(New file cover)

MT.

PART 2.

CONFIDENTIAL FILING.

REVIEW OF THE LAW ON PUBLIC ORDER

HOME AFFAIRS

PART 1 - March 1980

PART 2 - February 1985

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~29.6.82~~							
~~30/7/85~~							
~~29.6.82~~							
~~20.5.86~~							
~~21.5.86~~							
21.5.86							
~~2.10.86~~							
PT 2 ENDS							

PREM 19/1795

PART 2 ends:-

LPC to HOME SEC 21/5

PART 3 begins:-

HOME SEC. to LPC. 2/6.

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
CC(85) 28th Meeting, item 3	03/10/1985
CC(85) 17th Meeting, item 1	16/05/1985
H(85) 14	20/02/1985

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed J. Gray Date 25/9/2014

PREM Records Team

Published Papers

The following published paper(s) enclosed on this file have been removed and destroyed. Copies may be found elsewhere in The National Archives.

Cmnd. 9510. REVIEW OF PUBLIC ORDER. Presented to Parliament by the Secretary of State for the Home Department and Secretary of State for Scotland by Command of Her Majesty May 1985. Published by HMSO. ISBN 0 10 195100 0

Signed J. Gray Date 25/9/2014

PREM Records Team

cc BG

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

21 May 1986

Want HB comments

Dear Douglas

PUBLIC ORDER BILL: INCITEMENT TO RACIAL HATRED - BROADCASTING

Thank you for your letter of 20 ~~May~~ at Prep. about introducing an amendment to legislate against racial incitement in broadcasting.

In the interests of getting this Legislation through, I am extremely anxious to avoid Government amendments introducing new issues into the Bill. However, I think we could manage an amendment which would not involve the broadcasting authorities. But if the controversial issue of the broadcasting authorities is to be included, then I have to warn that this will take up much time in what is already a congested session. Also, with the best will in the world, I would not fancy the chances of getting such an amendment through against the violent opposition of the cluster of ex-BBC and IBA chairmen, ex-BBC governors and members of the IBA, Lord Annan and many others. If you insist, we will of course try our best, but really the Lords is the last place in which to introduce such an amendment which has not been put before the Commons.

I am sending a copy of this letter to the Prime Minister, the Secretary of State for Foreign and Commonwealth Affairs, the members of H Committee, First Parliamentary Counsel and Sir Robert Armstrong.

Yours

The Rt Hon Douglas Hurd MP

HONG AFFAIRS Public Order PT2

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

20 May 1986

Dear Willie,

PUBLIC ORDER BILL: INCITEMENT TO RACIAL HATRED - BROADCASTING

In your letter of 1 May you asked me to put a firm proposal to H Committee on the question of the broadcasting exemption for this offence. As you will recall, H Committee discussed the scope of the offence of racial incitement last year and Giles Shaw wrote again to the Committee on 24 April this year with revised proposals.

I believe there is now a strong case for extending the offence to films, videos, sound recordings and to forms of broadcasting such as community radio which are outside the control of the broadcasting authorities. Since we last discussed the matter there has, as Giles Shaw's letter made clear, been indications of a growing trade in sound tapes of a racial nature. I have also become increasingly concerned about the embarrassment which could occur with the community radio experiment (where a number of applications for licences, which I am still considering, were from ethnic groups) if the criminal law were left in its present unsatisfactory state. My aim, therefore, is to introduce such an amendment in the Lords in June. The central question which remains is whether or not the broadcasting authorities - the BBC, the IBA and the Welsh Fourth Channel Authority - should be exempted from the offence. The arguments for and against exemption are discussed below.

The constitutional position of the broadcasting authorities is that they are appointed as 'trustees for the public interest' in broadcasting. They are formally responsible for all aspects of their programmes and are subject to detailed obligations as to the content of programmes, contained in the Broadcasting Act 1981 and the Charter and Licence and Agreement of the BBC, including an obligation not to broadcast material which incites to crime or disorder. To extend the criminal law to the authorities might be resented by their members. It could be taken as suggesting that the Government was dissatisfied with the way in which they had fulfilled their obligations and foster a climate of distrust at a time when Peacock and other matters have already introduced uncertainty into the broadcasting world. (The Peacock Report is likely to be published in July, perhaps not long after these matters are debated in the Lords). It is also relevant that, in the context of Winston Churchill's Bill to remove the exemption of broadcasting under the Obscene Publications Act, the Government spokesman maintained a neutral stance. The Bill fell at Report primarily because of opposition to the inclusion of broadcasting.

