Police Reform and Social Responsibility Bill

Amendments for Committee Stage

House of Commons

January 2011

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Introduction

1. JUSTICE is a British-based human rights and law reform organisation, whose mission is to advance justice, human rights and the rule of law. JUSTICE is regularly consulted upon the policy and human rights implications of, amongst other areas, policing, criminal law and criminal justice reform. It is also the British section of the International Commission of Jurists.

2. These suggested amendments to the Police Reform and Social Responsibility Bill for House of Commons Committee Stage are intended to address some of the concerns raised in our Briefing for Committee Stage and focus upon Parts 3 and 4 of the Bill. Where we have not commented upon a certain provision in the Bill, this should not be taken as an endorsement of its contents.

3. The amendments below, if incorporated into the Bill, would:

    - **Remove the Bill's restrictions upon the use of amplified noise equipment in Parliament Square, at least where such equipment is not loud enough to disrupt the work of Parliament;**
    - **Prevent court orders made under the Bill from banning people from entering Parliament Square;**
    - **Remove clause 148, which would allow seizure and forfeiture of property for breach of byelaws;**
    - **Remove clause 150, which would allow the Home Secretary to dilute the expertise and independence of the Advisory Council on the Misuse of Drugs;**
    - **Amend clause 151 on arrest warrants for crimes of universal jurisdiction, to provide that the consent of the Director of Public Prosecutions would be required for prosecution rather than for arrest – in order to avoid the anomalous and problematic situation under the Bill's current provisions whereby the DPP's consent would be required for arrest and then the Attorney General's consent would be required for prosecution.**

PART 3 - PARLIAMENT SQUARE GARDEN AND SURROUNDING AREA

Amendments re noise amplification equipment

Page 95, line 8 [*Clause 141*], leave out paragraph (a)

Page 95 [*Clause 141*], leave out lines 28-33

Page 96 [*Clause 142*], leave out lines 19-25

Page 96 [*Clause 142*], leave out line 32

Page 97, leave out clause 145

OR

Page 96, line 23 [*Clause 142*], leave out from "in or" to "Square" in line 24 and insert "inside the Palace of Westminster"

AND/OR

Page 98, line 9 [*Clause 144*], leave out "21" and insert "7"

Effect

These three alternative amendments seek to avoid the disproportionate restriction of the use of noise amplification equipment including loudspeakers and loudhailers in Parliament Square. Such equipment is frequently used in large demonstrations to marshal crowds and keep processions to their arranged route. They are extremely useful in allowing organisers to communicate with demosntrators and to maintain order. We do not believe that such broad restrictions on their use as are envisaged by the Bill are justified. For these reasons we offer three alternative suggested amendments. The first group would remove noise amplification equipment from the Bill altogether thus leaving it to be regulated by public order offences (if abusive or insulting speech is used) or by local authorities. This would accord

with evidence given to the Committee by Assistant Commissioner Lynne Owens of the Metropolitan Police on 20 January, when she said:[1]

> **One of the concerns we have about the Bill as drafted is that that noise becomes a police responsibility. … Noise issues are normally dealt with by the local authority, so the policing view would be that that would only be an element we would seek to use in extremis, probably when we had various protest groups looking to be in the same place at the same time. But, traditionally, noise issues are not dealt with by police officers.**

However, under the Bill the power to give directions in clause 141 is not only confined to the police but also to other 'authorised officers'. We are concerned that this power will be used inappropriately. Communicating effectively with each other and with passers-by is we believe integral to the right to lawful protest and should not be unduly or arbitrarily restricted in this way.

As an alternative, therefore, we have proposed an amendment which would only allow restriction of the use of loudhailers and loudspeakers when they could be heard inside the Palace of Westminster, in order to answer concerns regarding the disruption of Parliamentary proceedings without further restricting the right to communicate using such equipment. Finally, the third amendment would shorten the period for authorisation requirements to be given from 21 days from receiving the application to 7; since Parliamentary protest often takes place in response to fast-moving political events, we believe that if an authorisation regime is to proceed determinations on applications should be made as quickly as possible.

[1] Police Reform and Social Responsibility Bill, Committee Stage 4th sitting, House of Commons 20 January 2011, col 118

Amendment limiting scope of court orders to protect lawful demonstrations

Page 97 [*Clause 144*], leave out lines 32-34 and insert

> "( ) However, an order under subsection (1) (b) may not prohibit a person from entering the controlled area of Parliament Square nor restrict their right lawfully to demonstrate there."

Effect

We are concerned that the making of orders under clause 144 to prevent camps, etc, in Parliament Square should not as a by-product bar a person entirely from the square and therefore prevent him/her from protesting lawfully there. The importance of freedom of expression and assembly near Parliament – at the heart of our democracy – is such that restricting access in this way will rarely be justified. Parliament Square is a public place well served by police officers and anyone attempting to carry out a prohibited activity can be quickly seen and apprehended. It is therefore hard to imagine when it would be necessary to prohibit entry to the square per se. This amendment would therefore prevent clause 144 orders from excluding a person from Parliament Square or restricting their right *lawfully* to protest there.

