



**The Serious Organised Crime and Police Act 2005
(Designated Area) Order 2005**

Briefing for House of Lords debate

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**For further information:
contact Sally Ireland - sireland@justice.org.uk Tel: 020 7762 6414**

JUSTICE, 59 Carter Lane, London EC4V 5AQ
Tel: 020 7329 5100 Fax: 020 7329 5055 E-mail: admin@justice.org.uk Website: www.justice.org.uk

1. JUSTICE is an all-party organisation, largely of lawyers, dedicated to advancing justice, human rights and the rule of law. We are also the British section of the International Commission of Jurists.
2. This briefing concerns the **Serious Organised Crime and Police Act 2005 (Designated Area) Order 2005**. JUSTICE produced briefings for both Houses of Parliament on the Serious Organised Crime and Police Bill, which became the Act enabling this Order. JUSTICE also drafted suggested amendments to the Bill for Committee stage in the House of Lords.
3. When briefing the House of Lords on the Bill we expressed grave concerns about the clauses that became sections 132-137 of the Act, because we believed that they imposed 'severe restrictions on peaceful protest'. In relation to the clause that became section 138, under which this Order is made, we said:

We are extremely concerned by the extent of the designated area. We believe that if these provisions are retained the area should be designated by Parliament, rather than by granting a discretion to the Home Secretary. We believe that the maximum radius proposed is greatly excessive; a protest one kilometre from Parliament would not be heard or seen from Parliament Square. The area proposed would encompass Trafalgar Square, a traditional and important focal point for protests. It would also cover parts of Millbank, Whitehall, parts of St. James's park and stretch across the Thames onto the south bank. Much of the area does not contain parliamentary or government buildings. We believe that there is no legitimate reason for extending the area in this way.

4. We have similar concerns about the area proposed under the Order. Freedom of expression and assembly, protected under Articles 10 and 11 of the European Convention respectively, will be seriously restricted in the 'designated area'. The European Court of Human Rights (ECtHR) has repeatedly emphasised that

freedom of expression constitutes an essential foundation of democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment¹.

The Commission has also said that freedom of assembly is a

fundamental right in a democracy and...is one of the foundations of such a society.²

5. Interferences with the rights to expression and assembly must be proportionate and in pursuit of a legitimate aim, such as the prevention of disorder or crime. They must also be 'prescribed by law', which includes the requirement that the measures should be accompanied by adequate and effective safeguards to protect against arbitrary interferences with Convention rights.
6. While the effect of the Act is not altogether to prevent protest in the 'designated area', sections 132-137 impose severe restrictions upon it. Protest there, even by a single, stationary and silent demonstrator, is an imprisonable offence unless six days' notice (or, if this is not practicable, a minimum of 24 hours' notice), including notice of the duration of the protest, is given to the police. Spontaneous protest is forbidden, even if it is entirely peaceful and carried out in response to the swift pace of political events.
7. Secondly, the Commissioner's power to impose conditions on demonstrations on receipt of a notice is very broadly drawn. A protest planned to take place in Parliament Square can be moved to another location entirely. An all-night vigil in memory of a political prisoner can be curtailed to twenty minutes and moved into the obscurity of a side-road. A group who want to form a large assembly to demonstrate the breadth of opposition to an unpopular policy can be told that only five of them can attend. A person who wants to protest about a controversial Bill during its Commons debate can be told that they can only demonstrate once the debate has concluded. Such restrictions go to the very substance of the rights under Articles 10 and 11.
8. The Commissioner must reasonably believe the conditions he imposes to be necessary on listed grounds. However, these grounds include 'disruption to the life of

¹ *Steel and others v. UK*, 23 September 1998, para. 101.

the community'. It is clear that any large demonstration is likely to cause some disruption; notably, the Convention protects peaceful assemblies even if they are disruptive.³ Further, the requirement of 'reasonable belief' sets a low standard, particularly since the Commissioner's decision will usually be reviewed *ex post facto* when the substance of the right (e.g. to protest against a particular Bill) may have been permanently removed due to the passage of time.

9. Section 137 of the Act also criminalizes the use of loudspeakers by protestors in the designated area. As well as making it difficult to co-ordinate songs and chants by demonstrators, we believe that the section may make it difficult for organisers to marshal demonstrators effectively and keep them in the appropriate areas – which could cause added disruption and danger.
10. In addition to their direct effects, these sections may have a general 'chilling effect' on protests within the designated area and around it, since potential demonstrators may be deterred by hearing of criminal offences connected with demonstrations in central London, or of the arrest of other demonstrators.
11. For these reasons, the area should be drawn as narrowly as possible to fulfil its stated purposes. It should not allow arbitrary restrictions on protest to take place. It should be recalled, in this context, that the police already have extensive powers of stop and search, for example under section 44 Terrorism Act 2000, as well as powers to remove demonstrators who are unlawfully obstructing the highway.
12. The stated purposes of the Act are connected with Parliament. The relevant part of the Act is headed '[d]emonstrations in the vicinity of Parliament.' In promoting the legislation, the Government has referred to the Palace of Westminster and other Parliamentary buildings and their surrounding areas as being its object. At House of Commons Second Reading, the then Home Secretary said of the precursor provisions to sections 132-138 that:

[they] follow recommendations by the Procedure Committee...It is important for people, including protestors, to be able to go about their business, and for people coming to our capital city to be able to enjoy the environment surrounding the Palace of Westminster. It is daft

² *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979) 17 DR 93, 119, E Comm HR.

that we should have to pass a law for the purpose, but that is what happens when people make a monkey of the existing law.⁴

13. At Commons Committee stage, Caroline Flint MP, then a Home Office minister, said

We intend to lay an order with a precise area to be covered, and we intend to consult the Metropolitan police. It will cover the area where the demonstrations will disrupt the work of Parliament and hinder access to the House. Parliament could mean Millbank, 1 Parliament Street or Norman Shaw. We have to map out the buildings of Parliament that would be affected. Unfortunately 1km [radius] may be excessive, but 100m or 250m might not incorporate some of those other buildings.⁵

14. The ostensible purpose of the law is therefore to prevent disruption to the work of Parliament and access to the House, and to assuage security concerns. However, the zone defined in paragraph 1 of the Order extends far beyond Parliament. It has clearly been designed to extend around the government buildings in Whitehall such as the Ministry of Defence and HM Treasury. It also extends across the Thames and onto the South Bank into an area that is not populated by parliamentary or even government buildings but includes instead Lambeth Palace, St Thomas's hospital, and County Hall.
15. One effect of this legislation will therefore be to impose severe curbs upon protest outside many key Government ministries. The Government is, to a large extent, insulating itself from the sight or hearing of peaceful demonstrations through this Order.
16. Further, the area goes beyond that required to fulfil the stated purposes of the legislation. Security concerns may be no higher on the parts of the South Bank included than they would be in many other parts of central London. The workings of Parliament and access to it will not, we believe, be disturbed by an assembly outside Lambeth Palace, be it ever so large, in the light of existing powers both to regulate

³ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, 2 October 2001.

⁴ Commons Hansard, 7 Dec 2004, Col. 1059.

⁵ Standing Committee D, 21 January 2005, Col. 439.

processions under the Public Order Act 1986 and to deal with obstructions of the highway.

17. The effect of the Order as currently drafted is therefore both disproportionately to restrict the freedoms of expression and assembly and to allow arbitrary interferences with those rights. Although we oppose the relevant sections of the Act, we recommend that, if the Order is enacted, it be amended so as to confine its application to Parliamentary buildings and their environs. We hope that the harmful effects of the legislation will thereby be minimised.

SALLY IRELAND

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