The Rt Hon The Viscount Whitelaw, CH., MC.

/over....

I have consulted the Chairmen of the IBA and the BBC on the possible extension of the law. They are strongly opposed, and among the points they have made are the following:

(i) the broadcasting authorities are subject to a different form of regime from other kinds of publication, and already have a variety of responsibilities which are not imposed on or accepted by other sections of the media;

(ii) there has been no significant evidence that their existing controls have been ineffective in dealing with racial matters;

(iii) their editorial controls take greater account of the moral dimension of racialism than could be included in any legal restraints, and this could be weakened if they were to be brought within the general law on racial incitement;

(iv) their ability to report racial incidents and related issues could be compromised;

(v) the powers of search and seizure contained in the Bill could affect their news-gathering operations.

There is some force in the first two of their comments, but to my mind they are not decisive.

The principal argument against exempting the authorities lies in the changing pattern of broadcasting in recent years. The BBC and the IBA now have extensive local radio networks: there are increased hours of television on four channels: day time television is round the corner: and up to five new direct broadcasting by satellite channels may soon be available. The concept that the governing boards can be directly responsible for everything they broadcast is therefore increasingly seen as a fiction. In addition, the growth of cable services (which are already subject to the criminal law on racial incitement), low-powered satellite services, and other possible forms of quasi-broadcasting, all of which we would hope to regulate in some way with regard to racial incitement, means that the public (and some MPs) will find it difficult to accept that the position of the IBA and the BBC under the criminal law should be substantially different from other kinds of electronic published.

More positively, the inclusion of the broadcasting authorities within the offence would indicate the Goverment's full commitment to combatting racial hatred, and an exemption might be misunderstood by the ethnic minority community. Their inclusion might also assist in dealing with any abuses by community radio stations since we would be able to point to the fact that the BBC and the IBA were subject to the same provision, and that there could be no suggestion that the Government was not being even-handed.

The issues remain, in my view, fairly finely balanced. We risk stirring up trouble with the broadcasters, who will argue that there are objections of broadcasting policy to bringing them within the scope of the criminal law. But on balance I believe that the arguments point away from an exemption for the BBC, IBA and the Welsh Fourth Channel Authority. The broadcasters may receive some support in the Lords but I believe that the decision can be defended as a rational and consistent one and will be supported outside broadcasting circles.

I should be grateful for the agreement of the Committee to proceed on this basis.

I am copying this letter to the other members of H Committe, to the Prime Minister, to the Foreign & Commonwealth Secretary, to First Parliamentary Counsel and to Sir Robert Armstrong.

Yours,

Douglas.

HOME ~~AFFAIRS~~
PUBLIC ORDER
PF 2

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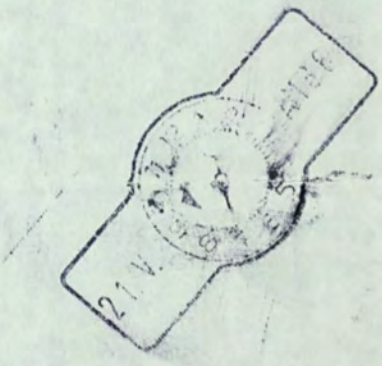

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From the Minister of State
for Industry and Information Technology

GEOFFREY PATTIE MP

NBM

Rt Hon Viscount Whitelaw CH MC
Privy Council Office
Whitehall
LONDON
SW1H 2AT

29th April 1986

Dear Lord President,

PUBLIC ORDER BILL: INCITEMENT TO RACIAL HATRED

Giles Shaw's letter of 24 April proposes that there should be a Government amendment to this Bill in the Lords to extend the offence of incitement to racial hatred to films, videos and sound recordings. / can request if required

In view of the evidence of a growing trade in racialist tape recordings I am entirely happy to agree the course proposed.

