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กรณีศึกษา: สิทธิการประท้วงในสหราชอาณาจักร



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**BALANCE BETWEEN FREEDOM OF EXPRESSION AND SOCIAL ORDER:
A CASE STUDY OF RIGHTS TO PROTEST IN THE UNITED KINGDOM**

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**A Thesis Submitted in Partial Fulfillment of the Requirements
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ศศิกานต์ วิทโชภคติกุณ: ความสมดุลระหว่างเสรีภาพทางการแสดงออกกับกฎระเบียบข้อบังคับของสังคม กรณีศึกษา: สิทธิการประท้วงในสหราชอาณาจักร (BALANCE BETWEEN FREEDOM OF EXPRESSION AND SOCIAL ORDER: A CASE STUDY OF RIGHTS TO PROTEST IN THE UNITED KINGDOM) อ. ที่ปริกษาวิทยานิพนธ์หลัก: ศศ. สุรัตน์ โหราชัยกุล, 176 หน้า.

วิทยานิพนธ์ฉบับนี้มุ่งศึกษาถึงสิทธิการประท้วงของประชาชนในสหราชอาณาจักร จากการศึกษาพบว่าการชุมนุมประท้วงของประชาชนที่เกิดขึ้นนั้นมีหลายรูปแบบ เช่น การประท้วงนัดหยุดงาน การประท้วงนโยบายหรือการกระทำของรัฐบาล หรือหน่วยงานของรัฐ หรือการประท้วงที่ไม่เกี่ยวข้องกับสหราชอาณาจักรเลย ซึ่งโดยปกติแล้วรัฐบาลหรือฝ่ายปราบปรามจะไม่เข้าไปก้าวก่ายในการแสดงออกซึ่งสิทธิเสรีภาพของประชาชน แต่ไม่ใช่ว่าผู้ชุมนุมประท้วงจะสามารถทำอะไรตามอำเภอใจได้ โดยไม่ต้องเกรงว่าจะถูกดำเนินคดีแต่อย่างใด ในสหราชอาณาจักรนั้นมีกฎหมายที่บัญญัติให้ความคุ้มครองแก่สิทธิเสรีภาพของประชาชนในเรื่องดังกล่าวไว้คือ กฎหมายสหภาพยุโรปในเรื่องสิทธิมนุษยชน ภายใต้บทที่ 10 และ 11 (The European Convention Human Rights (Article 10, 11)) และกฎหมายที่มีบทบัญญัติเกี่ยวกับการชุมนุมประท้วงในพื้นที่สาธารณะคือ พระราชบัญญัติว่าด้วยเรื่องการรักษาความสงบเรียบร้อยของสังคม (Public Order Act) ที่บัญญัติวิธีการดำเนินการชุมนุมประท้วงไว้ว่าจะต้องดำเนินการขึ้นตอนอย่างไร จึงจะสามารถชุมนุมประท้วงอย่างถูกต้องภายใต้บทบัญญัติของกฎหมาย หลักการพื้นฐานของกฎหมาย คือการชุมนุมประท้วงสามารถกระทำได้ แต่ต้องไม่ใช่ความรุนแรง ไม่ทำลายทรัพย์สินของผู้อื่น และต้องไม่ขัดขวางสิทธิเสรีภาพของผู้อื่นเช่นกัน ถ้าหากมีการใช้กำลังหรือใช้ความรุนแรงเข้าขัดขวาง ก็ถือว่าละเมิดกฎหมายและอาจถูกดำเนินคดีได้ การชุมนุมประท้วงภายใต้กรอบกฎหมายนั้น ผู้จัดการชุมนุมประท้วงจะต้องแจ้งความจำนงต่อเจ้าหน้าที่ตำรวจท้องที่ล่วงหน้าเป็นเวลาอย่างน้อย 6 วัน ให้รับทราบและเพื่อเป็นการเตรียมความพร้อมของเจ้าหน้าที่ในการคุ้มครองดูแลรักษาความสงบเรียบร้อยของสังคมตามหน้าที่ของเจ้าพนักงานที่อำนาจรัฐกำหนดไว้ ซึ่งเรื่องดังกล่าวนี้เป็นการแสดงให้เห็นถึงความร่วมมือระหว่างอำนาจรัฐและประชาชนในการดูแลและปกป้องสิทธิของสังคม

ดังนั้นจึงอาจกล่าวได้ว่า สหราชอาณาจักรเป็นประเทศที่ให้สิทธิเสรีภาพทางการแสดงออกในทางการเมืองแก่ประชาชนเป็นอย่างมากก็ว่าได้

สาขาวิชา.....ยุโรปศึกษา.....

ลายมือชื่อนิสิต Sasikarn Vittachokkittikun

ปีการศึกษา.....2553.....

ลายมือชื่อ อ. ที่ปริกษาวิทยานิพนธ์หลัก.....

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KEYWORDS: FREEDOM OF EXPRESSION / POLITICAL EXPRESSION / RIGHTS TO PROTEST / PUBLIC ORDER / THE UNITED KINGDOM

SASIKARN VITTAYACHOKKITIKHUN: BALANCE BETWEEN FREEDOM OF EXPRESSION AND SOCIAL ORDER: A CASE STUDY OF RIGHTS TO PROTEST IN THE UNITED KINGDOM. THESIS ADVISOR: ASSIST.PROF. SURAT HORACHAIKUL, 176 pp.

This thesis aims at studying the rights to protest in the United Kingdom. In this study, the author gathers data from books, documents and the internet that are related to protest in the United Kingdom. Protests are normal events which happen regularly in the United Kingdom and they are expression of rights and freedom of the citizens.

There are many types of protest such as a strike, a protest against a policy or an action of the government or its agency and even a protest that is not at all related to the United Kingdom. Generally, the government or the authority will not get involved with the expression of rights and freedom of individuals. This however does not mean that the protestors can do anything according to their free will without any fear of prosecution. Protestors are protected and given rights to protest according to laws on rights and freedom of expression. In this study, the focus is on Articles 10 and 11 of the European Convention on Human Rights, a European law conferring the protection of human rights; Public Order Act, which deals with procession and assembly and how they should proceed and be controlled; and other related criminal laws. In principle, protests are allowed, but it must not involve violence, the damage of assets and properties, and obstructing others from using their rights. If there is a use of force or violence, the action is a violation of law and can be prosecuted and apprehended by the police. In order to hold a protest, the organisers must inform the responsible authority at least six days in advance in order that public order can be sustained. Therefore, it can be said that the United Kingdom gives substantial rights and freedom to its citizen in political expression as long as done without disturbing social order.

Field of Study: European Studies

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CHAPTER I

INTRODUCTION

1.1 Background and Issues.

John Locke stated that under democratic regime every individual has equal rights and liberties provided that those rights and liberties are under law and social order. One of those rights and liberties is the freedom of expression, which can be broadly interpreted. As there is no established confined level or delineated interpretation of freedom of expression, misinterpretation could result in social chaos due to the use of freedom without boundary and in a wrong way. Therefore, rights and liberties of individual should be prescribed under the provision of law. The question remains: what is the balance between freedom of expression and social rules in way that under human rights principle the latter does not restrict the former? As one of the fundamental principles of human rights, freedom of expression is given to all individuals. It can be broadly divided into three categories: political expression, commercial expression and artistic expression.¹

In this study, freedom of political expression is the subject of interest. Political expression is one of the tools that support liberal democracy, whereby people have direct authority over sovereignty as in Lincoln's famous phrase: "government of the people by the people and for the people." One of the controversial problems in political expression is the extent to which political expression is appropriate. For instance, political criticism that leads to social chaos might not be appropriate and thus can be considered misuse of political expression. Related legal framework exists as to prescribe the limits of freedom and penalties for violating the law and creating social chaos. Hence, citizens have rights to political expression under legal framework and democratic regime. Nevertheless, political expression is the foundation of democratic regime, in which people participation in all political levels are encouraged. Therefore, a right balance should be set as an ultimate goal. Protest, as

¹ For a good account see Coppel, Jason, The Human Rights Act 1998: enforcing the European Convention in the Domestic Courts (Chi Chester: John Wiley & Sons, 1999), pp. 339-343.

one form of political expression, thus should also be encouraged yet restricted under legal framework.

At present, most countries in the world are governed under democratic system. With details and democratic paths different and deviated from one another, depending on social and cultural norm of each, the system is developed through the amalgamation of believes, norms, visions as well as lives of people in those countries. Liberal democracy is of the most used democratic system.

Liberal democracy constitutes the pillar of equality that each human have equal value. No one has privilege over another. There is no preference for treatment whether because of social status, customs, culture, economic status or class or caste one is born into. Everybody has the rights to political status, has equal “voice” as well as has equal rights to act. The gist of democracy is not freedom because in authoritarian state freedom may exists even though not equal and without stability. Freedom could be violated by those with higher power. Therefore, this equality characteristic may not happen in other governing system.

State belongs to everyone. No one has rights over another. People’s expression of their intention is therefore the most valuable factor in democracy. Democracy does not indicate or evaluate intelligence or stupidity. Rather, it indicates the value of human: one human has one voice similar to that of another. Organisation of the state is therefore of and a contract to its citizens.

The harmonisation of interests between that of public and the protection of individual rights must be of the most optimal balance. This is incumbent upon the state, which has an obligation to its citizen. Citizens’ control over the state’s use of power is a method or a mechanism within liberal democracy as granted to its citizen. According to the principles of democracy, sovereignty belongs to people and people exercise this power through elected representative. The representative that was elected by the citizen must therefore act or make decisions according to the wills of the citizens that elect them into the position. As citizens are the owner of sovereignty, citizens have the rights to control the decision making process, policy process or any action of the government that the citizens elect.

As principles of liberal democracy, principle of human equality and the harmonisation of interests between that of public and the protection of individual

rights are the duty of the state, the state must therefore give protection to its citizen in order for them, the owner of sovereignty, to be able to exercise their rights and freedom. The problem of all democratic countries is thus regarding the civic virtue on freedom of expression and liberties in giving rights and freedom to individual in freedom to political expression.

Thailand is one of the countries employing this particular system. It is hard to deny that liberal democracy is the more suitable system for countries that use democratic system than other types of democracy.² The author views the problem in Thailand as an example of countries with liberal democracy. It inspires the author to study political expression, whose question is on the appropriate boundary as well as the form and the method in which they are to be widely accepted by the society and are to be the exercise of rights and freedom of individual under fundamental rights of human.

Democratic regime of Thailand has gone through semi-democracy to liberal democracy. Whether it be political reform or coup d'état, the mechanism toward democracy depends on the political culture of that period. While political reform is a gradual change in administrative structure of the government under the democratic regime, the coup d'état is a take over of the government without legitimacy provided by the pre-existing constitution.

Protest is one form of people participation.³ By definition, protest is an assembly of people expressing discontent toward or disagreement with activities or policies of the government. Usually, each protest has a specific aim and objective. It is an expression of people's rights toward politics. They may want to express their needs or request for certain reaction from the government.⁴

Since 2006, the protest of the People's Alliance for Democracy (PAD), whose royalty to the King remains at the core of the group's ideology, has raised a question among international communities: what exactly is the definition of democracy in

² For an account of this model, see Held, David. Models of Democracy 3rd ed. (Cambridge: Polity Press, 2006).

³ People participation can be divided into six categories. See Lester Milbrath and Goel. M. Political participation: how and why do people get involved in Politics (Chicago: Rand McNally, 1965).

⁴ ผู้สนใจการอธิบายอย่างละเอียด โปรดดู บุญเรือง นูรภัคดี, “การมีส่วนร่วมทางการเมืองในการปกครองระบอบประชาธิปไตย,” รัฐศาสตร์ 34, 10 (ตุลาคม 2539). [For a good account, see Boorapak, Boonruang. “Political participation in democratic regime,” Rattasapasarn 34, 10 (October 1996).]

Thailand? This is largely due the protest of the PAD in requesting a political change through the return of power from the government to people i.e. their resignation from being the country's government. The origin of the problem stems from the negative sentiment toward Thaksin Shinawatra—the prime minister at that time—and his ministers; the non-transparency and the denial for corruption investigation of the government and the prime minister; the use of majority vote as absolute power by favouring his colleagues and himself; and the use of the drafting of new constitution and the legal loopholes in exploiting for their personal benefits. All of these issues aggravated the discontent among the protestors and led them to use their rights and freedom of people in the movement against the government. In order to investigate the works of the government and force the government to explain about the alleged case on corruption, the PAD used public speech in raising the non-transparency of the government to the public. The reacted stance of the government raised discontent and doubt in the administrative branch of the country. After futile attempt of speech and criticism in inducing the requested change, the protestors put more pressure on the government by protesting with an aim to remove and deprive the whole government from power. The level of violence increased raised the question and doubt to the public: what is the limit to the rights of protest and freedom of political expression?

As stated earlier, the rule of law and mechanism of the legal system must play a role in limiting rights and freedom of individuals as to maintain social order. However, the protest of the PAD at the Suvarnabhumi and Don Mueng Airports in Bangkok*, which resulted in partial closure of their operation and tremendous loss to the country, demonstrated the inability of the government to implement the law in controlling the protestors. This intense level of political participation had not only a negative impact on the country but it also raised a doubt in the definition of rights and freedom. If all of these doings were without boundary and resulted in violence and public disturbance affecting the whole country, could the rights to protest of the PAD be considered part of political participation?

The situation soon resolved after the constitution court had declared the verdict to absolve the three following political parties: Thais Love Thais party, Chart

* Besides stationing at both airports as a mean to protest, the PAD also seized many governments' buildings as their own Hyde Park and their temporary residents.

Thai party and People Power party; and to rescind political rights of the politicians on the management board of the parties for 5 years. Following the verdict, the PAD proclaimed that the protest against the government was successful.** Problems soon ensued.

On the other side is another group of protestors disagreeing with the PAD's protest. They stated that the three governments led by Thaksin Shinawatra, Samak Sundaravej and Somchai Wongsawat—the latter two can be included into part of Thaksin political dynasty—came from rightful elections and legitimate procedures.*** This group, which calls themselves the United Front of Democracy against Dictatorship (UDD), colloquially known as the Red Shirt, stated that the PAD's protest was not under the framework of democracy. The question they put forward is: How could the banishment of governments that were rightfully elected to administrate the country be called the use of rights of political expression under democracy? Thai and foreign academics gave various criticisms during that time. Some expresses that protest of the PAD is an act promoting democracy as this genre of protests can bring changes to society. Thailand's democracy will transform into true democracy, not democracy that through leading or with absolute power.**** However, any illegal acts or acts that create social chaos are not right and sends negative messages to international body that state power and laws are not respected and not capable of dealing with the situation within legal framing.***** Democratic regime was destroyed because the protestors did not respect law and the principle of democracy. Rule of law

** Despite the withdrawal from both airports of the PAD after the verdict of constitutional court, the PAD stated they are ready to come back if they see that Thai politics lacks transparency and is corrupted to combat injustice.

*** In this research, the Author excludes the 19-September-2006 coup d'état from this research because the coup d'état that threw out the government of Thaksin Shinawatra could not be count as political participation of people under democracy.

**** Absolute power here refers to the establishment one-party government under the leadership of Thaksin Shinawatra that won the 2001 and 2005 elections and had majority voting power in the parliament, and therefore results in democracy with absolute power under the control of Thaksin Shinawatra. Stances of the academics criticised the administration of Thaksin Shinawatra differs. Most are highlighted on the extending of special benefits to his clans and the use of legal loopholes. Moreover, is the change in social structure under the Thaksinomics that generated both positive and negative criticisms toward the administration reform of many organisations, which includes state-own enterprises. The related personnel were under pressure both direct and indirect. This leads to the anti-reform sentiment for the reason that the reform is for his own's and his relative's benefits.

***** The event, however, created doubt in the minds of the academics as the event was extended for a period of time and without state control.

cannot be applied to control or contain the congregation of protestors. Political rights and political freedom were used as a tool in claiming the legitimacy of the protest. The protestors' mob rule, which to certain extent led to ochlocracy or mobocracy, hovered over national law. Governments that were rightfully and directly elected by the people were unseated because of the PAD's discontent.

The protest of the PAD brought discontents to those that favours Thaksin Shinawatra. It had become an example of political expression for the other group to follow using the very similar method of congregation to pressure and petition to the government. This is an expression of the group to the public so that the public can absorb the group's sentiment.

The clash between the two groups of protestors was manifested in the use of colours, symbol to differentiate the groups' identities. While the United Front of Democracy against Dictatorship (UDD) uses the colour red, the People's Alliance for Democracy (PAD) adopts the colour yellow, the colour of the King—the Red Shirts vs. the Yellow Shirts. The sharp dichotomy between the two groups aggravated the situation in both the specific sense of protest and the broad atmosphere of Thai political canvass. The Red Shirt protest, which started their campaign after the Yellow Shirt, could be regarded as a trace of the Yellow Shirt's footsteps. The PAD's means in pressuring the governments that resulted in no guilt were mimicked by the Red Shirt creating a similar pattern of protest. For example, the Red Shirts similarly used many official buildings as their place of congregation. They also share the same method of public broadcast to incite the members of the groups. However, The Red Shirt, unlike the PAD, resorted to the method of arousal and incitement in requesting for justice for the ex-prime minister Thaksin Shinawatra. Video conference and phone-in with the ex-prime minister are some of the methods used by the Red Shirt to recreate his popularity.*****

The protest of the Red Shirts adhered to the support of democracy. Governments that come into office must be derived from election system under

*****Populism remained at the core of Thaksin Shinawatra's policies. It resulted in the win-over of people in the grass-rooted level and the middle class in the north and north eastern part of Thailand. The populist policies won over people in the rural areas, people of grass-rooted level and the middle class of all regions, with the exception of the south and Bangkok, because the policies made them realise that they were not neglected by their government as in the past.

democratic regime. This is in contrast with the government requested by the PAD as the government should come from new politics.***** Furthermore, the Red Shirt protestors requested for the current government to prosecute the PAD with the case of the Suvarnabhumi and Don Mueng Airports closure together with the occupation of government's offices and buildings. The Red shirts claimed that the PAD should be prosecuted through legitimate legal process as they violated official possessions and created public disturbance.

The current government under the leadership of Prime Minister Abhisit Vejjajiva, however, does not respond to the request of the Red Shirt. That many of the legal procedures have progressed at a sluggish rate during his governments stirs discontent among protestors. They feel that the government neglects their protests. The word "double standards" has been applied to the government's preferential treatment. The Red Shirt believes that the government does not treat them in a similar manner to the Yellow Shirt. While a number of the Red Shirt's TV and radio broadcasting channels were ordered a permanent closure, those of the Yellow Shirt remains in operation without any governmental intervention. As a consequence of such discrepancy, the Red Shirt protestors have stepped up their game in order to pressure the government to respond to their requests. The peaceful public congregation and political criticism has transformed under the interpretation of the freedom and rights to political participation into a violent riot as in the 2009 ASEAN Summit in Pattaya. The riot resulted in the damage and destabilisation of Thai Economy as well as the reputation of and confidence in Thailand. This is no different from the closure of the airports incident by the PAD. Thai politics now lack stability as the riot and the protest disturb social and public order. The intervention of the 2009 ASEAN Summit in Pattaya by the Red Shirt created consternation among leaders of the participating nations of the meeting. The collapse of the summit resulted in the damage of the country's image and political stability as demonstrated by the fact that protestors did not respect the law and created a riot. That the laws could not be used in controlling the riot and the protestor to be within the legal framework points to the

*****The new politics that the PAD request, up to the present, cannot be concluded as to which form it would take or what characteristics it would have. Nevertheless, the PAD established the New Politics party in order to have the member of the party up for election under democracy.

question of how should such acts be considered under the democracy? Should this protest which resulted in unlawful activities be considered political participation when rights and freedom of expression reigns over law?

All of these problems lead to the question of how to control and administrate the form of people's protest to exist under legal framework without sacrificing or over-limiting the rights to protest and political expression. Therefore, the author would like to study democratic system in the western world, the origin of the system. The inspiration that leads to choosing the UK as a case study is the country is called the mother of democracy.⁵ Britain or the United Kingdom—a state that consists of England, Scotland Wales and Northern Ireland considered as a political unit⁶—and Thailand share similar form of government. Regardless of the use of common law in the UK, both countries use parliamentary democracy, constitutional monarchy. Thai laws are also adapted from the common laws of England. For this reason of similarities, the author opts for looking deep into this country.

Laws are designed to suit people and society, in which they are aimed at. The use of common law, which is derived from customs and courts' decisions over times, in the United Kingdom has been effective. In this sense, whether the laws are written or unwritten does not affect the effectiveness of the enforcement. As social and political systems as well as its constitutive people are of key concerned to law makers, to create laws, the law makers have to synthesis social customs together with their political culture. As stated by Aristotle, “Law is free from passion and it is a reason”.⁷ This means that any individual has the same rights under the same law. Laws are

⁵ Quoted in Tipbrarat, Politics and Governance: the Development of Democracy of Western Countries [Online], 11 September 2009. Available from: <http://www.idis.ru.ac.th/report/index.php?PHPSESSID=h1fh11e01662bbf72obbjp9bo1&topic=101.msg391#msg391>. [ทิพย์รัตน์, การเมืองการปกครอง: การพัฒนาของประชาธิปไตยในประเทศไทย. [ออนไลน์], 11 กันยายน 2552. แหล่งที่มา: <http://www.idis.ru.ac.th/ac/th/report/index.php?PHPSESSID=h1fh11e01662bbf72obbjp9bo1&topic=101.msg391#msg391>.]

⁶ The United Kingdom uses democratic system in administrating the country by forming one political unit despite consisting of four countries which have different languages, nationalities and cultures. Under constitutional monarchy, the central government in England has the power to administrate on the matters of the national policies and to delegate certain powers to local governments: Welsh, Scottish and Northern Irish. In this regard, please see more information in: Jumbala, Prudhisan M.R. British Parliamentary Democracy (Bangkok: Chulalongkorn University Printing House, 2001), pp.17-41. [พฤฒิสถาณ ชุมพล, ม.ร.ว. ประชาธิปไตยแบบรัฐสภาในอังกฤษ (กรุงเทพฯ: โรงพิมพ์แห่งจุฬาลงกรณ์มหาวิทยาลัย, 2544), หน้า 17-41.]

⁷ Quoted in Aristotle, Law definition[Online], 10 August 2010. Available from: <http://www.brainyquote.com/quotes/quotes/a/aristotle165159.html>

provided to control all population as to respect others and do not abuse others' rights. Laws are reason that rule and control people in each society allowing them to live together without anarchy or chaos.

In a democratic world, protest is a part of informal political participations.⁸ Democracy refers to a form of government in which people rule.⁹ Within a democratic community, people have political equality, rightful authority, liberty, political equality, interests, social utility and satisfaction of wants vary upon people of various needs.¹⁰ In accomplishing a goal, one might over step's other interests or create troubles unacceptable to some group of people to the extent that the affected party decides to come out and let their voices be heard. Therefore, protest is part of the democratic process and thus can happen regularly. As the government could neglect some of the people's requests, protest can become a means to garner and protect their interests through letting their voices heard. Moreover, protest is a factor in encouraging democratic freedom.

In the UK's political life, protest is very much part of its democratic system. Protest periodically manifests itself dramatically through a huge assembly or a march through the countryside, both accompanied by a succession of speaker bitterly attacking government's policies.¹¹ To bring the government's attention toward their voices, people have to express their dissatisfaction toward those policies by using their rights in staging a protest, a legitimate form of political participation. In this regard, (many scholars including John Locke, David Hume and John Stuart Mill agree) we can say that no other country has contributed to idea of the liberty of individual more than Britain.¹² Through times, the arbitrary rule of monarchical leaders has had been gradually limited and finally eliminated. A rule of law was firmly established that no one is above law. The actions of governments are subjected to a constant barrage of criticism whether in the parliament, through the press, at

⁸ ผู้สนใจการอธิบายอย่างละเอียด โปรดดู บุญเรือง นุรศักดิ์, “การมีส่วนร่วมทางการเมืองในการปกครองระบอบประชาธิปไตย,” รัฐศาสตร์ 34, 10 (ตุลาคม 2539). [For a good account, see Boorapak, Boonruang. “Political participation in democratic regime,” Rattasapasarn 34, 10 (October 1996).]

⁹ Held, David. Models of Democracy 3rd ed. (Cambridge: Polity Press, 2006), p. 1.

¹⁰ Ibid.

¹¹ Freedman, Leonard. Politics and Policy in Britain(White Plains, New York: Longman, 1996), p. 299.

¹² This is the classic statement on the subject came from John Locke, David Hume and John Stuart Mill. Please see more information in Freedman, Leonard. Politics and Policy in Britain, p. 291.

Hyde Park, or in mass demonstrations.¹³ For instance, a demonstration against a bill in Hyde Park started from a peaceful one almost celebratory mood reminiscent of the 1960s and developed into a pitched battle between police and militant minority among the demonstrators. Often participation and voices of the middle-class are missing. In the 1990s emerge the angry protest movements in the middle-class, such as those provoked by proposed new high way. In these protests, we can witness a number of old frail ladies as part of the protestors. It is therefore the duty of the police to devise a gentle plan to counter such disruptive civil disobedience.¹⁴ Through time and globalisation, protest and demonstration have spread out to cover more issues. Whether it is climate change, oil prices or even intolerable animal, each can be a subject of discontent among protestor to go against a government's policy. This reflects that more and more people feel freer to express their opinions and points of view than in the past. Bitter disagreement with their government and its policies is a result of understanding of and respect toward law. At the same time, they stand without fear of legal or other retribution as they are using their rights wisely and legitimately. As a result, protests in the United Kingdom do not result in riot nor create social disturbance as we can see in other country. Since, people in the United Kingdom understand that they are one part of politics. People participation is the heart of democracy and protest is one form of people participation in globally democratic world. Thus, the protest in the United Kingdom is of author's interests.

The protest within legal framework provided under specific definition and boundary of rights and freedom in political expression is worthwhile and deserved a thorough study as to form a case study applied for the situation in Thailand.

¹³ Ibid.

¹⁴ Ibid., p. 301.

1.2 Research Question:

Under democratic regime, how should the balance between freedom of expression and social order be sustained?

1.3 Research Objectives:

This research aims to study the balance between freedom of expression and social order under the case study of rights to protest in the Britain with the following objectives:

- To study how people in the United Kingdom use their rights and freedom of expression through the form of protest
- To study how the British laws define and limit the rights and freedom of political expression

1.4 Hypothesis:

Under democratic regime, freedom of expression in the format of rights to protest is allowed within the context of law and order. Britain, as a case study, confirms that order prioritises rights.

1.5 Conceptual Framework:

In accordance with the hypothesis that rights to protest should be allowed under law and order, the assembly for protest that laws allow is a peaceful protest that does not result in social disturbance or public nuisance. The conceptual framework begins with the definition of freedom of expression, which is the content of virtue human rights, and then describes how broad the freedom of the assembly should be. The thesis will explain how the British laws sustain the balance order and freedom of expression under the European Convention on Human Rights (ECHR) and common laws of Britain.

1.6 Scope and Method:

This study aims to examine the meaning of freedom of expression according to the Article 10 of the ECHR. Freedom of expression in this study is through the form of protest. The scope of this study is with the laws and acts of parliament that give or restrict rights of individual in freedom of expression, political expression thru rights to protest or thru freedom of assembly and association. How are they given and whether the rights are basic human rights or not? For this reason, the British laws and their related Acts are the main subjects of this in-depth study in order to explain how the British laws sustain the balance between freedom of expression and social order.

This research is a documentary research using secondary resources. Books, articles, hansard, house of lords' decisions from selected case-law and websites will be used for data collection and data analysis.

1.7 Benefits:

- To develop a perception of civil liberties and human rights with a special reference to rights to protest
- To comprehend how the British laws are utilised to appropriately monitor the freedom of expression and
- To develop a model in analysing how such a violent protest could occur in order to create peaceful protest framework

CHAPTER II

PRINCIPLES BETWEEN RIGHTS AND ORDER

This study focuses on the rights to protest of people in the United Kingdom. Due to its lengthy historical background as a democratic state, the United Kingdom is one of the countries whose people have full rights to freedom. Freedom of expression is one of the significant rights of people to be wielded against their government to express their approval and appreciation, as well as vice versa, toward the government's action. Within freedom of expression includes the freedom of assembly, which consequently results in the rights to protest. Under democratic regime, people's protest is acceptable but only under legal framework. Even if protest turns into riot or chaos, it still can be counted as informal political participation. Therefore, people's expression is an activity indicating their interest in political participation. The theoretical analysis, following this introduction, can be divided into two parts. Firstly, democratic theory and people participation, including freedom of expression and freedom of assembly, are discussed and reviewed as part of the literature review. This part will cover the breadth of the freedom of individuals mentioned above. And secondly, protest and public order are reviewed in the later part in this chapter.

Literature Review:

2.1. Democratic Theory

“People often talk as though democracy and freedom were synonymous. Phrases such as ‘democratic freedom’ and ‘liberal democracy’ have become political clichés. Yet both a theoretical and practical level, the relationship between democracy and freedom is in fact controversial and complex...”¹ This statement by Jack and Adam deliver us a fundamental problem in analysing and applying democratic theory.

¹ Lively, Jack and Lively, Adam. Democracy in Britain: a reader (Oxford and Cambridge: Blackwell, 1994), p. 166.

It is imperative to establish a difference between and a connection between democratic freedom and liberal democracy.

In the 1859 essay on liberty by John Stuart Mill, 'the tyranny of the majority'², people are described to have no need to limit their power over themselves. Since the outbreaks against the monarch and aristocrats in the French Revolution, the notion of self-reservation in wielding their power and freedom changed dramatically. The formation and the mushrooming of democratic states best illustrated this change. People now have power to govern themselves; in this respect is the notion that people have no need to limit their power over themselves.

It is evident and well-acknowledged that election and elected responsible government together with its action and policy are subjects of observation, scrutiny and criticism. Therefore, there exists a contradiction within the phrase power of people over people. Who are the people? People who exercise the power are not always the same that such power is exercised upon. In order for such statement to be valid, the exercise of such power, i.e. self government, must concur with the will of people, which is widely and practically accepted as the largest fraction of people in the society or the majority. Often, majority can be interpreted as constitute of those who are active in making themselves accepted as the majority and able to use the delegated powers. 'The tyranny of the majority' is the evil within the society whose real or supposed interests in democracy are adverse. They are master in establishing themselves within the society as well as in political speculation. Similar to other tyrannies, they operate through the act of public authorities. The reflection of the society is imprinted by the tyrants.

In my opinion, tyranny can happen everywhere even in the modern democratic world. The responsible government cannot respond to all wills of people. Election is merely a tool in the democratic system to collect all the wants. Through elected representatives, the majority votes to represent their powers and their interests. In contrast, the majority does not always demonstrate liberties as John Stuart Mill mentioned in his essay. As majority constitutes of those who choose to participate in

² Mill, John Stuart. Utilitarianism, Liberty and Representative Government (Everyman, 1910), pp. 67-68. in Lively, Jack and Lively, Adam. Democracy in Britain: a reader (Oxford and Cambridge: Blackwell, 1994), pp. 167-169.

political events, i.e. not all individuals are the voters or have the rights to vote. Therefore, tyranny of the majority is a situation within a democratic state whose society has a low-level of true people participation in political participation. However, such low-level of people participation is hardly seen in this globalisation era. Education embeds within the people democratic thought making them realise their rights and their powers. Liberty and freedom are the basic rights of individuals that can be exercised against public authority. Protest can be an activity of individuals to pressure the government to respond to the unsatisfied as well as to demonstrate the power of people.

The 1958 essay 'Two Concepts of Liberty' by Isaiah Berlin³ delineates the connection between democracy and individual liberty, which reflects the rate in which people are to be governed or controlled. Berlin also derived the concepts of liberty into two categories: positive and negative. In the positive sense, the word 'liberty' refers to the freedom of individual in terms of being able to make a decision upon selves, not forced by the external factors. Laws, in this case, are the necessary frontier between private life and public authority. In the negative sense, although not thoroughly negative, liberty is restricted by none except the notion of self-control of self-direction within rational society directed by rational minds. Here the principles underlying the notions of self-control resulted in rational purpose. These are the two concepts contradicting each other.

To my conviction, the concept of liberty is an ideal. That individual can desire to be governed is valid. However, it is such a broad concept and there is no limit to liberties. Liberty and freedom must be limited by laws, which all individuals have to respect. For this reason, their liberties per se are always intact and no other public authorities can take it away. Regardless of that, the exercise of their liberties and freedoms should to be controlled and limited because rational society does not mean that all individuals have rational minds. There is no guarantee that individuals have the same wants and same notion of self-control. It is therefore the negative sense that works in reality.

³ Berlin, Isaiah. 'Two Concepts of Liberty' in *Four Essays on Liberty* (Oxford University Press, 1969), pp. 123-144. in Lively, Jack and Lively, Adam. *Democracy in Britain: a reader* (Oxford and Cambridge: Blackwell, 1994), pp. 169-171.

According to E. M. Forster in the 'Two Cheers for Democracy' (1951)⁴, democracy is a more admirable form of government than other contemporary forms. Individual is important and people need to express themselves. It is a democratic society that allows liberty to expression. Opinion and criticism are allowed as long as it causes no harm to the public. Press is a major tool in criticism because it questions and criticises the authorities. It connects people with their representative. Criticism, talk and chatter are widely reported causing the authorities or people's representative to mind their actions and their behaviours.

The author considered the press invaluable in a democratic system because it reports what is going on in our daily lives. Various presses report the different issues and from many point of views, even though they mostly report the same general issues. Due to its commercial nature, news is reported in the way that reflects the desire of people as well as the wish of the press themselves, which in turns reflects the freedom and liberty of people.

In modern democratic theory, there are two camps of thinkers: those who emphasise on votes and voting arrangements and those who emphasise on participation and deliberation.⁵ Whether they are a vote and voting arrangement or a participation and deliberation, each concept refers to the decision-making method, which is based on the principle of majority rule, the core characteristic of democracy. Liberty, freedom and individuals are influential actors in democracy. Each has different roles and is constricted by the particularity of each democratic model.

Therefore, it can be concluded the thinking on liberty of each political thinker in terms of meaning and values as follows:

John Stuart Mill gives importance to full freedom saying that the most fearsome enemy of freedom is not the government but "the tyranny of the majority." He stated that: if all human beings except one have certain opinion and the one has a contrary opinion, humanity then have no rights to silence that one contrary voice should the rights to silence exists. Mill supports freedom of expressing ones' opinion for that such will allow human to get closer to the truth. The restriction of rights and

⁴ Forster, E. M. Two Cheers For Democracy (Edward Arnold, 1951), p. 79. in Lively, Jack and Lively, Adam. Democracy in Britain: a reader (Oxford and Cambridge: Blackwell, 1994), p. 172.

⁵ Eriksen, O. Erik and Weigård, Jarlie. Understanding Habermas: communicative action and deliberative democracy (London and New York: Continuum, 2004), p. 111.

freedom through power or authority only can be done when those rights and powers will affect or injure others. The restriction of freedom on the basis of the interests of the restricted one cannot be done because it is hard that one will value interests of others more than of self. It is therefore the duty of individual to make a decision and not allow others or the society to make a decision for one. Freedom is thus the aim and goal of society per se.

Similarly, Isaiah Berlin regards liberty as self-realisation, which means that one is able to make a decision upon selves, not forced by others or external factors. "Liberty is liberty, not equality or fairness or justice or human happiness or a quiet conscience. There are no final answers because of the perennial human problems." It must be understood, especially by the government, that political values are inherently built upon and will always result in conflicts. Negotiation is thus the key.

To E. M. Forster, democracy is a more admirable form of governance than other forms as there are form and variety to each and every system as well as it allows criticism.

