



Joint Committee on Human Rights

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From Rt Hon Harriet Harman MP, Chair

Victoria Atkins MP

Parliamentary Under Secretary of State (Minister for Safeguarding)
Home Office

19 May 2021

Dear Victoria,

As you will be aware, part of the role of the Joint Committee on Human Rights is to carry out legislative scrutiny in respect of Bills that raise potential human rights concerns. We have identified the Police, Crime, Sentencing and Courts Bill as requiring our scrutiny, and published a call for evidence on the human rights implications of the Bill on 15 March 2021.

One of the areas of particular concern to the Committee is Part 3 of the Bill, which proposes changes to the policing of public processions and assemblies and the introduction of a statutory offence of public nuisance. These changes have implications for the right to engage in peaceful protest, guaranteed by a combination of the right to freedom of expression (Article 10 ECHR) and the right to freedom of assembly (Article 11 ECHR). We held an oral evidence session focusing on Part 3 of the Bill on 28 April 2021, during which we heard from witnesses who were very critical of the proposed changes and from representatives of Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) and the National Police Chiefs Council (NPCC) who were broadly supportive of them.

To assist us in our further scrutiny of this Part of the Bill, we would be grateful if you could provide answers to the following questions:

Conditions on processions and assemblies on the basis of noise

1. Clauses 54 and 55 of the Bill propose introducing a new 'trigger' for the imposition of conditions on public processions and assemblies by the police, based on "noise generated by persons taking part". We note that the law already allows for conditions to be imposed where there is a reasonable belief the procession or assembly may result in serious public disorder or serious disruption to the life of the community, and that the law already criminalises both harassment and threatening or abusive language causing alarm or distress. The oral evidence we received also indicated that conditions are used sparingly, and that the HMCIFRS report on the proposals had not addressed the question of whether they were necessary. Given this background, could you explain why this new power is necessary and what the evidence is to support this need? Is this the same in respect of extending the power to one-person protests?

2. Peaceful protest engages Articles 10 and 11 ECHR which are qualified, not absolute, rights. However, these rights can only be interfered with where necessary and proportionate for one of the legitimate aims listed in Articles 10(2) and 11(2). Can you please identify the legitimate aim that would be met by placing conditions on an otherwise peaceful protest on the basis of “noise generated by persons taking part”? We are particularly interested in the relevant legitimate aim where the condition is based on noise causing “serious disruption to the activities of an organisation which are carried on in the vicinity” and noise that may cause a person in the vicinity “to suffer serious unease, alarm or distress”.
3. Given that the aim of many demonstrations is to be heard, and in some sense to be disruptive, how does the new power to impose conditions on peaceful processions and assemblies on the basis of noise respect and facilitate the right to engage in peaceful protest?
4. One of the proposed bases for imposing conditions is if the noise of the protest may cause persons in the vicinity “serious unease”. Are you confident that an interference with the right to engage in peaceful protest on this basis would be adequately ‘prescribed by law’ and proportionate?

Conditions on public assemblies

5. Since the Public Order Act 1986 came into force, more than 34 years ago, the police have been empowered to impose a more limited range of conditions on public assemblies than on public processions. What is the basis for concluding that this position now needs to change, as clause 55(3) provides?

Clarification of terms

6. Clauses 54(4) and 55(6) would amend the 1986 Act to provide that the Secretary of State may by regulations make provision about the meaning of “serious disruption to the activities of an organisation” and “serious disruption to the life of the community”.
 - a. Do you consider the term “serious disruption to the life of the community” to be sufficiently clear to allow a prospective demonstrator to know whether their protest may result in conditions being imposed by the police?
 - b. Why are you seeking to define these terms in secondary rather than primary legislation?
 - c. Can you provide any detail on what further explanation will be forthcoming in regulations, to assist the Committee in its scrutiny of the Bill?

Changes to criminal offences

7. Clause 56 alters the mental element of the offence of failing to comply with conditions imposed on processions or assemblies, lowering the threshold for proving the offence. How does criminalising a breach of conditions on the basis of negligence where a demonstration is otherwise peaceful comply with the right to protest under Articles 10 and 11 ECHR?

8. Clause 56 also increases the maximum penalties available for these offences. What evidence is there that greater penalties for failing to comply with conditions are needed, particularly given the infrequency with which conditions are placed on public assemblies and processions? Are the increased maximum sentences of imprisonment proportionate to non-violent offences involving the exercise of Article 10 and 11 rights?

Public nuisance

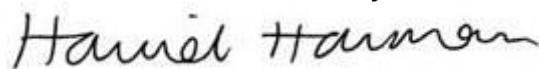
9. The proposed new statutory offence of public nuisance potentially criminalises behaviour that causes “serious distress, serious annoyance, serious inconvenience or serious loss of amenity”. The Law Commission report that recommended public nuisance being put on the statute book gave limited consideration to the implications for the right to protest. How will the right to engage in peaceful protest be protected when such a low threshold applies? Is it proportionate for such an offence to carry a maximum sentence of up to 10 years?

Challenging conditions

10. The human rights memorandum that accompanied the Bill partly explains the Government’s view that the provisions comply with Articles 10 and 11 on the basis that ‘the imposition of conditions can be challenged in court by way of judicial review’. While this may be so for conditions imposed in advance, judicial review cannot realistically provide a timely remedy where conditions are imposed at the scene of the protest. How can protesters in such circumstances who believe conditions have been imposed in breach of Articles 10 and/or 11 seek an effective and timely remedy?

The Committee intends to complete its legislative scrutiny in time to contribute to the debate on the Bill at Report stage in the House of Commons. For this reason, we would be grateful if a response to this letter could be provided by Friday 4 June 2021.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Harriet Harman', written in a cursive, flowing style.

Rt Hon Harriet Harman QC MP
Chair of the Joint Committee on Human Rights