I am copying this letter to the Prime Minister, Members of H Committee, Geoffrey Howe, and to Sir George Engle and Sir Robert Armstrong.

Yours sincerely,

Timothy Abraham

pp. GEOFFREY PATTIE

(Approved by the Minister and signed in his absence)

AP5/AP5AAF

1786 1986 BOARD OF TRADE BICENTENARY

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PRIME MINISTER 25 April 1986

PUBLIC ORDER BILL: INCITEMENT TO RACIAL HATRED

The Home Office propose to extend this Bill to racial incitement, contained in films, videos and sound recordings. Giles Shaw, in his letter attached, wishes to exempt broadcasting by the broadcasting authorities (BBC and IBA) from the proposed new offence, while catching pirate and community radio. This exemption of the BBC and IBA would be put through Parliament close to the time when we gave a neutral, but fair, wind to the Winston Churchill Bill, which would remove the exemption of broadcasting under the Obscene Publications Act.

This is an unfortunate moment to suggest exempting the BBC and IBA from any part of the criminal law. In other parts of Government we are removing crown immunity and our treatment of the Winston Churchill Bill will be seen as an inconsistent.

Whilst we absolutely support the good sense of the Home Office in extending racial offences to videos and films, and we accept there is no evidence that the BBC or IBA have or would infringe this provision, we do believe that the Home Office have been wrongly swayed by the hostility of the BBC. This Government has repeatedly said no-one must be above the law, whether it is Scargill, Hatton or Trade Unions.

We should not create a hostage to fortune by giving in to pressure from the Broadcasting Lobby. Do you wish to write to the Lord President, or take this up with the Home Secretary on Monday?

N

HARTLEY BOOTH

/ 06

CONFIDENTIAL

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

MINISTER OF STATE

28814

24th April 1986

Dear Willie

PUBLIC ORDER BILL: INCITEMENT TO RACIAL HATRED

I am writing to you, in the Home Secretary's absence, to seek H Committee's agreement to our introducing an amendment in the Lords to extend the scope of this offence. On 23rd October last year, H Committee discussed the offence and the Home Secretary's letter to you of 18th November recorded the Committee's conclusion that, unless pressure arose, we would not seek to extend the offence to broadcasting, nor to films, video or sound recordings. Since then, however, the position has changed. We are aware that a trade is developing in sound tapes of a racial nature, and it is probably only a matter of time before this extends to videos. In addition, during Committee on 20th March an amendment was introduced to widen the offence, and I agreed to look again at its scope, including the position of community radio.

Following consultation with the British Board of Film Classification, which saw no problems about the inclusion of films and videos, the Home Secretary believes that it would be right to extend the racial incitement provision to films, videos and sound recordings. Such a provision would also catch many aspects of broadcasting unless a specific exemption were made.

Accordingly we have consulted the BBC and the IBA about extending the offence to broadcasting. The BBC and the IBA are strongly opposed to being brought within the scope of this offence. Given the arrangements for governing public service broadcasting - with broadcasting authorities operating under tight statutory or Charter prescriptions - it could reasonably be argued that this offence need not be applied to them, particularly as there is no evidence that the present exemption has led to any pattern of abuse. It is also relevant that in the context of Winston Churchill's Bill to remove the exemption of broadcasting under the Obscene Publications Act, which is to have its Report Stage later this week, the Government Spokesman has maintained a neutral stance.

Against that background it would be possible to extend the racial incitement provision to broadcasting at large (which would catch pirate radio and community radio) while providing an exemption for broadcasting by the broadcasting authorities. That is clearly what the broadcasting authorities would like to see and, if the Churchill Bill fails, that would be consistent with Parliament's views on the obscenity exemption.

