

Response to the consultation paper
“Managing Protest Around Parliament”

This is a response to the Government’s consultation paper *Managing protest around Parliament* (published on 25th October 2007) by Baroness Miller of Chilthorne Domer, Liberal Democrat spokesperson for Home Affairs.¹

The response is structured around, but does not limit itself to, the questions posed in the consultation document.

Indented passages in bold are taken directly from the consultation document for discussion.

Summary

This response shows that:

1. Sections 132-138 of the Serious Organised Crime and Police Act (SOCPA) 2005 are not a reasonable way to deal with demonstrations around Parliament. They are too restrictive of the rights of freedom of expression and assembly and have proven to be ill-defined and hard to implement on a practical level. These clauses should be repealed.
2. Both the nature of conditions that can be imposed on demonstrations and the circumstances in which conditions can be imposed are too broadly defined in SOCPA 2005. The rules should revert to those of the Public Order Act 1986.
3. “Harmonisation” of the marching/assembly laws would lead to stricter rules for demonstrations in London and across England and Wales. This is unacceptable and should not be considered in the context of a review designed to relax the rules governing demonstrations around Parliament. The current framework governing marches and assemblies, under the Public Order Act 1986, should not be changed.

The Liberal Democrats agree with the principle set out in the consultation that a balance must be achieved between the right to demonstrate and other considerations, such as national security.

However, I am not convinced that there is robust evidence of any substantive security advantages to be gained from the legislation as it currently stands. In fact, given the excessive police time and capital spent in enforcing SOCPA 132-138 it may even be detrimental.

In sum, SOCPA 2005 imposes too many restrictions on the rights to freedom of expression and freedom of association as set out in Articles 10 and 11 of the European Convention on Human Rights and enshrined in the Human Rights Act 1998.

¹ Please note that although the author writes in her capacity as Home Affairs spokesperson, the views contained herein do not necessarily represent official Liberal Democrat party policy.

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

The Government's consultation considers the laws governing demonstrations across England and Wales, not simply the laws governing the Designated Area in isolation. This is helpful, because the legislative background is evidence of the alternative to SOCPA s.132-238.

I am concerned, however, that by discussing the wider legislative situation, the Government seems to be proposing reforms that potentially could make the rules governing demonstration more strict across the whole of England and Wales.

In particular, the suggestion that the laws covering marches and static demonstrations should be harmonised opens up the possibility of increased restrictions on static demonstrations, including:

- a) a definition of "demonstration" that can apply to just one person, as in the current SOCPA laws, but in contrast to the definition of "assembly" in the Public Order Act;
- b) the possibility for the police to ban a static demonstration, as they can a march under the Public Order Act – this would go *further* than SOCPA; and
- c) the power to impose more conditions on static demonstrations and in a wider range of circumstances.

This is not in the spirit of the review promised by Gordon Brown when he committed to a consultation "to change the laws that now restrict the right to demonstrate in Parliament Square". I believe that the provisions of the Public Order Act 1986 are adequate and that this consultation should concentrate instead on the rules for the vicinity of Parliament, and whether there should be any special rules at all.

We need to review sections 132 – 138 of the Serious Organised Crime and Police Act 2005 soberly. We need to focus on what the legislation actually does and to be aware that with rights come responsibilities. We need to remember that the freedom to demonstrate needs to be balanced with other freedoms, and to take other issues, like the security situation, into proper consideration.

The Liberal Democrats recognise that by necessity we live in a time of heightened security. Since the September 11th attack in the U.S. and the July bombings in this country, it is incumbent on us all to maintain a heightened vigilance. We are not, however, convinced of the case for special limits on demonstrations around Parliament as part of the response to the terrorist threat. The police have a variety of powers to guard against the terrorist threat.

For example, under the Terrorism Act the police have powers to stop and search in the designated area, and between January and July 2006, 714 searches took place within the government security zone around Westminster and Whitehall and a further 4,465 people were spoken to about their activities [Official Record, 26 Jan 2007 : Column 1369]. As already outlined, the police already have powers under the Public Order Act and a variety of civil remedies for ordering demonstrations that get out of hand.

I have been made aware of no evidence, apart from anecdotal assertions, of a link between the presence of demonstrators in the Designated Area and any increased security threat. Nor is there any evidence that SOCPA 2005 has helped to improve the security situation around Parliament.

