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Note Verbale No. 204

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit the response to communication OL GBR 7/2021, further to the letter dated 25 May 2021 from the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 28 July 2021

Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights

**RESPONSE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND TO THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES OF GBR
7/2021**

July 2021

Thank you for your joint communication setting out your concerns about the measures contained within Part 3 of the UK Government's Police, Crime, Sentencing and Courts Bill (the Bill)¹.

The UK is committed to upholding our international human rights obligations. We continue to place a major focus on championing human rights, democratic values, good governance, the rule of law and open societies. We believe that this is central to our role as a force for good in the world. We are fully committed to the rights contained in the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), including in the context of the right to freedom of expression and to freedom of peaceful assembly.

Before addressing your specific points, it may help to set out our overall approach to protest and disorder in the UK. For the vast majority of protests in the UK there is little police involvement, and when they are involved it is to facilitate the protest, for example, by overseeing road closures to keep protestors safe. Where there is reason to believe there may be serious disruption to others at a protest, procession, or assembly, then the police currently have the power to place conditions on the protest. In the last year, for which there are figures, this was done no more than a dozen times for the thousands of protests which took place, meaning the vast majority had no conditions imposed on them at all. Where conditions are imposed, they tend to be regarding the route or start and finish times. If people break the terms of those conditions they can be prosecuted, with an independent court deciding their punishment. If, on the other hand, the police are suspected of improper behaviour that can be addressed by the Independent Office of Police Complaints or the courts.

The measures in our Bill do not remove the public's rights to freedom of expression or assembly, or the requirement on the police to consider them, but they do grant the police some additional powers where individuals cause a disproportionate impact on others. We are introducing these measures as public order legislation in the UK is out of date and hasn't been updated in 35 years. The police have been clear that the legislation is no longer fit for purpose when dealing with the increasingly disruptive tactics used by some groups. By enabling the police to better manage these serious and sustained protests we will improve the balance between the rights of protesters and the rights of others to go about their day to day lives.

The UK strongly supports the right to protest. In the development of the measures in Part 3 of the Bill we have carefully considered the right to freedom of expression and peaceful assembly. However, these rights are not absolute, they may be restricted in order to protect interests of national security or public safety, public order, the protection of public health, or the protection of the rights and freedoms of others.

¹ <https://bills.parliament.uk/bills/2839>

These measures are compatible with the ICCPR and the ECHR. The Lord Chancellor and Secretary of State for Justice the Rt. Hon. Robert Buckland QC MP has made a statement to Parliament confirming the Bill's compatibility with the European Convention rights².

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned observations and concerns.

Clauses 54 to 56 and 60: Noise conditions on Assemblies, Processions

We recognise that noise is inevitable during a protest and the importance of protestor's voices being heard.

We expect the vast majority of public assemblies, public processions, and single person protests to continue as they currently do, without being subject to any conditions. However, in recent years there have been reports of protesters at assemblies, processions, and single person protests creating egregious noise which antagonised others and disrupted them from the enjoyment of their own freedoms and rights. Such protests can create unjustifiable amounts of noise which causes "serious disruption to the activities of an organisation which are carried on in the vicinity"³ or significantly impacts on persons in the vicinity. Whilst noise may impact a person such that they "suffer serious unease, alarm or distress"⁴ the senior police officer may only impose conditions if that impact may be significant, having regard to the likely number of persons impacted, the likely duration of the impact, and the likely intensity of the impact. These thresholds are appropriately very high, most protests do not cause this level of harm.

When the police do impose conditions on the basis of noise, they will do so when it is necessary, proportionate, 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 on the rights of others. Conditions are rarely placed on protests at present, this infrequency demonstrates that the police are proportionate with their use of public order powers and only use them when absolutely necessary.

The independent police inspectorate, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), carried out an inspection of how effectively the police manage protests titled "*Getting the balance right?*"⁵ As part of this inspection, they considered some of the measures in these clauses and found that the proposals would "improve police effectiveness without eroding the right to protest". This was also found of a police proposal to lower the threshold at which the police can place conditions on a protest from "serious disruption to the life of the community" to

² <https://hansard.parliament.uk/Commons/2021-03-09/debates/2103096600016/PoliceCrimeSentencingAndCourtsBill>

³ <https://publications.parliament.uk/pa/jt5802/jtselect/jtrights/331/33106.htm>

⁴ <https://publications.parliament.uk/pa/jt5802/jtselect/jtrights/331/33105.htm>

⁵ <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/getting-the-balance-right-an-inspection-of-how-effectively-the-police-deal-with-protests/>

“significant impact on the community”. Such a change would in fact go further in widening the police’s ability to impose conditions on assemblies and processions compared to the far narrower measure relating to noise which has a much higher threshold for use.