/However

The Rt. Hon. Viscount Whitelaw CH MC

However the special position of the public service broacasters is undoubtedly under scrutiny at the present time, and for the Government to propose a specific exemption from an offence being newly extended to broadcasting would not be attractive if the Churchill Bill receives its Third Reading in the Commons. We may not know whether this is the case until 9th May. Accordingly the Home Secretary believes that we should give a commitment now to extend the offence in the Lords to cover films, videos sound recordings and to broadcasting, leaving the details (such as an exemption for the broadcasting authorities) to be settled later in the light of the outcome of the Churchill Bill. I would like to give such a commitment in the course of the debate on the Report Stage of the Public Order Bill on 30th April, and I must therefore ask for comments by noon on Tuesday, 29th April.

Copies of this letter go to the Prime Minister, members of H Committee, Paul Channon, Geoffrey Howe and to Sir George Engle and Sir Robert Armstrong.

Yours

Giles

(GILES SHAW)

Prime Minister. (4)
To asked for the Policy Unit's views on Sir Alfred Sherman's note.
MEA 16/4

CONFIDENTIAL

PRIME MINISTER

9 April 1986

PICKETING LAW

Brian Griffiths has passed me Alfred Sherman's note to you about picketing laws. Alfred's analysis is penetrating, but perhaps he is forcing the horse a little faster than it is ready to go. As Lionel Block states at the end of his updating note: "The new Public Order Act is probably adequate to deal with violent picketing, but in practice, the real question is not one of sterner legislation, but one of the will to enforce it".

The ambiguities in the present law give the police the leeway not to enforce the rules in disputes where a heavy hand would have little public support. Indeed, one sure way of bringing the law into disrepute would be for the police to arrest large numbers of perfectly peaceable demonstrators, or even worse, try to arrest them and fail in the attempt.

If all of the changes that have been made to the industrial relations law over the last 6½ years had been made in one go in 1979, then the resistance would have been insuperable, and the legislation would have gone the way of Edward Heath's Industrial Relations Act. The more gradual approach adopted has allowed the pace of change to run alongside or just slightly ahead of public opinion.

No doubt there will come a time when still tighter picketing laws can be enacted and enforced with the support of the public at large, but I doubt whether that time has yet come.

Peter Warry

PETER WARRY

CONFIDENTIAL

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AS FROM: 10 Gerald Road, London SW1W 9EQ

2 April 1986

MEMORANDUM

Further to our telephone conversation I enclose some notes by Lionel Bloch up-dating and drawing conclusions from work they did at the Centre for Policy Studies. At that time, and in collaboration with the Argonauts and with John Hoskyns (and later Ferdy Mount) at Number Ten, we produced ideas on trade union reform, mobilised support from employers and provided a counterweight to the baleful views of Jim Prior and the Department of Employment civil servants. I think that successes in labour relations owe much to the work at the time of Lionel Bloch, Sir Lenard Neal, John Hoskyns and the Argonauts.

But there are still steps to be taken in the step-by-step process. One serious lacuna is the law on picketing which Prior succeeded in persuading the Cabinet to make a voluntary code - which trade unions ignore, and police are reluctant to enforce - rather than a law which could be enforced.

This matter, and its role in the prevention of intimidatory picketing and demonstrations - which is not picketing nor demonstration at all but rioting - lies at the intersection of labour law and public order. When both sides - police and Department of Employment - are reluctant to act, they hide behind the pretext that it is the other chap's job. With people like Mayhew involved this can only be expected.

Here is a case where a clear law clarifying what may or may not be done and the respective roles of police, Home Office and Department would be of inestimable value. Otherwise the benefits of the Tebbit legislation, for which I and my colleagues worked so hard from the mid-seventies onwards, will be erroded by trade union violence, Home Office hesitation, police pusilaminity, Department of Employment appeasement and employers' recourse to discretion as the better part of valour.

For the rest, the material speaks itself.

I am working on the notes of the matter discussed with you on the ethics which in our culture are religiously based. All the rest is gloss.

I should complete them when I come back from the FCS conference in Scarborough.

Enc

PICKET VIOLENCE AT WAPPING

AND ITS WIDER IMPLICATIONS

The present picketing of the News International plant at Wapping is illegal because it is directed at companies which technically did not employ the dismissed printers and also because many of those picketing where never employed by any of the News International companies. This is therefore Secondary Picketing.