On the contrary, attempts to enforce the almost unworkable SOCPA laws have taken up large amounts of police time and resources. For example, policing of the “Sack Parliament” protest of October 2006 cost £298,000 [Official Record, 30 Nov 2006 : Column WA76]. The Liberal Democrats are of the opinion that a free and active democratic right to demonstrate is part of the solution to potential danger. An open, active civil society promotes social strength from within that cannot be achieved by legislation.

Sections 132 – 138 of the Serious Organised Crime and Police Act 2005 sought to establish a framework around Parliament that correctly balanced these competing rights; that provided the police with appropriate powers to manage this balance; and which protected the rights and interests of demonstrators and those undertaking other lawful activities.

Proportionality is the key. The police response must be measured and proportionate in order to comply with Human Rights considerations.

The Liberal Democrats maintain that Sections 132 – 138 of SOCPA 2005 tipped the balance too far towards the restriction of rights. The limitations on demonstrating around Parliament impinge on the rights established by Articles 10 and 11 of the European Convention on Human Rights, the right to freedom of expression and the right to freedom of assembly and association.

As Lord Carlile, the Independent Reviewer of Terrorism Legislation, has said:

Have we been too cautious...? I believe that we have. If we have, we need to go one stage further and say that we are prepared, even the Government are prepared, from time to time to admit that we have legislated a step too far... Now let us step back and restore those standards that we regard as essential in our precious democracy. [Official Record, 26 Jan 2007 : Column 1379]

According to the Metropolitan Police Commissioner, between the enactment of SOCPA 2005 and March 2007, 91 individuals were arrested for demonstrations outside Parliament [Official Record, 28 Mar 2007 : Column 1649W].

These include the cases of Milan Rai and Maya Evans who were both convicted for unauthorised “demonstrations” drawing attention to the victims of the Iraq war. Mark Barrett was arrested for holding a tea party outside Parliament which, according to the police, constituted an illegal demonstration.

The inconsistency with which the law has been applied has been highlighted by the work of comedian Mark Thomas (<http://www.markthomasinfo.com/>) whose Mass Lone Demonstrations have shown the arbitrary application of the law and the

ridiculous situations that have arisen from the unnecessarily strict and shoddy drafting of SOCPA s.132-138. This was confirmed by District Judge Purdy in Westminster Magistrates Court who found difficulties in both the letter of the law and its application [Regina v. Brian Haw, 22/01/07].

In addition to these obvious effects of the law, there may also have been a deeper effect on the democratic participation of British citizens, who have been caused to doubt their right to demonstrate because of SOCPA and these high profile cases. Although sheer number of demonstrations has remained high, this is partly due to the resolve of those who have been trying to draw attention to the problems caused by SOCPA.

It is impossible to tell how many ordinary people have decided not to exercise their democratic right to demonstrate because of the “chilling effect” of the SOCPA laws. As Baroness Miller of Chilthorne Damer said in the 2nd Reading of the Public Demonstrations (Repeals) Bill, which proposed the repeal of SOCPA 132-138, “People are now afraid that they will get a criminal record for simply holding a placard or even wearing a T-shirt with a slogan on it anywhere near Parliament” [Official Record, 26 Jan 2007 : Column 1368].

Baroness D’Souza agreed that:

It cannot be denied that putting the onus on any single would-be demonstrator or group of demonstrators to inform the authorities as much as six days in advance as to the time, date, place and anticipated number of participants has a chilling effect on political expression... This chilling effect as we know all too well from non-democratic countries gives rise to self-censorship—the most insidious form. Censorship in whatever form has a habit of increasing. [Official Record, 26 Jan 2007 : Column 1374]

This view was corroborated by the Advisory Group on Campaigning and the Voluntary Sector, which is chaired by Baroness Kennedy QC and comprises a variety of charitable groups such as One World Trust, Oxfam and People & Planet. The group’s May 2007 report on campaigning and the voluntary sector which supported Baroness Miller’s bill, stating that “Parliamentarians should support the new Public Demonstrations (Repeals) Bill which calls for the repeal of those parts of the Serious Organised Crime and Police Act 2005 that impose disproportionate restrictions on protest and demonstrations, in particular the provisions prohibiting unauthorised demonstrations in the vicinity of Parliament”.