The Liberal Model

This model is based on freedom of individual and makes an emphasis on rights and freedoms of people. The state has the duty to protect the rights and freedom of its citizen. Through a democratic process of decision-making and aggregating citizen's preference, people express their choices via their votes in election or any legitimate collective decisions. This model manifests the idea of human beings possessing certain rights and freedoms that are independent from any political order. It is a notion of pre-social and pre-political human rights that stem from natural law.⁶ Certain rights of individual influence the establishment of political institutions. Pre-political rights do not limit the power of the state, but entitle it to use their rights and freedom at its own discretion.

Politics can be understood as a process in which political actors have an influence on the authorities in order to secure as much power and as many resources as they possibly can.⁷ This is referred as a competitive elitism. Citizens are seen as

⁶ Ibid., p. 114.

⁷ Ibid.

passive consumers. The political process is a struggle between competing interests in which each party offers its best value to the voters to gain the highest number of votes resulting in the right to govern. In order that the system operates righteously, “checks and balances” is employed as to keep corruption in check as well as to have the political institutions working in the right directions. Once in office, the government also has to focus on maximising the popularity of its authority by maximising the interests of their citizens or responding correctly to the individual’s needs and preferences, which can be aggregated through formal procedure of registration as well as the collection of preferences. Nevertheless, conflicts of interests are inherent as not all shares the same preferences. Therefore, regulation through formal procedures is needed.

In my opinion, the liberal model has some problems because it has no rule in aggregating individual preferences. Individuals have no direct influence on the decision-making process and the voting rule. Therefore, it is difficult to ensure a fair aggregation of individual preferences are collected and the legitimacy of elected government. The voting procedure cannot guarantee a rational outcome or the satisfaction of all the voters, as the outcomes are the winner not the common will of people. Such could result in an unstable and uncertain political order. In putting the emphasis on the aggregation of preferences and neglecting the direct power of individual, voting can be controlled strategically through the procedures. Even through tyranny can be prevented, this model does not grant individual to freely exercise their rights and liberties.

The Republican Model

The foundation of the republican model is based on common good. The political process of this model is citizen with virtues actively engaging in collective affairs of general will. The republican believes that rights are political by nature and democracy is the ultimate good.⁸ The collective decision is a political process that shape rights, which eventually become mandatory. Therefore, rights and duties reflect the level of commitment people determined to have within the society. This is a politics of virtues in which citizen are self-sovereign as in enabling them to

⁸ Ibid., p. 117.

participate in discussions about the conditions of coexistence as well as about the common good.⁹ In the eyes of the republican, freedom depends on political participation; this means that citizens give their freedom when they are given the opportunity to participate in the self-governing republic. The republican also regards a normative activity as a community of value. The republic society is a social community in which, to obtain freedom, citizens autonomously pursue their goals. Hence, the basic concept of this model is focused on the citizens' reason and ability to agree on what is common good.¹⁰

The main differences view between the liberal and republican on democracy.

Comparable characteristics	Liberalism	Republican
Concept of freedom	Negative	Positive
Rights	Pre-political	Political
Procedures	Decision-making method	An end in themselves
Justification	The right	The good
Decision-Making	Aggregation	Deliberation

Source: 'Important differences between Liberalism and Republican' in Eriksen, O. Erik and Weigård, Jarlie. Understanding Habermas: communicative action and deliberative democracy (London and New York: Continuum, 2004), p. 118.

Regarding the republican, there are some problems with this model. It concerns only the community members, i.e. its citizens, who have rights not human being in general.¹¹ This model relies on Greek public sphere, which is out-of-date and cannot respond to the infinite interests of individuals in modern societies. Society nowadays is so complicated and multi-cultured. The republican model is therefore designed to understand the decision-making in complex and widespread society, which are characterised by functional differences and conflicting interests. Thus, decision-making process in modern democratic society is to deliberate and collect all

⁹ Ibid.

¹⁰ Ibid., p. 118.

¹¹ Ibid.

of people's preferences as well as conflicts of interests into one allowing the system to pursue all goals through legitimate procedure and democratic apparatus. People are treated equally and fairly under the constitution of the state, which concerns on civil rights and liberties. In this sense, it means that they are freely to exercise their rights and liberties under the rule of state as they are human beings.

A procedural model of deliberative politics

A procedural model is a model that derives certain abstract interpretation of what the liberals and republicans believe: a collection of principles and ideas of rights. The theory focuses on the ideal aspect of government whose democratic institutional forms are advocated by the citizens' deliberations. According to Habermas, this model of democracy is based on a desubstantialised concept of popular sovereignty, a procedural concept of legitimacy and a decentralised perspective of society.

The concept of popular sovereignty refers to the will of people as collectively expressed through people.¹² People in this context consist of a number of people. Therefore, popular sovereignty should be regarded as anonymous and subject-less.¹³ Such manifestation is only expressed through and within the democratic procedure and political culture as resulted in a rational public opinion and expression-of-will process.

The procedural legitimacy concerns the institutionalisation of rights through an open public debate as well as the institutionalisation of procedure for argumentation, negotiations, bargaining and election in the parliamentary system.¹⁴ According to Habermas, legitimate political power emerges from the interaction between "legally institutionalised discourse arrangements and culturally mobilised public spheres", where citizens have the freedom to participate and to refine themselves from it. As a result, constitution fosters rational and fair process of decision-making by letting people's voices pass through their elected representatives. The representation is therefore necessary to bring about what is the common good through rational deliberations.

¹² Ibid., p. 125.

¹³ Ibid.

¹⁴ Ibid.

According to the discourse theory, decentralised perspective of society means that there are several powers and authority centres as well as several ways of making one's voice heard. There are many centre bodies with authorities to make decisions and exercise power in the modern society not as one as in the past. In this democratic process, people are brought into discussion and deliberations, which will lead to legal procedures. Political stages and events such as the opinion survey before the state making a decision. Such doings are solutions to the weakness of the representative democratic system as such direct political participation allows more channels and space of exchange in viewpoints and opinions in making a decision that will lead to the consequent legal procedures. This serves as an option and a tool to respond to the needs of its citizen of this system.¹⁵

To my observation, this model values individual rights more than the liberal and republican model. It guarantees individual rights on an independent basis. A public deliberation is a precondition of the representative before one can vote or do the bargaining. Such deliberation can be translated into the collection of the necessary and rationally overview of individual preferences. This can be explained and justified as to defend everyone's interests. Moreover, an argumentation or a defence is needed to justify a decision. Therefore, within a decision-making process, individual rights play the central role in this political system as it is needed to verify the legitimacy of such process or decision. Political power thus can be explained by popular rule, which citizen with equal rights can discuss political issues freely as individuals governed by of those institutions within the forum of civil society.

In this study, democratic theory can be used in explaining why freedom of individuals is important in every model of democracy. Individual and freedom are tied together. People participation in political participation in different societies differs because of the difference in political culture. Similarly, limitation of individuals' freedom varies according to the states' constitution. Recognition of individual and political awareness is central to this study. One example of such is protest, which can be considered the awareness of individuals who manifest their discontents against or their requests to the state. Those that exercise their rights in pursuing their goals by letting their voices be heard, in context of democratic theory,

¹⁵ Ibid., p. 127.

are supporter-of-democracy individual expressing their freedom and liberty against the state, regardless of the democratic models they are in. Therefore, protest is a form of freedom that democratic system provides a way for individual with such alternative actions, which the author will explain in the next part.

2.2 Civil Society and People Participation

Civil Society

Civil society is an essential component of democratic consolidation. Two explanations of civil society can be given:

1. Civil society is a society that civil has complete participation in public affairs, both locally and nationally. The confederacy and the acts via the international organisations are implemented without hindrance from the government and capitalism. In other words, civil society is a society with intensive civil politics. Not only do the public affairs include political movements, environments, arts and cultures as well as ethical youth training are parts of them. From this definition, civil society can be referred to as a ‘civilised society.’¹⁶
2. Public corporate network conduct their own public affairs which are obviously not relevant to governmental activities and the marketing system. The civil society can be summarised as a community that is independent from the government and capitalism, however; the definitions of each term: network, group, association, union, and the community can be varied depending on the social context.¹⁷

¹⁶ ชีรยุทธ บุญมี, “สังคมเข้มแข็ง,” ใน *ประชาสังคม ทรรศนะนักคิดในสังคมไทย* นพ. ชูชัย ศุภวงศ์ และยุวดี คาคการณโกศล, บรรณาธิการ (กรุงเทพฯ: สำนักพิมพ์มติชน, 2540). [Boonmee, Teerayut. “Vigorous Society,” in *Civil Society: thinking's of philosophers in Thai society* Supawong, Chuchai. and Kardkarnklai, Yuwadee. (Ed.) (Bangkok: Matichon Press, 1997)]

¹⁷ ผู้สนใจการอธิบายอย่างละเอียด โปรดดู อเนก เหล่าธรรมทัศน์, “ส่วนรวมที่มีใช้รัฐ: ความหมายของประชาสังคม,” *เอกสารโครงการวิจัยและพัฒนาประชาสังคม มหาวิทยาลัยมหิดล*. หน้า 1. [For a good account, see Laothamatas, Anek.

In conclusion, the idea of civil society is to create a balance of power among government and the society, government and associations, and the social values. The society with this nature comprises of members possessing the characters of being active and enthusiastic in protecting and realising the benefits of the society as a whole. The main concepts of the civil society are rights, liberty, independence, equality, participation and individual potentiality. The prominent point of this concept is to have civil participation in various issues, both political and social, and in the way that will benefit the society.

This study includes the variously available meanings of civil participation. Nevertheless, this study divided them civil participation into 2 definitions: political participation, and public affair participation.

People Participation

Participation of people, the process of the acts relating to the mass at various levels of the society, is, firstly, the procedure of decision-making which opts the social purposes as well as provides resources and secondly, the voluntariness to public affairs. Such participation benefits not only the society but also the participants themselves. In participating in the activities, the participant learns and experiences, which will lead to the benefits of being able to use and apply the experience to their careers, associates and to the society.¹⁸ That participation is the exact mental and emotional state of individual towards the group that will not only lead personal aim but the group's aim. This creates responsibility as well as loyalty to the group. People participation is considered to be developed from the following ideas:

1. Civil shares common concern
2. Civil shares common dissatisfaction
3. Civil has agreement to diversify groups or society in a certain way. This participation focus on having opinions and movements whose origins are

“The Whole that is not State: the Meaning of Civil Society,” Document of research and the development of civil society research, Mahidol University. p. 1.]

¹⁸ โอชา จันทร์สว่าง, “การมีส่วนร่วมของประชาชน นั้นทำกันไค,” วารสารพัฒนาชุมชน (2532): 53. [Chansawang, Ocha. “The participation of people, how?,” Community Development Journal (1989): 53.]

from civil. All procedures are done by civil, not intervened by outsiders or the government.¹⁹

People and Political Participation

Political participation is the activities that are implemented to influence the decision of the government. It is one of the significant characters in modern political system since people now have become aware of political movements more than of customary system. To be part of a political movement is not only a goal in itself but also a method of development as it is believed that to take part in politics is an important nature of civilised society. Political participation can lead to distinctive purposes such as to enforce the authority to develop the country.²⁰

Political participations can be divided into 6 categories²¹:

(1) Voting is a political participation that can be separated into election campaign and political party campaign, and patriotic acts such as taxation, laws abiding and supporting the government decisions to commit into wars, although it may go against one's opinion. Voting in the election is a way to show respect in the political system rather than to do it for one's sake. Literally, one goes to vote because they believe in their duties rather than believe in the real meaning of their votes and how those votes can affect the politics. Therefore, voting does not need as much persuasion as the other political activities.

(2) Party and campaign workers are the persons who attend or involve in the political parties during the election and the campaign for voting, as well as the persons who donate money for candidates, those who convince people to go and vote

¹⁹ อकिन รพีพัฒน์, การมีส่วนร่วมของชุมชนในการพัฒนาชนบทในสภาพสังคมและวัฒนธรรมไทยในการมีส่วนร่วมของประชาชนในการพัฒนา (นครปฐม: ศูนย์ศึกษานโยบายสาธารณสุข มหาวิทยาลัยมหิดล, 2527), หน้า 320. [Rabibhadana, Akin. Participation of Community in Social Environment Development and Thai Culture in People Participation in Development. (Nakhonpathom: Study Centre of Public Health Policy, Mahidol University, 1984), p. 320.]

²⁰ สุจิต บุญบงการ, การพัฒนาทางการเมืองของไทยปฏิสัมพันธ์ระหว่างทหาร สถาบันการเมือง และการมีส่วนร่วมทางการเมืองของประชาชน (กรุงเทพฯ: จุฬาลงกรณ์มหาวิทยาลัย, 2542), หน้า 39. [Boonbongkarn, Sujit. Development of Thai Politics: Relations between military, political institutions and people political participation (Bangkok: Chulalongkorn University Printing House, 1999), p. 39.]

²¹ Milbrath, W. Lester. Political participation: how and why do people get involved in Politics? (Chicago: Rand McNally, 1965)

for the parties they are supporting, those who compete in the election themselves, and those who join with associations to develop the community. This kind of participation is the module of relationship between individuals and government.

(3) Community activists are the people who gather up together to resolve what they see as problems in the society, or cooperate with other existing associations to take part in public affairs or run the process involving the governmental office. These people are enthusiastic and also have concerns to the community. These people are different from the political party workers in that they involve less in election and political power.

(4) Contracting officials participate in the activities that specially dealt with a certain person individually, such as paying tax, constructing road, social welfare errands.

(5) Protestors are people who march on the streets when it comes to the matter that go against their wills. They are open to the issues and discussion, play a big part in the protest and will definitely disagree with what they see as unfair.

(6) Communicators are those who follow up with the political issues to spread support and be a good back up when the political leaders commit the right things or even to object the malignity. These communicators discuss political issues, acknowledge the community about politics, pay attention to the government's subjects, and write articles to the press or public relations. These people come from good background and are well-educated. They have awareness about politics, therefore, these people are playing more important role to criticise the government actions and reactions towards each national issues than those who are government officials and those who claim themselves as patriots, somehow, these communicators rarely join the protest.

The applications of freedom to comment upon issues related to the benefits to civil, to offer opinions about the social rules and policies by ways of public speaking, writing articles and publishing articles can be counted as one of political participation as it would be reflected to by the government and can direct to right actions that the government can provide. From the definitions and the pattern of how politics are participated, it can lead into two essential modules: to officially participate in political

issues and to unofficially participate in political issues.²² Example of which are provided and categorised below:

Official Participation in Political Issues

- 1) Aggregation originates from the interest group to protect and sustain their benefits. Some gathers together to preserve public benefits.
- 2) Political party establishment and membership is a way people with the same direction towards politics group up together and arrange the movements leading to political changes according to their ideal. Political party is an important part as it is directly organised to precede political activities and can be founded by the civil.
- 3) Voting in election. The sovereignty belongs to the people in the country. Civil has all rights to vote according to the democracy system. The system has the representative to rule and act in the form of government. Voting represents the political awareness and political intellection.
- 4) Campaigning for voting that exists only during the election.

Unofficial Political Participation

- 1) Marching protest is a way that a group of people who share the same common of being not satisfied with some decisions made by the government. The protest mostly has certain purposes and goals to show to people their powers and how they want to government to react.
- 2) Political riot mostly happens via demagogy referring to the mistake the government have committed. There are some actions to be taken to show how they go against the government such as striking which affects the economy.
- 3) Sabotage, such as to burn buildings and to endanger lives, are mostly operated under disfavour but it can get government attention and reactions quickly.

²² บุญเรือง บูรภักดิ์, “การมีส่วนร่วมทางการเมืองในการปกครองระบอบประชาธิปไตย,” *รัฐศาสตร์* 34, 10 (ตุลาคม 2539). [Boorapak, Boonruang. “Political participation in democratic regime,” *Rattasapasarn* 34, 10 (October 1996).]

- 4) Revolution is a radical change that can occur and convert the political system quickly and severely. Revolution can be the consequence of an economics crisis, political issues, or even from the people who can no longer put up with the depression that they finally create a revolution.

The concept of civil society and political participation can be used in explaining the rights to protest in the United Kingdom where people's expression can be done via these activities. No matter what, such participation will somehow affect people whether majority and minority. It is therefore important to discuss the scope of and limitation to it.

Civil Disobedience²³

John Rawls define civil disobedience as the public act free from violence, full of conscious, yet politically-inclined and at the same time go against law with a goal either to alter laws or government's policy. According to this thinking on civil obedience, seven properties²⁴ can be derived:

1. It is an act violating laws or an act intended to violate laws.
2. It is without violence.
3. It is an open act, public and announced to the state before hand.
4. There is a willingness to accept punishment resulting from such perpetration.
5. It aims to induce change in policy, laws and regulations of the state to be more justified.
6. It intends to bring sense of true justice to the majority in the society that may overlook or perceive such justice wrongly.
7. It is connected with sense of justice that is part of law and social institutions.

²³ Gosling, David. "Rawls in the Nonideal World: an Evaluation of Rawlsian Account of Civil Disobedience" in Crisp, Roger and Warner, Martin. eds. Terrorism, Protest and Power (Hampshire: Edward Elgar, 1990), p. 81-93.

²⁴ สุรกิจ ปัญญาวิวัฒน์, อารยะชัดขึ้น กับ Civil Disobedience และความสับสน[ออนไลน์], 18 เมษายน พ.ศ. 2549. แหล่งที่มา: <http://www.nidambe11.net/ekonomiz/2006q2/2006april18p5.htm>. [Panchavini, Surakit. Civil Disobedience and Confusions [Online], 18 April 2006. Available from: <http://www.nidambe11.net/ekonomiz/2006q2/2006april18p5.htm>.]

From such definition and properties, the civilisation within the proceedings of civil disobedience lies within the non-violence act, both upon oneself and upon others. The perpetrator that goes against the law requesting for such change are willing to accept the punishment. This is in contrast to thieves and criminals in that the latter resist the authority and seek escape from the consequent apprehension.

As civil disobedience reflects politics under democratic regime and shows the respect toward legal system, there should be a legal arrangement for violation of law, which should concur with the constitution under democratic regime. By regulating civil disobedience, two problems are targeted: one, such regulations will be an alternative for individuals to harmonise the conflict that might happen between the individuals' consciousness and their duties to obey the laws; and, two, they will serve as principles for reasoning the act in case of injustice. The acceptance of just civil disobedience that is within the limit of fidelity to law should be treated as the maintenance of constitution's stability, despite the illegal nature of civil disobedience.²⁵

To conclude, Rawls seeks to reason civil disobedience, which might result in an illegal act, by differentiating it from normal legal perpetration and pointing toward the positives and benefits to the society.

The thinking on civil disobedience therefore tries to explain the elements and the reasoning behind an action originating from the feeling toward injustice or the urge to create change within society. As civil obedience is one of the civil society mechanisms that people use to bargain with the authority, violence might ensue, regardless of the legality of such action. Nevertheless, the nature of civil disobedience does not aim to or want to create violence. The confrontation with the authority and the law enforcement, on the other hand, might necessitate the fight against the authority. Therefore, civil disobedience, as one form of resisting the authority, can be used in explaining the protest of people, which is the subject of this thesis.

²⁵ Thomassen, Lasse. Deconstructing Habermas (London: Routledge, 2008), pp. 95-119.

2.3 Freedom of Expression and Freedom of Assembly and Association

In the Human Right Act 1998, there are many criteria which describe the fundamental rights of individuals. The relevance of this study is in the Article 10 and 11, which provides support for the rights to protest of the individuals.

Freedom of Expression

Freedom of expression is a vital element of democratic rights and freedoms, which are crucial in empowering democracy to work and public participation in decision-making. It is essential to democracy, individual dignity, and polity of participation as well as accountability. Citizens are not able to express their views freely and cannot exercise their rights to vote effectively or even take part in public decision-making if they do not have free access to information and ideas. Besides, violations of freedom of expression are often related to other violations, especially the right to freedom of association and assembly.²⁶

According to the European Court of Human Rights (ECHR), freedom of expression is protected by article 10 and deemed one of the essential foundations of democratic society. It promotes free flow of information and ideas to protect not only the information and ideas, which are favourably or regarded as inoffensive, but also those that shock, offend or disturb certain population or the state as a whole. Article 10 establishes give importance to limiting the power of state in restricting freedom of expression, particularly in the areas of press and broadcasting freedom, political expression, defamation, privacy, national security and demonstrations. Freedom of expression also promotes ideas of pluralism, tolerance and broad-mindedness, which the Court sees as central to democratic process and to personal development of individuals.

The ECHR Article 10 of the convention provides:

1. 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of

²⁶ Human Rights Education Association (HREA), Freedom of Expression [Online], 1 October 2010. Available from: http://www.hrea.org/index.php?doc_id=408

frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of reputation rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'.²⁷

Freedom of expression constitutes one of the essential foundations of democratic society and one of the basic conditions for its progress and each individual's fulfilment. Article 10(1) sets out basic rights and specifies the circumstance in which the rights may be limited. Freedom of expression is referred as freedom because it is to be enjoyed without interference by public authority. The Court treats Article 10(1) as encompassing any action or inaction intended to have expressive content.²⁸ Artistic works including films, licensing of cinema are covered and permitted. Participation in a demonstration, even though takes a form of obstructing people from acting lawfully, are expressive acts, which allow people to identify themselves with a set of opinion and value. It therefore falls within the idea of expression. The right to communicate and the right to receive information and ideas give protection to publication of materials that government considers prejudicial to national security. However, rights to seek such information are not covered by this Article.²⁹ Broad interpretation is thus needed in interpreting the scope and meaning of freedom of expression: Article 10(1) does not depend on it being justified as restricting freedom under Article 10(2).

Subjected under Article 10(2), the freedom of expression is applicable not only to "information" or "idea" that is favourably received, but also to those that

²⁷ Coppel, Jason. 'Appendix 1 Article Part I the Convention Rights and Freedom: Article 10' in The Human Rights Act 1998: enforcing the European Convention in the Domestic Courts (Chi Chester: John Wiley & Sons, 1999), p. 412.

²⁸ Feldman, David. Civil Liberties and Human Rights in England and Wales 2nd ed. (Oxford: Oxford University Press, 2002), p. 753.

²⁹ *Ibid.*, p. 754.

offend shock or disturb. Such offences, shocks and disturbances thus require by nature pluralism, tolerance and broad-mindedness in order to maintain a peaceful democratic society. Freedom of expression, according to Article 10, is subjected to a number of exceptions, which must be narrowly interpreted. The adjective “necessary”, within the meaning of Article 10(2), implies the existence of a pressing social need, particular to each state and specific circumstances. Despite the states’ ability to form such necessity and thus restricting the rights to freedom, European supervision remains intact in order to maintain the uniformity of the law. The court is therefore empowered to give the final ruling on whether a “restriction” is reconcilable with freedom of expression as protected by Article 10. On the other hand, Article 10(2), with the aim of contained freedom under the basis of social order, defines in more details the types of interference that it permits under certain circumstances, which include “formalities, conditions, restrictions or penalties.” One prominent implication is that all of these are in breach of Article 10 unless they fall within the limits of Article 10(2). That the wide-ranging nature of the rights to freedom of expression results in the overlap and contradiction with other rights and freedom, hence, is inevitable.

One exception should be noted: it appears that an individual or body may contract-out of Article 10 so that a restriction or penalty upon free expression will not be equivalent to interference within Article 10(1).³⁰ The breadth of the interpretation according to Article 10(1) means that the vast majority of applications succeed in establishing an interference with freedom of expression also fall to be determined under Article 10(2). Besides, Article 10(2) furthers this exercise of the freedom ‘carries with it duties and responsibilities’ principle by allowing state to restrict freedom of expression under certain conditions. The exception must be describe by law which pursue one of the legitimate aims for a restriction exhaustively listed in Article 10(2), and be essential in a democratic society.³¹

The Court’s task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the

³⁰ Coppel, Jason. The Human Rights Act 1998: enforcing the European Convention in the Domestic Courts (Chi Chester: John Wiley & Sons, 1999), p. 331.

³¹ Feldman, David. Civil Liberties and Human Rights in England and Wales 2nd ed., p. 755.

decisions that authorities delivered. This does not mean that the supervision is limited to ascertaining whether the state exercised its discretion reasonably and in good faith; what the Court has to do is to look at the interference and determine whether it was proportionate to the legitimate aim pursued. In giving such rights, the court has to satisfy itself that the national authorities applied standards which were in conformity with the principles of Article 10 and that they based their decisions on an acceptable assessment of the relevant facts.³²

A number of provisions are designed to give effect to the responsibilities which, as the international instrument note, freedom of expression carried with it. The law of defamation protects people's reputation against untrue or unfair attacks. It mainly affects the press, broadcasters and publishers. Other rules which seek to prevent the irresponsible exercise of free speech include rule to protect people against unfair pressure to adopt or change opinion, or to prevent people from using a privileged position to peddle their ideas from a more advantageous position than is available to competitors. This involves a restriction on free exchange of ideas, and a derogation from general principle in favour of free expression derived from civil liberties. However, it has often been thought to be permissible in order to prevent people who have position which give them special authority from abusing their position by seeking to impose their opinions on others who are vulnerable to suggestion. The resulting limitations on freedom of expression represent a form of paternalism, achieved by imposing obligations to present balanced accounts of controversial matters to those under their charge.³³

The United Kingdom prided itself in adhering to a form of representative democracy. Some fundamental values are inherent to representative democracy, which gives rise to the democratic society. The Human Rights Act 1998 propels the re-injection of such values into the UK's political structure. Once internalised by administrators and legislators, it will contribute to a sound ethical base for political and constitutional decision-making. The Convention affect two sets of values: firstly, general legal values and distinctive public values. The former, which spans both

³² Coppel, Jason. The Human Rights Act 1998: enforcing the European Convention in the Domestic Courts, p. 334.

³³ Feldman, David. Civil Liberties and Human Rights in England and Wales 2nd ed., p. 787.

public and private laws, include autonomy, dignity, respect, status and security. These are predominantly individualistic giving them the capacity to contribute to social life. Secondly, distinctively public values, which help maintaining the conditions for democracy, are such as representative democracy, creation of political elites, and free press. The implementation of the Human Rights Act nonetheless covers rules of law and associated supervisory systems, which are designed to control abuse of power as well as ensured transparency in decision-making. The case laws of the European Courts of Human Rights in respect of freedom of expression under Article 10 give more weight to political expression than other form of expression due to the importance of democratic society in context of the Convention rights.³⁴

To my perception, according to the definitions and meanings discussed above, liberties to express themselves freely are an essential instrument that will help government shaping the application and development of law on freedom of expression. The freedom of expression is an activity that is absolutely essential to democracy; it is the rights of individuals to express their opinions. If choice of values is taken seriously, it will be sufficiently important for them to be able to express such values through words, writing or any actions. Similarly, it is their rights to choose to live according to their choices, to the part they have chosen. Expression can be from within and surfaces through selected choices and values that one accepted—persona or identity. These rights of expression are extremely broad and thus make people use their rights subconsciously. The width of this scope raises a question on the justification and restraint of using such freedom. For this reason, domestic and international laws prescribe restriction on how people can express their opinions under the scope of law and order. As difference in norms and values exists, freedom of expression is very difficult to be interpreted unanimously or to even to harmonise analogous rights. In considering the freedom of expression, circumstances and factors are used as criteria in categorising expression. Expression can be subdivided into three categories: political, commercial and artistic expression.

³⁴ Ibid., p. 105-106.

Political expression

The focus of the study is political expression. Two related parties are people and the authority. While the latter may occasionally see people expressing their political concern as annoyance, it is to be kept in mind that the government is elected by people to represent them and to preserve their interests. People participation is one of the key elements to the success of a democratic regime. Political expression is therefore portrayed as one of the fundamental rights of a democratic system, which give authorities to people to protect their rights in political participation. Political expression thus forms the first stage of higher civil society, which includes public demonstrations, public protest and political speech.

Political expression should not be interpreted or looked at unilaterally; it is wide and multifaceted. It includes not only high politics, but also discussion subjected to any public concern, which includes political speech. For this reason, the Court gives protection to political speech as the Court deems such to be an important element in democratic society. Restriction of rights is therefore curbed to minimum. Freedom of press is of particular concern due to its function as a “public watch dog.” This is especially of importance before and during elections. Political expression and political speech are cores to the dissemination and the existence of opinions. Here, Article 10 is in conjunction with Article 3 of the First Protocol to the Convention, which ensures freedom of expressing opinions of people.³⁵

Freedom of Assembly and Association

Freedom of assembly is the rights of people to form groups, to organise or to assemble with an aim of addressing common issues and concerns without fear of government’s harassment or intrusion. Neither freedom of assembly nor freedom of association encompasses the rights to share, informally, the company of others, although the rights to private life and/or freedom of expression might be relevant.³⁶ Besides, this freedom is inextricably tied to freedom of speech and religion, and to petitioning the government.

³⁵ Coppel, Jason. The Human Rights Act 1998: enforcing the European Convention in the Domestic Courts (Chi Chester: John Wiley & Sons, 1999), pp. 339-341.

³⁶ *Ibid.*, p. 353.

Assembly, whether they are groups of striking workers, anti-war pacifists or LGTB marchers, has its own purpose of expressing their common beliefs and points-of-view. If people are not allowed to assemble, freedom of speech is minimised as appeared merely in form of conversation or group discussion, which is a restrained form and is not capable of delivering their messages to the mass. Freedom to assemble is therefore vital to freedom of speech. Furthermore, in case of petitioning to the government, it is important to amass people and propagate their messages. Without permission or freedom to assemble, petition would be crippled and limited for there are not enough people supporting the ideals. Sometimes, rally or marching is the best way to grab everyone's attention. Public method often creates a stir initiating the discussion of such issues. Whether the matters or the subjects at hand are ridiculous or quintessential to the benefits of the public, it is vital that the government allows such freedom of assembly. The only acceptable exception as for the government to interfere such rights or freedom is when such assembly demonstrates a "clear and present danger" to public safety.³⁷

The rights to freedom of assembly and association are protected in international human rights treaties. The ECHR Article 11 of the Convention provides:

1. 'Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administrations of the State'.³⁸

Article 11 gives protection to the related rights of freedom of peaceful assembly and freedom of association. Freedom of association refers to formal

³⁷ Civics Library of the Missouri Bar, Freedom of Assembly[Online], 1 October 2010. Available from: <http://members.mobar.org/civics/FreetoAssemble.htm>

³⁸ Coppel, Jason. 'Appendix 1 Article Part I the Convention Rights and Freedom: Article 11' in The Human Rights Act 1998: enforcing the European Convention in the Domestic Courts, p. 412.

assembly through organisation, whether of political or social causes. Examples of such are trade unions, political parties and NGOs. On the other hand, freedom of peaceful assembly refers to a looser, less formal act of physical congregation disregard of their purposes whether political and social purposes.³⁹ These rights cover a number of issues. Mass protest is a potent symbol of the exercise of this right. Freedom of association under Article 11, particularly its application on trade union rights, is guaranteed under many international human rights treaties such as the council of Europe's European Social Charter and the Conventions promulgated by the International Labour Organization (ILO). Due to the links between these rights and the well being of labour through the means to acquire or secure economic and social status, freedom of association is given importance as through the definition and elaboration given in a number of international labour laws. Concretely, the framework of the ILO includes the rights of workers and employers to form organisations and to bargain collectively.⁴⁰

Freedom of peaceful assembly, as part of fundamental rights, to be considered protected by Article 11, must meet two specific conditions. The first condition is that the assembly must be organised with a peaceful intention. If the intention is to create social disturbance or violence, it is not considered peaceful assembly. However, if violence results in violence by others, the assembly can still be considered peaceful. The second condition is that the assembly has no rights to march through public places or to assemble only for social purposes.⁴¹

The protection given to freedom of assembly according to Article 11(1), however, does not eliminate all state control over public assembly. A ban on protest or demonstration and a penalty on those that participates in such acts are clearly against Article 11. Nevertheless, it can be justified if the justifications provided in Article 11(2) are met. For instance, a requirement established by the government for

³⁹ Ibid., p. 353.

⁴⁰ Human Rights Education Association (HREA), Freedom of Assembly and Association[Online], 1 October 2010. Available from: http://www.hrea.org/index.php?doc_id=406

⁴¹ Coppel, Jason. The Human Rights Act 1998: enforcing the European Convention in the Domestic Courts (Chi Chester: John Wiley & Sons, 1999), p. 354.

protestor to notify the police or seek authorisation for an assembly does not violate Article 11(1) if its purpose is to let the police prevent violence that may occur.⁴²

While the negative obligations of Article 11 prohibited the government from restricting the freedom of assembly as explained earlier, the Court also interprets the Article as to have positive obligations toward the freedom. The state has duty to ensure that people are allowed exercise such freedom through their power such as the facilitation and protection for ones to assemble and to ensure that the assembly will be peaceful and lawful and does not create social disturbance.⁴³

Under English law, freedom of assembly, which refers to the right to assemble and protest in public places, must be narrowly interpreted. Many find that such freedom is so limited or even exists due to the restriction placed upon this freedom in many recent events in the country. For instance, the protest can only be in the public spaces: a protest on private properties is a trespass and highway cannot be used as it obstructs the passageway of vehicles. Freedom of assembly is restricted by other common laws, especially the breach of the peace. The law gives power to the police to restrain people from an act whether it is a protest or a march that might result in the breach of the peace, which covers a broad range of actions. It constitutes “a breach of the peace wherever harm is actually done or likely to be done to a person, or in his presence, to his property, or a person in fear of being so harmed through an assault, an affray, a riot, an unlawful assembly or other disturbance.” It is debated that whether the breach of the peace falls within the “prescribed by law” requirement in Article 11(2). The power to bind over good behaviour might not satisfy such requirement.⁴⁴

Freedom of association refers to the rights to establish and to join association. Political parties, trade unions, pressure groups and religious bodies are examples of such. Professional regulatory bodies such as those monitoring doctors, lawyers and architects are not included due to its nature and importance and not covered under Article 11. However, associations of other profession such as taxi drivers, even though with some regulatory power, are subject under Article 11.⁴⁵ The right of

⁴² Ibid., p. 355.

⁴³ Ibid.

⁴⁴ Ibid., pp. 357-358.

⁴⁵ Ibid., pp. 359-360.

individuals to form and join trade unions for the protection of their interests is covered under Article 11.

Article 11(2) allows for special treatment as in restricting the freedom of association in case of armed forces, the police and the state administrators. This is due to them being subjected to lawful restrictions. A total withdrawal of such rights is allowed. Furthermore, restrictions on except categories of state employees will not be saved by the provision in Article 11(2) when they do not go along with Article 11(2) as a whole. It is therefore important to differentiate those that fall into the category of the members of the administration of the state and those that do not.⁴⁶

The author believes that freedom of assembly and freedom off association are significant activities in a democratic system. Peaceful assembly is a pleasant element in the process of growing modern democracy. Similarly, demonstration or protest, whether peaceful or violent, is part of growing civil society. Overall, the outcomes depend on sensible conscious and recognition of their rights in political participation and political expression.

2.4 Protest and Public Order

During the twentieth century, political participation has been exploding.⁴⁷ The scope and the amount of political participation have grown tremendously. The freedom to assemble and protest is valued by many people and groups who want to exercise it for their own purposes.⁴⁸ Protest, as an activity, has value as a form of self-expression, which lies in its role as central to democracy. Protest, like other expression, is used as a form for people or a group of people to participate in the political process. It is an effective choice in allowing themselves to be heard, particularly when they lack access to media to communicate with the public.⁴⁹

Nowadays, from a basic communal level, people have the freedom to available choices of opinions and policies and thus there are more choices for them to identify themselves with the right policy. As an assertion of demand for that right policy,

⁴⁶ Ibid., pp. 366-367.

⁴⁷ Andrain, F. Charles and Apter, E. David. 'Introduction: People in Protest' in Political Protest and Social Change: analyzing Politics(London: Macmillan Press Ltd, 1995), p. 1.