Clause 54 – 56 and 60 continued: “alarm or distress”

The terms “alarm” and “distress” are well understood by the police and judiciary of the UK, with a variety of case law justifying their use. In the case of *R (R) v DPP [2006] EWHC 1375*, which considered the offence of intentionally causing harassment, alarm or distress, the High Court described these terms as relatively strong words befitting an offence which may carry imprisonment or a substantial fine, and held that the word ‘distress’ in this context requires emotional disturbance or upset. In *Southard v DPP [2006] EWHC 3449*, it was held that distress, by its very nature, involves an element of emotional disturbance or upset. How these terms are used and the threshold for how they are defined and interpreted is a matter for the courts.

Clause 57 and 58: Obstruction of a vehicle outside of Parliament and the expansion of the controlled area and prohibited activity

This measure will not prevent those who wish to do so from protesting outside of parliament. The ability to protest outside the heart of our democracy is a fundamental right that this Government will not erode.

This measure is limited to enabling a police officer to direct an individual to cease, or not begin, obstructing the passage of a vehicle into or out of Parliament. A police officer may only make such a direction where they have reasonable grounds to believe that a person is, or is about to, cause such an obstruction. This is to ensure that those who have business there can access Parliament without risk of being attacked as a result of being held stationary outside of Parliament’s gates, an area which has previously been the target of a terrorist attack.

Protesters will be able to continue to protest outside Parliament as they currently do, providing they follow a police officer’s direction to not obstruct vehicular entrances as a vehicle is approaching gates to the Parliamentary Estate.

This measure responds to a recommendation made by the Joint Committee on Human Rights (JCHR) in their October 2019 report “*Democracy, freedom of expression and freedom of association: Threats to MPs*”.⁶ The JCHR is an independent Parliamentary Committee set up to examine matters relating to human rights within the UK and scrutinise UK Government Bills for compatibility with human rights.

Clause 59: intentionally or recklessly causing public nuisance

Public nuisance is a centuries old common law offence for which protesters can already be arrested and prosecuted when appropriate. We are abolishing the common law offence and restating it in statute. As with all offences which may be committed in the course of peaceful protest, the police ensure that their decisions to arrest and

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prosecute for the offence of public nuisance are in line with protesters' human rights, namely those of freedom of assembly and expression.

The offence of intentionally or recklessly causing public nuisance has been drafted in line with the recommendations of the Law Commission, an independent body which keeps the law of England and Wales under review and to recommend reform where it is needed.

In formulating their recommendation, the Commission held a public consultation which informed and argued that this restatement will provide clarity to the police and potential offenders, in comparison to the common law offence. Their findings can be found in their 2015 report, "*Simplification of Criminal Law: Public Nuisance and Outraging Public Decency*".⁷

2. Please provide further information about the compliance of the proposed legislation with international human rights norms and standards.

Due to the high thresholds at which the police may place conditions on the use of noise at a protest, the judicial understanding of the terms "alarm" and "distress", and the limited extent of the measure applying to Parliament these measures are compatible with the ICCPR. As mentioned earlier in this response, the Lord Chancellor and Secretary of State for Justice the Rt. Hon. Robert Buckland QC MP has made a statement confirming the Bill's compatibility with the European Convention on Human Rights.

Furthermore, the police are under a legal obligation to act in compliance with human rights obligations. When deciding if it is appropriate to use powers to manage protests the police consider the human rights implications of doing so for all those who will be affected. They will only make use of their powers when it is necessary, proportionate, and compliant with the human rights of those involved, namely the freedoms of expression and assembly.

Should police officers depart from these standards, the UK has robust institutions and processes in place through which complaints can be made. Complaints can either be made directly to the relevant police force or to the Independent Office for Police Conduct.

3. Please explain if consultations with civil society organizations, activists, academia, and other stakeholders were held during the drafting of the above-mentioned proposed legislation.