The SOCPA rules do not pass the essential necessity test: are the laws necessary to prevent the infringement of the right to life, liberty and security of person? The evidence shows that they are not, so they ought to be repealed.

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

Aligning the conditions that can be imposed on assemblies with those that can be imposed on marches would give the police greater discretion when it comes to managing assemblies. For example, a senior officer could

direct that conditions be imposed on the content of banners or placards if they reasonably believed that the content of particular banners would be likely to result in serious public disorder.

The Government must not use this consultation as an opportunity to clamp down further on legitimate protest.

Currently, marches and static demonstrations are dealt with separately under the provisions of the Public Order Act 1986. Stricter rules were created for marches, which are harder for the police to manage efficiently.

The Government say that the police have argued that some demonstrations resemble marches and present the same logistical difficulties, but I have yet to see evidence of the need for new powers to control static demonstrations.

In particular, there should not be a wholesale transposition of the laws governing marches into those governing static demonstrations (including those around Parliament) because, under section 13 of the Public Order Act, the police can apply for a ban to be imposed on a planned march. I understand the need for that provision, but I certainly do not think that it would be appropriate for the law to allow for the banning of peaceful and otherwise lawful demonstrations, especially around the seat of our democracy.

In addition, the extension of the marching rules to cover static demonstrations would increase the range of conditions that could be imposed on assemblies around England and Wales. Under the Public Order Act, “place”, “duration” and “number” are the only conditions that can be imposed on an assembly, but much wider discretion is given in the conditions covering static assemblies. Parliament made this distinction for a reason – there should not be the opportunity to impose conditions tantamount to a ban – and that reason still holds good.

Such a harmonisation of laws would amount to a tightening of the restrictions on demonstrations around Parliament, which would be injurious to democracy in this country.

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

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

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

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

The Government lists several reasons why special provisions might apply to demonstrations around Parliament:

1. to ensure the smooth running of Parliamentary business
2. to mitigate the security risk to Parliament
3. to allow for equal access to the right to protest
4. to maintain an appropriately “symbolic and dignified setting”

In terms of the shape of those provisions, there are two separate issues: (a) under what circumstances conditions can be imposed on a demonstration; and (b) what sort of conditions can be imposed.

I concede that there may be some justification for a very limited set of special provisions for (a), because of the very unique circumstances around Parliament. For example, it may be necessary to circumscribe the location of a large demonstration in order to avoid obstruction to the work of Parliament. I do not agree, however, that there is justification for special provisions for (b). The powers provided in the Public Order Act are adequate to keep a demonstration in good order.

There follows a brief discussion of each of the Government's reasons in turn.

1. It is important that Members of Parliament are not obstructed from attending the House to conduct the business which they are elected to conduct.

Allowing the business of Parliament to proceed unhindered needs to be properly balanced against the argument that Parliament’s status as the forum of our democracy means that it is, and should be, a focus for demonstrations.

We agree that the business of Parliament must be allowed to continue unhindered and that the police need appropriate powers to ensure that this takes place. However, it is now clear that the powers created by SOCPA were both disproportionate and unworkable.

The Sessional Orders, which are renewed each session at the Opening of Parliament, require that the Commissioner of the Metropolitan Police ensures that access to Parliament is kept free. Although the Sessional Orders do not confer any special powers of arrest on the police, they are sufficient to deal with all ordinary circumstances.

In the case of persistent obstructions, general powers such as the power to arrest for obstructing a police officer in the execution of his duty, for breach of the peace, or for public order offences come into play. For larger gatherings, the Public Order Act 1986 provides powers to prevent disruptions to the life of the community, for example. In addition, the Greater London Authority has authority over the central gardens and Westminster City Council has responsibility for the pavements, which can be exercised in the event of serious obstructions.

2. The Government considers that this security risk needs to be properly and proportionately addressed and that the management of large groups of people in the vicinity of Parliament must continue to be a consideration

when reviewing the framework for assemblies and marches in the vicinity of Parliament.

The consultation document states that “Parliament is a very obvious target” for terrorist attackers and that this risk must be “proportionately addressed”. We agree that all the necessary steps must be taken to prevent violent attacks.

However, the consultation gives no evidence that demonstrations heighten the risk to Parliament.

Firstly, it seems unlikely that individuals and small groups or single demonstrators pose any more threat than everyday passers-by in Westminster, and I would invite the Government to bring forward any evidence to the contrary. An individual demonstrator is likely to be much more visible to police than someone who wishes to go unnoticed in order to commit a terrorist act.