As the law stands, these pickets could be dealt with either by Mr Murdoch's companies making a further application to the court, or by the police exercising its existing Public Order powers.

Mr Murdoch is clearly reluctant to exercise his right to the limit because:-

1. He has been influenced by widespread adverse criticism from such diverse sources as the Managing Director of ICI, a Conservative minister and the united condemnation of various opposition leaders.
2. He is known to want a settlement in order to use again the printing works at Gray's Inn Road and according to some well informed sources, his companies have set aside a sum of approximately fourteen million pounds in order to pay compensation to dismiss printers in the event of a deal.

As such a deal is at present his main objective, we cannot expect him to exercise his legal remedies to the limit. This point was fully anticipated by the Trade Unions Reform Committee of The Centre for Policy Studies, when it published "Liberties and Liabilities" in 1981.

The Centre for Policy Studies recommended at the time that the only way to deal with violent picketing was to make this a criminal offence and to make the police solely responsible for preventing it. It was pointed out that one could not expect employers to deal with violent picketing because there was always a chance that they would be intimidated. We also argued that Mr Prior's code of voluntary conduct would be completely useless as indeed it proved in the subsequent miners strike and now at Wapping.

Even now, the police have powers to disperse meetings when a breach of the Queen's Peace is anticipated, but they are reluctant to exercise this power as it may appear an unreasonable curtailment of the freedom of assembly and freedon of public speaking.

These inhibitions certainly did not justify the failure of the police to tackle and disperse rioters at Birmingham and Tottenham last year. The failure was one of police policy, i.e, a deliberate refusal to enforce the law, because the enforcement would have involved numerous injuries and probably the consequent indignation of the progressive media.

The alarming spread of this attitude became noticible very recently when John

Carlisle, MP, was prevented from addressing a student meeting in Oxford and was subsequently advised by a senior police officer to leave town as the police could not be responsible for his safety. In other words, instead of dealing with his assailants, the police thought that the best way to deal with the situation was to assist those who sought to prevent freedom of speech being exercised.

The new Public Order Act is probably adequate to deal with violent picketing, but in practice, the real question os not one of sterner legislation, but one of the will to enforce it.

Yours.

See summary: pages 10–11

SECTION 2 – PICKETING: PART I

Picketing is undeniably important. It is arguably the most urgent area for trade union reform. This is recognised by both the major political parties. Prominent members of the last Government favoured plans to strengthen the powers of pickets. The present Government has proposals to weaken them very slightly. It is the Government's plans in relation to picketing that have caused the greatest alarm among trade union leaders who are well aware how crucially their power depends on their strength in this field.

Historically, picketing has always been controversial. It was a Liberal administration under Gladstone which in 1871 (Criminal Law Amendment Act) reaffirmed the 1825 proscriptions on "molestation" and "obstruction" (and was strengthened in the Lords to ban "watching and besetting"). The effect of the 1871 Act was to make all forms of picketing of doubtful legality. The Parliamentary Committee of the T.U.C. pressed for the repeal of this statute. Ironically it was a Tory Administration under Disraeli which did so in 1875. In 1876 this was followed up by a Trade Union Act which declared in effect that an action carried out by a group of workers acting collectively would not be illegal unless it would also be illegal if carried out by an individual. The trade union legislation of Disraeli's government was based on the Minority Report of a Royal Commission and was put through by the responsible minister, Cross, with Disraeli's backing, against the opinion of the bulk of the Cabinet. The effect of the legislation was to make peaceful picketing legal.

Whilst the romantic adventurism of Disraeli paid off in the short run, trade union legislation took a wrong turn at this time. The mischievous principle "If it's all right for one person to do it, then it's all right for everyone to do it" was enshrined in the law. A moment's consideration should suffice to show that this principle is spurious. It may be all right for one person to get into a rubber dinghy but if a horde of people try to do it at the same time it will sink. In the case of picketing, it may be all right for one person to attempt "peacefully to persuade" a co-worker not to cross a picket line, but if five thousand people seek to do so simultaneously, it becomes coercion rather than peaceful persuasion. Their intentions may or may not be peaceful, but the effect is undoubtedly intimidatory.

