Climate Action in 2008 (Operation Oasis) has been debriefed with a further review commissioned by the Chief Constable of Kent underway and due to report in June 2009. The NPIA have also carried out a structured debrief of the policing operation connected with the Lindsey Oil Refinery protest in Humberside.

Further, the Genesis website of NPIA is open to all police forces via the in-force intranet system. The ACPO Public Order and Public Safety secretariat in partnership with NPIA have created a best practice library and have uploaded the first de-briefs provided to them. The secretariat have undertaken a lot of work in the past six months raising the profile of the portfolio and encouraging dissemination of best practice via the newly established Regional Public Order and Public Safety Working Groups. This in turn will be supported by a recently piloted national Structured Debrief Course. The NPIA will roll this out to the Service throughout this year which will enable forces to more readily conduct debriefs.

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)

The Government agrees that there is much learning that can be gleaned from Northern Ireland. The Police Service of Northern Ireland already work closely with forces in England and Wales, particularly through ACPO.

The Government will feed in the Committee recommendations on human rights advisors into the HMIC review into G20 which will be looking at learning from other forces and jurisdictions.

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)

The Government agrees with the Committee's conclusions on prior notification and also agree that the police take further proactive steps to ensure that dialogue is encouraged. We wholeheartedly support the notion that there should be no surprises from either the police or the protesters in relation to the policing of protest.

While guidance on communication and negotiation already exists in the police service, and is built into the training courses for commanders, ACPO Public Order and Public Safety are keen to engage directly with recognised protest groups as part of the consultation phase for the re-write of the *Keeping the Peace* manual and will also consult the Chair of the Joint Committee on Human Rights.

Communication is of course a two way process and protest groups who will not currently actively engage with the police, need to be encouraged to enter into constructive dialogue.

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)

Clearly the issue of police equipment, use of force and the perception of heavy-handed policing tactics have all been highlighted by the G20 protests. These issues will be directly addressed in the HMIC review of G20 which is due to publish its interim report at the end of June and a final report at the end of September.

We welcome the Committee's recognition that police officers should not be placed at risk of serious injury and would stress that the standard uniformed policing protest model has always been the basis for policing protest. Officer numbers, dress code and tactics only change when police assess that disorder is taking place or is highly likely.

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)

In evidence to the Committee both the police and the Government were very clear that Tasers would not be used as a public order tool against peaceful protestors. Contrary to media reporting Tasers were not deployed at the G20 protests.

In announcing an extension of Taser to specially trained units on 24 November, the Home Secretary in a Written Ministerial Statement gave an undertaking that, “all Taser deployments will also continue to be monitored for assessment by DOMILL [independent medical advisors]. We will continue to publish Taser usage figures on a regular basis.”

The latest Taser figures were provided to independent medical advisors and published on the Home Office Scientific Development Branch website on 5 May 2009.

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)

The Government agrees that the freedom of the press is one of the cornerstones of our democracy and is clear that there should be no impediment to reporting on protests.

A comprehensive document of advice and good practice on management of media at public order events/incidents was presented to the National Public Order and Public Safety Group on the 27th April 2009. Once approval is granted ACPO will ensure the prompt circulation of the guidance to key public order staff throughout the country.

The Terms of Reference of the HMIC Review into G20 will also assess the effectiveness and impact of public order tactics deployed in response to significant protests involving disorder or the threat of disorder, and will specifically look at liaison with the media.



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