⁴⁸ Feldman, David. Civil Liberties and Human Rights in England and Wales 2nd ed. (Oxford: Oxford University Press, 2002), p. 1008

⁴⁹ Ibid.

citizens can vote, join protest or even support a revolution. At the state level, dissenting public expression keeps the government responsive to public opinion and discourages officials from behaving improperly. The movement of public expression together with people's political consciousness creates an environment in which government is vigilantly watched, evaluated and scrutinised. Demonstration, marching, boycott, sit-in and fights with police have become frequently used tactics to gain opportunity in voicing their demands.

When facing public authority, dissidents have to choose among different types of tactics: violent or non-violent, public or covert, organised or spontaneous and single or group up with other groups, parties or government agencies.⁵⁰ The threat of state punishments will correspond with the tactics and decision made. Higher level of threat would consequently deter individuals that cannot afford high risk. Similarly, higher degree of state repression also reduces the rate of success. Non-violent strategies, such as electoral campaigning, voting, petitioning, demonstrating and boycotting, are thus preferred to more violent tactics like property damage, physical assault, and assassination. Not only are there more willing participants, the image of the group is also positive and could gain more support once others have seen their actions and understand their objectives.

Public policies may constitute an intervening variable in political protest and social change. These include economic poverty, state disintegration, communal violence, ethnic separation, religious intolerance, and ecological devastation. These problems faced by the expectation of conflicting groups, whether government-public or public-public. It is the responsibility of the government or public policymakers to formulate solutions to solve or at least compromise the problems.

The structure of rights to protest should be different from the rights of assembly and association and freedom from arbitrary interference with liberty.⁵¹ Freedom of assembly and protest comes with costs of other freedoms, which depends on the context of the situation.⁵² Disturbed freedoms are such as privacy, freedom of movement and freedom from physical attack or abuse. The perception of opportunity

⁵⁰ Andrain, F. Charles and Apter, E. David. 'Introduction: People in Protest' in Political Protest and Social Change: analyzing Politics, p. 3.

⁵¹ Feldman, David. Civil Liberties and Human Rights in England and Wales 2nd ed., p. 1008

⁵² Ibid.

leads some individuals to join the protest campaign if they view the opportunity as favourable to realising their political objectives. This may be danger to the government as the protest could be filled with those with ill willed who are not of common goals of most protestors merely infiltrating and using the protest for criminal activity such as terrorism. It is therefore of utmost important to not give the same freedom given to assembly and association to protest.

There is always a yearning for citizens to be free from annoyance and disorder in every society and that creates a tension between these groups of citizens and the protestors. For people to be free to bring to the attention of their fellow citizens to matters, freedom should be given as more people might agree or join in. This creates a great of political participation. On the other hand, there exist peace-lovers who disagree with the protests at all cost and would like to escape from such persuasion to join the group or the news report on it. This freedom of the protestors to express their point of views or the persuade people is the problem to society as this would inevitably collides with other people's right to be free of that sort of persuasion, and of its accompanying annoyance or even offence. It is therefore imperative for the legal system to resolve such tension and strike the right balance between the two opposing parties. This is the job of lawmakers to decide whether the benefits of society being free from unwanted persuasion or disorder outweigh the benefits from free expression of opinions and persuasion. As tolerance is the indication of attitude toward pluralism and different sorts of freedom, freedom to expression, whether protest or not, should be respected. A society that tolerates a good deal of annoyance or disorder so as to encourage the greatest possible freedom of expression, particularly political expression, is likely to be one in which the public and political activities of citizens are regarded as contributing to healthy democratic system.

At the heart of democratic system is the rule of law. This means that people protect their liberty in a society through a check on abuses of private and government power and providing equal access to all citizens and a clearly defined procedure for formal justice.⁵³ It is Law and Order that is the underlying principle that a government exercises its power and that must correspond to clear, objective, and publicly

⁵³ Dun, Frank van. Hobbesian Democracy[Online PDF file], 25 October 2010. Available from: http://www.users.ugent.be/~frvandun/T_exts/.../Hobbesian%20democracy.pdf

disclosed laws. This will yield consistency, predictability, and transparency, the characteristics that laws should have. Laws must be adopted and enforced through established procedures in order to create a strong foundation for social order. Well-written laws are a first step to it, as the laws will lead to accessible and accountable institutions. The government and its officials and agents must therefore be accountable under laws.⁵⁴ Due process by which the laws are enacted, administered, and enforced needs to be accessible, fair, and efficient. Accordingly, institutions must be created or reformed as to ensure equality and to protect human rights and freedoms. Individual rights along with justice are essential to democratic society as human rights allow people to exercise their fundamental rights without abusing it. Legal protections make it possible for people to enjoy freedom of speech, assembly, and movement as well as other human and political rights.

My observation is that protest and public order must be linked in the way such that one complements another. The protestors have to realise the limit to their expression. Public order is the set of rules to control social mass to respect in individuals and also to shape society within the framework of law and order. Everyone has one's own liberties, freedom of expression and fundamental rights. However, those liberties must be under the notion of citizenship and their duties as prescribed by law. Protest can be done under the restriction and limitation prescribed in domestic law and also at the same time universally under international conventions and agreements.

⁵⁴ Holden, Barry. Understanding liberal democracy 2nd ed.(New York: Harvester Wheatsheaf, 1993), pp. 23-29.

CHAPTER III

RIGHTS TO PROTEST AND SOCIAL ORDER

Allowing citizens to engage in the public protest is one significant part of a democratic society. Rights to protest is rights of individuals that can be exercised within the boundary of human rights, which is guaranteed by the Universal Declaration of Human Rights article 20 and the European Convention on Human Rights (ECHR) article 11 freedom of assembly. These guarantee individuals to have the rights to express their needs. Of which, this mentioned expression is the use of rights that can be made in protesting. This is the use of freedom of individual as explained briefly in Chapter 2—Freedom of expression and freedom of assembly and association. Protest is the expression of discontent and the opposition toward a particular event or policy that affects society as a whole or part or group of persons or individuals. The cause of protests can come from many factors: a subject of wide interest, daily weather, walks of day, natural disaster, weapon test, chemical testing in animals, laws, military and many more. All of which can be a subject igniting a protest, however whether it will happen or not depends on people's understanding of individual rights and how much the country gives freedom of expression to its citizens.

This chapter will examine the rights to protest in the United Kingdom. The first part of this chapter presents example cases from each of the following regions: England, Northern Ireland, Scotland and Wales. These selected cases are merely certain representation of protests in each of the regions. The author chooses cases that interest the author, particularly in terms of the rulings and the appellant's petition. Each selected case has different causes and goals, which consequently results in different characteristics of each case.

Despite the difference, all of the selected case-law shares a common characteristic, which is the exercise of freedom of expression and freedom of assembly and associations. Such expression—i.e. protest—that happened is a case that was through legal procedures of the courts due to the disagreement with and

negligence of the authority's request for cooperation, whose power to observe and control protest and assembly in the United Kingdom. Such power of the authority is endowed and prescribed by law in keeping the order of the society and maintaining the rules of law. This will then be explained the second part of this chapter.

In part two, the author presents laws on freedom of expression, freedom of assembly and association and public order act that are related to protest and assembly. This part will contain the examination of boundary and guideline given as to provide freedom of expression to individual as to render widely acceptable rules creating social order. Each individual or group of individuals must be able to express their opinions, which can be different, but within legal boundary and not disturbing social orderliness.

3.1 Example of the protest (Case-law).

This part constitutes four selected case-laws that are inherently related to protests and rights to protests. The cases are from England, Northern Ireland, Scotland and Wales. Abstract of all four case-laws can be found in Appendix B of this thesis.

I. England - Austin (FC) & another v Commissioner of Police of the Metropolis

In Austin (FC) & another v Commissioner of Police of the Metropolis, Austin made an appeal to the court that she was deprived of her right to liberty during her participation in the demonstration in 2001. The police, in order to maintain public order, used cordon to surround the demonstrators. Austin stated that she was prevented from leaving the area due to the cordon for seven hours and thus it is a breach of her right under Article 5(1) of the Convention to liberty.

According to the police, the use of cordon was proportionate. The police expected a confrontation with 500 to 1000 hard-core demonstrations together with numerous less head-strong demonstrators. The organisers of the demonstration also do not conform to the rules regarding demonstration by informing the police before hand. The demonstrators refused to cooperate with the police in order to maintain public order. The event created a disturbance to the area and the people in the area, which was not prepared for or notified of such event. Therefore, in order to prevent violence, injury to people and damage to properties, it is necessary and of no

alternative to use the cordon rounding the demonstrators. This is not a decision made in advanced. Rather it is made in order to prevent the escalation of situation. About after seven hours, the demonstrators are released from the cordon. The judge determined that the police had no intention of holding the demonstrators longer than was necessary, which is to the purpose of such reliance to the any measures used that would breach people's liberty. Lord Neuberger of Abbotsbury summarises that:

- "The cordon was imposed purely for crowd control purposes, to protect people and property from injury;
- The cordon was necessary as many of the demonstrators were bent on violence and impeding the police, and its imposition was in no way attributable to policing failures;
- The purpose and reason for imposing the cordon were at all times plain to those constrained within it;
- The cordon lasted for as short a time as possible; during its imposition, the police attempted to raise it on a number of occasions, but decided that it was impractical;
- The inclusion of the appellant and the demonstrators constrained with her within the cordon was unavoidable;
- Those who were not demonstrators, or were seriously affected by being confined, were promptly permitted to leave;
- Although the appellant suffered some discomfort, it was limited, and the police could not have alleviated it; further, she could move around within the cordon;
- The appellant knew in advance that many of the demonstrators intended to cause violence, and that the police were concerned about this."

The key point to this appeal is whether such deprivation of liberty through the use of cordon in this instance is contrary to Article 5(1) of the convention or not. Taking into consideration the circumstance and the practicality, the House of Lords discuss and interpret the intention and coverage of the Article as well as its application in this instance. The House of Lords state that "If measures of this kind are to avoid being prohibited by the Convention therefore it must be by recognising that they are not within the ambit of article 5(1) at all. In my opinion measures of

crowd control will fall outside the area of its application, so long as they are not arbitrary. This means that they must be resorted to in good faith, that they must be proportionate and that they are enforced for no longer than is reasonably necessary.”

The House of Lords, therefore, dismissed this appeal. The reason is that the demonstration caused public nuisance and the demonstrators had intention to involve in the use of violence. The appellants all knew beforehand that the level of the violence had escalated and could be avoided. Due to the happened violence, the police had to use their power ordering the dissolve of the demonstration. The demonstrators must be prosecuted and gone through the court procedure. The police, as the authority, must apprehend the demonstrators. Despite the rights to expression given to individuals that are conclusive and the freedom of expression that allows for expressing different opinions, the expression must not disturb social order. No assets and properties shall be destroyed. No life shall be harmed. In this case, even though no assets were harmed or destroyed, inconvenience and disturbance as a result of the demonstration existed. Such inconvenience and disturbance could lead to numerous losses that were addressed earlier. That the police proceeded with the prosecution of the demonstrators is the use of absolute power endowed by the laws in keeping social order. The appeal was therefore dismissed. After the House of Lords had derived opinions from deliberating evidence, facts and alibis, the defendants are found guilty as being prosecuted. An argument on the basis of endowed rights is not acceptable as the defendant had thorough understanding of the situation and had made a deliberation to join and not withdraw selves from the assembly. Therefore, once the prosecution occurred, it was not possible to make an argument on such basis. The intention of Public Order Act is to give rights to individual in expression and assembly without creating social disturbance. It creates a frame in which individuals can exercise their rights rightfully without limiting or constraining the rights of individuals. It operates as a legal framework that allows different ideas and expressions to be presented in a socially acceptable form.

II. Northern Ireland - Tweed v. Parades Commission for Northern Ireland (Northern Ireland)

The moot point of this appeal is whether the discovery of five documents held by the Parades Commission should be ordered for purposes of Mr. Tweed's application for judicial review to the extent that such application turns on a proportionality argument under the Human Rights Act 1998 and the European Convention on Human Rights.

The House of Lords of Appeals' opinions allows the case to be appealed as Mr. Tweed's parade was under the framework of law. In this parade, only a few number of the locals participated and the police was able to control its orderliness. As Mr. Tweed did not create disturbance or incur any loss due to his activity, why should his parade be unacceptable when the Human Rights Act under Article 9, 10 and 11 guarantees rights of individual in this respect. While the parade might result in traffic jam and cause inconvenience and consternation to the locals living in the area and those using the roads, Mr. Tweed's parade went accordingly with legal framework, which allows for such doing as an expression of individual. Legal restriction, on the other hand, makes this an interesting case. How much should the rights be restricted? Normally, in unveiling the details of the case, the committee must consider that in doing so to the appellant would be to the case as a whole. This allows create transparency and a guarantee to justice of the law. In this case, the appeal is effective. The use of power to control the area and deal with the participants is legitimate according the Public Order Act. However, in this case public immunity is not jeopardised; therefore this case is the consideration of the rationality of restriction in effect. The request to reveal the information in five documents of the Parades Commission for Northern Ireland would have an effect on Mr. Tweed in the case appealed. The reveal of information to the appellant, Mr. Tweed, will make him acknowledge which article he violated and into which guilt he fell within any law or that prescribed by law. This will be an advantage for the appellant appeal. Normally, such request is not allowed. It must be appealed case by base. As this case is about rights of individual to parade (protest) and the involved party is state authority, the examination and consideration must be impartial as law in certain respect is for protection against infringement. The appeal is thus allowed.

III. Scotland - Bruce William Scott Hamilton v Procurator Fiscal

This case involves a protest in a small scale. Nevertheless, the rights to protest are examined in regard to peaceful protest. Mr. Combe, who runs a waste disposal business in an area away from his residence, was for several times prohibited access to his house in Gartocher Terrace by the locals. The reason for such protest is the fear that Mr. Combe might use the ground surrounding his house for purposes connected with his business, namely waste disposal. Despite the denial and explanation given in written to all the residents in the street, the access to his house is frequently blocked. Furthermore, his residence and the surrounding area is vandalised and as well as placed with obstructions prohibiting access to the area. Such doing results in Mr. Combe as well as those that need access to the house annoyance and upset.

In this case, the appellant was prosecuted due to the refusal to co-operate with the authority in removing the barricade blocking the entrance to the area. Even though such act was a peaceful protest, which does not resort to a use of violence, the appellant's action resulted in nuisance and inconvenience to the ones that need access to the road, particularly the house of Mr. Combe. The police gave explanation why such action is not allowed as it is the violation of rights of individuals in rightfully accessing public entrance-exit. While a number of protestors did accordingly to the police's request and removed the bins that blocked the access and withdraw from the scene, the appellant does not.

The appellant is prosecuted according to law as the infringement on other individuals is under the framework of criminal offences. In conclusion, the blocking of area creates inconvenience to others is illegal. It cannot be said that such action does not bring about the breach of peace because a peaceful protest does not create social disturbance or public nuisance. This incident, however, had high potential to further upset and alarm bystanders and onlookers as well as create disorder. Despite the lack of support through the available evidence for such potential, the existing evidence confirms the creation of nuisance and inconvenience. Therefore, the appeal and question that the appellant requested are responded through the court opinion and legal affirmation.

IV. Wales - Tabernacle v Secretary of State for Defence

The Aldermaston Women's Peace Camp (AWPC) is a group of women protesting against nuclear weapons at Aldermaston. As part of their protest, they assemble on the land around the research establishment on the second weekend of each month from Friday evening to Sunday morning holding vigils, meetings and demonstrations, and handing out leaflets. The camping has been part of their actions for over 23 years. Their protest has always been peaceful. In details, the camping has been done in the area called "controlled areas," which is open to the public at least since 1986. The controlled areas are in contrary to the "protected areas," which public entry is prohibited and situated in the same vicinity. The camping in the controlled areas has been done continuously until the annexation of the area into one of the controlled areas according to 2007 Byelaws. The annexation made their political expression, which has been done continuously and legally, illegal.

In this case, the appellant stated that the 2007 Byelaws calling "the Controlled Areas" which is in an area owned by the respondent Secretary of State under Article 7(2)(f) of the 2007 Byelaws violates their rights under Article 10 and 11 of the Convention of Human Rights Act. The AWPC used their rights to political expression as given to individual rightfully in peaceful protest and does not create in social disturbance. The 1986 Byelaw also was never used against AWPC. Therefore, the protest is an act according to the norm and form as usual. This case is interesting in bringing up the subject of Article 10 and 11 of the Convention of Human Rights as in reasoning, substantiating and weighing the appeal through the support of such international law. The 7(2)(f) of the 2007 Byelaws instead is the violation of individuals' rights. In consideration the reasoning of the protest in question, such political expression of the AWPC does not aim or intend to create violence, disorder or public nuisance as demonstrated by the evidence showing the activity of the past years. Therefore, for the reasoning of national security and public safety of the 2007 Byelaws, there is no enough relevance to submit a case on this basis against the individuals participating in the AWPC. The appeal of this case is therefore allowed for this reason.

These case studies depict types of protest that could arise and turn into a case. Some escalates from peaceful protest into violent disorder, which requires police to wield their authority controlling the protest. Some creates an impact on others as in conjuring the feeling of upset, alarm and disorder among bystanders and onlookers. That the protest turns into a case is because the denials to conform to the request of state authority, which is the observer that will take care and control the protest. In short, these cases are the result of such denials to the authority.

3.2 Social Order

In this section, the author would like to begin with the fundamental freedoms and human rights under the ECHR, which form parts of English laws by virtue of the Human Rights Act 1998 in discussing expression and public protest. Crucial to the discussion are Article 10 and Article 11 of the ECHR.

The ECHR Article 10 of the convention provides:

1. 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of reputation rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'.¹

The rights to freedom of assembly and association are protected in international human rights treaties. The ECHR Articles 11 of the Convention provides:

¹ Coppel, Jason. 'Appendix 1 Article Part I the Convention Rights and Freedom: Article 10' in The Human Rights Act 1998: enforcing the European Convention in the Domestic Courts(Chi Chester: John Wiley & Sons, 1999), p. 412.

1. 'Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administrations of the State'.²

The European Human Rights Act 1998 gives and explains the boundary of freedom of expression and freedom of assembly and association, which are the laws supporting individuals to have freedom in expressing themselves and encouraging the use of their rights and freedom. Article 10 and Article 11 of ECHR give supports to the Public Order Act 1936 and Public Order Act 1986 of the United Kingdom, which are the laws relating to the control of protest pre-existing to the ECHR. Also, due to the UK joining the European Union in 1973, English domestic laws must therefore correspond to European Community laws in order to create a social change conforming to that idealised by the Union. The ECHR, which deals with freedom of expression and freedom of assembly and association, is a step further to the existing laws aiming to give a more concrete framework to rights and freedom. Before ECHR, protests in the UK are according to the Public Order Act, which regulate and control public protest. In short, the Act aims at public meeting and processions, freedom of expression and assembly. It gives authority over those against public order, which is characterised by broad police discretion. A range of statutes responding to perceived threats have created various offences that restrict freedom of expression and give the police extensive power to regulate public meeting and processions to prevent imminent breaches of the peace. Under the Human Rights Act, these powers however

² Coppel, Jason. 'Appendix 1 Article Part I the Convention Rights and Freedom: Article 11' in The Human Rights Act 1998: enforcing the European Convention in the Domestic Courts (Chichester: John Wiley & Sons, 1999), p. 412.

must be exercised in accordance with the principle of proportionality to safeguard freedom of expression and association.³

In understanding today's human rights in the United Kingdom, one must not neglect the importance and the influence of the European Convention on Human Rights as well as the involvement of the European Union, that is an area of regional political playing field. It is evident that the UK's membership of the European Union and the influence of the Convention have an enormous impact on civil liberties in the UK. The laws of the European Union gradually encompass numerous human rights aspect such as sexual discrimination, data protection and freedom of movement whether through the agreed concrete legal framework or through the ramification of the frameworks through the rulings of the European Court of Human Rights.

The influence of the rulings of the ECHR nevertheless is inherently limited. The effect of the rulings depends on the local government's application of such rulings. Therefore, the local government, in this case, the British government, has the power to down play and reduce the impact of the rulings through its own interpretation, which nevertheless must go along with that of the ECHR. It must be understand that the membership to the EU brings about the legal play, which means that the old might no longer be compatible. Within the transition period might occur a plea from those suffered loss through the implementation of national law which is incompatible with Community law. It is also must be considered that the UK entered into the EU when the original provisions of the Community requiring the member to respect human rights when implementing the community law and policy. The obligation to human rights was through supranationalism, which forces the laws to be incorporate into municipal law of the UK. However, the ECHR slowly manifest its effect through the acceptance and the position of the UK courts, which is particularly noticeable in the mid-1990s when the UK has become more aware of human rights.⁴

This zeitgeist would soon result in the formalisation of fundamental freedoms and human rights as in the HRA. Depending on each state, the Convention may be incorporate into national law or refer to as part of national law. In some states it has

³ Alder, John. Constitutional and administrative law 7th ed. (Basingstoke: Palgrave Macmillan, 2009), p. 438.

⁴ Feldman, David. Civil Liberties and Human Rights in England and Wales 2nd ed. (Oxford: Oxford University Press, 2002), pp. 74-77.

the status of constitutional law; in others ordinary law. In Britain, the Convention has no binding force until the inception of the HRA, which is a national law conceived to take into consideration the Convention. The British government deemed that it was not necessary for the Convention to be part of British law; rather, the UK constitution was to conform to it. The citizen of the UK therefore has no rights to invoke the Convention before it surfaces in the form of the HRA.⁵

Public Order Act

“The sombre lesson of recent British history is the balance between public order and individual liberty, though its existence is protected by an alert and independent judiciary and an enlightened law, is in its operation the business of the police. At the end of the day standards of police conduct and proper use by the police of their powers means more to society than the theoretical state of the law”.⁶

The opinion above emphasised on the effect of the law and the power of the police, which the widespread acceptance of this thought especially the relative importance the police has been responsible for numerous studies on the subjects. In this thesis, however, the focus on the power given to the police according to the law is not of central importance. Here, the author aims to explore the details of the Public Order Act on how public protest and public assembly should proceed.

An illegal assembly could happen any where, whether on public property or private property. Accordingly, the Public Order Act aims to give control and prohibit those who join or intend to join the assembly or the protest unlawfully. These acts give details on how the police officers could use their power against the demonstrators without abusing the rights to protest and at the same time protect individuals who wield their rights lawfully.

⁵ Fenwick, Helen and Phillipson, Gavin. Texts Cases & Materials on Public Law & Human Rights 2nd ed. (Oxon: Routledge-Cavendish, 2006), pp. 846-847.

⁶ Quoted in Lord Scarman. “The Conflict in Society; Public Order and Individual Liberty” in Papers of the 7th Commonwealth Law Conference: Hong Kong 18-23 September 1983 in Smith, A.T.H. The offences against public order: including the public order act 1986 (London: Sweet & Maxwell: Police Review Pub. Co.; Agincourt, Ont.: Carswell co, 1987), p. 5.

Public Order Act 1936⁷ (this Act does not extend to Northern Ireland)

One aspect of this Act is the prohibition of the wearing of uniforms in connection with political objects by private persons or associations of military or similar characters; and the preservation of public order on the occasion of public processions and meetings in public places.⁸ This act is a particular response to the fear of fascism and communism.⁹ Moreover, this act also delineates responses to particular problems and political agendas. Due to its coverage and the change in situation, the Act had become more restrictive in the following years.

Before going further with the examination of this Act, it is important to create a basic mutual understanding through the familiarity of the meaning of the words used in this act:

“Meeting” means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters;

“Private premises” means premises to which the public have access (whether on payment or otherwise) only by permission of the owner, occupier, or lessee of the premises;

“Public meeting” includes any meeting in a public place and any meeting which the public or any section thereof are permitted to attend, whether on payment or otherwise;

“Public place”¹⁰ includes any highway, (or in Scotland any road within the meaning of the Roads¹¹ (Scotland) Act 1984 and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise.)

“Recognised corps” means a rifle club, miniature rifle club or cadet corps approved by a Secretary of State under the Firearms Acts 1920 to 1936, for the purposes of those Acts.

⁷ Public Order Act 1936 (1936 CHAPTER 6 1 Edw 8 and 1 Geo 6.)

⁸ The National Archives, Public Order Act 1936(1936 CHAPTER 6 1 Edw 8 and 1 Geo 6) Whole Act [Online], 15 October 2010. Available from: <http://www.legislation.gov.uk/ukpga/Edw8and1Geo6//6>

⁹ Alder, John. *Constitutional and administrative law* 7th ed. (Basingstoke: Palgrave Macmillan, 2009), p. 430.

¹⁰ Definition substituted by Criminal Justice Act 1972 (c. 71), s. 33

¹¹ Words inserted by Roads (Scotland) Act 1984 (c. 54, SIF 108), ss. 128(1), 156(1), **Sch. 9 para. 30**

1. Prohibition of uniforms in connection with political objects.

(1) Subject as hereinafter provided, any person who in any public place or at any public meeting wears uniform signifying his association with any political organisation or with the promotion of any political object shall be guilty of an offence:

Provided that, if the chief officer of police is satisfied that the wearing of any such uniform as aforesaid on any ceremonial, anniversary, or other special occasion will not be likely to involve risk of public disorder, he may, with the consent of a Secretary of State, by order permit the wearing of such uniform on that occasion either absolutely or subject to such conditions as may be specified in the order.

...

This section prohibits the wearing of political uniforms in any public place or public meeting without police consent, which can be obtained for special occasions. Uniform includes any garment that has political significance, which could be identified from any of the circumstances or from historical evidence.¹²

2. Prohibition of quasimilitary organisations.

(1) If the members or adherents of any association of persons, whether incorporated or not, are—

(a) organised or trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or of the armed forces of the Crown; or

(b) organised and trained or organised and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object, or in such manner as to arouse reasonable apprehension that they are organised and either trained or equipped for that purpose; then any person who takes part in the control or management of the association, or in so organising or training as aforesaid any members or adherents thereof, shall be guilty of an offence under this section:

Provided that in any proceedings against a person charged with the offence of taking part in the control or management of such an association as aforesaid it shall be a defence to that charge to prove that he neither consented to nor connived at the organisation, training, or equipment of members or adherents of the association in contravention of the provisions of this section.

...

(3) If upon application being made by the Attorney-General it appears to the High Court that any association is an association of which members or adherents are organised, trained, or equipped in contravention of the provisions of this section, the Court may make such order as appears necessary to prevent any disposition without the leave of the Court of property held by or for the association and in accordance with rules of court may direct an inquiry and report to be made as to any such property as

¹² Alder, John. Constitutional and administrative law 7th ed., p. 437.

aforesaid and as to the affairs of the association and make such further orders as appear to the Court to be just and equitable for the application of such property in or towards the discharge of the liabilities of the association lawfully incurred before the date of the application or since that date with the approval of the Court, in or towards the repayment of moneys to persons who became subscribers or contributors to the association in good faith and without knowledge of any such contravention as aforesaid, and in or towards any costs incurred in connection with any such inquiry and report as aforesaid or in winding-up or dissolving the association, and may order that any property which is not directed by the Court to be so applied as aforesaid shall be forfeited to the Crown.

(4) In any criminal or civil proceedings under this section proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the control or management of an association or in organising, training or equipping members or adherents of an association shall be admissible as evidence of the purposes for which, or the manner in which, members or adherents of the association (whether those persons or others) were organised, or trained, or equipped.

(5) If a judge of the High Court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this section has been committed, and that evidence of the commission thereof is to be found at any premises or place specified in the information, he may, on an application made by an officer of police of a rank not lower than that of inspector, grant a search warrant authorising any such officer as aforesaid named in the warrant together with any other persons named in the warrant and any other officers of police to enter the premises or place at any time within one month from the date of the warrant, if necessary by force, and to search the premises or place and every person found therein, and to seize anything found on the premises or place or on any such person which the officer has reasonable ground for suspecting to be evidence of the commission of such an offence as aforesaid:

Provided that no woman shall, in pursuance of a warrant issued under this subsection, be searched except by a woman.

(6) Nothing in this section shall be construed as prohibiting the employment of a reasonable number of persons as stewards to assist in the preservation of order at any public meeting held upon private premises, or the making of arrangements for that purpose or the instruction of the persons to be so employed in their lawful duties as such stewards, or their being furnished with badges or other distinguishing signs.

...

Section 3- 5A of this Act are repealed by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(3), **Sch. 3**

Public Order Act 1986¹³ - Part II (Processions and Assemblies)

Over the times, there has been an exponential increase in the number of protest-related activities, whether it is procession or public assembly. The majority of public processions and assemblies have been peacefully. However, it is not easy for the police to control them.¹⁴ The increasing concern over the conduct of activities has led to the strengthening by Part II of the Act. These provisions, similar to the ones they replace, are preventive in nature and emphasised on the balance between the rights to freedom of expression and of association and the rights to peace in public space and elsewhere.¹⁵

Part II of the Act makes changes and increases the power of police in controlling the meeting and processions. This is the first time there is a national requirement (as opposed to a local one) that the organisers of a procession, but not of an assembly, have to notify the police of their intentions. The police will have the power to impose conditions on the procession, and for the first time on an assembly, both in advance and during the procession or assembly. To impose such conditions, the police must take into consideration the potential “serious damage to property and serious disruption to the life of the community” to prevent disorder according to the 1936 Act; and the senior police officers must reasonably believe that purpose of the persons organising the activity is “the intimidation of others with a view to compelling them not to do an act that they have right to do, or to do an act that they have right not to do”.¹⁶

This is an Act aiming to do away with the common law offences of riot, rout, unlawful assembly and affray and certain statutory offences relating to public order; as well as to control such activities.

The following words are of importance in this Act and need interpretation:

“the City of London” means the City as defined for the purposes of the Acts relating to the City of London police;

¹³ Office of Public Sector Information, Part of The National Archives. (The UK Statute Law Database), Public Order Act 1986 (c. 64)[Online], 15 October 2010. Available from: <http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=2236942>

¹⁴ Card, Richard. Public Order- the new law (London : Butterworths, 1987), p. 57.

¹⁵ Ibid.

¹⁶ Section 12(1) and (b) and 14(1) (a).

“the metropolitan police district” means that district as defined in section 76 of the London Government Act 1963¹⁷;

“public assembly” means an assembly of 20 or more persons in a public place which is wholly or partly open to the air;

“public place” means—

(a) any highway, or in Scotland any road within the meaning of the Roads (Scotland) Act 1984¹⁸, and

(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

“public procession” means a procession in a public place. Moreover, a public place is defined of all roads, footpaths, subways and bridges (including toll bridges or tunnels), other public rights of way and municipal parks.

Advance notice of public processions.

11. — (1) Written notice shall be given in accordance with this section of any proposal to hold a public procession intended—

(a) to demonstrate support for or opposition to the views or actions of any person or body of persons,

(b) to publicise a cause or campaign, or

(c) to mark or commemorate an event,

unless it is not reasonably practicable to give any advance notice of the procession.

(2) Subsection (1) does not apply where the procession is one commonly or customarily held in the police area (or areas) in which it is proposed to be held or is a funeral procession organised by a funeral director acting in the normal course of his business.

(3) The notice must specify the date when it is intended to hold the procession, the time when it is intended to start it, its proposed route, and the name and address of the person (or of one of the persons) proposing to organise it.

(4) Notice must be delivered to a police station—

(a) in the police area in which it is proposed the procession will start, or

(b) where it is proposed the procession will start in Scotland and cross into England, in the first police area in England on the proposed route.

¹⁷ 1963 c. 33.

¹⁸ 1984 c. 54.

(5) If delivered not less than 6 clear days before the date when the procession is intended to be held, the notice may be delivered by post by the recorded delivery service; but section 7 of the Interpretation Act 1978¹⁹ (under which a document sent by post is deemed to have been served when posted and to have been delivered in the ordinary course of post) does not apply.

(6) If not delivered in accordance with subsection (5), the notice must be delivered by hand not less than 6 clear days before the date when the procession is intended to be held or, if that is not reasonably practicable, as soon as delivery is reasonably practicable.

(7) Where a public procession is held, each of the persons organising it is guilty of an offence if—

(a) the requirements of this section as to notice have not been satisfied, or

(b) the date when it is held, the time when it starts, or its route, differs from the date, time or route specified in the notice.

(8) It is a defence for the accused to prove that he did not know of, and neither suspected nor had reason to suspect, the failure to satisfy the requirements or (as the case may be) the difference of date, time or route.

(9) To the extent that an alleged offence turns on a difference of date, time or route, it is a defence for the accused to prove that the difference arose from circumstances beyond his control or from something done with the agreement of a police officer or by his direction.

(10) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

This section requires advanced written notice to be given to the police in case of a public procession “intended to demonstrate support for or opposition to the views or action of a person or body, which is being held to publicise a cause or to mark or commemorate an event unless it is not reasonably practicable to give any advance notice of the procession.” Despite such extending definitions, commercial gatherings, and aimless events are excluded. However, one might question the necessity of the requirement of aim, as any procession has the potential of creating disruption disregard of its purpose.

Processions as part of customs or cultural events and funeral processions are exempted from the notice requirement as the police should already be informed and therefore do not fall within the rational of the requirement. Should a notice is needed, the organisers of the events or the processions must discuss with the police in advance the arrangements for the conduct of the procession, which will alleviate or prevent

¹⁹ 1978 c. 30.

potential disorder. Details to be included in the notice such as date and beginning time of the procession, possible route and name and address of the organiser will facilitate the police and lead to the goal of preventing disorder. With the police being notified, the police will be able to give warning of what should not be done and such will in turn guaranteeing free speech in the rightful way. Even though details are needed, some particulars such as the estimation of number are not needed. It is required that the notice reach the police not less than six clear days before intended date of the procession.

This section is not a permit requirement as it does not allow the police to deny permission to hold procession.²⁰

Imposing conditions on public processions.

12. — (1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that—

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b) the purpose of the persons organising it 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, he may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions.

(2) In subsection (1) “the senior police officer” means—

(a) in relation to a procession being held, or to a procession intended to be held in a case where persons are assembling with a view to taking part in it, the most senior in rank of the police officers present at the scene, and

(b) in relation to a procession intended to be held in a case where paragraph (a) does not apply, the chief officer of police.

(3) A direction given by a chief officer of police by virtue of subsection (2)(b) shall be given in writing.

(4) A person who organises a public procession and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

²⁰ Smith, A.T.H. The offences against public order: including the public order act 1986, p. 132-133.

(5) A person who takes part in a public procession and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(6) A person who incites another to commit an offence under subsection (5) is guilty of an offence.

(7) A constable in uniform may arrest without warrant anyone he reasonably suspects is committing an offence under subsection (4), (5) or (6).

(8) A person guilty of an offence under subsection (4) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(9) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) A person guilty of an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, notwithstanding section 45(3) of the Magistrates' Courts Act 1980 (inciter liable to same penalty as incited).²¹

(11) In Scotland this section applies only in relation to a procession being held, and to a procession intended to be held in a case where persons are assembling with a view to taking part in it.

According to this section, the senior officer have the power to impose conditions on the proposed march if they reasonably believe that the march “may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or alternatively that the purpose of person organising the march is to intimidate others with the view to compelling them not to do an act they have right to do, or to do an act they have a right not to do.” It is important to note that the police have the power to impose conditions on coercive marches which will not give rise to disorder. Here the coercion is considered under this section. The examples of such are the encouragement of employees not to work, or force a local councillor to vote differently. The conditions are virtually limitless as long as long they are referable to purposes mentioned. The senior police are the one to make a decision to impose conditions of this section while the march is in process, and similarly whether they decide to act in advance in prevent the possible disorder or not.²²

²¹ 1980 c. 43.

²² Ibid., pp. 134-136.

Prohibiting public processions.

13. —(1) If at any time the chief officer of police reasonably believes that, because of particular circumstances existing in any district or part of a district, the powers under section 12 will not be sufficient to prevent the holding of public processions in that district or part from resulting in serious public disorder, he shall apply to the council of the district for an order prohibiting for such period not exceeding 3 months as may be specified in the application the holding of all public processions (or of any class of public procession so specified) in the district or part concerned.

