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Rt Hon Harriet Harman MP  
Chair  
Joint Committee on Human Rights  
Houses of Parliament  
London  
SW1A 0AA

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Dear Harriet,

Thank you for your letter of 19 May on behalf of the Joint Committee on Human Rights in relation to Part 3 of the Police, Crime, Sentencing and Courts Bill. Please see below the Government's response to your queries. I hope that they will satisfactorily support your scrutiny of the Bill.

***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 HMICFRS 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 oneperson protests?**

In recent years we have had reports of protesters at assemblies and processions creating egregious noise which antagonised others and disrupted them from the enjoyment of their own freedoms and rights.

Such assemblies and processions can create unjustifiable amounts of noise which causes "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". These harms can also be caused by a single person protest through the use of affordable amplification equipment.

The police will only be able to impose these conditions on unjustifiably noisy protests that cause harm to others or prevent an organisation from operating. The threshold for being able to impose conditions on noisy protests will be appropriately high and in compliance with the human rights of protesters and those affected by the protest, enabling protesters to continue enjoying their legal right to protest without infringing the rights of others. Police will only use it in cases where it is deemed necessary and proportionate.

As you point out, the police impose conditions on protests sparingly. That does not mean, however, that they should not have the power to do so but instead shows that the powers to manage protests are used with restraint when necessary and proportionate.

Furthermore, HMICFRS supported a police proposal to lower the threshold of “serious disruption to the life of the community” to “significant impact on the community”, stating that it would improve the police effectiveness without eroding the right to protest. Such a change would in fact go further in widening the police’s ability to impose conditions on assemblies and processions compared to our proposal which has a high threshold, is narrower, and relates to noise only.

- 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”.**

The police will be required to demonstrate that their use is indeed necessary and proportionate as well as in line with human rights obligations. The Government fully expects the vast majority of public assemblies, public processions, and single person protests to continue as they currently do. However, we can envisage circumstances where the threshold could be met, for example:

- A noisy protest in a town centre may not meet the threshold, but a protest creating the same amount of noise outside a school might, given the age of those likely to be impacted by the protests.
- A noisy protest outside an office with double glazing may not meet the threshold, but a protest creating the same amount of noise outside a care home for elderly people, a small GP surgery, or small street-level businesses might, given the level of disruption likely to be caused by the protest.
- A noisy protest that only lasts a short amount of time may not meet the threshold, but a protest creating the same amount of noise over several days might, given the extended duration of the protest.

- 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.**

The police will only be able to impose conditions on unjustifiably noisy protests that cause harm to others or prevent an organisation from operating. The majority of protests in England and Wales do not cause serious disruption to the activities of an organisation or a significant impact on the people in the vicinity of the protest so will be unaffected by this legislation. This power will only limit the most extreme cases where the noise from protests is unjustifiable.

- 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?**

When placing conditions on the basis that noise may have a significant impact, which includes “serious unease”, on those in the vicinity, the senior police officer must have regard to the likely number of persons who may experience the significant impact and the likely duration and intensity of that impact. Consequently, we believe the exercise of this power would be 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?**

Recent large-scale protests have shown the challenges that police can face when policing static demonstrations. They are just as capable of causing as much disruption as processions, it is therefore right for the police to have the same ability to manage assemblies as they currently do for processions.

Furthermore, HMICFRS found in its recent inspection that “protests are fluid, and it is not always possible to make this distinction [between static protests and marches]. Some begin as assemblies and become processions, and vice versa. The practical challenges of safely policing a protest are not necessarily greater in the case of processions than in the case of assemblies, so this would not justify making a wider range of conditions available for processions than for assemblies”.

The National Police Chiefs’ Council (NPCC) have also been clear that the existing legislation is not fit for purpose when dealing with protests which encompass assemblies and processions. Aligning the ability to impose the same range of conditions for both will ensure that legislation remains up to date and that the police can continue to protect the rights of the public and local communities.