Whatever the merits of the Tory approach to picketing in the nineteenth century there have been changes since, which call for a complete re-evaluation of the matter. The Unions have grown from weak and harassed associations into one of the most powerful vested interests in society, they have acquired a large number of legal immunities, they have vastly increased their membership, they have developed powerful sanctions against members and non-members, and they have perfected and extended picketing with the "mass picket" and the "flying picket",[1] and have done so in a way that has done grievous damage to the public interest.

It is therefore necessary to go back to first principles and recognise that no practice, however long established, can be regarded as sacrosanct in this sphere.

There are three such principles which must not be forgotten:

(1) That strikes are in themselves undesirable, and that it is better that production should not be interrupted than that it should, and that it is better that fewer people should withdraw their labour than that more should.

(2) That the individual rights and interests of *all* involved in industry should be respected (this includes managers, non-strikers, and strikers).

(3) That the liberty and interests of the subject in general should not be infringed.

There are some who would add a fourth principle that a consensus should exist regarding any changes in this sphere. If a consensus is desired which embraces the trade union leaders and shop stewards (as opposed to the rank-and-file), the Government should not attempt any legislation at all. Whatever changes are proposed by the Government in this field will meet with a synthetic indignation from the trade unionist activists that will be presented (quite erroneously) as a spontaneous outburst of hostility from the "trade union movement". Any measure that is accepted, even on a *de facto* basis, by the trade union leaders will certainly be completely ineffective. Weakening the power of the pickets will itself hamstring the effectiveness of any industrial action mounted in opposition to the Government. Failure to act will leave the trade unions with a loaded revolver that can be fired at any time at the Government.

Returning to the three principles above, it is clear that the art of legislating in this field should be to preserve and protect the rights of those who want to work and keep the wheels of industry turning without infringing the rights of those who have seen fit to withdraw their labour; and, provided the rights of both are secured, to tip the balance of power towards the working workers and against the striking "workers".

---

1. See Appendix 1.

The theory of picketing as it is supposed to be, is that a group of workers wait for their colleagues as they are about to enter the workplace and inform them of their grievances and their position on the current state of negotiations, and invite them to join the strike giving them reasons to show why it is just and why it is in their interests to join. This could be summed up by the phrase "peacefully to persuade and inform".

The Common Law recognises a right of one person to make unsolicited remarks to another in a public place. There can be no objection in law or morality (whatever the position with regard to etiquette) for one person to talk to another even if the second person did not ask him to do so. This is the right of "unsolicited conversation". But if the second person refuses to listen and walks away, the first person may not stop him (for that would be an assault) or follow him about pestering him with talk (for that would be illegal too).

There is another right of "peaceful demonstration" where a group of persons behaving in an orderly manner may, subject to local or special regulations, hold a march or a meeting in order to make their views heard to a general audience or in order to petition the appropriate public authorities for redress of (their) grievances. This is a more qualified right because it is subject to regulation concerning use of uniforms, route of marches and so forth.

Picketing is founded on these two rights and one must be careful to recognise that there are two other general rights associated with them – liberty of speech and liberty of assembly – and the legislation concerning picketing should not fall foul of the European Convention of Human Rights.

However, picketing does belong to a special category in that it is a demonstration against an employer held at or near the premises of the employer. It is an expression of hostility towards the employer and the non-strikers. This is rather different from an expression of hostility towards public authorities – because the law should be alert to protect the rights of private persons to a greater extent than public officials. Freedom of speech is chiefly concerned with enabling citizens to express their views on matters of public interest for the benefit of their fellow citizens and to inform the legislature and the executive authorities. Speech and actions directed against private persons or bodies are not entitled to the same blanket protection because of the limitations imposed by the laws relating to libel, sedition, etc.

Picketing should therefore be seen not as a fundamental human right but as a special situation arising from a conflict of rights between management and non-strikers on the one hand and strikers on the other hand. The purpose of legal regulation is to ensure fair play and legislation should be presented accordingly. Those who oppose any legal regulation should be criticised for supporting a system where there is a free-for-all, like a rugby scrum without a referee or linesmen.