(2) On receiving such an application, a council may with the consent of the Secretary of State make an order either in the terms of the application or with such modifications as may be approved by the Secretary of State.

(3) Subsection (1) does not apply in the City of London or the metropolitan police district.

(4) If at any time the Commissioner of Police for the City of London or the Commissioner of Police of the Metropolis reasonably believes that, because of particular circumstances existing in his police area or part of it, the powers under section 12 will not be sufficient to prevent the holding of public processions in that area or part from resulting in serious public disorder, he may with the consent of the Secretary of State make an order prohibiting for such period not exceeding 3 months as may be specified in the order the holding of all public processions (or of any class of public procession so specified) in the area or part concerned.

(5) An order made under this section may be revoked or varied by a subsequent order made in the same way, that is, in accordance with subsections (1) and (2) or subsection (4), as the case may be.

(6) Any order under this section shall, if not made in writing, be recorded in writing as soon as practicable after being made.

(7) A person who organises a public procession the holding of which he knows is prohibited by virtue of an order under this section is guilty of an offence.

(8) A person who takes part in a public procession the holding of which he knows is prohibited by virtue of an order under this section is guilty of an offence.

(9) A person who incites another to commit an offence under subsection (8) is guilty of an offence.

(10) A constable in uniform may arrest without warrant anyone he reasonably suspects is committing an offence under subsection (7), (8) or (9).

(11) A person guilty of an offence under subsection (7) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(12) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) A person guilty of an offence under subsection (9) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, notwithstanding section 45(3) of the Magistrates' Courts Act 1980.²³

This section allows the senior police officer to have the procession banned. This can be done if the chief of the police reasonably believes that no conditions imposed could prevent serious public disorder. In such case, the police should apply to the district council for an order prohibiting the holding of all public processions or a specific class of processions for a period not exceeding three months. It must be noted that a ban against specific march does not exist. Only a ban to classes of marches or all marches is possible. Also proposal to the effect of a specific power is not acceptable as it would place the police in the situation where they would be subject to allegations of political motivation and partially whenever they exercised the power to seek a ban on a particular march.²⁴

Imposing conditions on public assemblies.

14. —(1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that—

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b) the purpose of the persons organising it 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, he may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

(2) In subsection (1) "the senior police officer" means—

(a) in relation to an assembly being held, the most senior in rank of the police officers present at the scene, and

(b) in relation to an assembly intended to be held, the chief officer of police.

(3) A direction given by a chief officer of police by virtue of subsection (2)(b) shall be given in writing.

²³ 1980 c. 43.

²⁴ Ibid., pp. 136-137.

(4) A person who organises a public assembly and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(5) A person who takes part in a public assembly and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(6) A person who incites another to commit an offence under subsection (5) is guilty of an offence.

(7) A constable in uniform may arrest without warrant anyone he reasonably suspects is committing an offence under subsection (4), (5) or (6).

(8) A person guilty of an offence under subsection (4) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(9) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) A person guilty of an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, notwithstanding section 45(3) of the Magistrates' Courts Act 1980.²⁵

In short, the conditions can be imposed when the senior police officer are aware of the time or place and the circumstances of that public assembly. Senior police officer in this case is similar to those in the case of public procession. During the assembly, the term refers to the most senior ranking officers present at the scene. If the assembly is intended to be held, the term refers to the chief constable or in London the relevant Commissioner. Therefore, the conditions may be imposed by the senior police officer on the persons organising or taking part in the assembly as senior officers exist both before and during the assembly. The imposition of conditions therefore can be either in writing or orally. In case of an assembly intended to be held, the chief constable or Commissioner must give them in writing.²⁶

²⁵ 1980 c.43.

²⁶ Card, Richard. Public Order- the new law (London : Butterworths, 1987), p. 84.

Prohibiting trespassory assemblies.

14A.²⁷—(1) If at any time the chief officer of police reasonably believes that an assembly is intended to be held in any district at a place on land to which the public has no right of access or only a limited right of access and that the assembly—

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access, and

(b) may result—

(i) in serious disruption to the life of the community, or

(ii) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument,

he may apply to the council of the district for an order prohibiting for a specified period the holding of all trespassory assemblies in the district or a part of it, as specified.

(2) On receiving such an application, a council may—

(a) in England and Wales, with the consent of the Secretary of State make an order either in the terms of the application or with such modifications as may be approved by the Secretary of State; or

(b) in Scotland, make an order in the terms of the application.

(3) Subsection (1) does not apply in the City of London or the metropolitan police district.

(4) If at any time the Commissioner of Police for the City of London or the Commissioner of Police of the Metropolis reasonably believes that an assembly is intended to be held at a place on land to which the public has no right of access or only a limited right of access in his police area and that the assembly—

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access, and

(b) may result—

(i) in serious disruption to the life of the community, or

(ii) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument,

he may with the consent of the Secretary of State make an order prohibiting for a specified period the holding of all trespassory assemblies in the area or a part of it, as specified.

(5) An order prohibiting the holding of trespassory assemblies operates to prohibit any assembly which—

(a) is held on land to which the public has no right of access or only a limited right of access, and

²⁷ S. 14A inserted (3.11.1994) by 1994 c. 33 ss. 70, 172(4)

(b) takes place in the prohibited circumstances, that is to say, without the permission of the occupier of the land or so as to exceed the limits of any permission of his or the limits of the public's right of access.

(6) No order under this section shall prohibit the holding of assemblies for a period exceeding 4 days or in an area exceeding an area represented by a circle with a radius of 5 miles from a specified centre.

(7) An order made under this section may be revoked or varied by a subsequent order made in the same way, that is, in accordance with subsection (1) and (2) or subsection (4), as the case may be.

(8) Any order under this section shall, if not made in writing, be recorded in writing as soon as practicable after being made.

(9) In this section and sections 14B and 14C—

“assembly” means an assembly of 20 or more persons;

“land” means land in the open air;

“limited”, in relation to a right of access by the public to land, means that their use of it is restricted to use for a particular purpose (as in the case of a highway or road) or is subject to other restrictions;

“occupier” means—

(a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; or

(b) in Scotland, the person lawfully entitled to natural possession of the land, and in subsections (1) and (4) includes the person reasonably believed by the authority applying for or making the order to be the occupier;

“public” includes a section of the public; and

“specified” means specified in an order under this section.

(10) In relation to Scotland, the references in subsection (1) above to a district and to the council of the district shall be construed—

(a) as respects applications before 1st April 1996, as references to the area of a regional or islands authority and to the authority in question; and

(b) as respects applications on and after that date, as references to a local government area and to the council for that area.

(11) In relation to Wales, the references in subsection (1) above to a district and to the council of the district shall be construed, as respects applications on and after 1st April 1996, as references to a county or county borough and to the council for that county or county borough.

Similar to the conditions in public procession, the senior police officers are under conditions in issuing the prevention of disorder, damage, or any disruption. The

demonstrators and the likes can be ordered as to where they are allowed to assemble, how long they are allowed to do so and how many could participate for instance.

Nevertheless, there is a limit to conditions that can be made as to ensure that the prohibition are not virtually prohibit. Although there is a limit to it, some conditions render it impossible to have an effective assembly or make the assembly less effective. As the power is endowed upon senior police officer, they are an important factor deciding the effectiveness of the procession. For example, the police may limit the number of the participants as they see fit. Such power is different from the Public Order Act 1936. This is controversial as police involving in what can be regarded as political decision, which requires sensitivity in wielding it, can limit freedom of assembly. Furthermore, some may not have faith and confidence in the police to perform this duty.²⁸

Offences in connection with trespassory assemblies and arrest therefore.

14B.²⁹ — (1)A person who organises an assembly the holding of which he knows is prohibited by an order under section 14A is guilty of an offence.

(2)A person who takes part in an assembly which he knows is prohibited by an order under section 14A is guilty of an offence.

(3)In England and Wales, a person who incites another to commit an offence under subsection (2) is guilty of an offence.

(4)A constable in uniform may arrest without a warrant anyone he reasonably suspects to be committing an offence under this section.

(5)A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(6)A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7)A person guilty of an offence under subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, notwithstanding section 45(3) of the Magistrates' Courts Act 1980.³⁰

(8)Subsection (3) above is without prejudice to the application of any principle of Scots Law as respects art and part guilt to such incitement as is mentioned in that subsection.

²⁸ Ibid., pp. 84-85.

²⁹ S. 14B inserted (3.11.1994) by 1994 c. 33 ss. 70, 172(4)

³⁰ 1980 c. 43.

Stopping persons from proceeding to trespassory assemblies.

14C.³¹ — (1) If a constable in uniform reasonably believes that a person is on his way to an assembly within the area to which an order under section 14A applies which the constable reasonably believes is likely to be an assembly which is prohibited by that order, he may, subject to subsection (2) below—

- (a) stop that person, and
- (b) direct him not to proceed in the direction of the assembly.

(2) The power conferred by subsection (1) may only be exercised within the area to which the order applies.

(3) A person who fails to comply with a direction under subsection (1) which he knows has been given to him is guilty of an offence.

(4) A constable in uniform may arrest without a warrant anyone he reasonably suspects to be committing an offence under this section.

(5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

...

The Criminal Justice and Public Order Act 1994 give the power to local authority with the consent of the Secretary of State to ban certain kinds of assembly in case the assembly happens in the place that the public has no or limit rights of access. Such areas include private land and building where the public is invited such as monuments, meeting room, shop, entertainment centres and libraries. In doing so, the chief constable must reasonably believes that an assembly is “(a) a trespassory assembly likely to be held without the permission of the occupier or to exceed the limit of his or her permission or the public’s rights of access and (b) “may result in serious disruption to the life of the community or, where the land or building or monument on it is historical, architectural or scientific importance, may result in days within an area of up to five miles”.³² Again, the ban covers all trespassory assemblies and is not specific to certain assembly.

In conclusion, Article 11 of the ECHR confers a right to freedom of assembly and association with the following overrides: national security or public safety, prevention of disorder or crime, protection of health or morals, or protection of rights and freedom of others. However, the article does not prevent an imposition of

³¹ S. 14C inserted (3.11.1994) by 1994 c. 33 ss. 70, 172(4)

³² Alder, John. Constitutional and administrative law 7th ed., p. 432-433.

restriction allowed by other laws on state authorities such as soldier, police and civil servants. In general, freedom of assembly should be given high protection as it is related to freedom of expression, particularly in terms of political related ones.³³

One important aspect of this article is that everything is permitted unless forbidden, particularly the Public Order Act that gives power to the police. It is ironic that in holding a public meeting as meetings and procession must take place on land with consent to the owner. As all land, which includes a public highway, is owned by someone whether a private body or the state. Trespass traditionally is not a criminal offence. With the notion of aggravated trespass and trespassory assembly, the police have the power remove demonstrators from land with criminal penalties.³⁴

Further legislation has been expanded to have a wider coverage to conclude those such as anti-nuclear demonstration, hunt saboteurs, travellers, stalkers, football hooligans, anti-war demonstrations, terrorists and animal rights groups. Due to the open nature of the law, one might question the legitimate causes for such legislation to be drafted loosely to include such event. As a result, many arguments have risen based on uncertainty, proportionality and discrimination.³⁵

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³³ Ibid., p. 430.

³⁴ Ibid., pp. 430-431.

³⁵ Ibid., p.430.

CHAPTER IV

ANALYSIS

In this study, the objective is to study how people in the United Kingdom use their rights and freedom of expression through the form of protest and to study how the British laws define and limit the rights and freedom of political expression. The main research question is how the balance between freedom of expression and social order should be sustained within democratic regime? The result will come from the selected case study on protests and related English laws on protest. The sources come from various reference documents, books, Hansard, House of Lords' decisions from selected case-law and articles. Political theory will be used in explaining the results of this study.

The protest of individuals is the use of rights and freedom to expression, which is part of the basic human rights through the expression of opinions, needs and being-part-of-society. Public assembly and marching is one of the important ways of people to express their opinion to their government. Freedom to protest and marching is the freedom that has been developed from giving opinion at an individual level to the collective level. They are therefore an evolution of expressing citizens' opinions. For a state or a country to give rights and freedom to its citizen, the level of rights and freedom given is hinged upon the system of government. Democracy is the system that gives freedom to individuals the most compared to other systems.

Democracy is a term of wide and diverse interpretations. It varies depending each thinker and philosopher. John Stuart Mill particularly emphasises on the value of freedom. Montesquieu looks at the division of power John Locke and Rousseau support citizen having power controlling their government. Nevertheless, the gist of democracy is similar to all in that citizen is the most supreme part of the country, not a person, an individual or a group of individuals. This is the reason democracy is different from dictatorship.

Forms of democracy are derived from the Theory of the Social Contract, which is the result of the thinking of Thomas Hobbes (1588-1679), John Locke (1632-

1704) and Jean Jacques Rousseau (1712-1778). The core to the thinking is that: state is formed because of human in other words human are the creator of state.* In creating a human state, there must exist common certain commitment as if it is a contract stating the intention of bond together and go through happiness and sadness together. State and government is the result of such human coming together. State and government is therefore a human contract and thus has to act accordingly with its citizen's intention as called "general wills" by Rousseau. General wills mean that wills of people are above all and the government cannot violate that.

In the present world, liberal democracy is the most widely used democratic system. With the three criteria as Abraham Lincoln said, democracy is a governance to achieve goal of being a government of people by people and for people. The ideology of true liberal democracy lies in participation, as it is a path toward preserving the power in the hand of people. Citizens not only elect their representative, but also have the power to make a decision and plan policies directly through the use of methods in making citizen the true owner of democracy. Some important tools and methods are popular referendum, popular initiative and a recall. The important principles or standard of democracy can be summarised into four components: firstly, popular sovereignty, which means the supreme power, lies with people as they are the true owner of sovereignty. Therefore, people have the rights to elect the government as well as drive them away. Second are principles of rights and freedoms or government of law, not of men. Citizens are guarantee that the government will not infringe upon their rights and freedom or any doings that will disturb rights and freedoms of its citizen. Third is the most supreme principle of laws, which emphasises on the equality of all human. Everyone shall receive equal protection under law without discrimination. The last is the majority rule. Democracy although is a system rooting in the voice of the majority, it is important to listen to the minority and give them justice.

* Hobbes' view is that the natural state of human is the fight for survival of selves. It is thus a human instinct to be selfish and distrust to others. Each has one's own rule that will be used in making decision or making an argument with others. It is a natural state of chaos without any order or rule as a constraint. In order to avoid such situation, people in the community must form a social contract to be used in stopping one another and keeping rights of everyone through state. Those that infringe the rights of other must be punished with the power of the state that all accepts. There exists a sovereign or a person with the highest of power that people in the community accepts and follows as a representative selected as an executive.

When discussing such, the meaning of justice must be deliberated. This is really important to lawyer as laws are made to create justice within the society. However, what is justice? Is there justice that is universal? Often, justice is decided upon one's perception. While some is justice to us, it is not to the others. Still, if justice is based on society as a whole, justice may be reached. This is such as to issue a law to preserve peace and public interest. Every one must be under the same law. Double standard and preferential treatment do not exist. If such were to be true, then such justice is justifiable as well as the law being justice.

There are many meaning of justice. David Hume states that justice is a virtue that does not naturally exist. However, it is a virtue from human creation, i.e. artificial value. Aristotle views justice as social virtue that is connected to personal relationship. Virtue in justice will be effective only when humans relieve themselves from force of selfishness. Justice can be divided into two categories: natural and conventional justice. The former refers to one that is universal and immutable to all human without boundary. It can be discovered by true reasoning of human. The latter, on the other hand, follows laws, customs, customs or such of society. Justice of this type varies according to place, situation as well as time and appropriateness.

To give justice to the minority requires the principle of law, which allows the principle of legal state to in turn explain the principles and rule of law. State, according to modern constitution, is a legal state. That is a state acquiesce to be under the control of law and the state itself is the one that enacts and allow itself to be governed by it. The thinking in legal state is the thinking of citizens that have faith in individualism. And for state's constitution, a state that can be a legal state must have rules on principles guaranteeing rights and freedoms of citizen. Some of these include freedoms in one's own body, in assets, in properties, in making contracts, in working and in expression. In this respect, state is merely a servant of society that is strictly control. It can be seen that for the state to respect freedoms of its citizen, it needs a rule of law. As long as the state is strictly controlled and as long as law in used and the stated is bided by it, with the thinking, the rules of law can exist. Rule of law is derived from thinking on legal system. One of them is that of Aristotle stating that good governance is not governance by people but by law. Governance by people is at risk of chaos and governance through free will. On the other hand, governance by law

will allow and bring about equality and liberty for if there is governance on the rule of law principles, every one will be equal under legal framework and will have freedom as there is no fear of misgovernance.

This thinking is therefore a basis to constitutionalism, which is a reflection of the meaning of law and order. In England, Albert Venn Dicey (1835-1922), a constitution lawyer, concluded that rule of law must consist of the following three components: 1) the executive has not power to be used according to its will. This means that there is a person accountable for guilt and punishment under criminal law if there is an act that is guilty and there is a responding punitive measure according to law. This shows a person's rights and freedoms will only be constrained by law. State authority cannot misuse their power. 2) Every person is under the same law and the same court. This means that everyone is under the same law equally without being discriminated or biases due to his or her status or duty. When there is a dispute between two private parties or a private party with a state authority, whether under civil law, criminal law or others such administrative laws, only court of justice could proceed with the case. The trial must be unbiased and free from sanction of any party. 3) General principles of constitutional laws are result of general laws of the country. That court is the one that can proceed with the case on rights and freedom of private, which brings about the acceptance of the rights and freedom.

It is the duty of the state to preserve social order, provide utilities and maintain justice. Power of state or *puissance publique* refers to the laws being above its citizen. State can use such power over them. However, this does not mean that state can unilaterally enforce the laws according to its view because the state with liberal democracy is a legal state, which means that state is under the system of law and the state's institutions as well as their power are as prescribed by law.

In terms of government, rule of law is the method for all the state administrators whether it is an election or a delegation according to and done under law and constitution. Government under the rule of law that will create justice must include the enactment of just laws. Rule of law is the government of country through law and everyone is equal under law and is punishable once stepping over the line of limit that the law has drawn. If such is to happen, one must go through trial from the court of justice, which is free from bias, no matter who the dispute party is. Rule of

law is an important principle of a legal state and is truly a root and basis of real democracy.

With liberal democracy being in use for a long time, people are well aware of their own rights and duty making them the true owner of sovereignty. This is reflected through political and development participation. The expression of their rights and wants, whether through political discussion and criticism at Hyde Park, or through printed media presenting viewpoints free from government sanction, or the assembly to show their power of citizen or civil society in expressing a common belief to the public are some examples of it.

In England, protest and assembly are normal. They are parts of the use of their freedom of expression and freedom of assembly and association. The demand for rights can be seen even as early as 1215 in the Magna Carta. According to the charter, if the King was to tax the citizen for the purpose of public spending, he must convene the House of Commons in order to ask for their approval because at that time most members of the House of Commons are the major tax payer. In exchange, this is the opportunity for the members to request assistance, i.e. redress for grievance. In 1414, the House began to consider themselves both the assenters and the petitioners. When the House changed to comprise representatives of citizens through election, petitioning has therefore become part of basic rights of the citizens. Furthermore, the citizens have rights to direct petition to the government, which can be done through a person or a group of persons in writing or in person as in peaceful assembly. It must be noticed that such rights of citizens bring about other rights and freedoms such as free speech and free press. Usually, government or the suppressing authority could not limit freedom of assembly or marching for any reason outside that supported by law and constitution. The government must not step into the way of expressing the citizens' rights and freedom in order not to eliminate the medium in which citizens could channel their thoughts and opinions through.

For example; in case of strike, once there is a strike, the laws allow for a protest against the employers outside of the workplace, but do not allow them to prohibit other non-participating employers from working or restrict their access. The striker can persuade them but cannot prohibit them. Nevertheless, public assembly, public demonstration or public procession inevitably results in effects. Despite the

fact that they are parts of basic rights of the citizens, the nature of them involves a number of people, social order and disturbance of rights of those not participating in the event. The events are therefore not counted as an absolute right but a relative right, which can be restricted by law.

Protest is one of the important mechanisms in democracy. As explained earlier, people's participation and expression is tantamount to the expression of needs and opinions of the protestors. Protest, as an important tool in democracy, is partially a mechanism that drives the needs of people through the assembly of individuals. Public assembly and public procession are important tools used in communicating political opinions to the society as well as putting pressure to the government. Freedom to assembly is therefore an important freedom to political expression. This is similar to the thinking on civil society and civil disobedience that individuals with the common wants and common goals come together to express their powers and their needs and channel them toward the public, particular to the state authority in order for them to respond to their requests. Such is a participation in form of people and political participation. In the United Kingdom, protest is deeply rooted in its political culture. Many of them were of monumental impact that changes the course of history. People power is a potent force, whether at a national or a local level, whether to do with political causes or single issues, whether in support of striking workers or bereaved families, or in opposition to globalisation, or the waging of unjustified wars. All of these lies in the basic nature of protest: the solidarity of people standing together that can draw attention of the state to listen them through their expressions, which is a protest.

The right of people to engage in activities like these must be balanced against the rights and freedom of other citizens. In the United Kingdom, freedom of assembly only exists as a negative right. When people gather together, they are not necessarily breaking the law, but the law does not give them any positive right of assembly. The law regulates where people can meet together, what assemblies are allowed and who may participate. There is no such place with fully unrestricted rights to access or protest. Thus all land is subjected to legal restrictions on freedom of assembly. Due to the nature of the assembly or the procession and depending on the authorities, the event could be banned. The authorities may ban or impose conditions on the event.

Some can be illegal, such as trespassory assemblies. Furthermore, not all people are allowed to participate in the assembly although it is lawful. Conditions such as bail and the membership to army may restrict such participation. The people who do attend cannot necessarily act as they wish.¹

It may be true that people can assemble together, however once in the society as long as there have been governments; there have been rules to restrict protest and dissent. Over the centuries the law of the United Kingdom has gone through development, adapting to the prevailing attitudes and concerns of the governments and courts of the day. This dynamic process reflects the struggle that lies at the heart of public order law—the natural tension between the amount of freedom people demand as demonstrators and the amount of restriction the electors or the representatives permit the Parliament to impose. For centuries, legislators have resisted the notion of positive rights in the field of public protest and political expression. In general, it can be said that citizens can do anything that is not prohibited by law. It therefore cannot be said that people have a positive right to assemble or to protest. It is only allowed as long as it does not cause inconvenience to anyone.

One important shift to such stance is the incorporation into domestic law of the European Convention on Human Rights (ECHR) in October 2000. In regard to political protest, four key areas are affected: right to peaceful assembly in Article 11, right to freedom of expression in Article 10, right to freedom of thought, conscience and religion in Article 9 and right to respect for private and family life in Article 8.

Although freedom of assembly is crucial to democracy, the purposes of any meeting or procession need not be democratic. Demonstration may annoy or offend people opposed to the ideas or claims promoted; still the participant must be able to hold such demonstration.² Formal recognition of civil and political rights is not enough. It is essential that any restriction or all rights recognised by the European Convention be closely scrutinised. The two instruments set out a strict three-part test:

1. “Any restriction on civil and political rights must be ‘prescribed by law

¹ Klug, Francesca, Starmer, Keir and Weir, Stuart. The three pillars of liberty: political rights and freedom in the United Kingdom (London: Routledge, 1996), pp. 185-186.

² Ibid., pp. 186-187.

2. The restriction must be justified by one of the aims under the International Covenant or European Convention.
3. The restriction must be shown to be 'necessary in a democratic society'.
 - The prohibition or break-up of a procession or meeting can only be justified when milder measures, such as imposing conditions, would be insufficient
 - But where it is not practicable for a demonstration to proceed peacefully, it can be banned. A state can even impose a 'blanket' ban covering more than one demonstration.
 - However, a state must consider the effect of a blanket ban covering more than one demonstration.
 - The rights of passers-by must be taken into account, but it is the state's duty to uphold their rights and safeguard freedom of assembly.
 - An obligation on organisers of marches or meetings to give information to the police and/or seek authorisation for their activity does not necessarily infringe the right to freedom of assembly – so long as its purpose is to enable the state either to prevent non-peaceful assemblies or to take positive steps to ensure that peaceful assemblies are not disrupted.
 - Freedom of assembly is so important that punishing an individual simply for participating in an assembly cannot be justified, unless he or she personally commits a reprehensible act: an individual's failure to disassociate himself or herself from such acts is not enough"³

It is important that the Convention does not give a trump card to political protest, especially when concerns over safety and security are of prime concern. Despite the positive promise of the Human Rights Act 1998 (HRA) the courts have been slow in practice to increase the scope of rights available to protestors. On the other hand, parliament has been quick to hand out new statutory powers. The Terrorism Act 2000, the Criminal Justice and Police Act 2001, the Anti-terrorism, Crime and Security Act 2001 and the Criminal Justice Act 2003 give more power to the power in preventing the free movement of protestors and other members of the public, and the free expression of political protest.

³ Ibid., pp. 187-188.

In principle, the basis of protest according to the British law is that protest is allowed without the use of violence and does not cause damage to assets of other as well as does not obstruct others in wielding their rights. The important point is if there is a use of force or violence, it is a violation of law and therefore the users of force or violence can be prosecuted. Public assembly with an intention to create breach of peace is illegal. However, public assembly in private place is not except that there is an effect on peace in the public place. If the road or street used for demonstration is public, it could be a tort of trespass to the authority taking care of that road or street.

For general protest, citizens can stage a protest anywhere except some that laws prescribe as protected area that is not allowed as a location of protest. These locations are such as military camp, army base and nuclear power plant. In 2005 and 2006, the English parliament enacted the Serious Organised Crime and Police Act. Both of which increase a number of locations not allowed to be protest at. Most of which are the offices of political and national security institutes such as the residence of the prime minister at Downing street, Westminster City Council, the parliament at the Big Ben, headquarter of the Security Service, as known as MI5, and the headquarter of the Secret Intelligence Service, as known as MI6. No one could stage a protest at these locations. If one were to do so, immediate prosecution would ensure. Before the application of both legal acts in 2005 and 2006, the police cannot prosecute those trespassing into those locations if they are involved in the criminal acts related to that location such as the damage of properties or the refusal to the police request to leave the location. Another point of the Serious Organised Crime and Police Act is on the protest in the important locations in London. The Acts allow the Commissioner of Police for the City of London to impose conditions restricting the rights to protest within the diameter of one kilometre from the House of Parliament, which covers Whitehall, the areas of many government office building, Downing Street, the building of the Scotland Yard. However, the area does not include Trafalgar Square; one of the most frequently used location for protest. Regardless of the change, the basis of the Act is still intact. That is the protestors must not use violence or damage properties and does not prohibit others from using their rights.

Initially, there is no direct rule relating to meetings and processions. However, as they necessarily involve the use of road, the 1835 Highway Act is therefore related

to rights to assemblies and processions. The Act states that citizens have rights to passing and re-passing but not of standing still or blocking its use.

As laws are developed to specifically deal with assemblies, a number of laws, which includes those such as that relate to assemblies, are incorporated into laws relating public order, which is now in form of Public Order Act. Public Order Act deals with public safety, order within society, protection of health and rights and freedom of the third persons within the vicinities of the public place used in assemblies. The Act therefore is (1) to secure peaceful assembly and (2) to be a guideline and method for public assembly in order to minimise the effect on the citizens not participating in the event or the citizens with contrary point of view.

Public Order Act considers marches as processions and all other static demonstrations as assemblies. Concised definition of procession is people moving together along a route. According to the Act, there is no number requirement for such act to be considered a procession. Even a few people going to a Town Hall to hand in a petition will be a procession. The Act gives the police a lot of power to handle and control processions. The organisers of processions inform the police in form of a notice beforehand so that the police gain control over the procession, which can be done through the imposition of conditions or even the ban of the procession. Not complying with the conditions is a criminal offence. The notice requested must be given in advanced if it demonstrates support for or opposition to the views or actions of any group, publicise a cause or campaign and mark or commemorate an event. Included in the notice, which must be in writing, is the date and beginning time of the procession, the proposed route and the name and address of the organiser. The notice must be delivered six day in advance or as soon as possible in case of short-planned event.

Nevertheless, there is not guarantee that the police will allow the event to take place. With the increased power of the police especially the ability to impose conditions and the ability to ban the event, many are sceptical feeling toward the police as they are should not have the rights to such power, with is quasi-political in nature. The Public Order Act says that conditions can be imposed only if the senior officer reasonably believes that the procession may result in serious public disorder; or serious damage to property; or serious disruption to the life of the community.

Moreover, the senior officer may also impose conditions if he or she reasonably believes that the purpose of the organisers is to intimidate 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 conditions must be ones that the officer believes are necessary to prevent disorder, damage, disruption or intimidation.

In addition to the public order powers that the police have to control processions and assemblies, the police also have powers to control crowds and members of the public that can be used in restricting protest. In certain situation, the police can stop and search protestors. The grounds for the search must be specified. If there is an authorisation, any police in uniform may stop and search any pedestrian as well as their belongings and vehicles. The police do not need to have reasonable suspicion that the person is in fact carrying offensive weapons before stopping and searching under these powers.

In conclusion, legal assembly that the law allows must conform to the following:

Advance Notice

Advance notice to the police must be given if the procession is intended for:

- Demonstrating support for or opposing to the views or actions of any group.
- Publicising a cause or campaign.
- Marking or commemorating an event.

Notice need not be given if it is not reasonably practicable to do so in advance.

If notice is required, it must be in writing and must include:

- The date of the procession.
- The time it will start.
- The proposed route.
- The name and the address of the organiser.

The written notice must be delivered to a police station in the area where the procession is planned to start, either by hand or by recorded delivery six clear days in advance. The organiser commits an offence if:

- Notice was not given as required.
- The date, starting time or route differs from that given on the notice.

Police Conditions on Marches

The police have extensive powers to impose conditions on marches, and even to ban them. In advance, the Chief Constable or the Metropolitan Police Commissioner in London can impose conditions relating to the route, number of marchers, types of banners or duration, or restrict entry to a public place. These conditions must be in writing. After the procession has begun the most senior officer on the spot can impose similar conditions, which do not have to be in writing. The Public Order Act allows for conditions to be imposed only if the senior officer reasonably believes that the procession may result in:

- Serious public disorder; or
- Serious damage to property; or
- Serious disruption to the life of the community.

The senior police officer at the scene has the power to impose conditions but only if he or she reasonably believes that:

- The conditions are necessary to prevent serious public disorder, serious damage to property or serious disruption to the life of the community, or
- The purpose of the person organising the assembly is to intimidate others.

The only conditions may be imposed on a public assembly under POA are on:

- Location of the assembly,
- Maximum number of people participating in the assembly,
- Maximum duration of the assembly

Note also that although the police have power to impose conditions, there is no power to ban a public assembly altogether. Therefore if the conditions are so strict that they in effect prohibit the assembly from taking effect in any meaningful way, it may be that they amount to a ban and are unlawful. An attempt by the police to impose excessively strict conditions may also be a breach of the protesters rights to assembly under Article 11 of the Convention.

Any meeting of two or more people that is wholly or partly in the open air is a 'public assembly' and subject to conditions imposed by the police under the Public Order Act. If such a meeting is attended by 20 or more people and held on land

without the owner's permission it may be a trespassory assembly and could be subject to a banning order. Organisers should be aware that plain clothes police officers might attend political meetings without authority for the purpose of collecting information.

Therefore, it can be said that people have rights to participate in lawful and peaceful protest. Violence is on the other hand prohibited. The English law gives rights to people in expressing what they want within the legal framework that will preserve social orders. There is no limit in speaking, publishing or giving opinions and there should be no interference from any authority to do so such as at speaking Corner in Hyde Park. As allowed public space, citizens have all the rights and all the freedom to expressing themselves. However, outside of the allowed area, the activities cannot be performed. In public space, all have equal rights and freedom under the same law and the same court. Any doing that will bring about disorder and public nuisance is not allowed. In regard to protest, protest and assembly can be done but the police or the authority must be informed beforehand in order that there will be a protection and a control allowing the protest to proceed in peace and does not disturb others' day-to-day activities. The laws are there for people in the society to follow the same rules and expression without exception. It is important that the laws are able to create an appropriate balance within rights and freedom of expression with the boundary to protect and control the infringement of rights and freedom of others and the public. Nevertheless, even though rights and freedoms are natural rights of human, state and state power are a created abstract based on the power of citizens electing their representatives to be an executive sovereign. Besides electing a sovereign to manage and control the society, the law must be initiated and shaped by all and at the same time be followed and respect by all without any exception. Thus, every state must be a legal state and conform to the rule of law in governing a society. Law is not justice; rather it is a tool for justice. Law enforcement must be for the purpose of preserving justice and should not limit itself within the realm of law but should extend itself to cover moral, fact and reasoning. Laws are wills or general wills. Power is moral or moral is power. If laws are the needs of the authority, then legal state is wills. If laws are general wills of all citizens, then laws are also general wills in the democratic system that hold sovereign as possession of all citizens, i.e. *souverait populaire*.

General wills or common wills of the whole country's citizens are accepted principles in the countries with liberal democracy and accepted by the theory of sovereignty through the representative system. If the government issues a new law or amends a law that is not right, it is a good thing because the law is the general wills. Due to the representative system, laws are more certain as they are through the deliberation process of the representatives, whose duties is to preserve the interests of the citizens and represent their common wills. For this reason, laws within liberal democratic system are tools to maintain justice of the society through the attempt to compromise the needs and the general wills of the citizens without limiting their rights and freedom under international basic human rights.

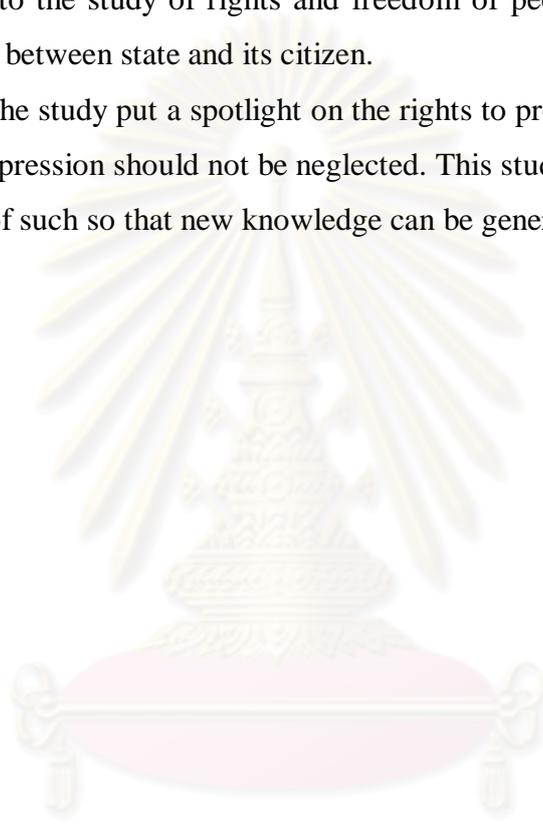
It thus can prove true the hypothesis that social orders prioritise rights. However, it must be under the condition that laws are dynamic and responds to the era and the changing general wills while maintaining justice to all. Laws are tools for justice giving rights and freedom to every individuals. They are not tools for the authority to limit rights and freedom as people are state and state is people except that people are willing to limit their rights so that all can live harmoniously with each other.