## ***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?**

The term “serious disruption to the life of the community”, which is a trigger already included in the Public Order Act 1986, and “serious disruption to the activities of an organisation” both cover a wide range of harms to which greater clarity can be provided. This is why the Bill contains delegated powers which would enable the Home Secretary to make provision as to its meaning. In doing so we will provide greater clarity on the law to both protesters and the police.

**b. Why are you seeking to define these terms in secondary rather than primary legislation?**

The flexibility of secondary legislation compared to primary legislation means that powers can be updated to mirror changes in protest tactics.

The statutory instruments will be subject to the draft affirmative procedure, so there will be an opportunity for both Houses to debate and vote on the regulations before they can be made.

**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?**

We aim to provide more detail of the content of the regulations ahead of Report stage.

## ***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?**

The police make use of measures such as verbal communication through direct engagement or the use of a loudspeaker. They also make use of written communications such as handing out leaflets to ensure that protesters are made aware of conditions on a protest. Some protesters take steps such as covering their ears or tearing up written notifications of conditions before going on to breach conditions in order to be able to exploit the defence that they did not know of the conditions. Changing the fault element to “ought to have known” will close this loophole.

The police will be required to prove that they took the necessary steps to inform protesters of the conditions in place in order to prove the case beyond reasonable doubt and will continue making the same effort they currently do to ensure that all protesters are aware of any conditions in place.

- 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?**

The current maximum penalties for breaching conditions are disproportionately low compared to the harm suffered in the most extreme examples of protests. Recent protest activity has had a significant detrimental effect on many communities across the country, and we believe these sentences are a proportionate response to the harms experienced by those affected by such protests.

The offence of breaching conditions on a protest is not limited to conditions imposed to prevent “serious disruption to the life of the community” but also conditions imposed to prevent other harms such as “serious damage to property” and “serious public disorder”. There have been reports of a recent protest where individuals have assaulted journalists reporting on the protest and damaged their equipment. Numerous police officers have also been assaulted whilst managing protests, with 224 Metropolitan Police officers assaulted at 16 demonstrations between 1 April 2020 and 31 March 2021. It is absolutely right that there are appropriate sentences should conditions imposed to prevent protests descending into such violence and disorder be breached and we would expect the judiciary to pass sentences proportionate to the circumstances of each case.

The infrequency with which conditions are placed on public assemblies and processions demonstrates that they are only imposed when necessary; breaches of such conditions should therefore be treated seriously.

### ***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?**

Public nuisance is an existing common law offence which can already be used by the police at protests when appropriate. As with all powers used to manage peaceful protests the police ensure that they are used in compliance with protesters’ human rights, namely those of freedom of assembly and expression.

We are in fact lowering the maximum penalty from unlimited crown court penalties, to 10 years’ imprisonment and/or an unlimited fine. We assess that a maximum 10 year

custodial sentence is appropriate as the offence of public nuisance covers behaviours beyond those related to public order and the Law Commission recommends “as the offence is intended to address serious cases for which other offences are not adequate, if a maximum sentence is set it should be high enough to cover these cases.”

Following the Law Commission’s recommendation, we have also incorporated a reasonableness excuse defence where “the defendant’s conduct was reasonable in the circumstances as he or she knew or reasonably believed them to be.”

### ***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?**

It is the nature of protests that they are dynamic and consequently the police must, as now, be able to impose conditions during the currency of a protest where this is necessary and proportionate to prevent disorder. This is already the case under the 1986 Act and the Bill does not change this. It is therefore unavoidable that, in these circumstances, any challenge must be made after the event. Judicial Review continues to provide an effective means to pursue any such challenge.

The vast majority of police officers fulfil their duties to a very high standard and uphold the values of the Code of Ethics in serving their communities. But where they depart from those standards, the public rightly expects them to be held to account. Serious allegations of misconduct remain subject to formal investigation, those committing serious breaches of professional standards can still expect to find themselves facing disciplinary or even criminal proceedings.

The police make extensive efforts through their training and continuous professional development to ensure that the right balance is struck between the rights of protesters and those affected by protests.

Thank you again for writing to me regarding your further scrutiny of Part 3 of the Police, Crime, Sentencing and Courts Bill. I look forward to the Committee’s report on the Bill.

Yours sincerely,

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