Secondly, a large throng of tourists or passers-by that is frequently found outside Parliament is just as likely to be able to conceal illicit activities as a group of demonstrators.

The particular security risk that applies to Parliament, the need to allow the business of Parliament to proceed unhindered and promoting equal access to protest, could all argue for a legislative framework which incorporates some form of a *prior notification mechanism* (where prior notification is possible). The courts have confirmed that such mechanisms can be compatible with the European Convention on Human Rights. And a prior notification system applies for any gathering in Trafalgar Square – including static demonstrations.

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

We do not consider that a special regime is appropriate outside Parliament. In practice, large groups of demonstrators are likely to inform the police of their intentions, as they usually do across the country. If this is not the case, and if a demonstration gets out of hand, then the police will still have the powers of control created by the Public Order Act in order to mitigate any security threat or to prevent any obstacle to the proper functioning of Parliament.

3. In reviewing the framework governing protest in the vicinity of Parliament, we need to ensure that all groups have the proper opportunity to protest peacefully at the seat of the elected UK Parliament.

It is important that the opportunity to demonstrate outside Parliament is not monopolised by a small number of individuals or interest groups and we do not condone such behaviour.

For example, with respect to the size of the encampment currently occupying the grass in Parliament Square, we would agree with Lord West's statement that "Responsibility for the management of the grass area of Parliament Square and the enforcement of by-laws falls to the Greater London Authority under the GLA Act 1999... We shall consult widely with a view to ensuring that people's right to protest is not subject to unnecessary restrictions, but protestors will in return need to obey the law". [Official Record, 12 July 2007 : Column WA246]

In other words, a degree of reasonableness must be exercised on both sides, and where one protest group oversteps the mark, existing by-laws should be utilised to ensure that the chance to demonstrate is available for everyone.

The Mayor of London's vision for Parliament Square is that it should provide a symbolic and dignified setting for Parliament and the surrounding historic buildings, in keeping with its World Heritage location.

The Government shares this vision. It considers that protestors' compliance with existing by-laws governing what can and cannot be done a) on the square, b) on the streets surrounding the square and c) in the wider designated area should provide appropriate protections in this regard.

We would support the use of existing by-laws to deal with any "aesthetic" offences. We would hope that these powers would only be exercised in the most extreme cases, because we do not agree that the dignity of Parliament is diminished by the presence of protesters.

One of the cultural criteria of a World Heritage site is "to be directly or tangibly associated with events or living traditions, with ideas, or with beliefs" and the right to express freely an opinion outside Parliament is an integral part of the democratic ideal that makes Parliament part of a living tradition, not an historical curiosity.

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

SOCPA 2005 created a Designated Area that could extend up to 1km from the perimeter of Parliament Square. In practice, the area does not extend further than 800m, but still covers all of Whitehall, Downing Street, Trafalgar Square, the MI5 building, Tate Gallery, Vauxhall Bridge and the MI6 building, Lambeth Palace, the South Bank Arts complex and Waterloo Station, much more territory than is necessary to ensure that the business of Parliament continues undisrupted.

I believe that the extension of the Designated Area to cover civil service and security service buildings is indicative of the Government's lack of distinction between *Parliament* and *Government*. We consider that the territorial extent of the Designated Area is much greater than needed to safeguard the proper functioning of Parliament, for which it was intended.

In practice, though, the extent of the Designated Area matters less than the rules that apply inside it.

Closing Comments

This consultation, *Managing protest around Parliament*, is a welcome step and a sign that the new Prime Minister is aware that the Labour Government has gone too far in restricting the freedom of the British people to demonstrate outside Parliament.

However, the consultation alone is not an answer; it must lead to the right results. Most importantly, s. 132-138 of the Serious Organised Crime and Police Act 2005 must be repealed and those who were arrested under these laws should receive an official apology.

What replaces these laws is a matter for some discussion. Best would be a restoration of the *status quo ante*, but we do recognise that some very limited special provisions might be appropriate around Parliament in the case of large demonstrations. What is not acceptable at this stage is a “harmonisation” of laws governing marches and assemblies across England and Wales which would actually lead to tighter restrictions on demonstrating.

Baroness Miller of Chilthorne Damer

December 2007.