Suggestions

1. The study on rights to protest in the UK is the study on the Public Order Act, which contains rules on public assemblies and public processions. In staging an assembly or a procession, the police must be charge in order to maintain public order. Public Order Act is therefore an example of an act that takes into consideration political expression as used in channeling their thoughts to the authority. This study should be of interests to those interested in right to protest as given in form of writing.
2. Should ASEAN to become similar to the European Union, the member states should have common understanding of rights and freedom, especially basic human rights. This study is an example of the use of basic human rights in discussing the boundary as well as how rights and freedom should be. Rights to protest are one indicator of how a democratic country allow for or limit the rights of its citizen. In becoming part of a supranational community, it is

necessary that the member state has stability in economy, society and politics. Basic human rights are one that should not be neglected. ASEAN could never become a supranational organisation, should the member state not adjusting itself to common rights and freedom. Political participation is part of this development and thus should be given importance. This study should be beneficial to the study of rights and freedom of people in which there is an interaction between state and its citizen.

3. Although the study put a spotlight on the rights to protests, rights and freedom to other expression should not be neglected. This study can serve as a basis for the study of such so that new knowledge can be generated.



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APPENCIES

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

APPENDIX A

HUMAN RIGHT ACT 1998

On 2 October 2000, the Human Rights Act 1998 came into full force in the United Kingdom.

PART I

THE CONVENTION

RIGHTS AND FREEDOM

ARTICLE 2 RIGHT TO LIFE

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3 PROHIBITION OF TORTURE

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4 PROHIBITION OF SLAVERY AND FORCED LABOUR

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "forced or compulsory labour" shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.

ARTICLE 5 RIGHT TO LIBERTY AND SECURITY

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6 RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7 NO PUNISHMENT WITHOUT LAW

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8 RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9 FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10 FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

ARTICLE 11 FREEDOM OF ASSEMBLY AND ASSOCIATION

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ARTICLE 12 RIGHT TO MARRY

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

ARTICLE 14 PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

ARTICLE 16 RESTRICTIONS ON POLITICAL ACTIVITY OF ALIENS

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

ARTICLE 17 PROHIBITION OF ABUSE OF RIGHTS

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ARTICLE 18 LIMITATION ON USE OF RESTRICTIONS ON RIGHTS

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

PART II**THE FIRST PROTOCOL****ARTICLE 1 PROTECTION OF PROPERTY**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

ARTICLE 2 RIGHT TO EDUCATION

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

ARTICLE 3 RIGHT TO FREE ELECTIONS

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature

APPENDIX B

Austin (FC) & another v Commissioner of Police of the Metropolis

House of Lords opinions for the Judgment in the cause

Austin (FC) (Appellant) & another v Commissioner of Police of the Metropolis (Respondent)

On Wednesday 28 January 2009

[2009] UKHL 5 (appeal from: [2007] EWCA Civ 989)

LORD HOPE OF CRAIGHEAD

My Lords,

...

The appellant submits that it is plain that she was deprived of her right to liberty. She says that the reason why the cordon was put in place and kept there for so long is irrelevant. If she is right, she must succeed in this appeal. If she is wrong, the judge's findings are against her. They show conclusively that the sole purpose of the cordon was to maintain public order, that it was proportionate to that need and that those within the cordon were not deprived of their freedom of movement arbitrarily.

The facts

3. On 1 May 2001 at about 2 pm a crowd of demonstrators marched into Oxford Circus from Regent Street South. They were joined later by others who entered the Circus, or tried to enter it, from all directions. By the end of the afternoon some 3,000 people were within the Circus and several thousands more were gathered outside in the streets that lead into it. The appellant was among those who went to Oxford Circus as part of the crowd to demonstrate, but she was not one of the organisers. She was prevented from leaving the area by the police cordon for about seven hours. On 29 April 2002 she brought a claim for damages against the respondent for false imprisonment and for breach of her right under article 5(1) of the Convention to liberty. The case went to trial before Tugendhat J who, having analysed the evidence with great care and attention to detail, dismissed her claims: [2005] EWHC 480 (QB); [2005] HRLR 647. What follows are a much abbreviated summary of his account of the event.
4. 1 May 2001, May Day, was not a public holiday in England. Nevertheless the police had been expecting demonstrations. On three previous occasions within the past two years, when the theme had been protests against capitalism and globalisation, they had resulted in very serious breakdowns in public order. The officers in charge of policing on this occasion were the most experienced public order officers in England. They feared that a breakdown in public order would be repeated in 2001. About 6,000 police officers were deployed on the streets of

London. This was about as large a number as had ever been so deployed. The Special Branch assessment was that there would be about 500 to 1,000 hard core demonstrators looking for confrontation, disorder and violence. The organisers had deliberately given no notice to the police of their intentions. They had refused to co-operate with them in any way at all. Their literature included incitement to looting and violence, multiple protests to avoid the police and the encouragement of secrecy. Their publicity material had led the police to expect a gathering on Oxford Circus at 4 pm. But no warning was given of any march or procession or of the route which the demonstrators might take. The arrival there of such a large procession at 2 pm, when the area was already busy with shoppers and traffic, took the police by surprise and led them to respond as they did. They decided that, if they were to prevent violence and the risk of injury to persons and damage to property, they had no alternative but to impose an absolute cordon round the entire crowd that had gathered there.

5. The imposition of the cordon had not been decided upon in advance. Things might have been different if the crowd had built up gradually. As it was, the police decided that if they did not take control of the crowd when it arrived the opportunity to do this might not recur. Their aim was to establish control over it prior to and during a planned dispersal. It was not possible to impose the cordon without including the appellant in it because she was standing not on a pavement at the perimeter of the Circus but on the roadway. It took about 5 to 10 minutes to put in place a loose cordon, and about 20 to 25 minutes to put in place a full cordon. The full cordon was effectively in place by about 2.20 pm. Five minutes later, at 2.25 pm, a senior officer started to plan for the start of a controlled dispersal. At 2.45 pm he had reached the point where he expected the release to start within about an hour. On a number of occasions the order was given to start controlled release but it had to be suspended because of the conduct of protesters either inside or outside the contained area. At 4 pm the crowd were told that they were being contained to prevent a breach of the peace and that they would be released in due course by a prescribed exit. They were asked to be patient. The judge was satisfied that the police had no intention of holding the demonstrators longer than was necessary. The object was not to hold the crowd for any reason other than to carry out a controlled release as soon as it was practicable and safe to do so. In the event the dispersal was not completed until 9.30 pm.
6. The delay in the dispersal was substantially contributed to by the attitude of the crowd within the cordon which was not co-operating with the police. While about 60% remained calm about 40% were actively hostile, pushing and throwing missiles. Those who were not pushing or throwing missiles were not dissociating themselves from the minority who were. Some members of the crowd were very violent. They broke up paving slabs and threw the debris at the police. The crowd did nothing to help the police when they entered the cordon to arrest a suspect. It was a dynamic, chaotic and confusing situation. It was made all the more difficult by the fact that there were a large number of protesters in the immediate vicinity outside the

cordon. They were engaged in the same quest for Oxford Circus that had driven the original crowd there at 2 pm and were refusing to accept control by the police.

7. The judge held that it was not practicable for the police to release the crowd earlier than they did. For them to have done so earlier would have been a complete abnegation of their duty to prevent a breach of the peace and to protect members of the crowd and third parties, including the police, from serious injury. The policy that was communicated to police officers was that they should seek to identify and release those who obviously had nothing to do with the demonstration but were caught up in the cordon because they had just happened to be in Oxford Circus. This was subject to their discretion to release individual demonstrators. Up to about 400 individuals were released individually. Some of them were bystanders who had been caught up in the demonstration. Others had medical problems or had suffered some injury. The judge was satisfied that there was no other release policy which could and should have been adopted, especially as the police had had no opportunity to plan for the event.
8. Few of those who were attending the demonstration can have been unaware that there was a substantial risk of violence. On 24 April 2001 an article by the Mayor of London, Ken Livingstone, appeared in the *Evening Standard* newspaper. He said that he supported the aims of the demonstration, which would be calling for the cancellation of Third World debt, the eradication of poverty, a stop to the privatisation of the London Underground and an end to pollution of the environment. But on this occasion violence was central to the objectives of its organisers. What was planned was not a peaceful protest that might go wrong but a deliberate attempt to create destruction in the capital. He urged all Londoners to stay away from it. The appellant had taken part in such events before. The judge held that when she chose to join this demonstration she was well aware that the protest was not expected by anyone to end without serious violence. There is no suggestion that she herself was involved in any violent acts or that she had any other intention than to engage in peaceful protest. Nevertheless she willingly took the risk of violence on the part of other demonstrators with whom she chose to be present, and her own conduct was unreasonable in joining with others to obstruct the highway.
9. There was sufficient space within the cordon for people to walk about and there was no crushing. But conditions within it were uncomfortable. The weather was cold and wet. No food or water was provided and there was no access to toilet facilities or shelter. The appellant, like others who were present, was not adequately dressed for the occasion. She had an 11 month old baby who was in a crèche. She had planned to be on the demonstration for two or three hours before collecting her, but in the event she was prevented from doing so. Nevertheless the judge held that she was not much distressed, but was stimulated by the event. At various times in the afternoon she had a megaphone and told people not to push. She was in the company of friends throughout. When she came out of the police cordon she did not rush home but participated in a TV interview and responded to questions from the press.

11. The judge said that there was no deprivation of liberty during the period between 2.00 pm and 2.20 pm, as the cordon was not absolute and people were free to leave by the pavements if they wished to do so. But during the subsequent period no one was free to leave without permission. He held that once the full cordon was in place there was a deprivation of liberty within the meaning of article 5(1), but that the containment was capable of being justified under article 5(1)(c) as the police reasonably believed that all those present within the cordon, including the appellant, were demonstrators and were about to commit a breach of the peace. He rejected the appellant's claim at common law for false imprisonment. The Court of Appeal (Sir Anthony Clarke MR, Sir Igor Judge P and Lloyd LJ) dismissed her appeal: [2007] EWCA Civ 989; [2008] QB 660. There is no appeal to your Lordships against the Court of Appeal's findings on the common law. The respondent accepts that, if the appellant's detention was an unlawful deprivation of liberty contrary to article 5(1) of the Convention, the finding that this was a lawful exercise of breach of the peace powers at common law cannot stand. The appellant for her part accepts that, if her detention did not amount to an unlawful deprivation of liberty contrary to article 5(1), she was contained within the cordon in the lawful exercise of police powers. Her appeal is directed solely to the Court of Appeal's decision that her rights under article 5(1) of the Convention were not infringed.

Article 5(1)

12. Article 5(1) of the Convention provides:
- "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
- (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."
13. The list in sub-paragraphs (a) to (f) of the cases where deprivations of liberty are permitted is exhaustive and is to be narrowly interpreted, as the European Court of Human Rights has

repeatedly emphasised: *Engel v The Netherlands (No 1)* (1976) 1 EHRR 647, para 57; *Kurt v Turkey* (1999) 27 EHRR 373, para 122; *Secretary of State for the Home Department v JJ and others* [2007] UKHL 45; [2008] 1 AC 385, para 5, per Lord Bingham of Cornhill. Of those listed, the only ones that it was suggested might be applicable in this case are those referred to in sub-paragraphs (b) and (c). In view of its decision that there had been no deprivation of liberty in this case the Court of Appeal found it unnecessary to decide whether, if there had been a deprivation of liberty, it would have been justified under either of these paragraphs.

14. The United Kingdom has not ratified article 2 of Protocol 4, nor are the rights that it sets out among the Convention rights within the meaning of the Human Rights Act 1998. But it is convenient to set out its provisions here too, as it is mentioned in some of the Strasbourg authorities that I am about to refer to:

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of '*ordre public*', for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

15. The rights mentioned in article 2 of Protocol 4 are relevant only in so far as they indicate that there is a distinction, for Convention purposes, between conditions to which a person may be subjected which are a restriction on his movement and those which amount to a deprivation of his liberty. The European Court has said that under its established case law article 5 is not concerned with mere restrictions on liberty of movement. They are governed by article 2 of Protocol 4. This is an important distinction, even though the rights that this article describes are not binding on the United Kingdom. Article 2 of Protocol 4 is a qualified right. The protection that article 5(1) provides against a deprivation of liberty is absolute, subject only to the cases listed in sub-paragraphs (a) to (f). In *McKay v United Kingdom* (2007) 44 EHRR 41, para 30, the court said:

"Article 5 of the Convention is, together with articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of an individual and as such its importance is paramount. Its key purpose is to prevent arbitrary or unjustified deprivations of liberty."

Article 2 of Protocol 4 helps to put the ambit of this absolute right into its proper perspective.

16. In *Secretary of State for the Home Department v JJ and others* [2008] 1 AC 385, para 35, Lord Hoffmann said that the point about the right to liberty under article 5(1) is that it is unqualified. Its place in the scheme of other unqualified rights shows that it deals with literal

physical restraint. Such is the revulsion against detention without charge or trial that it ordinarily trumps even the interests of national security. Liberty of movement may be restricted in the interests of public safety or to maintain public order. But the right to liberty under article 5(1) is absolute. As was observed in *Engel v The Netherlands (No 1)* (1976) 1 EHRR 647, para 58, this article contemplates individual liberty in its classic sense - the physical liberty of the person. Moreover a comparison between article 5 and the other normative provisions of the Convention and its Protocols shows that it is not concerned with mere restrictions upon liberty of movement. In this case the appellant's liberty of movement was restricted by the police cordon. The question is whether this was also a deprivation of liberty.

...

Is purpose relevant?

26. The decision whether there was deprivation of liberty is, of course, highly sensitive to the facts of each case. Little value can be derived therefore from decisions on the application of article 5 that depend entirely on their own facts. But they are of value where they can be said to illustrate issues of principle. In the present context some assistance is to be derived from the cases as to the extent to which regard can be had to the aim or purpose of the measure in question when consideration is being given as to whether it is within the ambit of article 5(1) at all.
 27. If purpose is relevant, it must be to enable a balance to be struck between what the restriction seeks to achieve and the interests of the individual. The proposition that there is a balance to be struck at the initial stage when the scope of the article is being considered was not mentioned in *Engel v The Netherlands (No 1)* (1976) 1 EHRR 647 or *Guzzardi v Italy* (1980) 3 EHRR 333. Nor can it be said to be based on anything that is to be found in the wording of the article. But I think that there are sufficient indications elsewhere in the court's case law that the question of balance is inherent in the concepts that are enshrined in the Convention and that they have a part to play when consideration is being given to the scope of the first rank of fundamental rights that protect the physical security of the individual.
- ...
33. In *Saadi v United Kingdom*, application no 13229/03, 29 January 2008, BAILII: [2008] ECHR 80, the Grand Chamber examined the notion of arbitrary detention in the context of the first limb of article 5(1)(f) which authorises the detention of a person to prevent his effecting an unauthorised entry to the country: paras 67 to 74. Its observations were directed to the restrictions permitted by the various sub-paragraphs of article 5(1). In para 67 the Grand Chamber said that it is a fundamental principle that no detention that is arbitrary can be compatible with article 5(1) and that the notion of "arbitrariness" extends beyond lack of conformity with national law. In para 68 it said that the notion of arbitrariness in the context of this article varies to a certain extent depending on the type of detention involved. In para 74

it said that, to avoid being branded as arbitrary, such detention must be carried out in good faith and its length should not exceed that reasonably required for the purpose pursued. The ambit of article 5(1) was not the point at issue in that case. But it must follow from these observations that measures of crowd control which involve a restriction on liberty, if they are not to be held to be arbitrary, must be carried out in good faith and should not exceed the length that is reasonably required for the purpose for which the measure was undertaken.

34. I would hold therefore that there is room, even in the case of fundamental rights as to whose application no restriction or limitation is permitted by the Convention, for a pragmatic approach to be taken which takes full account of all the circumstances. No reference is made in article 5 to the interests of public safety or the protection of public order as one of the cases in which a person may be deprived of his liberty. This is in sharp contrast to article 10(2), which expressly qualifies the right to freedom of expression in these respects. But the importance that must be attached in the context of article 5 to measures taken in the interests of public safety is indicated by article 2 of the Convention, as the lives of persons affected by mob violence may be at risk if measures of crowd control cannot be adopted by the police. This is a situation where a search for a fair balance is necessary if these competing fundamental rights are to be reconciled with each other. The ambit that is given to article 5 as to measures of crowd control must, of course, take account of the rights of the individual as well as the interests of the community. So any steps that are taken must be resorted to in good faith and must be proportionate to the situation which has made the measures necessary. This is essential to preserve the fundamental principle that anything that is done which affects a person's right to liberty must not be arbitrary. If these requirements are met however it will be proper to conclude that measures of crowd control that are undertaken in the interests of the community will not infringe the article 5 rights of individual members of the crowd whose freedom of movement is restricted by them.

Article 5(1)(b) and (c)

35. The respondent's written case contains submissions directed to the cases mentioned in article 5(1)(b) and (c) as alternatives to his principal submission that there was no deprivation of liberty within the meaning of that article in the circumstances of this case. He submits that the police conduct was lawful under article 5(1)(b), as the police were acting in a proportionate manner to secure the appellant's fulfilment of an obligation prescribed by law, namely the common law obligation to assist a constable in dealing with a breach of the peace. Alternatively he submits that the police confined the appellant lawfully under article 5(1)(c), because they reasonably believed that this was necessary to prevent her committing the common law offence of refusing to aid a constable to prevent a breach of the peace. He accepts that to develop this argument he would need to persuade your Lordships that the

reasoning in *Lawless v Ireland (No 3)* (1961) 1 EHRR 15 as to the way this subparagraph should be construed was unsound.

36. Although he did not abandon these arguments, Lord Pannick did not develop either of them in oral argument. The Court of Appeal found it unnecessary to reach a concluded view on these points, and so do I. But in my opinion it would be most unfortunate if the police were to have to rely on these sub-paragraphs, or either of them, when they were considering whether or not it was lawful for them to resort to measures of crowd control. It is obvious that neither of them were designed with that way of preserving public order in mind. It is safe to assume that, if they had thought that such measures were at risk of being held within the ambit of article 5(1), the framers of the Convention would have used language similar to that which is to be found in article 10(2). As it is, the tests which they lay down, which must be construed strictly, are highly specific to the position of the individual whose right to liberty is guaranteed by the article. They refer to what the court in *Guzzardi v Italy* (1980) 3 EHRR 333, para 92 described as the concrete situation of the person who complains that his right to liberty has been violated. The police would have to identify each and every individual in the crowd and determine whether it was necessary in his particular case for his liberty to be restricted. In almost every situation that can be imagined this would be an impossible exercise - especially in an emergency, when measures of crowd control were most needed to preserve life and limb and avoid serious damage to property.
37. If measures of this kind are to avoid being prohibited by the Convention therefore it must be by recognising that they are not within the ambit of article 5(1) at all. In my opinion measures of crowd control will fall outside the area of its application, so long as they are not arbitrary. This means that they must be resorted to in good faith, that they must be proportionate and that they are enforced for no longer than is reasonably necessary.

Conclusion

38. I would hold, in agreement with the Court of Appeal, that the restriction on the appellant's liberty that resulted from her being confined within the cordon by the police on this occasion met these criteria. This was not the kind of arbitrary deprivation of liberty that is proscribed by the Convention, so article 5(1) was not applicable in this case. I would respectfully endorse the further remarks of my noble and learned friend, Lord Walker of Gestingthorpe, with which I am in full agreement. I would dismiss the appeal.

LORD SCOTT OF FOSCOTE

My Lords,

39. I have had the advantage of reading in draft the opinions prepared by my noble and learned friends, Lord Hope of Craighead and Lord Neuberger of Abbotsbury, and am in full agreement with the reasons they have given for dismissing the appeal. I agree, in particular,

that, when deciding whether a confinement or a restriction of movement imposed on an individual by some public authority constitutes a deprivation of liberty for the purposes of article 5.1 of the European Convention, the purpose of the confinement or restriction and the intentions of the persons responsible for imposing it rank very high in the circumstances to be taken into account in reaching the decision. The imposition by the police of the Oxford Circus cordon on the appellant, and many others, was done for the purposes of protecting the physical safety of the demonstrators, including the appellant, and of protecting the neighbourhood properties from the violence that it was justifiably feared some of the demonstrators would perpetrate, violence that the appellant herself regarded as likely to happen. The intention of the police was to maintain the cordon only so long as was reasonably thought necessary to achieve those purposes and it is accepted by the appellant that the cordon was not maintained longer than was necessary to achieve those purposes. In the circumstances the confinement and restriction of movement that the cordon inevitably imposed on those within it did not, in my opinion, constitute an Article 5 deprivation of their liberty. I, too, would dismiss this appeal.

LORD WALKER OF GESTINGTHORPE

My Lords,

40. I have had the great advantage of reading in draft the opinion of my noble and learned friend Lord Hope of Craighead. I am in full agreement with it, and for the reasons given by Lord Hope I would dismiss this appeal. Because of the importance of the appeal, I add a few remarks of my own, but they are no more than footnotes to Lord Hope's opinion.
41. The opening words of article 5(1) refer to "the right to liberty and security of person." There is no clear Strasbourg jurisprudence as to what "security of person" adds to "liberty", but at least the added words emphasise that the article is concerned with liberty of the person (rather than, for instance, intellectual or economic freedom). In *Bozano v France* (1986) 9 EHRR 297, a case of "disguised extradition", the Court (paras 59 and 60) attached weight to the fact that the applicant had been transported in handcuffs for 12 hours in concluding that his treatment was not compatible with the right to security of person. In some more recent cases (such as *Kurt v Turkey* (1999) 27 EHRR 373, paras 122-124, and *Timurtas v Turkey* (2001) 33 EHRR 6, paras 99-106) the Court has referred to "security of person" in connection with the ill-treatment or disappearance of prisoners while in state custody (see also *McKay v United Kingdom* (2007) 44 EHRR 41, para 30 and footnote 4). All this is consistent with close personal confinement, against one's will and to one's discomfort, being the paradigm case of a breach of article 5(1).
42. It is worth noting that article 2 of the Fourth Protocol, which the United Kingdom has not ratified, is not a new measure. It dates from 1963, and it was therefore in existence when all the Strasbourg authorities cited to your Lordships were decided. In *Guzzardi v Italy* (1980) 3 EHRR 333 it was referred to in the dissenting opinion of Sir Gerald Fitzmaurice, who noted

that it was not an issue in that case because it had not been ratified by Italy. It is also worth noting that the qualifications in article 2 of the Fourth Protocol to the right of liberty of movement and freedom to choose one's residence (set out in para 14 of Lord Hope's opinion) constitute wider and less demanding grounds of justification than the six exceptions in article 5(1). As Lord Hope observes, article 2 of the Fourth Protocol puts the ambit of the absolute article 5(1) right into its proper perspective.

...

47. Having said all that, however, I conclude that it is essential, in the present case, to pose the simple question: what were the police doing at Oxford Circus on 1 May 2001? What were they about? The answer is, as Lord Hope has explained in his full summary of the judge's unchallenged findings, that they were engaged in an unusually difficult exercise in crowd control, in order to avoid personal injuries and damage to property. The senior officers conducting the operations were determined to avoid a fatality such as occurred in Red Lion Square on 15 June 1974. The aim of the police was to disperse the crowd, and the fact that the achievement of that aim took much longer than they expected was due to circumstances beyond their control.

LORD CARSWELL

My Lords,

48. I have had the advantage of reading in draft the opinion prepared by my noble and learned friend, Lord Hope of Craighead, with which I am in complete agreement. For the reasons which he has given I too would dismiss the appeal.

LORD NEUBERGER OF ABBOTSBURY

My Lords,

49. Article 5(1) of the European Convention begins by stating that everyone has "the right to liberty and security of person", and it goes on to provide that "[n]o one shall be deprived of his liberty" subject to six specified exceptions. Those exceptions include, in paras (b) and (c), "the lawful arrest or detention of a person" in certain specified events.

...

51. Accordingly, where, as happened to the appellant in this case, a person is confined in an area against her will by the police for well over six hours, in circumstances where paras (b) and (c) do not apply, the notion that there has been no infringement of article 5 seems, at least on the face of it, surprising. All the more so, given that the appellant was required to remain, in circumstances of some discomfort, in an area of some 2,000 square metres, cordoned in together with apparently some 3,000 other people, and where the confinement was in the context of the appellant exercising her undoubted right to demonstrate

...

57. In very summary terms, those circumstances included the following significant features, all of which were identified by the Judge, after a very full hearing:
- The cordon was imposed purely for crowd control purposes, to protect people and property from injury;
 - The cordon was necessary as many of the demonstrators were bent on violence and impeding the police, and its imposition was in no way attributable to policing failures;
 - The purpose and reason for imposing the cordon were at all times plain to those constrained within it;
 - The cordon lasted for as short a time as possible; during its imposition, the police attempted to raise it on a number of occasions, but decided that it was impractical;
 - The inclusion of the appellant and the demonstrators constrained with her within the cordon was unavoidable;
 - Those who were not demonstrators, or were seriously affected by being confined, were promptly permitted to leave;
 - Although the appellant suffered some discomfort, it was limited, and the police could not have alleviated it; further, she could move around within the cordon;
 - The appellant knew in advance that many of the demonstrators intended to cause violence, and that the police were concerned about this.
58. The police are under a duty to keep the peace when a riot is threatened, and to take reasonable steps to prevent serious public disorder, especially if it involves violence to individuals and property. Any sensible person living in a modern democracy would reasonably expect to be confined, or at least accept that it was proper that she could be confined, within a limited space by the police, in some circumstances. Thus, if a deranged or drunk person was on the loose with a gun in a building, the police would be entitled, indeed expected, to ensure that, possibly for many hours, members of the public were confined to where they were, even if it was in a pretty small room with a number of other people. Equally, where there are groups of supporters of opposing teams at a football match, the police routinely, and obviously properly, ensure that, in order to avoid violence and mayhem, the two groups are kept apart; this often involves confining one or both of the groups within a relatively small space for a not insignificant period. Or if there is an accident on a motorway, it is common, and again proper, for the police to require drivers and passengers to remain in their stationary motor vehicles, often for more than an hour or two. In all such cases, the police would be confining individuals for their own protection and to prevent violence to people or property.
59. So, too, as I see it, where there is a demonstration, particularly one attended by a justified expectation of substantial disorder and violence, the police must be expected, indeed sometimes required, to take steps to ensure that such disorder and violence do not occur, or, at least, are confined to a minimum. Such steps must often involve restraining the movement of the demonstrators, and sometimes of those members of the public unintentionally caught up in

the demonstration. In some instances, that must involve people being confined to a relatively small space for some time.

60. In such cases, it seems to me unrealistic to contend that article 5 can come into play at all, provided, and it is a very important proviso, that the actions of the police are proportionate and reasonable, and any confinement is restricted to a reasonable minimum, as to discomfort and as to time, as is necessary for the relevant purpose, namely the prevention of serious public disorder and violence.
61. It was suggested on behalf of the appellant that, at any rate in some of the examples I have given, consent to being confined could be imputed to the people concerned. I am not sure that that is a satisfactory analysis, not least because, unless the consent is to be treated as being involuntary or irrebuttably deemed to be given, it would not deal with the case of a person who informed the police that he objected to being confined. However, if imputed consent is an appropriate basis for justifying confinement for article 5 purposes, then it seems to me that the confinement in the present case could be justified on the basis that anyone on the streets, particularly on a demonstration with a well-known risk of serious violence, must be taken to be consenting to the possibility of being confined by the police, if it is a reasonable and proportionate way of preventing serious public disorder and violence.
62. So, in agreement with the Court of Appeal, I would hold that, in the light of the findings of the Judge, as summarised in para [57] above, the actions of the police in the present case did not give rise to any infringement of the appellant's article 5 rights. The feature of the present case which gives particular cause for concern is the length of the period of confinement, nearly seven hours. However, having reached the conclusion that reasonable and proportionate constraint, which is requisite to prevent serious public disorder and violence, does not infringe article 5, it seems to me hard to contend that the mere fact that the period of constraint was unusually long can, of itself, convert a situation which would otherwise not be within the ambit of article 5 into one which is. I think that some support for that view can be found in cases where it has been held that detention in prison is not taken out of article 5 because it was only for a short time - see e.g. *Novotka v Slovakia* (Application No 47244/99) 4 November 2003, BAILII: [2003] ECHR 708
...
63. As already indicated, it appears to me that the intention of the police is relevant, particularly in a non-paradigm case, such as this, and where the intention is manifest from the external circumstances. If it transpired, for instance, that the police had maintained the cordon, beyond the time necessary for crowd control, in order to punish, or "to teach a lesson" to, the demonstrators within the cordon, then it seems to me that very different considerations would arise. In such circumstances, I would have thought that there would have been a powerful argument for saying that the maintenance of the cordon did amount to a detention within the meaning of article 5. However, as is apparent from the clear and careful findings made by the

Judge, which have quite rightly not been challenged on appeal, there could be no question of such a contention being raised in the present case.

...

65. For these reasons, which are little more than a summary of those advanced by my noble and learned friend, Lord Hope of Craighead, with whose opinion (which I have had the privilege of reading in draft) I agree, I would dismiss this appeal.



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Tweed v. Parades Commission for Northern Ireland

House of Lords opinions of the Lords of appeal for judgment in the cause
Tweed (Appellant) v. Parades Commission for Northern Ireland (Respondents)

On

Wednesday 13 December 2006

[2006] UKHL 53 (appeal from: [2005] NICA 42)

LORD BINGHAM OF CORNHILL

My Lords,

...

5. In the present case, Mr Tweed has obtained leave to apply for judicial review on grounds which include a challenge to the proportionality of the Commission's interference with his claimed Convention rights. The Commission's deponent has summarised five documents which Mr Tweed wishes to see. Disclosure is resisted on the ground that this would breach the assurance of confidentiality given to the Commission's informants. Like my noble and learned friends, and for the reasons they give, I would order that the five documents in question be disclosed by the Commission, in the first instance to the judge alone. He will assess whether the documents appear to record information imparted in confidence by identified informants. If not, he is likely to order disclosure to Mr Tweed, since there will be no reason not to do so. If they do appear to disclose such information, he must consider whether the documents add anything of value to the summaries in the evidence. If not, that will be the end of the matter. If he judges that they do add something of value to the summaries, he will move on to consider the submissions of the parties on redaction and, if raised, public interest immunity.
6. I would allow the appeal and make the order which my noble and learned friends propose.

LORD HOFFMANN

My Lords,

7. I have had the advantage of considering the speeches of my noble and learned friends, Lord Bingham of Cornhill, Lord Carswell and Lord Brown of Eaton-under-Heywood, in draft. I agree with them and would make the order which they propose.

LORD RODGER OF EARLSFERRY

My Lords,

8. I have had the advantage of considering the speeches of my noble and learned friends, Lord Bingham of Cornhill, Lord Carswell and Lord Brown of Eaton-under-Heywood, in draft. I agree with them and would make the order which they propose.

LORD CARSWELL

My Lords,

9. This interlocutory appeal from the Court of Appeal in Northern Ireland on the subject of disclosure of documents in judicial review applications enables the House to review the extent of disclosure which should be ordered in such applications, since the rules applicable in Northern Ireland are identical with those in England and Wales. The issue which is at the heart of the appeal is the way in which the court should approach disclosure when the question before it involves the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), in particular those qualified rights contained in articles 9, 10 and 11.
10. Parades, or to give them their statutory name, public processions, are well-established traditions in all democratic countries. They can be organised to celebrate, to express solidarity or cultural identity or to articulate concern and give expression to grievances. Very few of them are contentious in the sense that they provoke any opposition or counter-protest, but in Northern Ireland a small proportion of them have in recent years proved to be contentious in that sense and some of them have been the occasion of serious public disorder. The extent of that disorder in the mid-1990s caused the Government to set up a review body chaired by Dr Peter North, which produced a substantial report in 1997. The main recommendations of the North report were enacted in legislation in the passing of the Public Processions (Northern Ireland) Act 1998 ("the 1998 Act").

...

The facts

15. Dunloy is a small village in north Antrim. It is generally found that the most acrimonious disputes and protests over parades occur in areas where there has been demographic change, and Dunloy is no exception. The local Orange lodge Dunloy LOL 496 ("the lodge") has been established in the village for many years and has its own hall there. It has been the custom for the lodge to parade at regular intervals from the Orange Hall to Dunloy Presbyterian Church, a distance of some 325 yards, and return to the hall after the service, with a band playing for the parade in each direction. In recent years the community balance of the area has changed and according to the 2001 census 97 per cent of the population of Dunloy is now Catholic. Opposition to the parades began to mount and in 1995 there was serious public disorder. Since the 1998 Act came into force the Commission has issued a series of determinations considerably restricting the parades. The Commission has sought to encourage the members of the lodge to enter into discussion with the residents of Dunloy, but they have consistently declined to do so on what they see as a matter of principle.
16. On 9 March 2004 the appellant gave notice to the police on behalf of the lodge of a proposed public procession to be held on Easter Sunday 11 April. The proposed route was between the Orange Hall and Dunloy Presbyterian Church and back, via Station Road and Main Street.

Regalia was to be worn, but no banners carried and the parade was to be accompanied by the Dunloy Accordion Band. The police forwarded a copy of the notice to the Commission on 12 March 2004, together with an accompanying facsimile stating that the parade was an annual one, that it had previously been contentious and that it had been the subject of previous determinations by the Commission.

17. The lodge then undertook what the appellant refers to as a "communications strategy", sending out letters to local people and inviting them to an Open Day in Ballymoney on 2 April. On this occasion an exhibition was mounted, with the object of making information available about the Orange Order and the lodge and its memorabilia. One of the members and other representatives of the Commission attended the exhibition, but none of the residents of Dunloy came to it, and no direct contact was made with them by the officers or members of the lodge.

Conclusion

18. ..., The report, disclosure of which is sought in the present appeal, was summarised in paragraph 6(iii) of the affidavit sworn on 29 July 2004 by Sir Anthony Holland, the chairman of the Commission:

"(iii) On 24 March 2004 the Commission received a police report in respect of the proposed procession. This was compiled by Superintendent Corrigan, the District Commander for Ballymoney. It contained a section dealing with recent parading history beginning with a parade on 21 May 2000 and working forward. This demonstrated that on some 27 occasions since that date public processions in Dunloy had been the subject of Determinations by the Commission restricting the route, mainly so as to prevent any procession occurring in the village of Dunloy. While, on occasions, there had been protests by Loyal Orders directed at the restrictions it was noted that the organisers had complied with all the Determinations and had abided by the Commission's Code of Conduct. There had been no disorder or violence in connection with any of the parades which, subject to a small number of minor incidents, had passed off with little attention being paid to them by local residents. It was noted that local residents believed that it was the norm for no parades to be permitted in the village. In terms of the impact of processions on the community, Superintendent Corrigan records that in the past applications to parade had raised tension within the wider community. In his view if the proposed parade took place without a local agreement damage would be caused to community relations within the area. In this circumstance it was thought that residents would mount a protest which would result in a number of persons taking to the streets. Such protests, if any, would bring a potential threat to public order. Superintendent Corrigan indicated that parades did have the potential to lead in Dunloy to inter-community conflict. Without any protest in opposition to the parade he noted that traffic diversions might cause limited inconvenience to village residents and business interests but in the event of a protest that led to violence from

any quarter the disruption to the life of the community would be substantially increased. Superintendent Corrigan, in dealing with the impact of the proposed parade on human rights, noted that there would always remain the possibility that if the opposing factions came into contact in a disorderly manner the potential for a real and serious risk to life existed. In view of the fact that no Notice of Intention had been received to mount a counter-march or demonstration, the police view was that deployment of police would initially be maintained at as low a level as possible to ensure the safe passage of the parade consistent with the sensitivities of local residents. A peaceful protest against the parade would require careful monitoring on the part of the police with police being positioned to deal with disorder or violence which might arise from any quarter. If violence were to occur the police response was stated to be a graduated one commensurate with the public order situation, the object being to protect the lives of all."