We have consulted extensively with the police and other partners and have made robust assessments of the impact these measures may have, paying particular regard to characteristics which are protected under UK law from discrimination. These are

⁷ <https://www.gov.uk/government/publications/simplification-of-the-criminal-law-public-nuisance-and-outraging-public-decency>

age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

We have also carefully considered the findings of independent bodies in the formulation of these measures. These institutions each conducted independent research and consultation which led to the recommendations we have considered in the formulation of the public order measures. As part of their inspection which considered some of the measures contained in clauses 54 to 56, and 60, HMICFRS engaged with civil rights and protest groups. The Law Commission held a full public consultation on their recommendation to restate the common law offence of public nuisance in statute.⁸ The JCHR held a call for evidence and an oral evidence session which led to their recommendation that the Government introduce a statutory duty protecting the right of access to the Parliamentary Estate for those with business there.

4. Please provide information about the fines and penalties included in the above-mentioned proposed legislation and their compatibility with the necessity and proportionality requirements, under articles 19 and 21 of the ICCPR.

Offence of breaching conditions placed on an assembly, procession, or single-person protest

The offence of breaching conditions placed on a protest does not only relate to conditions placed on the use of egregious noise. Conditions are also placed on protests to prevent serious public disorder, serious damage to property or serious disruption to the life of the community, or if the purpose of the persons organising the protest is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do.

The penalties for breaching conditions placed on public assemblies and processions will be:

- A maximum 6 month custodial sentence and/or a maximum £2,500 fine for organisers;
- A maximum 6 month custodial sentence and/or a maximum £2,500 for those who incite others to breach conditions; or
- A maximum £2,500 fine for participants.

The penalties for breaching conditions placed on a single-person protest will be:

- A maximum £2,500 fine for organisers or participants; or
- A maximum 6 month custodial sentence and/or a maximum £2,500 for those who incite others to breach conditions.

Recent protest activity has had a significant detrimental effect on many communities across the country, and the UK Government believes these sentences are a proportionate response to the harms experienced by those affected by such protests.

⁸ <https://www.gov.uk/government/publications/simplification-of-the-criminal-law-public-nuisance-and-outraging-public-decency>

There have been reports of recent protests in the UK where individuals have assaulted journalists reporting on the protest and damaged their equipment. 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. These sentences are therefore necessary and proportionate 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.

Offence of failing to comply with a direction to cease or not start doing a prohibited activity in the controlled area or Parliament Square

The offence of failing to comply with a direction to cease or not start doing a prohibited activity in the controlled area or Parliament Square is punishable on summary conviction by an unlimited fine as decided by a judge. The amount of any fine, in the opinion of the court, must reflect the seriousness of the offence. In fixing the amount of any fine to be imposed on an offender, the court must take into account the individual circumstances of the case including, in particular, the financial situation of the offender.

As well as the obstruction of access to the Parliamentary Estate for those who have business there, the prohibited activities in the controlled area of Parliament Square includes activities such as the use of amplified noise equipment and the erecting or use of tents and structures for sleeping or staying in the area. Such behaviours prevent others' ability to exercise their rights to protest outside Parliament along with the enjoyment and use of a location which plays an important role in the UK's heritage as a place of special historic interest. We therefore believe this maximum sentence provides courts with sufficient flexibility in order to pass a sentence that is proportionate to the harm caused by these offences.

Offence of intentionally or recklessly causing public nuisance

The offence of intentionally or recklessly causing public nuisance is a broad offence which does not only apply to protests. The common law offence of public nuisance has been used to charge individuals for incidents such as substituting drugs in a chemist's shop, hoax bomb calls, and causing a police siege by attempting or threatening to blow up or set fire to oneself or a house.

The penalty for this offence is a maximum 10 years custodial sentence and/or an unlimited fine. We are in fact lowering the maximum penalty from unlimited crown court penalties which can be applied under the current common law offence.

The Law Commission recommended that this broad offence is needed as "human inventiveness being so great, it is desirable to have a general offence for culpable acts that injure the public but do not fall within any of the specialised offences." The commission went on to recommend "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." The sentence is therefore necessary and proportionate to cover the broad range of behaviours captured by this offence.

Harsher sentences under the offence of public nuisance are likely to only occur in exceptional circumstances, the Law Commission recommended “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.” Sentencing in individual cases is a matter for the independent judiciary.