The central point is that picketing is about "peacefully persuading and informing". It is clear that this ceases to be peaceful if someone is coerced into listening to it. There must therefore be no right to stop vehicles or persons. This is an infringement of *their* rights and should be resisted on the basis that "non-strikers have rights too". It is equally clear that it ceases to be peaceful if anyone is threatened, attacked, or intimidated. Both these principles point to a limitation on numbers of pickets. It only *needs* a handful of people to talk to incoming workers and hand out leaflets. The purpose of the surplus persons can only be to intimidate. The fewer the pickets the greater the chance of their being able to communicate in a reasonable and rational fashion with those who wish to talk to them. Large numbers not only intimidate, they also make it very difficult to exercise any genuine persuasion or to impart any information. The Donovan Commission drily commented: "It is not clear, however, why mass picketing is required simply to communicate information" (*Donovan Report* 1968 p. 231).

"Persuasion and information" both presuppose that the pickets know what they are talking about. This means that they must be in a position to impart knowledge, which in turn means that they must have personal knowledge of the background to the dispute and the points at issue. If they seek to demonstrate at a workplace which, unlike a public park or square, was not designed to accommodate meetings, they ought also to have some standing in the matter which ties them in with the particular premises in question. Both these considerations exclude outsiders. Outsiders are not in a position to persuade and inform for they have not worked at the premises and therefore cannot have personal knowledge of the dispute. They have no connexion with the premises either for the same reason.

There is therefore no justification for "flying pickets" or for the presence of outsiders on picket lines. The law should lay down that those who picket particular premises must themselves have worked at those premises for a set period immediately prior to the dispute in question. Whatever period is chosen will in a sense be arbitrary but it is important to exclude from the picket-lines those who have an interest in stirring up trouble because they are only temporary or casual workers or about to leave. Many students, for example, take vacation jobs, and may be tempted to exacerbate industrial relations in the knowledge that they will not have to live with the consequences in the aftermath of a strike. The law should look after the interests of the permanent workers. A period of one year's continuous service prior to the dispute is probably the minimum set period for the law to lay down for the ordinary picket.

The technique of the "flying picket" pioneered at Saltley[2] would be effectively outlawed by this ban on outsiders manning the picket lines. It would be possible for the police to enforce it by intercepting and turning back coaches[3] carrying flying pickets just as they intercept motorcycle gangs of young hooligans. In addition, the hirer of the vehicle could be prosecuted and the owner (that is to say the organizer and the coach operator). The law could deal very effectively with the flying pickets without the need to imprison anybody by the general provisions for forfeiture of vehicles and fines on organizers. If the problem of "flying pickets" is not tackled it could become very serious. At present it is in its infancy. But its proved effectiveness will lead to an increasing number of unions using it. The manning of picket lines by outsiders should be made an offence and so should the act of conspiracy with others to do so or to organise, for example, the transport arrangements (including financing). Without this organization "flying pickets" would be practically impossible — for few people will pay for and organise their own transport on their own initiative for the privilege of taking part in a picket many miles away (especially if they know it would be illegal to do so). An organised collective outing at the union's expense is a very different proposition. Coachloads of students would be similarly eliminated by the same legal measure. The virtue of dealing with this problem at the departure and journey stage rather than at the arrival stage, is that the potential pickets are dispersed in the former case but concentrated into a huge mob at the latter stage.

The next problem is good order on the picket-line. This can be presented (as indeed it is) as being in the interest of all parties. The problem in a nutshell is that troublemakers, often with political motives, attend pickets in order to use violence, engineer a confrontation with the police, and intimidate non-strikers.

The problem of troublemakers should be squarely faced. First, if they are outsiders they should not be there at all. But how can it be instantly established whether or not someone is a legitimate picket? Pickets must wear some form of identifying mark. The obvious solution is an armband.