19. The Commission also received reports from its authorised officers, a variety of persons from a range of backgrounds, who obtain information and opinions from a multiplicity of sources in their areas, and from whom the Commission seeks information and advice about proposed processions. The first report, received on 24 March 2004, is summarised in paragraph 6(iv) of Sir Anthony Holland's affidavit as follows:

"This report records a range of views which had been expressed to the authorised officers. Inter alia, it records the view being expressed that as there had been no engagement between the Loyal Orders and the Dunloy residents over the winter the status quo regarding parades ought to continue. The report records information about the Orange Order in County Antrim's communications strategy. It notes that a signed letter from the Orange Order was to be sent to every household in Dunloy outlining the thinking behind the procession and service on Easter Sunday. It also records that an invitation to residents to attend the exhibition of Orange culture at the Joey Dunlop Centre in Ballymoney had been provided and that there was also to be a presentation for a range of public representatives and others on the day prior to the exhibition. The strategy was described as constituting meaningful communication in the eyes of the Orange Order though it is noted that the initial reaction among residents was that it fell short of engagement with the local community."

...

25. Girvan J in the High Court acceded to the appellant's application ... , he stated at paragraph 11 of his judgment:

"Whatever the position may be in judicial review cases where no Convention issue or issue of proportionality arises, in a case where proportionality is in issue I consider that disclosure of the full documents referred to in the affidavit should take place. If the anxious scrutiny by the court or the intense review (whichever term one uses) is to be properly carried out then the court should have had sight of the documents. If this were not so the decision maker's interpretation and synopsis of documents would bind the court and the court would at least in

part have surrendered to the decision maker the question of determining weight and the relevance of material before the decision maker when reaching its decision. A decision maker acting in perfectly good faith may put a particular interpretation on documentary material which on a proper analysis turns out in law to be erroneous. It is only by seeing the documents that the court itself can carry out its function properly."

26. The Commission appealed with the leave of the judge against this ruling and the Court of Appeal (Kerr LCJ, Campbell LJ and Morgan J) set aside the order for disclosure, on the ground that it was premature to require it until the validity of rule 3.3 had been determined. Morgan J, giving the judgment of the court on 7 September 2005, referred to the principle, to which I shall return later, that the intensity of review in a public law case will depend on the subject matter in hand, quoting Lord Steyn's remark "In law context is everything." He stated his conclusions in paragraphs 22 and 23:

"[22] In this case the context is set in part by the nature of the convention rights in issue, the extent of interference with those rights and the implications, if any, for the rights and freedoms of others. But it is also clear that the procedures which the court should use for the purpose of carrying out its scrutiny of the interference with the rights may well be determined by the procedural context which the court finds appropriate in this case. Rule 3.3 of the Procedural Rules provides a mechanism whereby the rights and freedoms of others are taken into account in a manner which imposes a duty of confidence on communications with the Commission. The validity of such an approach is at issue in the substantive judicial review application and the outcome of that challenge must set an important procedural context for the determination of the question as to whether discovery of those communications is necessary for fairly disposing of the matter or for saving costs. It is only when that context has been established that the issue of discovery in this proportionality challenge can be resolved.

[23] Accordingly I consider that it is not at this stage necessary for fairly disposing of the matter or for saving costs to order discovery of the documents sought and I would allow the appeal."

27. Discovery of documents, now termed disclosure in the Civil Procedure Rules applying in England and Wales, is governed by Order 24 of the Rules of the Supreme Court (Northern Ireland) 1980, the analogue of RSC Order 24, which applied before the CPR came into being. The same principles continue to apply in both jurisdictions and for convenience I shall refer to the procedure as disclosure, notwithstanding the fact that it continues to bear the appellation of discovery in the RSC in Northern Ireland.
28. Applications for judicial review in Northern Ireland are not subject to the requirement contained in RSC (NI) Order 24, rule 2(1) that the parties exchange lists of documents, which applies only to actions in which pleadings are served. They are governed instead by the provisions of rule 3(1), whereby the court may order any party to make disclosure by a list of documents, and rule 7(1), empowering the court to require a party to make disclosure by

affidavit in relation to any specified document or class of documents. These rules are in turn subject to rule 9, which provides that on applications for orders under rule 3 or 7 the court shall refuse to make an order for disclosure "if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs." Until the Civil Procedure Rules came into force in England and Wales identical provisions applied under RSC Orders 24 and 53. Under CPR Practice Direction CPD 54.12, however, it is specifically provided that disclosure is not required unless the court orders otherwise.

29. The courts in both jurisdictions developed over a series of decisions an approach to disclosure in judicial review which is more narrowly confined than in actions commenced by writ. The basis of this approach is that disclosure should be limited to documents relevant to the issues emerging from the affidavits: see *R v Inland Revenue Commissioners, Ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617, 654, per Lord Scarman, and cf Lewis, *Judicial Remedies in Public Law*, 3rd ed (2004), para 9.086 and a valuable article by Oliver Sanders, *Disclosure of Documents in Claims for Judicial Review* [2006] JR 194. In building upon this foundation the courts developed a restrictive rule, whereby they held that unless there is some prima facie case for suggesting that the evidence relied upon by the deciding authority is in some respects incorrect or inadequate it is improper to allow disclosure of documents, the only purpose of which would be to act as a challenge to the accuracy of the affidavit evidence: see the line of authority represented in England by *R v Secretary of State for the Environment, Ex p Islington London Borough Council and the London Lesbian and Gay Centre* [1997] JR 121 and in Northern Ireland by *Re McGuigan's Application* [1994] NI 143 and *Re Rooney's Application* [1995] NI 398.

...

36. Along with the concept of proportionality goes that of a margin of discretion, frequently referred to as deference or, perhaps more aptly, latitude. This has been conveniently encapsulated in a passage in Lester & Pannick, *Human Rights Law and Practice*, (1999) para 3.21, quoted with approval by Lord Steyn in *Brown v Stott* [2003] 1 AC 681 at 710-11 (the same passage appears with slight modification in Lester & Pannick's 2nd edition (2004) at para 3.20):

"Just as there are circumstances in which an international court will recognise that national institutions are better placed to assess the needs of society, and to make difficult choices between competing considerations, so national courts will accept that there are some circumstances in which the legislature and the executive are better placed to perform those functions."

That this also applies to other public bodies is clear from the expression of the principle in Fordham, *Judicial Review Handbook*, (3rd ed, 2001), para 58.2, cited with approval by Lord Walker of Gestingthorpe in *R (ProLife Alliance) v British Broadcasting Corporation* [2003]

UKHL 23, [2004] 1 AC 185, para 138 (a closely similar passage appears in Fordham's 4th edition (2004) at para 58.5):

"Hand in hand with proportionality principles is a concept of 'latitude', which recognises that the Court does not become the primary decision-maker on matters of policy, judgment and discretion, so that public authorities should be left with room to make legitimate choices. The width of the latitude (and the intensity of review which it dictates) can change, depending on the context and circumstances. In other words, proportionality is a 'flexi-principle'. The latitude connotes the degree of deference by court to public body."

...

37. The Court of Appeal concluded (in paragraphs 22-23 of the judgment of Morgan J which I quoted) that the validity of rule 3.3 of the Commission's procedural rules required to be ascertained before the extent of disclosure of documents could be settled. Girvan J expressed the view, however, in the High Court that the interests of justice could, if it were required, override the provisions of rule 3.3. He said at paragraph 8 of his judgment:

"[8] There are issues as to whether para 3.3 of the Procedural Rules are [sic] invalid and or whether the application of the rule involves an unfair procedure for determination of the issue which the Parades Commission had to determine. Discovery of the relevant documents would not be necessary for the determination of that legal issue. Para 3.3, if read as subject to an overriding power of the court to direct disclosure of documents if disclosure is necessary in the interests of justice, would not in itself preclude an order [for] disclosure if that is required in the interests of justice. The court would in that event have to determine whether it would be appropriate to direct discovery taking account of the fact that information in evidence was gathered on the basis that it would be treated as confidential. It would, in my view, require clear words to preclude the court from ordering disclosure of documents when [ex] hypothesis it considers that the interests of justice so require. Para 3(3) falls to be construed and applied in the context of rules made to explain how the court will exercise its statutory functions. It does not govern proceedings to challenge determinations in which a court is called on to review the legality of the way in which the Commission has exercised its functions, particularly where the court is required to take account of Convention rights. Accordingly, I conclude that there is nothing in para 3(3) which precludes an order for discovery, if otherwise appropriate. Insofar as the documents contain information obtained confidentially the protection of confidentiality may be achievable by limited redaction. Confidentiality, on its own, would not prevent an order for disclosure if the interests of justice are required and there is no public interest which requires that the documents should not be disclosed." I am in complete agreement with these propositions, the correctness of which was properly conceded by Mr McCloskey QC on behalf of the Commission. The court will clearly pay regard to the fact that statements and opinions were given to the Commission and its representatives on receipt of assurances of confidentiality and the importance of maintaining that flow of

opinions and information in the future. It will no doubt seek to cause minimum disturbance to that confidence when assessing the requirements of justice in disclosure of the documents sought, bearing in mind always the principles laid down by the House in *Science Research Council v Nassé* [1980] AC 1028. It follows accordingly that the decision of the Court of Appeal cannot be supported and that the question of disclosure can be considered without waiting until the validity of rule 3.3 is the subject of adjudication.

...

42. I would therefore allow the appeal and order disclosure in the manner I have set out ...

LORD BROWN OF EATON-UNDER-HEYWOOD

My Lords,

43. This appeal is all about disclosure of documents in judicial review proceedings. Although it comes from Northern Ireland it is not suggested that the approach there is or should be any different from that taken in England and Wales. And this is so notwithstanding that civil procedure in England and Wales is now governed by the Civil Procedure Rules (CPR) whereas in Northern Ireland the old rules of court (RSC) remain in force.
44. In England and Wales judicial review is now subject to CPR Part 54; disclosure and inspection of documents to CPR Part 31. Part 54 makes no mention at all of disclosure and the Practice Direction issued under it states no more than "12.1 Disclosure is not required unless the court orders otherwise" (54 PD.12). That the court has power to make disclosure and inspection orders under Part 31 is not of course in doubt, whether orders for standard disclosure under Part 31.6 or for specific disclosure or inspection under Part 31.12 or for inspection of individual documents mentioned in, for example, an affidavit under Part 31.14 (1)(d).

...

47. This appeal calls into question the correctness of that approach, in particular insofar as it states that "[a] claimant will not be granted an order for disclosure to go behind the written evidence to ascertain whether the statements in that written evidence are correct unless there is some material outside that evidence which suggests that it is inaccurate, misleading or incomplete in some material respect." The authorities supporting it, your Lordships will notice, substantially pre-date the coming into force of the Human Rights Act 1998 and even before that the Law Commission had expressed the opinion (in paragraph 7.12 of its report, (1994) Law Com No 226, HC 669, *Administrative Law: Judicial Review and Statutory Appeals*):

"While accepting that discovery should not be obtained on a contingency basis in judicial review proceedings, we consider that requirements which mean that in practice there must be a contradiction or inconsistency in the respondent's affidavit before discovery is ordered are

unduly restrictive and undermine the basic test of relevance and necessity laid down in *O'Reilly v Mackman*."

48. The particular factual and legislative context in which the question of disclosure now arises is fully set out in the opinion of my noble and learned friend Lord Carswell whose detailed exposition of these matters I gratefully adopt. In basic outline the position is this. On the substantive judicial review application the appellant challenges (i) the compatibility with articles 9, 10 and 11 of the Convention of section 8(6)(c) of the Public Processions (Northern Ireland) Act 1998 and paragraph 4.4 of the Parades Commission's guidelines, each of which in essence requires the Commission to have regard to any impact which a procession may have on relationships within the community—a consideration which the appellant submits falls outside any of the permissible objectives to be pursued under paragraph 2 of each of the three articles; (ii) the validity of rule 3.3 of the Commission's Procedural Rules—which provides essentially that the Commission will treat all evidence provided to it as confidential and for its use only—a rule challenged on both natural justice and article 6 grounds; and (iii) the Commission's substantive determination on 5 April 2004 permitting, but only subject to the most stringent conditions, the Dunloy Orange Lodge march on Easter Sunday, 11 April. The appellant contends that the conditions imposed were disproportionately restrictive so as to violate his rights under articles 9,10 and 11.
49. All these issues, of course, will fall for determination at the substantive hearing of the judicial review challenge. The question now is an interlocutory one: whether disclosure should be given of five particular documents mentioned and summarised in Sir Anthony Holland's affidavit of 29 July 2004, most importantly two situation reports from the Commission's Authorised Officers recording the views of a variety of people in the community about the proposed march. It is now common ground between the parties that rule 3.3 presents no obstacle to proper disclosure being ordered. Girvan J so held (see paragraph 8 of his judgment set out in paragraph 37 of Lord Carswell's opinion) and, like Lord Carswell, I agree with him.
- ...
53. There can be no doubt that proportionality challenges have brought a new dimension to judicial review. In times past, when the *Wednesbury* principle ruled, decision-makers had only to have regard to all material considerations (the weight of which was entirely for them), to ignore immaterial ones, and to have reached decisions which were rational (as opposed to perverse) to be immune from challenge. Subject only to rationality, decisions could not be impugned on the ground that a wrong balance had been struck between competing considerations. Now of course, in certain cases at least, a more sophisticated and intensive process of review is required, in particular when investigating alleged violations of the qualified rights protected by the Convention.
- ...

57. On this approach the courts may be expected to show a somewhat greater readiness than hitherto to order disclosure of the main documents underlying proportionality decisions, particularly in cases where only a comparatively narrow margin of discretion falls to be accorded to the decision-maker (*a fortiori* the main documents underlying decisions challenged on the ground that they violate an *unqualified* Convention right, for example under article 3). That said, such occasions are likely to remain infrequent: respondent authorities under existing practices routinely exhibit such documents to their affidavits (and, indeed, should be readier to do so whenever proportionality is in issue). Take this very case. But for the important matter of confidentiality arising in respect of these particular documents, it seems to me almost inevitable that they would have been exhibited, not least because that would have been simpler than summarising them. Without his having seen them, however, one can readily understand the appellant's concern that their effect may have been unwittingly distorted.
58. I too agree, therefore, that the disclosure application here should not be dismissed. I would treat all five documents in the same way: the judge should receive from the respondent and inspect the full text of the disputed documents (consistently with the practice laid down by the House of Lords in *Science Research Council v Nassé* [1980] AC 1028); if he concludes that realistically their disclosure could not affect the outcome of the proportionality challenge he will dismiss the appellant's application for inspection; if, however, he reaches the contrary conclusion he will need to consider (with counsel's assistance) the question of redaction; only then may he still need to determine the respondent's public interest immunity claim.
59. I too, therefore, for substantially the same reasons as those given by Lord Carswell, would allow the appeal and make the necessary order.

Bruce William Scott Hamilton v Procurator Fiscal

Opinion of Lord Hamilton in Stated Case in the cause

Bruce William Scott Hamilton (Appellant) v Procurator Fiscal, Glasgow(Respondent)

Appeal No: 2809/00

ScotHC 334

On

20 December 2002

...

The facts

3. ..., Gartocher Terrace is a private road accessed from a main road at one end only and that the owners of the houses in the street, all of which border the street on one side only, own the roadway up to the halfway line. The remaining part of the roadway was owned by Railtrack plc. It is found in fact that the roadway is in common and everyday usage with unrestricted access over many years to anybody wishing to enter the road on foot or by vehicle from the main road. Ordinarily there is no restriction, obstruction or difficulty for vehicular traffic coming from the main road into Gartocher Terrace and any member of the public wishing to drive into it can do so easily and without causing nuisance to the owners or occupiers of the houses in Gartocher Terrace. Also accessed via Gartocher Terrace is an area of waste ground, a cemetery and a social club all of which are regularly visited by members of the public without any restriction being placed on them either currently or historically by the owners of the properties on Gartocher Terrace. The whole roadway is wide enough to admit the passage of two vehicles abreast.
4. The findings in fact also record that Mr. Combe inherited his house at No. 14 Gartocher Terrace some two years before May 1999. In the early days of his ownership there was no difficulty about access to his property and he regularly took vehicles, both cars and lorries, to his property without difficulty over the roadway of Gartocher Terrace which is and has always been the only access to the house. Mr. Combe runs a business elsewhere in Lanarkshire as a waste disposal contractor. It appears that fears existed locally and particularly among the residents of Gartocher Terrace that he might attempt to use the ground surrounding his house for purposes connected with his business. Mr. Combe had no such plans and his solicitors had written to every resident in the street to confirm that there was no such intention.
5. Finding in fact 9 is in the following terms:

"9. From about mid-April 1999 for a period of several months (sic) Mr. Combe was repeatedly blocked, harried and obstructed on occasions when he attempted to drive in Gartocher Terrace as were other members of his company, in particular his company consultant Miss Dorothy Paterson. The problems were such that from 5 May 1999 onwards Miss Paterson began to keep a full written log of the incidents many of which involved residents and children of

residents in Gartocher Terrace, obstruction by objects and vehicles and vandalism in the area around No. 14. All of these incidents, including the present one on 13 May 1999 involving the appellant caused Mr. Combe, and others, annoyance and upset."

...

7. ..., a further protest or demonstration was arranged by residents unknown in the morning and at about 7.00 am residents of the street set up a line of 'wheelie' bins across the street at the point where it forms a T-junction with the main road. There were some other visible signs of a protest in the form of slogans and banners either on the obstruction caused by the bins or on hedges or fences adjoining. The line of bins completely blocked access to Gartocher Terrace and no vehicle could pass through without knocking them over or striking individuals who were standing at or near the bins. Mr. Combe found the obstruction when he attempted to drive into the street to gain access to his house with his own motor vehicle and a skip lorry. He called the police. At approximately 7.15 a.m. a number of police officers arrived. At that time a group of approximately eight persons were manning the barricade formed by the line of bins. The appellant was then in the middle of the group at a point on the roadway near to its centre. He was aware of earlier police involvement on previous days. This involvement is recorded in reference to an incident involving access to the street for vehicles belonging to Mr. Combe, that occurred on 7 May 1999 when two of the residents were arrested. In addition, there were further incidents on the mornings of 11 and 12 May 1999 when access to the street was denied by the erection of barriers across the entrance. On each day the police were called to deal with a complaint from Mr. Combe in relation to access being denied to him. On both days the obstruction was removed at the request of the police and Mr. Combe received access to his property.
8. After the police arrived on 13 May 1999 the appellant was spoken to initially by a police constable. He asked the group of persons including the appellant to move off the roadway. They all refused. The constable called for senior officers to attend. A police inspector, who was in charge of the operation, arrived in response to this call. A discussion took place between the police, the appellant and the others present as to Mr. Combe's rights of access to Gartocher Terrace. The police inspector asked the group as a whole to move off the road. He did so in clear terms "having regard to earlier involvement". Some of the group left at that stage and some moved the 'wheelie' bins which formed the obstruction. Two persons remained after this warning and after the others had left. One of these was the appellant. He remained in the middle of the road. He was spoken to personally by the police inspector and the instruction to move off the roadway and allow passage was repeated in clear terms. The appellant said "They are not coming through". This was a reference to Mr Combe and members of his company who were waiting on the main road with the skip lorry. The police inspector then gave instruction to apprehend the appellant.

...

Conclusion

10. In his note the sheriff tells us that he had viewed the conduct of the appellant in the light of the overall circumstances, the number of persons present and their state of mind, and that he had also had regard to the position of the police who had to take action in order to attempt to deal with the situation where the road was blocked and a resident of the street who appeared to have good reason for entering the road was being denied access. The action decided upon by the police officers was that the obstruction on the roadway should be moved and the actions of the appellant in attempting to frustrate them in that, taken along with his stated intent to continue to do so, was conduct which was performed in breach of good public order and decorum and conduct which might reasonably be expected to lead to upset or to the taking of reprisals on the part of others. The sheriff continues as follows:

"(The appellant's) refusal to allow entry to the street in respect of Mr. Combe had already led to upset on his part and I took the view that the police were entirely within their rights, powers and responsibilities when they attempted to clear the roadway by consent initially and thereafter when they arrested the appellant following upon his stated refusal to move. This was an entirely proper and reasonable course for the police to adopt and I was satisfied that refusal to comply in all the existing circumstances including the state of mind of others present at this demonstration of resistance fulfilled the conditions for the test for common law breach of the peace set out primarily in *Rafaelli v. Heatley* 1949 JC 101 and followed in subsequent cases."

11. Mr. Wheatley's general submission began from the decision of this court in *Smith v. Donnelly* 2001 SCCR 800. He pointed out that in that case, after a review of the relevant case law, the court expressed the view (in para. 17) that what is required to constitute the crime of breach of the peace is conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community. The court had gone on to indicate that if the opinions in the leading cases are read as a whole, it was sufficiently clear that something substantially greater than mere irritation was involved. Rather what is required is conduct which does present as genuinely alarming and disturbing, in its context, to any reasonable person. He also referred to the passage in para. 20 where the court, in commenting on some recurrent themes, said:

"...there have been repeated instances in which refusal to co-operate with police or other officials has led to a charge of breach of the peace; but such a refusal, even if forcefully or even truculently stated, is not likely to be sufficient in itself to justify conviction."

12. Mr Wheatley went on to submit that in the present case there was nothing to suggest that there had been that degree of alarm or annoyance as would suffice to substantiate a conviction for breach of the peace in the terms libelled in the present case. The incident took place on a private road. It was a peaceful protest although its object was to prevent others coming onto property which was owned by the residents. When the police officers arrived, the barrier was

withdrawn when the police requested that it be removed. Up to that point there could not be any warrant for holding that such conduct had constituted a breach of the peace. It did not threaten serious disturbance to the community. In what followed, as set out in the findings in fact, there was nothing of conduct on the part of the appellant which either by gesture or by words was severe enough to cause alarm to a reasonable person. Nor was there any suggestion of public disorder arising from that conduct. Consequently the conduct was not at a level which made it appropriate to be regarded as a breach of the peace. The sheriff had therefore erred in holding that the facts demonstrated that in law a breach of the peace had been committed by the appellant.

...

15. There are no findings of fact that any other persons were actually upset by the appellant's conduct. The issue is accordingly narrowed to whether the appellant's conduct prior to his arrest was such as might reasonably be expected to lead to others being alarmed or upset or tempted to make reprisals at their own hand. It is difficult to find in this case any evidential basis on which such a conclusion could properly be based. Although there was undoubtedly a background of earlier incidents, there is nothing in the findings of fact in this case to suggest that these were other than peaceful protests, albeit involving, to a greater or lesser degree, obstruction of free access along the street. While these earlier incidents were no doubt a source of irritation to those adversely affected, there is nothing to suggest that they, or any of them, had given rise to violence or any serious disturbance on the part of either those who obstructed access or of those whose access was obstructed. Nor does there appear to be any basis on which it could properly be concluded that these earlier incidents had caused "upset, alarm and disorder among bystanders and onlookers". The sheriff's finding that "there existed high potential for further upset, alarm and disorder among bystanders and onlookers" (emphasis added) seems unsupported by the evidence. We note that in the course of adjustment of the stated case the appellant's agents proposed the following question for inclusion:

"Was I entitled to make finding in fact Number 21 on the basis that no evidence was led in relation to anyone being upset by the Appellant's conduct and that any upset by bystanders and onlookers was caused by Mr. Combe being allowed access to the street after the Appellant's arrest?"

The sheriff rejected that proposed adjustment but, again, has given no reasons for doing so. There appears to have been nothing in the particular circumstances of the appellant's conduct which made it, against the relative background, likely to be a catalyst for any serious disturbance (whether from a supportive or a retaliatory source) such as to constitute a breach of the peace. No doubt, it might on one view be thought to be indecorous to refuse to cooperate with a police officer. But, as is made plain in *Smith v. Donnelly* at para. [20], such refusal is not likely, as the law is presently understood, to be sufficient in itself to justify a

conviction for breach of the peace. The circumstances of this case in substance amount to no more than that. It is unnecessary to discuss whether the appellant's conduct was otherwise criminal.

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ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

Tabernacle v Secretary of State for Defence

England and Wales Court of Appeal (Civil Division) Decisions between

Tabernacle (Appellant)

and

The Secretary of State for Defence (Respondent)

Case No: C1/2008/0649

On

05 February 2009

[2009] EWCA Civ 23

Lord Justice Laws:

Introduction

1. This is an appeal, with permission granted by Waller LJ on 13th May 2008, against the decision of the Divisional Court (Maurice Kay LJ and Walker J) given on 6th March 2008 by which it dismissed the appellant's application for judicial review seeking to challenge the legality of paragraph 7(2)(f) of the Atomic Weapons Establishment (AWE) Aldermaston Byelaws 2007 (the 2007 Byelaws).
2. The appellant is a long-time member of the Aldermaston Women's Peace Camp (the AWPC). The AWPC protest against nuclear weapons. They do so in the vicinity of the Atomic Weapons Establishment at Aldermaston (the AWE). They have camped on land at Aldermaston, most recently in an area owned by the respondent Secretary of State within what the 2007 Byelaws call "the Controlled Areas". Paragraph 7(2)(f) of the 2007 Byelaws prohibits camping in the Controlled Areas from which, therefore, it bans the AWPC. The question in the case is whether this prohibition violates the appellant's right of free expression guaranteed by Article 10 of the European Convention on Human Rights (the ECHR).

The facts

...

4. The camp has been going for some 23 years. The women assemble on the land for the second weekend of each month. They stay from Friday evening until Sunday morning. They hold vigils, meetings and demonstrations, and hand out leaflets. Their protest is and always has been entirely peaceful.
5. The land occupied by the AWE includes what are called the Protected Areas and the Controlled Areas. Public entry into the Protected Areas, where the actual Research Establishment is situated, is forbidden. However the public has free access to the Controlled Areas, and it is there, as I have indicated, that the AWPC foregathers each month. We were told that the Controlled Areas have been open to the public at least since 1986.

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The issue

9. The appellant sought originally to challenge the legality of paragraph 7(2)(f), (g) and (j). The Divisional Court, having granted permission to seek judicial review and proceeded to determine the substantive judicial review claim, upheld the challenge to paragraph 7(2)(g) but dismissed the balance of the application relating to 7(2)(f) and (j). We are no longer concerned with (j). The appeal relates only to (f).

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The secretary of state's case

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The Legal Setting

13. In deciding whether the interference is justified the court has to consider whether paragraph 7(2)(f) serves the achievement of a legitimate aim and, if it does, constitutes a proportionate means of doing so. The requirement of proportionality is derived from the rubric "necessary in a democratic society" in Article 10(2). It is well established that this standard can only be satisfied if the impugned measure is required to fulfil what the European Court of Human Rights has described as a "pressing social need": see, amongst a welter of authority, *Sunday Times v United Kingdom* (1979) 2 EHRR 245.
14. Moreover the weight of the Article 10(2) justification advanced by the State cannot – certainly in this case – be looked at in isolation. Whether paragraph 7(2)(f) imposes no more than a proportionate restriction of AWPC's free expression rights depends also on the particular nature and quality of the right's exercise with which the prohibition interferes. Here the Secretary of State's case has two specific aspects. First, Mr Nardell on his behalf submits that we should attach importance to the fact that the only source of the public's right (thus AWPC's right) to go on the Controlled Areas is to be found in the 2007 Byelaws themselves: paragraph 6, which I have set out. They are not, otherwise, public land at all. Mr Nardell says that all that has happened is that the Secretary of State has through the 2007 Byelaws granted the public a right to go on the Controlled Areas, but subject to conditions including that provided for by paragraph 7(2)(f). The State owes no positive obligation whatever to set aside any part of the property as a place for public protest. Moreover the Secretary of State has not previously admitted the public to the Controlled Areas for camping purposes, let alone political protest: the predecessor byelaws also prohibited camping. In all those circumstances, while as I have foreshadowed Mr Nardell accepts that paragraph 7(2)(f) constitutes an interference with AWPC's rights under Article 10, he says that the interference is weak.
15. The second aspect of the Secretary of State's case concerning the particular nature and quality of the Article 10 right's exercise (with which the paragraph 7(2)(f) prohibition interferes) is altogether broader. It consists in what Mr Nardell submits is an important distinction: between the so-called essence of the Article 10 right on the one hand, and the "manner and form" of its exercise on the other. Mr Nardell submits that paragraph 7(2)(f) only intrudes upon the latter,

and this has, or should have, a significant bearing on the court's readiness to hold that paragraph 7(2)(f) is no more than a proportionate interference. Plainly there is not, nor could there be, any suggestion that the Secretary of State has sought to impose anything approaching a blanket ban on AWPC's rights of protest. They may protest as much as they like: all they are stopped from doing is camping in the Controlled Areas. Mr Nardell submits that such a restriction goes at most to the manner and form of AWPC's exercise of the right of free expression; and not to the right's essence.

...

17. In Strasbourg the applicants submitted that their assembly was banned in Trafalgar Square because it was "controversial" and liable to shock or offend rather than for any reason of public safety. The Commission, which concluded that the applicants' complaint was manifestly ill-founded, held that the question whether the applicants' policy was merely "controversial" was within the government's margin of appreciation, and said this (CD98):
- "Having regard to the fact that the refusal of permission did not amount to a blanket prohibition on the holding of the applicants' rally but only prevented the use of a high profile location (other venues being available in central London)... the restriction in the present case may be regarded as proportionate and justified as necessary in a democratic society within the meaning of Article 11(2) of the Convention."

...

19. Mr Nardell would submit that the learning shows not only that there is a real distinction between restrictions on the manner and form of a protest (or other utterance) and a prohibition of the protest altogether; it shows also that once the court is satisfied that the case is in the former territory and not the latter, it will be much readier to allow the State what may be a generous margin of appreciation to take restrictive measures for practical or prudential reasons. As Professor Barendt has said (*Freedom of Speech*, 2nd edn., p. 281):
- "[R]easonable time, manner, and place restrictions have been upheld, provided at any rate that they leave ample alternative channels for communication of the ideas information."

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20. On Mr Nardell's case the space given by the Strasbourg court to manner and form restrictions is, moreover, all of a piece with another dimension of the court's jurisprudence. This is the care taken in the authorities to avoid a position in which invocation of a Convention right might seem to, or might in fact, confer an immunity from the effects of ordinary State regulation for proper purposes. *Chapman v UK* (2001) 10 BHRC 48 (Application No 272385/95) is a good example. The applicant was a gypsy. The local authority refused planning permission for her mobile home to be stationed on a piece of land she had purchased, and served enforcement notices which were upheld at a public inquiry. Further applications for planning permission for a bungalow were refused, and the refusals again upheld at public inquiries. The court at Strasbourg held that the authority's decisions constituted an interference

with the applicant's right to respect for her private life, family life and home pursuant to ECHR Article 8; but the interference had the legitimate aim of protecting the rights of others, the national authorities enjoyed a margin of appreciation as to how that should be achieved, and they had weighed in the balance the various competing interests. Accordingly the decisions arrived at were proportionate to the legitimate aim of preserving the environment. At paragraph 96 the court observed that

"the fact of belonging to a minority with a traditional lifestyle different from that of the majority does not confer an immunity from general laws intended to safeguard the assets of the community as a whole, such as the environment..."

21. Mr Nardell submits that all these aspects of the case-law provide the setting for the Secretary of State's justification of the interference with the AWPC's rights constituted by paragraph 7(2)(f) of the 2007 Byelaws. Their effect is that while the justification must be real and not fanciful, and of course serve a legitimate aim, it must be judged by reference to a very broad margin of appreciation enjoyed by the Secretary of State.

The Secretary of State's Justification of paragraph 7(2)(f) of the 2007 Byelaws

22., Maurice Kay LJ giving the judgment of the Divisional Court:

"23. ... As a matter of policy, there is a general prohibition on unauthorised camping across the Defence Estate. It is only allowed with express permission. The reasons include operational and security concerns. Dealing specifically with Aldermaston, Mr Pinchen says that camping in the vicinity of the security fence is not appropriate for security reasons. If it were allowed, additional surveillance would be necessary. Camping can be used as a base, a cover or a distraction in relation to terrorist or similar activities. There are no publicly accessible sanitation facilities anywhere in the Controlled Areas. AWE have received numerous complaints about the AWPC and its occupants, ranging from the leaving of human excreta in the area to passing motorists beeping their horns ... The claimant denies all allegations of antisocial behaviour and we are content to accept that, in general, the members of the AWPC do not behave badly. They have been camping there or thereabouts for many years and the prohibition on camping in the Byelaws has existed since at least 1986. We have previously explained why it has not been enforced over the years."

22. The reference to a previous explanation is to paragraph 5 of the Divisional Court's judgment: "It seems that the 1986 Byelaws were never used against the AWPC, probably because there was for a time some doubt as to whether the women were on land belonging to the Secretary of State and, more recently, because of apprehension about the impact of the Human Rights Act 1998."

...

The appellant's case

The Legal Setting

26. Mr Pievsky for the appellant does not dispute, nor could he, that the Strasbourg court has accepted a distinction between manner and form on the one hand and the essence of a Convention right on the other. He also concedes that the prevention of public disorder may in appropriate cases justify such measures as a requirement of prior authorisation or even the prohibition of a protest; though he submits that the feared disorder must be imminent. He does not, however, accept that in principle the law allows a wider discretionary area of judgment in relation to the manner and form, as opposed to the essence, of a political protest. ("Discretionary area of judgment" is a better phrase than "margin of appreciation": as is well known the latter is a Strasbourg term of art reflecting the international court's distance from the facts and circumstances of decision-making in the States Parties.)
27. In any event, however, Mr Pievsky roundly submits that we are not in "manner and form" territory. His case is that the AWPC camp is not merely the setting or the context – the manner and form – of his client's protest: it is an inherent part of the protest itself. It has a symbolic effect. Attending a peace camp is a traditional and well-recognised form of political expression. There are many well-known instances. Waller LJ granting permission to appeal considered that "the byelaw as construed catches a form of peaceful protest used in many places..." It is undoubted that acts as well as words may constitute political expression: see for example *Vajna v Hungary* (Application 33629/06). In his reply skeleton argument Mr Pievsky puts it thus (paragraph 4):
- "Defacing a flag, deliberately using a seat on a bus supposedly reserved for citizens of a different race, in order to defy a racist law on segregation, going on a hunger strike, carrying out a silent vigil, and attending a peace camp are well-known ways in which political messages about fundamentally important political matters can be very powerfully expressed – albeit silently."
28. As for the contention that the appellant's ECHR rights are the less because (in light of paragraph 6 of the 2007 Byelaws) all that has happened is that the Secretary of State has granted public access to the Controlled Areas subject to conditions, this is, on Mr Pievsky's argument, a *non sequitur*. He submitted in terms that government property is held for the public good; the Secretary of State has no legitimate private axe to grind. I apprehend Mr Pievsky would say that once it is accepted that the appellant enjoys Article 10 rights with the AWPC, the fact that the government landowner has granted access to the land means only that the AWPC is not a trespasser.
29. Mr Pievsky also submits that the Secretary of State has given no weight to the subject-matter of the AWPC protest: nuclear weapons. Where the acts or speech in question relate to "a debate on a matter of general concern and [constitute] political and militant expression ... a

high level of protection of the right to freedom of expression is required under Article 10": *Lindon and others v France* (2008) 46 EHRR 35.

30. In all these circumstances Mr Pievsky submits that the interference with his client's rights constituted by paragraph 7(2)(f) of the 2007 Byelaws, far from being weak or insubstantial, goes to the right's core or essence; and the discretionary area of judgment which the domestic court should allow the Secretary of State (whatever the margin of appreciation which might be contemplated by the international tribunal) should be severely circumscribed. Paragraph 7(2)(f) could only be vindicated by a substantial objective justification, amounting to an undoubted pressing social need.