PART 4 – MISCELLANEOUS

Amendment to remove power to include seizure and forfeiture provisions in byelaws

Page 99, clause 148, leave out clause

Effect

Little attention has been given to clause 148 of the Bill; however, we believe that it is an extremely broad power for which justification and further explanation should be provided. The clause creates a new power for byelaws to include provision for the seizure and retention of property in connection with the contravention of a byelaw and the forfeiture of that property on a person's conviction of an offence or contravention of the byelaw. This is an extremely broad power; byelaws by their nature cover relatively minor transgressions and the exercise of coercive powers of seizure, retention or forfeiture of property will therefore frequently be disproportionate. We therefore seek further clarification of why this new power is necessary, and how and when it is intended that it should be used, so that we can if appropriate at later stages of the Bill suggest detailed amendments to structure discretion under the clause.

Amendment to remove power to dilute expertise of Advisory Council on the Misuse of Drugs

Page 99, clause 150, leave out clause

Clause 150 would amend the Misuse of Drugs Act 1971 in order to remove the requirement on the Secretary of State to appoint certain categories of person to the Advisory Council on the Misuse of Drugs – those with wide and recent experience in medicine, dentistry, veterinary medicine, pharmacy, the pharmaceutical industry and chemistry – and those with wide and recent experience of social problems connected with the misuse of drugs. We believe that the Advisory Council is an important independent expert body whose recommendations can provide a rational basis for the classification of drugs under the 1971 Act. We were concerned by the sacking of Professor David Nutt in 2009 by the previous Home Secretary and believe that protection of the integrity and independence of the Council should not be watered down. We therefore oppose the inclusion of this clause in the Bill.

Amendments to changes to law on arrests for crimes of universal jurisdiction

Page 100, clause 151, leave out clause

OR

Page 100, clause 151, leave out clause and insert:

Consents to prosecutions: amendment

(1) Proceedings for an offence to which this subsection applies shall not be instituted without the consent of the Director of Public Prosecutions.

(2) The consent of the Attorney General or the Attorney General for Northern Ireland shall not be required for the institution of proceedings for an offence to which subsection (1) applies.

(3) Subsection (1) applies to –

(a) piracy or an offence under section 2 of the Piracy Act 1837 (piracy where murder is attempted)

(b) an offence under section 1 of the Geneva Conventions Act 1957 (grave breaches of Geneva conventions);

(c) an offence under section 1 of the Internationally Protected Persons Act 1978 (attacks and threats of attacks on protected persons)

(d) an offence under section 1 of the Taking of Hostages Act 1982 (hostage-taking);

(e) an offence under section 1, 2 or 6 of the Aviation Security Act 1982 (hijacking etc);

(f) an offence under any of sections 1 to 2A of the Nuclear Material (Offences) Act 1983 (offences relating to nuclear material);

(g) an offence under section 134 of the Criminal Justice Act 1988 (torture);

(h) an offence under section 1 of the Aviation and Maritime Security Act 1990 (endangering safety at aerodromes);

(i) an offence under sections 9 to 14 of that Act (hijacking ships etc);

(j) an offence under any of sections 1 to 3 of the United Nations Personnel Act 1997 (attacks on UN workers etc)

Briefing

JUSTICE, which has a longstanding interest in international crimes; its first chair was Lord Shawcross QC, former Attorney General and Chief Prosecutor for the UK at the Nuremberg

Tribunal. We are deeply concerned at clause 151 of the Bill, which seeks to remove the ability of private individuals to seek and obtain arrest warrants against those accused of international crimes including (inter alia) torture, war crimes, piracy and hijacking, unless the Director of Public Prosecutions gives his consent. Similar proposals were made by the Labour government before the general election. We believe that this legal change is unnecessary (since there is no evidence that the experienced district judges at the City of Westminster Magistrates' Court are acceding to frivolous warrant applications), and fear that it will make it more difficult for some of those suspected of these extremely grave crimes to be apprehended – if notice of the suspect's arrival in the UK is short it may be impossible for the CPS to review the evidence in time to give consent to the application before the suspect receives information of it and leaves the UK. As the current DPP Keir Starmer said in his evidence to the Committee on 20 January:[2]

> We have lawyers who are – and will be – available to work at short notice. However, if we are put on two hours' notice of somebody landing and are given two or three lever-arch files, it is pretty unlikely that we will be able to get through that exercise.

Further, the DPP in his evidence alerted the Committee to the unusual situation that will exist in relation to these provisions, whereby he must consent to the arrest *and* the Attorney General must consent to prosecution. Mr Starmer mentioned in his evidence that: 'I think it is inevitable in most of these cases that we would consult the Attorney-General, and it would be open to the Attorney-General to consult Ministers.'[3] We believe that this creates a situation which is not only unusual but anomalous: if the Attorney General intimated that he would refuse consent to a prosecution, how would the DPP then be able to take an independent decision that the arrest warrant should be granted? To take that decision knowing that no prosecution would ever take place would arguably be an improper exercise of his discretion. Therefore, the DPP's discretion would be subordinated to that of the Attorney General. Consultation with the Attorney General would also further delay proceedings if it took place in a time-sensitive case.

We therefore propose in our second group of amendments here that the Attorney General's role should be removed and that the DPP should, instead of consenting to arrest, consent to

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[2] Ibid, col 126.

[3] Ibid, col 129.

prosecution for the offences listed in our new suggested clause (which are slightly broader than those in the Bill due to the different nature of the discretion suggested).

JUSTICE, January 2011