The Secretary of State's Justification of paragraph 7(2)(f) of the 2007 Byelaws

31. Mr Pievsky has advanced arguments in reply to all of the points put forward by Mr Pinchen. As for concerns about security, it has not been suggested that the AWPC have ever proposed to enter the Protected Areas, and (as my Lord Wall LJ suggested in the course of argument) the perimeter fence is presumably patrolled in any event. Then there is a point about sanitation: the appellant has given evidence, which I do not think is contradicted, as to the availability of adequate sanitation facilities. Moreover the 2007 Byelaws include provisions relating to nuisance and waste and there has been no suggestion of any breach. Next there is Mr Pinchen's evidence of "numerous complaints about the AWPC and its occupants", some of them taking a particularly unpleasant form. The Divisional Court accepted that "in general, the members of the AWPC do not behave badly", and the evidence overall shows that their activities down the years have been consistently peaceful.
32. On this last aspect of the case, the reaction of other members of the public to the presence and the activities of the AWPC, Mr Pievsky understandably relies on the decision of the Divisional Court in *Redmond-Bate v DPP* [1999] EWHC Admin 732. That case concerned an episode in which one or more of three women, Christian fundamentalists, were preaching from the steps of Wakefield Cathedral. A crowd gathered. Some of the people in the crowd showed themselves hostile to the women. A police officer at the scene feared a breach of the peace. He asked the women to stop preaching. They refused. He arrested them for breach of the peace. One of the women was subsequently convicted of obstructing a police officer. Her appeal to the Crown Court was dismissed. She launched a further appeal, by way of case stated, to the High Court; and this appeal was successful. Sedley LJ (with whom Collins J agreed) said this:

"18. ... The question for PC Tennant was whether there was a threat of violence and if so, from whom it was coming. If there was no real threat, no question of intervention for breach of the peace arose. If the appellant and her companions were (like the street preacher in *Wise v Dunning*) being so provocative that someone in the crowd, without behaving wholly unreasonably, might be moved to violence he was entitled to ask them to stop and to arrest them if they would not. If the threat of disorder or violence was coming from passers-by who

were taking the opportunity to react so as to cause trouble (like the Skeleton Army in *Beatty v Gilbanks*), then it was they and not the preachers who should be asked to desist and arrested if they would not."

33. In all these circumstances Mr Pievsky submits that the Secretary of State has not begun to demonstrate a substantial objective justification for paragraph 7(2)(f) of the 2007 Byelaws, amounting to an undoubted pressing social need.

...

Conclusions

The Legal Setting

35. In my judgment the supposed distinction between the essence of a protest and the manner and form of its exercise has to be treated with considerable care. In some cases it will be real, in others insubstantial. All depends on the particular facts; and it is worth remembering that the Strasbourg court has always been sensitive to factual nuance.

...

The Secretary of State's Justification of paragraph 7(2)(f) of the 2007 Byelaws

...

42. Mr Pievsky's responses to the individual justifications canvassed in Mr Pinchen's evidence are all generally persuasive. Paragraph 7(2)(f) was not framed in the face of high-profile public concerns, as in *Rai, Almond* (1995) 19 EHRR CD93; or threats of violent public disorder, as in *Chorherr v Austria* (1993) 17 EHRR 358; or defiance of the general law, as in *Chapman v UK* (2001) 10 BHRC 48. In my judgment the Secretary of State has viewed, or treated, the AWPC's presence at Aldermaston for all the world as if it were no more nor less than a nuisance. I accept he appears to have regarded it as more than that, and I certainly accept that Mr Pinchen's evidence accurately describes the Secretary of State's perception of the matter. But the individual points made – the security fence, traffic problems, lavatories, the bad behaviour of other members of the public – are, in objective terms, nuisance points.
43. Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them. Sometimes they are wrong-headed and misconceived. Sometimes they betray a kind of arrogance: an arrogance which assumes that spreading the word is always more important than the mess which, often literally, the exercise leaves behind. In that case, firm but balanced regulation may be well justified. In this case there is no substantial factor of that kind. As for the rest, whether or not the AWPC's cause is wrong-headed or misconceived is neither here nor there, and if their activities are inconvenient or tiresome, the Secretary of State's shoulders are surely broad enough to cope.
44. For all these reasons, in my judgment the effect of paragraph 7(2)(f) of the 2007 Byelaws is to violate the appellant's rights guaranteed by ECHR Articles 10 and 11. I would accordingly

allow the appeal. If my Lords agree, we should hear argument as to the appropriate form of relief.

Lord Justice Wall:

...

47. ...,In the first place, it seems to me to give take no cognisance of the nature of the protest, as explained by the appellant in paragraph 7 of her second witness statement: -

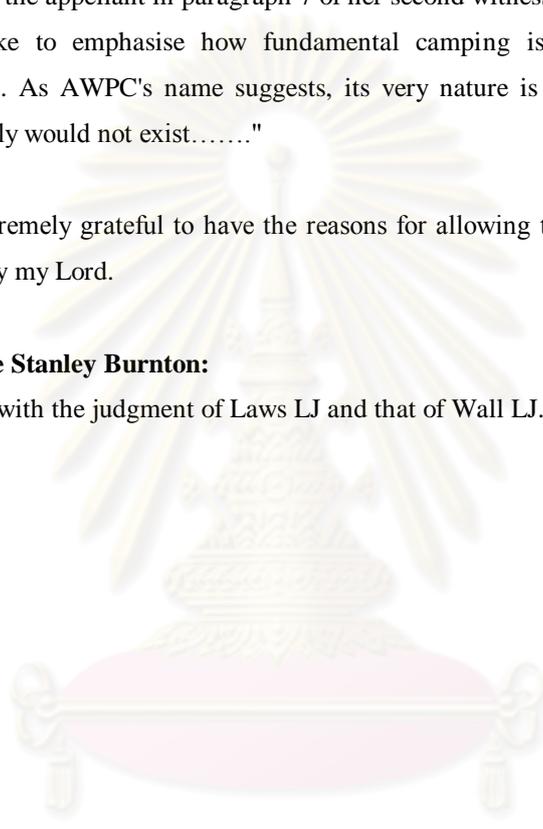
"I would like to emphasise how fundamental camping is to the AWPC's protests at Aldermaston. As AWPC's name suggests, its very nature is the camp. Without the camp AWPC simply would not exist....."

...

51. ..., I am extremely grateful to have the reasons for allowing the appeal so fully and clearly articulated by my Lord.

Lord Justice Stanley Burnton:

52. I agree both with the judgment of Laws LJ and that of Wall LJ.



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APPENDIX C

PUBLIC ORDER ACT 1936

1936 CHAPTER 6 1 Edw 8 and 1 Geo 6

An Act to prohibit the wearing of uniforms in connection with political objects and the maintenance by private persons of associations of military or similar character; and to make further provision for the preservation of public order on the occasion of public processions and meetings and in public places.

[18th December 1936]

1. Prohibition of uniforms in connection with political objects.

(1) Subject as hereinafter provided, any person who in any public place or at any public meeting wears uniform signifying his association with any political organisation or with the promotion of any political object shall be guilty of an offence: Provided that, if the chief officer of police is satisfied that the wearing of any such uniform as aforesaid on any ceremonial, anniversary, or other special occasion will not be likely to involve risk of public disorder, he may, with the consent of a Secretary of State, by order permit the wearing of such uniform on that occasion either absolutely or subject to such conditions as may be specified in the order.

(2) Where any person is charged before any court with an offence under this section, no further proceedings in respect thereof shall be taken against him without the consent of the Attorney-General [F1except such as are authorised by [F2section 6 of the Prosecution of Offences 1979]], so, however, that if that person is remanded in custody he shall, after the expiration of a period of eight days from the date on which he was so remanded, be entitled to be [F3released on bail] without sureties unless within that period the Attorney-General has consented to such further proceedings as aforesaid.

Annotations:

Amendments (Textual)

F1 Words substituted by Criminal Jurisdiction Act 1975 (c. 59), Sch. 5 para. 1

F2 Words substituted by Prosecution of Offences Act 1979 (c. 31), Sch. 1

F3 Words substituted by Bail Act 1976 (c. 63), Sch. 2 para. 10

2. Prohibition of quasimilitary organisations.

(1) If the members or adherents of any association of persons, whether incorporated or not, are—

(a) organised or trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or of the armed forces of the Crown; or

(b) organised and trained or organised and equipped either for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object, or in such manner as to arouse reasonable apprehension that they are organised and either trained or equipped for that purpose;

then any person who takes part in the control or management of the association, or in so organising or training as aforesaid any members or adherents thereof, shall be guilty of an offence under this section: Provided that in any proceedings against a person charged with the offence of taking part in the control or management of such an association as aforesaid it shall be a defence to that charge to prove that he neither consented to nor connived at the organisation, training, or equipment of members or adherents of the association in contravention of the provisions of this section.

(2) No prosecution shall be instituted under this section without the consent of the Attorney-General.

(3) If upon application being made by the Attorney-General it appears to the High Court that any association is an association of which members or adherents are organised, trained, or equipped in contravention of the provisions of this section, the Court may make such order as appears necessary to prevent any disposition without the leave of the Court of property held by or for the association and in accordance with rules of court may direct an inquiry and report to be made as to any such property as aforesaid and as to the affairs of the association and make such further orders as appear to the Court to be just and equitable for the application of such property in or towards the discharge of the liabilities of the association lawfully incurred before the date of the application or since that date with the approval of the Court, in or towards the repayment of moneys to persons who became subscribers or contributors to the association in good faith and without knowledge of any such contravention as aforesaid, and in or towards any costs incurred in connection with any such inquiry and report as aforesaid or in winding-up or dissolving the association, and may order that any property which is not directed by the Court to be so applied as aforesaid shall be forfeited to the Crown.

(4) In any criminal or civil proceedings under this section proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the control or management of an association or in organising, training or equipping members or adherents of an association shall be admissible as evidence of the purposes for which, or the manner in which, members or adherents of the association (whether those persons or others) were organised, or trained, or equipped.

(5) If a judge of the High Court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this section has been committed, and that evidence of the

commission thereof is to be found at any premises or place specified in the information, he may, on an application made by an officer of police of a rank not lower than that of inspector, grant a search warrant authorising any such officer as aforesaid named in the warrant together with any other persons named in the warrant and any other officers of police to enter the premises or place at any time within one month from the date of the warrant, if necessary by force, and to search the premises or place and every person found therein, and to seize anything found on the premises or place or on any such person which the officer has reasonable ground for suspecting to be evidence of the commission of such an offence as aforesaid: Provided that no woman shall, in pursuance of a warrant issued under this subsection, be searched except by a woman.

(6) Nothing in this section shall be construed as prohibiting the employment of a reasonable number of persons as stewards to assist in the preservation of order at any public meeting held upon private premises, or the making of arrangements for that purpose or the instruction of the persons to be so employed in their lawful duties as such stewards, or their being furnished with badges or other distinguishing signs.

Annotations:

Modifications etc. (not altering text)

C1S. 2(2) explained by Criminal Jurisdiction Act 1975 (c. 59), s. 12

3—5A..... **F4**

Annotations:

Amendments (Textual)

F4Ss. 3–5, 5A repealed by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(3), Sch. 3

6. Amendment of 8 Edw. 7. c. 66.

Section one of the Public Meeting Act, 1908, (which provides that any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together, or incites others so to act, shall be guilty of an offence) shall have effect as if the following subsection were added thereto— “ (3) if any constable reasonably suspects any person of committing an offence under the foregoing provisions of this section, he may if requested so to do by the chairman of the meeting require that person to declare him immediately his name and address and, if that person refuses or fails so to declare his name and address or gives a false name and address he shall be guilty of an offence under this subsection and liable on summary conviction thereof to a fine not exceeding forty shillings, and if he refuses or fails so to declare his name and address or if the constable reasonably suspects him of giving a false name and address, the constable may without warrant arrest him.”

Annotations:

Modifications etc. (not altering text)

C2The text of S. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

7. Enforcement.

(1) Any person who commits an offence under section two of this Act shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine, or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds, or to both such imprisonment and fine.

(2) Any person guilty of **F5** any offence under this Act other than an offence under section two . . . **F6** shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding **F7** level 4 on the standard scale], or to both such imprisonment and fine.

(3) A constable may without warrant arrest any person reasonably suspected by him to be committing an offence under section one . . . **F8** of this Act.

Annotations:

Amendments (Textual)

F5 Words substituted by Public Order Act 1963 (c. 52), s. 1(2)

F6 Words repealed by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(3), Sch. 3

F7 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G and by 1995 c. 40, ss. 3, 7(2), Sch. 1 para. 3(1), Sch. 2 Pt. II it is provided (S.) (1.4.1996) that s. 7(2) shall have effect as if the maximum fine that may be imposed on summary conviction for the offence mentioned therein were a fine not exceeding level 4 on the standard scale instead of a fine not exceeding £50

F8 Words repealed by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(3), Sch. 3

8. Application to Scotland.

This Act shall apply to Scotland subject to the following modifications:—

(1) Subsection (2) of section one and subsection (2) of section two of this Act shall not apply.

(2) In subsection (3) of section two the Lord Advocate shall be substituted for the Attorney-General and the Court of Session shall be substituted for the High Court.

(3) Subsection (5) of section two shall have effect as if for any reference to a judge of the High Court there were substituted a reference to the sheriff and any application for a search warrant under the said subsection shall be made by the procurator fiscal instead of such officer as is therein mentioned.

(4) The power conferred on the sheriff by subsection (5) of section two, as modified by the last foregoing paragraph, shall not be exercisable by an **F9** honorary sheriff]

(5) **F10**

(6) **F11**

Annotations:

Amendments (Textual)

F9 Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), s. 4(2)

F10S. 8(5) repealed by District Courts (Scotland) Act 1975 (c. 20), Sch. 2

F11S. 8(6) repealed by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(3), Sch. 3

9. Interpretation, &c.

(1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—

..... **F12**

“Meeting” means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters;

“Private premises” means premises to which the public have access (whether on payment or otherwise) only by permission of the owner, occupier, or lessee of the premises;

“Public meeting” includes any meeting in a public place and any meeting which the public or any section thereof are permitted to attend, whether on payment or otherwise;

F13 “Public place” includes any highway **F14**, or in Scotland any road within the meaning of the Roads (Scotland) Act 1984] and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise.]

..... **F15**

“Recognised corps” means a rifle club, miniature rifle club or cadet corps approved by a Secretary of State under the Firearms Acts 1920 to 1936, for the purposes of those Acts.

F16(2).....

(3) Any order made under this Act . . . **F17** by a chief officer of police may be revoked or varied by a subsequent order made in like manner.

(4) The powers conferred by this Act on any chief officer of police may, in the event of a vacancy in the office or in the event of the chief officer of police being unable to act owing to illness or absence, be exercised by the person duly authorised in accordance with directions given by a Secretary of State to exercise those powers on behalf of the chief officer of police.

Annotations:

Amendments (Textual)

F12 Definition of “Chief Officer of Police” repealed by (E.W.) Police Act 1964 (c. 48), Sch. 10 Pt. I and (S.) Police (Scotland) Act 1967 (c. 77), Sch.5 Pt. I

F13 Definition substituted by Criminal Justice Act 1972 (c. 71), s. 33

F14 Words inserted by Roads (Scotland) Act 1984 (c. 54, SIF 108), ss. 128(1), 156(1), Sch. 9 para. 30

F15 Definition repealed by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(3), Sch. 3

F16S.9(2) repealed (30.9.1997) by 1997 c. 60, ss. 3(2), 3(3), **Sch.**

F17 Words repealed by Public Order Act 1986 (c. 64, SIF 39:2), s. 40(3), Sch. 3

10. Short title and extent.

(1) This Act may be cited as the Public Order Act 1936.

(2) This Act shall not extend to Northern Ireland.

(3)..... **F18**

Annotations:

Amendments (Textual)

F18S. 10(3) repealed by Statute Law Revision Act 1950 (c. 6)



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APPENDIX D

PUBLIC ORDER ACT 1986

1986 CHAPTER 64

An Act to abolish the common law offences of riot, rout, unlawful assembly and affray and certain statutory offences relating to public order; to create new offences relating to public order; to control public processions and assemblies; to control the stirring up of racial hatred; to provide for the exclusion of certain offenders from sporting events; to create a new offence relating to the contamination of or interference with goods; to confer power to direct certain trespassers to leave land; to amend section 7 of the Conspiracy and Protection of Property Act 1875, section 1 of the Prevention of Crime Act 1953, Part V of the Criminal Justice (Scotland) Act 1980 and the Sporting Events (Control of Alcohol etc.) Act 1985; to repeal certain obsolete or unnecessary enactments; and for connected purposes.

[7th November 1986]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Annotations:

Commencement Information

II Act wholly in force at 1.4.1987 by s. 41(1) and S.I. 1987/198

PART I NEW OFFENCES

1. Riot.

(1) Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot.

(2) It is immaterial whether or not the 12 or more use or threaten unlawful violence simultaneously.

(3) The common purpose may be inferred from conduct.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Riot may be committed in private as well as in public places.

(6) A person guilty of riot is liable on conviction on indictment to imprisonment for a term not exceeding ten years or a fine or both.

2. Violent disorder.

(1) Where 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using or threatening unlawful violence is guilty of violent disorder.

(2) It is immaterial whether or not the 3 or more use or threaten unlawful violence simultaneously.

(3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(4) Violent disorder may be committed in private as well as in public places.

(5) A person guilty of violent disorder is liable on conviction on indictment to imprisonment for a term not exceeding 5 years or a fine or both, or on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.

3. Affray.

(1) A person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.

(2) Where 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

(3) For the purposes of this section a threat cannot be made by the use of words alone.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Affray may be committed in private as well as in public places.

(6) A constable may arrest without warrant anyone he reasonably suspects is committing affray.

(7) A person guilty of affray is liable on conviction on indictment to imprisonment for a term not exceeding 3 years or a fine or both, or on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.

4. Fear or provocation of violence.

(1) A person is guilty of an offence if he—

(a) uses towards another person threatening, abusive or insulting words or behaviour, or

(b) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting, with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible

representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both.

[F14A Intentional harassment, alarm or distress.

(1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he—

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

(3) It is a defence for the accused to prove—

(a) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or

(b) that his conduct was reasonable.

(4) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

(5) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both.]

Annotations:

Amendments (Textual)

F1S. 4A inserted (3.2.1995) by 1994 c. 33, s. 154; S.I. 1995/127, art. 2, Sch. 1

5. Harassment, alarm or distress.

(1) A person is guilty of an offence if he—

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or

(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) It is a defence for the accused to prove—

(a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or

(b) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or

(c) that his conduct was reasonable.

(4) A constable may arrest a person without warrant if—

(a) he engages in offensive conduct which [F2a] constable warns him to stop, and

(b) he engages in further offensive conduct immediately or shortly after the warning.

(5) In subsection (4) “offensive conduct” means conduct the constable reasonably suspects to constitute an offence under this section, and the conduct mentioned in paragraph (a) and the further conduct need not be of the same nature.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Annotations:

Amendments (Textual)

F2S. 5(4)(a): by 1996 c. 59, s. 1 it is provided in s. 5(4)(a) the word “the” shall be amended by being left out the word “a” inserted

6. Mental element: miscellaneous.

(1) A person is guilty of riot only if he intends to use violence or is aware that his conduct may be violent.

(2) A person is guilty of violent disorder or affray only if he intends to use or threaten violence or is aware that his conduct may be violent or threaten violence.

(3) A person is guilty of an offence under section 4 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting.

(4) A person is guilty of an offence under section 5 only if he intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or is aware that it may be threatening, abusive or insulting or (as the case may be) he intends his behaviour to be or is aware that it may be disorderly.

(5) For the purposes of this section a person whose awareness is impaired by intoxication shall be taken to be aware of that of which he would be aware if not intoxicated, unless he shows either that

his intoxication was not self-induced or that it was caused solely by the taking or administration of a substance in the course of medical treatment.

(6) In subsection (5) “intoxication” means any intoxication, whether caused by drink, drugs or other means, or by a combination of means.

(7) Subsections (1) and (2) do not affect the determination for the purposes of riot or violent disorder of the number of persons who use or threaten violence.

7. Procedure: miscellaneous.

(1) No prosecution for an offence of riot or incitement to riot may be instituted except by or with the consent of the Director of Public Prosecutions.

(2) For the purposes of the rules against charging more than one offence in the same count or information, each of sections 1 to 5 creates one offence.

(3) If on the trial on indictment of a person charged with violent disorder or affray the jury find him not guilty of the offence charged, they may (without prejudice to section 6(3) of the **M1** Criminal Law Act 1967) find him guilty of an offence under section 4.

(4) The Crown Court has the same powers and duties in relation to a person who is by virtue of subsection (3) convicted before it of an offence under section 4 as a magistrates’ court would have on convicting him of the offence.

Annotations:

Marginal Citations

M1 1967 c. 58.

8. Interpretation.

In this Part—

“dwelling” means any structure or part of a structure occupied as a person’s home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose “structure” includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

“violence” means any violent conduct, so that—

(a) except in the context of affray, it includes violent conduct towards property as well as violent conduct towards persons, and

(b) it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short).

9. Offences abolished.

(1) The common law offences of riot, rout, unlawful assembly and affray are abolished.

(2) The offences under the following enactments are abolished—

(a) section 1 of the **M2** Tumultuous Petitioning Act 1661 (presentation of petition to monarch or Parliament accompanied by excessive number of persons),

(b) section 1 of the **M3** Shipping Offences Act 1793 (interference with operation of vessel by persons riotously assembled),

(c) section 23 of the **M4** Seditious Meetings Act 1817 (prohibition of certain meetings within one mile of Westminster Hall when Parliament sitting), and

(d) section 5 of the **M5** Public Order Act 1936 (conduct conducive to breach of the peace).

Annotations:

Marginal Citations

M2 1661 c. 5.

M3 1793 c. 67.

M4 1817 c. 19.

M5 1936 c. 6.

10. Construction of other instruments.

(1) In the **M6** Riot (Damages) Act 1886 **F3**. . . (compensation for riot damage) “riotous” and “riotously” shall be construed in accordance with section 1 above.

(2) In Schedule 1 to the **M7** Marine Insurance Act 1906 (form and rules for the construction of certain insurance policies) “rioters” in rule 8 and “riot” in rule 10 shall, in the application of the rules to any policy taking effect on or after the coming into force of this section, be construed in accordance with section 1 above unless a different intention appears.

(3) “Riot” and cognate expressions in any enactment in force before the coming into force of this section (other than the enactments mentioned in subsections (1) and (2) above) shall be construed in accordance with section 1 above if they would have been construed in accordance with the common law offence of riot apart from this Part.

(4) Subject to subsections (1) to (3) above and unless a different intention appears, nothing in this Part affects the meaning of “riot” or any cognate expression in any enactment in force, or other instrument taking effect, before the coming into force of this section.

Annotations:

Amendments (Textual)

F3 Words in s. 10(1) repealed (1.1.1996) 1995 c. 21, ss. 314(1), 316(2), Sch. 12 (with s 312(1), Sch. 14 para. 1)

Marginal Citations

M6 1886 c. 38.

M7 1906 c. 41.

PART II PROCESSIONS AND ASSEMBLIES

11. Advance notice of public processions.

(1) Written notice shall be given in accordance with this section of any proposal to hold a public procession intended—

(a) to demonstrate support for or opposition to the views or actions of any person or body of persons,

(b) to publicise a cause or campaign, or

(c) to mark or commemorate an event,

unless it is not reasonably practicable to give any advance notice of the procession.

(2) Subsection (1) does not apply where the procession is one commonly or customarily held in the police area (or areas) in which it is proposed to be held or is a funeral procession organised by a funeral director acting in the normal course of his business.

(3) The notice must specify the date when it is intended to hold the procession, the time when it is intended to start it, its proposed route, and the name and address of the person (or of one of the persons) proposing to organise it.

(4) Notice must be delivered to a police station—

(a) in the police area in which it is proposed the procession will start, or

(b) where it is proposed the procession will start in Scotland and cross into England, in the first police area in England on the proposed route.

(5) If delivered not less than 6 clear days before the date when the procession is intended to be held, the notice may be delivered by post by the recorded delivery service; but section 7 of the **M8** Interpretation Act 1978 (under which a document sent by post is deemed to have been served when posted and to have been delivered in the ordinary course of post) does not apply.

(6) If not delivered in accordance with subsection (5), the notice must be delivered by hand not less than 6 clear days before the date when the procession is intended to be held or, if that is not reasonably practicable, as soon as delivery is reasonably practicable.

(7) Where a public procession is held, each of the persons organising it is guilty of an offence if—

(a) the requirements of this section as to notice have not been satisfied, or

(b) the date when it is held, the time when it starts, or its route, differs from the date, time or route specified in the notice.

(8) It is a defence for the accused to prove that he did not know of, and neither suspected nor had reason to suspect, the failure to satisfy the requirements or (as the case may be) the difference of date, time or route.

(9) To the extent that an alleged offence turns on a difference of date, time or route, it is a defence for the accused to prove that the difference arose from circumstances beyond his control or from something done with the agreement of a police officer or by his direction.

(10)A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Annotations:

Marginal Citations

M81978 c. 30.

12. Imposing conditions on public processions.

(1)If the senior police officer, having regard to the time or place at which and the circumstances in which any public procession is being held or is intended to be held and to its route or proposed route, reasonably believes that—

(a)it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b)the purpose of the persons organising it 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, he may give directions imposing on the persons organising or taking part in the procession such conditions as appear to him necessary to prevent such disorder, damage, disruption or intimidation, including conditions as to the route of the procession or prohibiting it from entering any public place specified in the directions.

(2)In subsection (1) “the senior police officer” means—

(a)in relation to a procession being held, or to a procession intended to be held in a case where persons are assembling with a view to taking part in it, the most senior in rank of the police officers present at the scene, and

(b)in relation to a procession intended to be held in a case where paragraph (a) does not apply, the chief officer of police.

(3)A direction given by a chief officer of police by virtue of subsection (2)(b) shall be given in writing.

(4)A person who organises a public procession and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(5)A person who takes part in a public procession and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(6)A person who incites another to commit an offence under subsection (5) is guilty of an offence.

(7)A constable in uniform may arrest without warrant anyone he reasonably suspects is committing an offence under subsection (4), (5) or (6).

(8)A person guilty of an offence under subsection (4) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(9)A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10)A person guilty of an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, notwithstanding section 45(3) of the M9Magistrates' Courts Act 1980 (inciter liable to same penalty as incited).

(11)In Scotland this section applies only in relation to a procession being held, and to a procession intended to be held in a case where persons are assembling with a view to taking part in it.

Annotations:

Marginal Citations

M91980 c. 43.

13. Prohibiting public processions.

(1)If at any time the chief officer of police reasonably believes that, because of particular circumstances existing in any district or part of a district, the powers under section 12 will not be sufficient to prevent the holding of public processions in that district or part from resulting in serious public disorder, he shall apply to the council of the district for an order prohibiting for such period not exceeding 3 months as may be specified in the application the holding of all public processions (or of any class of public procession so specified) in the district or part concerned.

(2)On receiving such an application, a council may with the consent of the Secretary of State make an order either in the terms of the application or with such modifications as may be approved by the Secretary of State.

(3)Subsection (1) does not apply in the City of London or the metropolitan police district.

(4)If at any time the Commissioner of Police for the City of London or the Commissioner of Police of the Metropolis reasonably believes that, because of particular circumstances existing in his police area or part of it, the powers under section 12 will not be sufficient to prevent the holding of public processions in that area or part from resulting in serious public disorder, he may with the consent of the Secretary of State make an order prohibiting for such period not exceeding 3 months as may be specified in the order the holding of all public processions (or of any class of public procession so specified) in the area or part concerned.

(5)An order made under this section may be revoked or varied by a subsequent order made in the same way, that is, in accordance with subsections (1) and (2) or subsection (4), as the case may be.

(6)Any order under this section shall, if not made in writing, be recorded in writing as soon as practicable after being made.

(7) A person who organises a public procession the holding of which he knows is prohibited by virtue of an order under this section is guilty of an offence.

(8) A person who takes part in a public procession the holding of which he knows is prohibited by virtue of an order under this section is guilty of an offence.

(9) A person who incites another to commit an offence under subsection (8) is guilty of an offence.

(10) A constable in uniform may arrest without warrant anyone he reasonably suspects is committing an offence under subsection (7), (8) or (9).

(11) A person guilty of an offence under subsection (7) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(12) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(13) A person guilty of an offence under subsection (9) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, notwithstanding section 45(3) of the **M10** Magistrates' Courts Act 1980.

Annotations:

Marginal Citations

M101980 c. 43.

14. Imposing conditions on public assemblies.

(1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that—

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b) the purpose of the persons organising it 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, he may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

(2) In subsection (1) “the senior police officer” means—

(a) in relation to an assembly being held, the most senior in rank of the police officers present at the scene, and

(b) in relation to an assembly intended to be held, the chief officer of police.

(3) A direction given by a chief officer of police by virtue of subsection (2)(b) shall be given in writing.

(4) A person who organises a public assembly and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(5) A person who takes part in a public assembly and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(6) A person who incites another to commit an offence under subsection (5) is guilty of an offence.

(7) A constable in uniform may arrest without warrant anyone he reasonably suspects is committing an offence under subsection (4), (5) or (6).

(8) A person guilty of an offence under subsection (4) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(9) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) A person guilty of an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, notwithstanding section 45(3) of the **M11** Magistrates' Courts Act 1980.

Annotations:

Marginal Citations

M11 1980 c. 43.

[F4] 14A Prohibiting trespassory assemblies.

(1) If at any time the chief officer of police reasonably believes that an assembly is intended to be held in any district at a place on land to which the public has no right of access or only a limited right of access and that the assembly—

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access, and

(b) may result—

(i) in serious disruption to the life of the community, or

(ii) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument, he may apply to the council of the district for an order prohibiting for a specified period the holding of all trespassory assemblies in the district or a part of it, as specified.

(2) On receiving such an application, a council may—

(a) in England and Wales, with the consent of the Secretary of State make an order either in the terms of the application or with such modifications as may be approved by the Secretary of State; or

(b) in Scotland, make an order in the terms of the application.

(3) Subsection (1) does not apply in the City of London or the metropolitan police district.

(4) If at any time the Commissioner of Police for the City of London or the Commissioner of Police of the Metropolis reasonably believes that an assembly is intended to be held at a place on land to which the public has no right of access or only a limited right of access in his police area and that the assembly—

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access, and

(b) may result—

(i) in serious disruption to the life of the community, or

(ii) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument, he may with the consent of the Secretary of State make an order prohibiting for a specified period the holding of all trespassory assemblies in the area or a part of it, as specified.

(5) An order prohibiting the holding of trespassory assemblies operates to prohibit any assembly which—

(a) is held on land to which the public has no right of access or only a limited right of access, and

(b) takes place in the prohibited circumstances, that is to say, without the permission of the occupier of the land or so as to exceed the limits of any permission of his or the limits of the public's right of access.

(6) No order under this section shall prohibit the holding of assemblies for a period exceeding 4 days or in an area exceeding an area represented by a circle with a radius of 5 miles from a specified centre.

(7) An order made under this section may be revoked or varied by a subsequent order made in the same way, that is, in accordance with subsection (1) and (2) or subsection (4), as the case may be.

(8) Any order under this section shall, if not made in writing, be recorded in writing as soon as practicable after being made.

(9) In this section and sections 14B and 14C—

“assembly” means an assembly of 20 or more persons;

“land” means land in the open air;

“limited”, in relation to a right of access by the public to land, means that their use of it is restricted to use for a particular purpose (as in the case of a highway or road) or is subject to other restrictions;

“occupier” means—

(a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; or

(b) in Scotland, the person lawfully entitled to natural possession of the land,

and in subsections (1) and (4) includes the person reasonably believed by the authority applying for or making the order to be the occupier;

“public” includes a section of the public; and

“specified” means specified in an order under this section.

(10) In relation to Scotland, the references in subsection (1) above to a district and to the council of the district shall be construed—

(a) as respects applications before 1st April 1996, as references to the area of a regional or islands authority and to the authority in question; and

(b) as respects applications on and after that date, as references to a local government area and to the council for that area.

(11) In relation to Wales, the references in subsection (1) above to a district and to the council of the district shall be construed, as respects applications on and after 1st April 1996, as references to a county or county borough and to the council for that county or county borough.]

Annotations:

Amendments (Textual)

F4S. 14A inserted (3.11.1994) by 1994 c. 33 ss. 70, 172(4)

[F5]14B Offences in connection with trespassory assemblies and arrest therefor.

(1) A person who organises an assembly the holding of which he knows is prohibited by an order under section 14A is guilty of an offence.

(2) A person who takes part in an assembly which he knows is prohibited by an order under section 14A is guilty of an offence.

(3) In England and Wales, a person who incites another to commit an offence under subsection (2) is guilty of an offence.

(4) A constable in uniform may arrest without a warrant anyone he reasonably suspects to be committing an offence under this section.

(5) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(6) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) A person guilty of an offence under subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, notwithstanding section 45(3) of the **M12** Magistrates' Courts Act 1980.

(8) Subsection (3) above is without prejudice to the application of any principle of Scots Law as respects art and part guilt to such incitement as is mentioned in that subsection.]

Annotations:

Amendments (Textual)

F5S. 14B inserted (3.11.1994) by 1994 c. 33, **ss. 70**, 172(4)

Marginal Citations

M121980 c. 43.

F614C Stopping persons from proceeding to trespassory assemblies.

(1) If a constable in uniform reasonably believes that a person is on his way to an assembly within the area to which an order under section 14A applies which the constable reasonably believes is likely to be an assembly which is prohibited by that order, he may, subject to subsection (2) below—

- (a) stop that person, and
- (b) direct him not to proceed in the direction of the assembly.

(2) The power conferred by subsection (1) may only be exercised within the area to which the order applies.

(3) A person who fails to comply with a direction under subsection (1) which he knows has been given to him is guilty of an offence.

(4) A constable in uniform may arrest without a warrant anyone he reasonably suspects to be committing an offence under this section.

(5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.]

Annotations:

Amendments (Textual)

F6S. 14C inserted (3.11.1994) by 1994 c. 33, **ss. 71**, 172(4)

15. Delegation.

(1) The chief officer of police may delegate, to such extent and subject to such conditions as he may specify, any of his functions under sections 12 to **F7**14A] to **F8**an] assistant chief constable; and references in those sections to the person delegating shall be construed accordingly.

(2) Subsection (1) shall have effect in the City of London and the metropolitan police district as if “**F8**an] assistant chief constable” read “an assistant commissioner of police”.

Annotations:

Amendments (Textual)

F7Word in s. 15 substituted (1.3.1998) by 1994 c. 33, s. 168(2), **Sch. 10 para. 60**; 1998/277, art. 3

F8Words in s. 15 substituted (1.4.1995) by 1994 c. 29, s. 44, **Sch. 5 Pt. II para. 37**; 1994/3262, art. 4, Sch.

16. Interpretation.

In this Part—

“the City of London” means the City as defined for the purposes of the Acts relating to the City of London police;

“the metropolitan police district” means that district as defined in section 76 of the **M13**London Government Act 1963;

“public assembly” means an assembly of 20 or more persons in a public place which is wholly or partly open to the air;

“public place” means—

(a) any highway, or in Scotland any road within the meaning of the **M14**Roads (Scotland) Act 1984, and

(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

“public procession” means a procession in a public place.

Annotations:

Marginal Citations

M131963 c. 33.

M141984 c. 54.

PART III RACIAL HATRED

Meaning of “racial hatred”

17. Meaning of “racial hatred”.

In this Part “racial hatred” means hatred against a group of persons **F9**. . . defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

Annotations:

Amendments (Textual)

F9Words in s. 17 repealed (14.12.2001) by 2001 c. 24, ss. 37, 125, 127(2), Sch. 8 Pt. 4 (with s. 42)

Acts intended or likely to stir up racial hatred

18. Use of words or behaviour or display of written material.

(1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if—

(a) he intends thereby to stir up racial hatred, or

(b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

(3) A constable may arrest without warrant anyone he reasonably suspects is committing an offence under this section.

(4) In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or any other dwelling.

(5) A person who is not shown to have intended to stir up racial hatred is not guilty of an offence under this section if he did not intend his words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.

(6) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme [F10 included in a programme service].

Annotations:

Amendments (Textual)

F10 Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 164(2)

19. Publishing or distributing written material.

(1) A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if—

- (a) he intends thereby to stir up racial hatred, or
- (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

(2) In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

(3) References in this Part to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

20. Public performance of play.

(1) If a public performance of a play is given which involves the use of threatening, abusive or insulting words or behaviour, any person who presents or directs the performance is guilty of an offence if—

- (a) he intends thereby to stir up racial hatred, or
- (b) having regard to all the circumstances (and, in particular, taking the performance as a whole) racial hatred is likely to be stirred up thereby.

(2) If a person presenting or directing the performance is not shown to have intended to stir up racial hatred, it is a defence for him to prove—

- (a) that he did not know and had no reason to suspect that the performance would involve the use of the offending words or behaviour, or
- (b) that he did not know and had no reason to suspect that the offending words or behaviour were threatening, abusive or insulting, or

(c) that he did not know and had no reason to suspect that the circumstances in which the performance would be given would be such that racial hatred would be likely to be stirred up.

(3) This section does not apply to a performance given solely or primarily for one or more of the following purposes—

- (a) rehearsal,
- (b) making a recording of the performance, or
- (c) enabling the performance to be **[F11]** included in a programme service];

but if it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in paragraph (b) or (c), the performance shall, unless the contrary is shown, be taken not to have been given solely or primarily for the purposes mentioned above.

(4) For the purposes of this section—

(a) a person shall not be treated as presenting a performance of a play by reason only of his taking part in it as a performer,

(b) a person taking part as a performer in a performance directed by another shall be treated as a person who directed the performance if without reasonable excuse he performs otherwise than in accordance with that person's direction, and

(c) a person shall be taken to have directed a performance of a play given under his direction notwithstanding that he was not present during the performance; and a person shall not be treated as aiding or abetting the commission of an offence under this section by reason only of his taking part in a performance as a performer.

(5) In this section “play” and “public performance” have the same meaning as in the **M15** Theatres Act 1968.

(6) The following provisions of the Theatres Act 1968 apply in relation to an offence under this section as they apply to an offence under section 2 of that Act—

- section 9 (script as evidence of what was performed),
- section 10 (power to make copies of script),
- section 15 (powers of entry and inspection).

Annotations:

Amendments (Textual)

F11 Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 164(2)

Marginal Citations

M15 1968 c. 54.

21. Distributing, showing or playing a recording.

(1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting is guilty of an offence if—

- (a) he intends thereby to stir up racial hatred, or
- (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

(2) In this Part “recording” means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.

(3) In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

(4) This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be **[F12]** included in a programme service].

Annotations:

Amendments (Textual)

F12 Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 164(2)

22. Broadcasting or including programme in cable programme service.

(1) If a programme involving threatening, abusive or insulting visual images or sounds is **[F13]** included in a programme service], each of the persons mentioned in subsection (2) is guilty of an offence if—

- (a) he intends thereby to stir up racial hatred, or
- (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

(2) The persons are—

- (a) the person providing the . . . **F14** programme service,
- (b) any person by whom the programme is produced or directed, and
- (c) any person by whom offending words or behaviour are used.

(3) If the person providing the service, or a person by whom the programme was produced or directed, is not shown to have intended to stir up racial hatred, it is a defence for him to prove that—

(a) he did not know and had no reason to suspect that the programme would involve the offending material, and

(b) having regard to the circumstances in which the programme was **[F15]** included in a programme service], it was not reasonably practicable for him to secure the removal of the material.

(4) It is a defence for a person by whom the programme was produced or directed who is not shown to have intended to stir up racial hatred to prove that he did not know and had no reason to suspect—

(a) that the programme would be **[F15]** included in a programme service], or

(b) that the circumstances in which the programme would be . . . **F16** so included would be such that racial hatred would be likely to be stirred up.

(5) It is a defence for a person by whom offending words or behaviour were used and who is not shown to have intended to stir up racial hatred to prove that he did not know and had no reason to suspect—

(a) that a programme involving the use of the offending material would be **[F15]** included in a programme service], or

(b) that the circumstances in which a programme involving the use of the offending material would be . . . so included, or in which a programme . . . so included would involve the use of the offending material, would be such that racial hatred would be likely to be stirred up.

(6) A person who is not shown to have intended to stir up racial hatred is not guilty of an offence under this section if he did not know, and had no reason to suspect, that the offending material was threatening, abusive or insulting.

(7),(8). **F17**

Annotations:

Amendments (Textual)

F13 Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 164(3)(a)

F14 Words repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 164(3)(b)(i), 203(3), Sch. 21

F15 Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 164(3)(a)

F16 Words repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 164(3)(b)(ii), 203(3), Sch. 21

F17 HYPERLINK "http://www.legislation.gov.uk/id/ukpga/1986/64/section/22/7/8" \o "Go to S. 22(7)(8)" S. 22(7)(8) repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 164(3)(b)(iii)(iv), 203(3), Sch. 21

Racially inflammatory material

23. Possession of racially inflammatory material.

(1) A person who has in his possession written material which is threatening, abusive or insulting, or a recording of visual images or sounds which are threatening, abusive or insulting, with a view to—

(a) in the case of written material, its being displayed, published, distributed, **[F18]** or included in a cable programme service], whether by himself or another, or

(b) in the case of a recording, its being distributed, shown, played, **[F18]** or included in a cable programme service], whether by himself or another, is guilty of an offence if he intends racial hatred to be stirred up thereby or, having regard to all the circumstances, racial hatred is likely to be stirred up thereby.

(2) For this purpose regard shall be had to such display, publication, distribution, showing, playing, **[F19]** or inclusion in a programme service] as he has, or it may reasonably be inferred that he has, in view.

(3) In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the

written material or recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

(4) **F20**

Annotations:

Amendments (Textual)

F18 Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 164(4)(a)

F19 Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 164(4)(b)

F20S. 23(4) repealed by , ss. 164(4)(c), 203(3), Sch. 21

24. Powers of entry and search.

(1) If in England and Wales a justice of the peace is satisfied by information on oath laid by a constable that there are reasonable grounds for suspecting that a person has possession of written material or a recording in contravention of section 23, the justice may issue a warrant under his hand authorising any constable to enter and search the premises where it is suspected the material or recording is situated.

(2) If in Scotland a sheriff or justice of the peace is satisfied by evidence on oath that there are reasonable grounds for suspecting that a person has possession of written material or a recording in contravention of section 23, the sheriff or justice may issue a warrant authorising any constable to enter and search the premises where it is suspected the material or recording is situated.

(3) A constable entering or searching premises in pursuance of a warrant issued under this section may use reasonable force if necessary.

(4) In this section “premises” means any place and, in particular, includes—

(a) any vehicle, vessel, aircraft or hovercraft,

(b) any offshore installation as defined in section 1(3) (b) of the **M16** Mineral Workings (Offshore Installations) Act 1971, and

(c) any tent or movable structure.

Annotations:

Marginal Citations

M16 1971 c. 61.

25. Power to order forfeiture.

(1) A court by or before which a person is convicted of—

(a) an offence under section 18 relating to the display of written material, or

(b) an offence under section 19, 21 or 23, shall order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates.

(2) An order made under this section shall not take effect—

(a) in the case of an order made in proceedings in England and Wales, until the expiry of the ordinary time within which an appeal may be instituted or, where an appeal is duly instituted, until it is finally decided or abandoned;

(b) in the case of an order made in proceedings in Scotland, until the expiration of the time within which, by virtue of any statute, an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned.

(3) For the purposes of subsection (2)(a)—

(a) an application for a case stated or for leave to appeal shall be treated as the institution of an appeal, and

(b) where a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

(4) For the purposes of subsection (2)(b) the lodging of an application for a stated case or note of appeal against sentence shall be treated as the institution of an appeal.

Supplementary provisions

26. Savings for reports of parliamentary or judicial proceedings.

(1) Nothing in this Part applies to a fair and accurate report of proceedings in Parliament [F21] or in the Scottish Parliament].

(2) Nothing in this Part applies to a fair and accurate report of proceedings publicly heard before a court or tribunal exercising judicial authority where the report is published contemporaneously with the proceedings or, if it is not reasonably practicable or would be unlawful to publish a report of them contemporaneously, as soon as publication is reasonably practicable and lawful.

Annotations:

Amendments (Textual)

F21 words in s. 26 inserted (6.5.1999) by 1998 c. 46, s. 125, Sch. 8 para. 24 (with s 126(3)-(11); S.I. 1998/3178, art. 2, Sch. 3

27. Procedure and punishment.

(1) No proceedings for an offence under this Part may be instituted in England and Wales except by or with the consent of the Attorney General.

(2) For the purposes of the rules in England and Wales against charging more than one offence in the same count or information, each of sections 18 to 23 creates one offence.

(3) A person guilty of an offence under this Part is liable—

(a) on conviction on indictment to imprisonment for a term not exceeding [F22]seven years] or a fine or both;

(b) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

Annotations:

Amendments (Textual)

F22 Words in s. 27(3) substituted (14.12.2001) by 2001 c. 24, ss. 40, 127(2) (with s. 42)

28. Offences by corporations.

(1) Where a body corporate is guilty of an offence under this Part and it is shown that the offence was committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director.

29. Interpretation.

In this Part—

..... **F23**

.....

“distribute”, and related expressions, shall be construed in accordance with section 19(3) (written material) and section 21(2) (recordings);

“dwelling” means any structure or part of a structure occupied as a person’s home or other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose “structure” includes a tent, caravan, vehicle, vessel or other temporary or movable structure;

“programme” means any item which is **F24**included in a programme service];

F25“programme service” has the same meaning as in the Broadcasting Act 1990;]

“publish”, and related expressions, in relation to written material, shall be construed in accordance with section 19 (3);

“racial hatred” has the meaning given by section 17;

“recording” has the meaning given by section 21(2), and “play” and “show”, and related expressions, in relation to a recording, shall be construed in accordance with that provision;

“written material” includes any sign or other visible representation.

Annotations:

Amendments (Textual)

F23 Definitions repealed by Broadcasting Act 1990 (c. 42, SIF 96), ss. 164(5)(a), 203(3), Sch. 21

F24 Words substituted by Broadcasting Act 1990 (c. 42, SIF 96), s. 164(5)(b)

F25 Definition inserted by Broadcasting Act 1990 (c. 42, SIF 96), s. 164(5)(c)

PART IV

30–37..... **F26****Annotations:****Amendments (Textual)**

F26Ss. 30–37 repealed with saving by Football Supporters Act 1989 (c. 37, SIF 45A), **s. 27(5)**; Subject to amendment (27.9.1999) (E.W.) by 1999 c. 21, **ss. 6(1), 6(2)(a)(b), 7(1), 8(1)(2)(4)(5)**; Subject to amendment (1.4.2001) by 1999 c. 22, **ss. 90, 106, 108, Sch. 13 para. 134, Sch. 15 Pt. V(7); S.I. 2001/916, art. 2** (with transitional provisions and savings in **Sch. 2 para. 2**); Subject to amendment (25.8.2000) by 2000 c. 6, **ss. 165(1), 168(1), Sch. 9 para. 101**; Subject to amendment (28.8.2000) by 2000 c. 25, **s. 1(2)(3), Sch. 2 paras. 3-7, Sch. 3; S.I. 2000/2125, art. 2**

PART V MISCELLANEOUS AND GENERAL

38. Contamination of or interference with goods with intention of causing public alarm or anxiety, etc.

(1) It is an offence for a person, with the intention—

(a) of causing public alarm or anxiety, or

(b) of causing injury to members of the public consuming or using the goods, or

(c) of causing economic loss to any person by reason of the goods being shunned by members of the public, or

(d) of causing economic loss to any person by reason of steps taken to avoid any such alarm or anxiety, injury or loss, to contaminate or interfere with goods, or make it appear that goods have been contaminated or interfered with, or to place goods which have been contaminated or interfered with, or which appear to have been contaminated or interfered with, in a place where goods of that description are consumed, used, sold or otherwise supplied.

(2) It is also an offence for a person, with any such intention as is mentioned in paragraph (a), (c) or (d) of subsection (1), to threaten that he or another will do, or to claim that he or another has done, any of the acts mentioned in that subsection.

(3) It is an offence for a person to be in possession of any of the following articles with a view to the commission of an offence under subsection (1)—

(a) materials to be used for contaminating or interfering with goods or making it appear that goods have been contaminated or interfered with, or

(b) goods which have been contaminated or interfered with, or which appear to have been contaminated or interfered with.

(4) A person guilty of an offence under this section is liable—

(a) on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine or both, or

(b) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(5) In this section “goods” includes substances whether natural or manufactured and whether or not incorporated in or mixed with other goods.

(6) The reference in subsection (2) to a person claiming that certain acts have been committed does not include a person who in good faith reports or warns that such acts have been, or appear to have been, committed.

F2739.....

Annotations:

Amendments (Textual)

F27S. 39 repealed (3.11.1994) by 1994 c. 33, ss. 168(3), 172(4), **Sch. 11**

40. Amendments, repeals and savings.

(1) Schedule 1, which amends the **M17** Sporting Events (Control of Alcohol etc.) Act 1985 and Part V of the **M18** Criminal Justice (Scotland) Act 1980, shall have effect.

(2) Schedule 2, which contains miscellaneous and consequential amendments, shall have effect.

(3) The enactments mentioned in Schedule 3 (which include enactments related to the subject matter of this Act but already obsolete or unnecessary) are repealed to the extent specified in column 3.

(4) Nothing in this Act affects the common law powers in England and Wales to deal with or prevent a breach of the peace.

(5) As respects Scotland, nothing in this Act affects any power of a constable under any rule of law.

Annotations:

Marginal Citations

M17 1985 c. 57.

M18 1980 c. 62.

41. Commencement.

(1) This Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be appointed for different provisions or different purposes.

(2) Nothing in a provision of this Act applies in relation to an offence committed or act done before the provision comes into force.

(3) Where a provision of this Act comes into force for certain purposes only, the references in subsection (2) to the provision are references to it so far as it relates to those purposes.

Annotations:

Modifications etc. (not altering text)

C1 Power of appointment conferred by s. 41 partly exercised: **S.I. 1986/2041**, 1987/198, 852

42. Extent

(1)The provisions of this Act extend to England and Wales except so far as they—

(a)amend or repeal an enactment which does not so extend, or

(b)relate to the extent of provisions to Scotland or Northern Ireland.

(2)The following provisions of this Act extend to Scotland—

in Part I, section 9(2) except paragraph (a);

in Part II, sections 12 and 14 to 16;

Part III;

Part V, except sections 38, **F28**, . . ., 40(4), subsections (1) and (3) of this section and any provision amending or repealing an enactment which does not extend to Scotland.

(3)The following provisions of this Act extend to Northern Ireland—
sections 38, 41, this subsection, **F29**and section 43].

Annotations:**Amendments (Textual)**

F28Word in s. 42(2) repealed (3.11.1994) by 1994 c. 33, s. 168(3), 172(2), **Sch. 11**

F29Words substituted by S.I. 1987/463 (N.I. 7), art. 28(1), **Sch. 1 para. 6**

43. Short title.

This Act may be cited as the Public Order Act 1986.

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

SCHEDULES

Section 40 (1).

SCHEDULE 1 SPORTING EVENTS

PART I ENGLAND AND WALES

Introduction

1. The **M19** Sporting Events (Control of Alcohol etc.) Act 1985 shall be amended as mentioned in this Part.

Annotations:

Marginal Citations

M19 1985 c. 57.

Vehicles

2. The following shall be inserted after section 1 (offences in connection with alcohol on coaches and trains)—

“1A Alcohol on certain other vehicles.

(1) This section applies to a motor vehicle which—

(a) is not a public service vehicle but is adapted to carry more than 8 passengers, and

(b) is being used for the principal purpose of carrying two or more passengers for the whole or part of a journey to or from a designated sporting event.

(2) A person who knowingly causes or permits intoxicating liquor to be carried on a motor vehicle to which this section applies is guilty of an offence—

(a) if he is its driver, or

(b) if he is not its driver but is its keeper, the servant or agent of its keeper, a person to whom it is made available (by hire, loan or otherwise) by its keeper or the keeper’s servant or agent, or the servant or agent of a person to whom it is so made available.

(3) A person who has intoxicating liquor in his possession while on a motor vehicle to which this section applies is guilty of an offence.

(4) A person who is drunk on a motor vehicle to which this section applies is guilty of an offence.

(5) In this section—

“keeper”, in relation to a vehicle, means the person having the duty to take out a licence for it under section 1(1) of the Vehicles (Excise) Act 1971,

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads, and

“public service vehicle” has the same meaning as in the Public Passenger Vehicles Act 1981.”.

Fireworks etc.

3. The following shall be inserted after section 2 (offences in connection with alcohol, containers etc. at sports grounds)—

“2A Fireworks etc.

(1) A person is guilty of an offence if he has an article or substance to which this section applies in his possession—

(a) at any time during the period of a designated sporting event when he is in any area of a designated sports ground from which the event may be directly viewed, or

(b) while entering or trying to enter a designated sports ground at any time during the period of a designated sporting event at the ground.

(2) It is a defence for the accused to prove that he had possession with lawful authority.

(3) This section applies to any article or substance whose main purpose is the emission of a flare for purposes of illuminating or signalling (as opposed to igniting or heating) or the emission of smoke or a visible gas; and in particular it applies to distress flares, fog signals, and pellets and capsules intended to be used as fumigators or for testing pipes, but not to matches, cigarette lighters or heaters.

(4) This section also applies to any article which is a firework.”.

Licensing etc.

4. The following shall be inserted after section 5—

“5A Private facilities for viewing events.

(1) In relation to a room in a designated sports ground—

(a) from which designated sporting events may be directly viewed, and

(b) to which the general public are not admitted, sections 2(1) (a) and 3(1) (a) of this Act have effect with the substitution for the reference to the period of a designated sporting event of a reference to the restricted period defined below.

(2) Subject to any order under subsection (3) below, the restricted period of a designated sporting event for the purposes of this section is the period beginning 15 minutes before the start of the event or (if earlier) 15 minutes before the time at which it is advertised to start and ending 15 minutes after the end of the event, but—

(a) where an event advertised to start at a particular time on a particular day is postponed to a later day, the restricted period includes the period in the day on which it is advertised to take place beginning 15 minutes before and ending 15 minutes after that time, and

(b) where an event advertised to start at a particular time on a particular day does not take place, the period is the period referred to in paragraph (a) above.

(3) The Secretary of State may by order provide, in relation to all designated sporting events or in relation to such descriptions of event as are specified in the order—

(a) that the restricted period shall be such period, shorter than that mentioned in subsection (2) above, as may be specified in the order, or

(b) that there shall be no restricted period.

(4) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

5B Occasional licences.

(1) An occasional licence which is in force for any place situated in the area of a designated sports ground, and which would (apart from this section) authorise the sale of intoxicating liquor at the place during the whole or part of the period of a designated sporting event at the ground, shall not authorise such sale.

(2) Where the sale of intoxicating liquor would (apart from this section) be authorised by an occasional licence, its holder is guilty of an offence if he sells or authorises the sale of such liquor and by virtue of this section the licence does not authorise the sale.

(3) A person is guilty of an offence if he consumes intoxicating liquor at a place, or takes such liquor from a place, at a time when an occasional licence which would (apart from this section) authorise the sale of the liquor at the place does not do so by virtue of this section.

5C Clubs.

(1) Subsections (3) and (5) of section 39 of the Licensing Act 1964 (clubs), and subsection (4) of that section as it applies to subsection (3), shall not apply as regards the supply of intoxicating liquor in the area of a designated sports ground during the period of a designated sporting event at the ground or as regards the keeping of intoxicating liquor for such supply; but subsections (2) to (5) below shall apply.

(2) During the period of such an event at the ground, intoxicating liquor shall not be supplied by or on behalf of a registered club to a member or guest in the area of the ground except at premises in respect of which the club is registered.

(3) A person supplying or authorising the supply of intoxicating liquor in contravention of subsection (2) above is guilty of an offence.

(4) A person who, during the period of such an event, obtains or consumes intoxicating liquor supplied in contravention of subsection (2) above is guilty of an offence.

(5) If intoxicating liquor is kept in any premises or place by or on behalf of a club for supply to members or their guests in contravention of subsection (2) above, every officer of the club is guilty of an offence unless he shows that it was so kept without his knowledge or consent.

5D Non-retail sales.

(1) During the period of a designated sporting event at a designated sports ground, intoxicating liquor shall not be sold in the area of the ground except by sale by retail.

(2) A person selling or authorising the sale of intoxicating liquor in contravention of subsection (1) above is guilty of an offence.

(3) A person who, during the period of such an event, obtains or consumes intoxicating liquor sold in contravention of subsection (1) above is guilty of an offence.”

Supplementary

5 In sections 2 and 3, after subsection (1) insert—

“(1A) Subsection (1)(a) above has effect subject to section 5A(1) of this Act.”

6 In section 7(3) (power to stop and search vehicles), after “public service vehicle (within the meaning of section 1 of this Act)” insert “or a motor vehicle to which section 1A of this Act applies”.

7(1) Section 8 (penalties) shall be amended as follows.

(2) In paragraph (a) after “1(2)” there shall be inserted “or 1A(2)”.

(3) In paragraph (b) after “1(3)” there shall be inserted “, 1A(3)”, after “2(1)” there shall be inserted “, 2A(1)” and after “3(10)” there shall be inserted “, 5B(2), 5C(3), 5D(2)”.

(4) In paragraph (c) after “1(4)” there shall be inserted “, 1A(4)”.

(5) At the end there shall be inserted—

“(d) in the case of an offence under section 5B(3), 5C(4) or 5D(3), to a fine not exceeding level 3 on the standard scale, and

(e) in the case of an offence under section 5C(5), to a fine not exceeding level 1 on the standard scale.”

Minor amendment

8 Section 3(9) (notice varying order about sale or supply of intoxicating liquor) shall have effect, and be taken always to have had effect, as if in paragraph (b) “order” read “notice”.

PART II SCOTLAND

Introduction

9. Part V of the **M20** Criminal Justice (Scotland) Act 1980 (sporting events: control of alcohol etc.) shall be amended as mentioned in this Part.

Annotations:

Marginal Citations

M20 1980 c. 62.

Vehicles

10. After section 70 there shall be inserted the following—

“70A Alcohol on certain other vehicles.

(1) This section applies to a motor vehicle which is not a public service vehicle but is adapted to carry more than 8 passengers and is being operated for the principal purpose of conveying two or more passengers for the whole or part of a journey to or from a designated sporting event.

(2) Any person in possession of alcohol on a vehicle to which this section applies shall be guilty of an offence and liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale or both.

(3) Any person who is drunk on a vehicle to which this section applies shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(4) Any person who permits alcohol to be carried on a vehicle to which this section applies and—

(a) is the driver of the vehicle, or

(b) where he is not its driver, is the keeper of the vehicle, the employee or agent of the keeper, a person to whom it is made available (by hire, loan or otherwise) by the keeper or the keeper's employee or agent, or the employee or agent of a person to whom it is so made available, shall, subject to section 71 of this Act, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

11. In section 71 (defences in connection with carriage of alcohol) for “or 70” there shall be substituted “, 70 or 70A(4)”.

12. In section 75 (police powers of enforcement) for “or 70” there shall be substituted “, 70 or 70A”.

13. In section 77 (interpretation of Part V)—

(a) the following definitions shall be inserted in the appropriate places alphabetically—

““keeper”, in relation to a vehicle, means the person having the duty to take out a licence for it under section 1(1) of the Vehicles (Excise) Act 1971;

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads;” and

(b) in the definition of “public service vehicle” for the words “Part I of the Transport Act 1980” there shall be substituted the words “the M21Public Passenger Vehicles Act 1981”;

Annotations:

Marginal Citations

M211981 c. 14.

Fireworks etc.

14(1) After section 72 there shall be inserted the following—

“72A Possession of fireworks etc. at sporting events.

(1) Any person who has entered the relevant area of a designated sports ground and is in possession of a controlled article or substance at any time during the period of a designated sporting event shall be guilty of an offence.

(2) Any person who, while in possession of a controlled article or substance, attempts to enter the relevant area of a designated sports ground at any time during the period of a designated sporting event at the ground shall be guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) above shall be liable on summary conviction to imprisonment for a period not exceeding 60 days or to a fine not exceeding level 3 on the standard scale or both.

(4) It shall be a defence for a person charged with an offence under subsection (1) or (2) above to show that he had lawful authority to be in possession of the controlled article or substance.

(5) In subsections (1) and (2) above “controlled article or substance” means—

(a) any article or substance whose main purpose is the emission of a flare for purposes of illuminating or signalling (as opposed to igniting or heating) or the emission of smoke or a visible gas; and in particular it includes distress flares, fog signals, and pellets and capsules intended to be used as fumigators or for testing pipes, but not matches, cigarette lighters or heaters; and

(b) any article which is a firework.”

(2) In section 75 (police powers of enforcement) at the end of subparagraph (ii) of paragraph (e) there shall be inserted—

“; or

(iii) a controlled article or substance as defined in section 72A(5) of this Act.”.

Section 40(2).

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SCHEDULE 2 OTHER AMENDMENTS

*Conspiracy and Protection of Property Act 1875 (c.86)***F301**.....**Annotations:****Amendments (Textual)****F30**Sch. 2 para. 1 repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, Sch.1*Prevention of Crime Act 1953 (c.14)*

2In section 1 of the Prevention of Crime Act 1953 (offence to have offensive weapon) at the end of subsection (4) (offensive weapon includes article intended by person having it for use by him) there shall be added “or by some other person”.

Civic Government (Scotland) Act 1982 (c.45)

3(1)Part V of the Civic Government (Scotland) Act 1982 (public processions) shall be amended in accordance with this paragraph.

(2)In section 62 (notification of processions)—

(a)in subsection (1)—

(i)after “below” there shall be inserted “(a)”; and

(ii)at the end there shall be inserted— “; and

(b)to the chief constable.”

(b)in subsection (2)—

(i)in paragraph (a), after “council” there shall be inserted “and to the office of the chief constable”;

(ii)in paragraph (b), for “that office” there shall be substituted “those offices”;

(c)in subsection (4)—

(i)after “area” there shall be inserted “(a)”; and

(ii)after “them” there shall be inserted— “; and

(b)intimated to the chief constable,”; and

(d)in subsection (12), in the definition of “public place”, for “the Public Order Act 1936” there shall be substituted “Part II of the Public Order Act 1986”.

(3)In section 63 (functions of regional and islands councils in relation to processions)—

(a)after subsection (1) there shall be inserted—

“(1A)Where notice of a proposal to hold a procession has been given or falls to be treated as having been given in accordance with section 62(1) of this Act—

(a)if a regional or islands council have made an order under subsection (1) above they may at any time thereafter, after consulting the chief constable, vary or revoke the order and, where they revoke it, make any order which they were empowered to make under that subsection;

(b)if they have decided not to make an order they may at any time thereafter, after consulting the chief constable, make any order which they were empowered to make under that subsection.”;

(b)in subsection (2) after “(1)” there shall be inserted “or (1A)”;

(c)in subsection (3)—

(i)in paragraph (a)(i), after “(1)” there shall be inserted “or (1A) above”;

(ii)in paragraph (a)(ii), for “such an order” there shall be substituted “an order under subsection (1) above or to revoke an order already made under subsection (1) or (1A) above”;

(iii)at the end of paragraph (a)(ii), for “and” there shall be substituted—

“(iii)where they have, under subsection (1A) above, varied such an order, a copy of the order as varied and a written statement of the reasons for the variation; and”;

(iv)in paragraph (b), after “(1)” there shall be inserted “or (1A)”, and after “made” where third occurring there shall be inserted “and, if the order has been varied under subsection (1A) above, that it has been so varied”; and

(v)at the end of paragraph (b) there shall be inserted— “; and

(c)where they have revoked an order made under subsection (1) or (1A) above in relation to a proposal to hold a procession, make such arrangements as will ensure that persons who might take or are taking part in that procession are made aware of the fact that the order has been revoked.”.

(4)In section 64 (appeals against orders under section 63)—

(a)in subsection (1) for the words from “against” to the end there shall be substituted—
“against—

(a)an order made under section 63(1) or (1A) of this Act; or

(b)a variation under section 63(1A) of this Act of an order made under section 63(1) or (1A), in relation to the procession.”;

(b)in subsection (4) after “make” there shall be inserted “or, as the case may be, to vary”; and

(c)in subsection (7) after “order” there shall be inserted “or, as the case may be, the variation of whose order”.

(5)In section 65 (offences and enforcement)—

(a)in paragraphs (b) and (c) of subsection (1), after “(1)” there shall be inserted “or (1A)”;

(b)in paragraphs (b) and (c) of subsection (2), after “(1)” there shall be inserted “or (1A)”.

(6)In section 66 (relationship with Public Order Act 1936)—

(a)for “the Public Order Act 1936” there shall be substituted “Part II of the Public Order Act 1986”;

(b)in paragraph (a), for “or order made under section 3” there shall be substituted “under section 12”, and “or that order” shall be omitted; and

(c)in paragraph (b), “or order under the said section 3” shall be omitted.

Criminal Justice Act 1982 (c.48)

4The following shall be inserted at the end of Part II of Schedule 1 to the Criminal Justice Act 1982 (statutory offences excluded from provisions for early release of prisoners)—

“ *Public Order Act 1986*

27Section 1 (riot).

28Section 2 (violent disorder).

29Section 3 (affray).””

5. **F31**

Annotations:**Amendments (Textual)**

F31Sch. 2 para. 5 repealed by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(3), Sch. 21

6. **F32**

Annotations:**Amendments (Textual)**

F32Sch. 2 para. 6 repealed by S.I. 1987/463 (N.I. 7), art. 28(5), Sch. 2, and Broadcasting Act 1990 (c. 42, SIF 96), s. 203(3), Sch. 21

Police and Criminal Evidence Act 1984 (c.60)

7In section 17(1)(c) of the Police and Criminal Evidence Act 1984 (entry for purpose of arrest for certain offences) in sub-paragraph (i) the words from “4” to “peace)” shall be omitted and after sub-paragraph (ii) there shall be inserted—

“(iii)section 4 of the Public Order Act 1986 (fear or provocation of violence);”.

Section 40(3).

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SCHEDULE 3

REPEALS

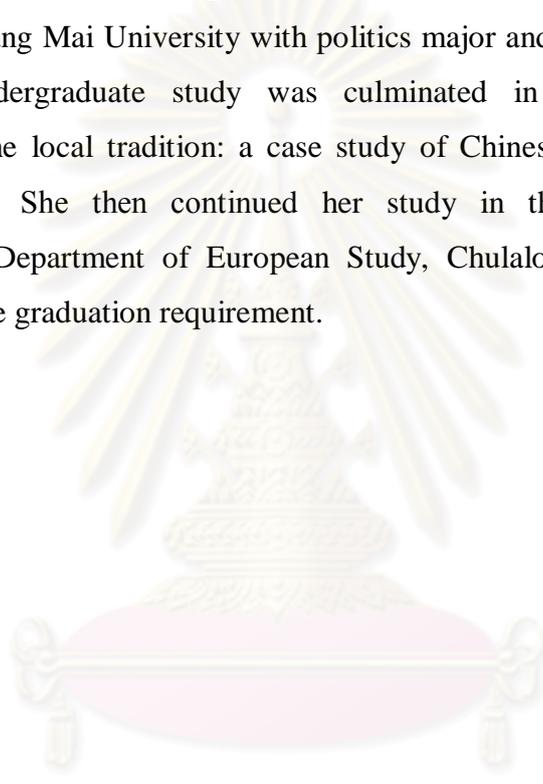
Chapter	Short title	Extent of repeal
13 Chas. 2. Stat. 1. c. 5.	Tumultuous Petitioning Act 1661.	The whole Act.
33 Geo. 3. c. 67.	Shipping Offences Act 1793.	The whole Act.
57 Geo. 3. c. 19.	Seditious Meetings Act 1817.	The whole Act.
5 Geo. 4. c. 83.	Vagrancy Act 1824.	In section 4, the words from “every person being armed” to “arrestable offence” and from “and every such gun” to the end.
2 & 3 Vict. c. 47.	Metropolitan Police Act 1839.	In section 54, paragraph 13.
2 & 3 Vict. c. xciv.	City of London Police Act 1839.	In section 35, paragraph 13.
3 Edw. 7.c .ccl.	Erith Tramways and Improvement Act 1903.	Section 171.
1 Edw. 8 & 1 Geo. 6. c. 6.	Public Order Act 1936.	Section 3.
		Section 4.
		Section 5.
		Section 5A.
		In section 7, in subsection (2) the words “or section 5 or 5A” and in subsection (3) the words “; four or five”.
		Section 8(6).
		In section 9, in subsection (1) the definition of “public procession” and in subsection (3) the words “by the council of any borough or district or”.
7 & 8 Geo. 6. c.xxi.	Middlesex County Council Act 1944.	Section 309.
1967 c. 58.	Criminal Law Act 1967.	Section 11(3).
		In Schedule 2, paragraph 2(1) (b).

1968 c. 54.	Theatres Act 1968.	Section 5.
		In sections 7(2), 8, 9(1), 10 (1) (a) and (b), 15(1)(a) and 18(2), the references to section 5.
1976 c. 74.	Race Relations Act 1976.	Section 70.
		Section 79(6).
1976 c. xxxv.	County of South Glamorgan Act 1976.	Section 25.
		In Part I of Schedule 3, the entry relating to section 25.
1980 c. 62.	Criminal Justice (Scotland) Act 1980.	In section 75(e)(i), the word “or” at the end.
1980 c. x.	County of Merseyside Act 1980.	In section 30(2), paragraph (b), the word “and” preceding that paragraph and the words from “and may make” to the end.
		In section 30(5), the words “in the said section 31 or”.
		Section 31.
		In section 137(2), the reference to section 31.
1980 c. xi.	West Midlands County Council Act 1980.	Section 38, except subsection (4).
		In section 116(2), the reference to section 38.
1980 c. xiii.	Cheshire County Council Act 1980.	Section 28, except subsection (4).
		In section 108(2), the reference to section 28.
1980 c. xv.	Isle of Wight Act 1980.	Section 26, except subsection (4).
		In section 63(2), the reference to section 26.
1981 c. ix.	Greater Manchester Act 1981.	Section 56, except subsection (4).
		In section 179(2), the reference to section 56.

1981 c. xxv.	East Sussex Act 1981.	Section 29.
		In section 102(2), the reference to section 29.
1982 c. 45.	Civic Government (Scotland) Act 1982.	Section 62(10).
		In section 63(3)(a)(i), the word “or” at the end.
		In section 66, in paragraph (a), the words “or that order”, and in paragraph (b) the words “or order under the said section 3”.
1982 c. 48.	Criminal Justice Act 1982.	In Part I of Schedule 1, the entries relating to riot and affray.
1984 c. 46.	Cable and Broadcasting Act 1984.	Section 27.
		In section 33 (2), the words “an offence under section 27 above or”.
1984 c. 60.	Police and Criminal Evidence Act 1984.	In section 17(1)(c)(i) the words from “4” to “peace”.
1985 c. 57.	Sporting Events (Control of Alcohol etc.) Act 1985.	In section 8, the word “and” at the end of paragraph (b).

BIOGRAPHY

Sasikarn Vittayachokkitikhun was educated at Satri Nakhon Sawan School and was an exchange student at Toyota Nichi High School, Toyota, Japan, for a year through the AFS intercultural programs. She received a Bachelor of Arts in political science from Chiang Mai University with politics major and in English and Japanese minors. Her undergraduate study was culminated in a mini-thesis “People participation in the local tradition: a case study of Chinese New Year tradition in Nakhon Sawan”. She then continued her study in the Master level at the Interdisciplinary Department of European Study, Chulalongkorn University. This thesis is part of the graduation requirement.



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