If good order is to be maintained on the picket line and initimidation avoided, it is essential that there should be strict limits on the numbers of pickets who may be permitted to picket any one access-point to the workplace at any one time. It has already been shown that large numbers make proper picketing impossible in any case. It is also quite clear that large numbers can, in themselves, be intimidatory. The huge mob at Grunwick's was a case in point.[4] Activities occurred there which in addition to being intimidation (itself a tort) also amounted to the common law crime of affray. In other circumstances they would have led to criminal prosecutions.

Although restrictions on the numbers of pickets are bound to be unpopular with trade unionist leaders, the violence and disruption that can be caused by huge mobs of pickets is an extremely serious problem for the police and a confrontation, as at Grunwick's, with many arrests, can damage industrial and social relations far more than the restriction itself would.

At the Saltley depot in February 1972 there were an estimated 15,000 strikers and sympathisers engaged in picketing and in order to maintain order the police ordered the gates to be closed. There was 76 arrests and 17 policemen were injured.[5] The cost in terms of police time, court time, damage, and loss of production was enormous.

Pickets can be limited under the present law on an *ad hoc* basis by the police on duty. A police officer may request the picket line to thin out because he apprehends a breach of the peace and he may impose a limit on the numbers that may picket. Failure to comply with his request would be punishable as obstructing a police officer in the execution of his duty. In *Piddington v. Bates* (1960) a police constable told a potential third picket that two pickets were enough at a particular entrance. The third man nevertheless insisted on joining the other two pickets and was arrested and convicted. The conviction was upheld in the Divisional Court and is still good law. However, it places a great burden of judgement (as to whether there is likely to be a breach of the peace and what restrictions on numbers should be imposed) on police constables who are often inexperienced in this type of law enforcement and who tend to avoid what they consider an onerous duty. It is much better for the law to state what the restrictions are, so that the police do not have to make the judgement or incur the odium of being responsible for inventing the restrictions.[6]

The problem of troublemakers also requires that those who have committed offences on picket-lines should be banned from attendance at pickets for a set period. A bad driver is disqualified from driving for a period so why should not a bad picket be disqualified from picketing for a given period? This would be a valuable step since it is a minority who use violence and there is overwhelming evidence that there are certain professional agitators who repeatedly attend pickets (and demonstrations) and repeatedly commit offences.

Regulations of picketing would be inexpensive and easy to enforce. The heavy costs of policing large crowds would be done away with. Instead the problem of order would consist merely in keeping an eye on a handful of authorized pickets.

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2. See Appendix 1.
3. See Appendix 1 for examples of their use.
4. See Appendix 1.
5. See Appendix 1.
6. See SECTION 1 p.6.

The system would work like this: A person who wished to organise a picket would attend the local police station, identify himself and announce himself as the Picket Organizer. He would sign a form taking responsibility for the selection, administration and supervision of the pickets. The police would issue him with arm-bands and give him a leaflet setting out the Rules for Picketing. He would leave them with an address and telephone number. He would have a distinctive arm-band which identified him as the Picket Organizer. It would be his responsibility to ensure good order on the picket line in the first instance and to warn potential pickets of the rules. He would then issue the armbands to those he selected for the picket. Pickets would be limited to six at any given access-point. The Picket Organizer would be responsible for supervising them, liaising with the police, and ensuring that only his chosen pickets were on duty wearing their armbands.

The rules that the Picket Organizer would be given would state that no person who had not worked for a year at the premises to be picketed could act as a picket, that pickets were limited in number to six, that armbands must be worn at all times, that no threats may be made to non-strikers, and would also warn pickets of the penalties for breach of the picketing regulations. The Picket Organizer would nominate a deputy when he was off duty and inform the police accordingly.

Once the system is established it would not involve the police in much work, and work to regulate the picket would save work in coping with the consequences of a disorderly picket. Overall this system would involve less work for the police.

There would be clear individual responsibility first by the chosen pickets themselves, secondly by the Picket Organizer. In the case of official strikes he would be a union official. The law would lay down that Picket Organizers must either be employees who have worked for two years at the premises or a local union official in the case of official strikes.

If the authorized pickets misbehaved it would be easy to identify and punish the culprits. In addition action could be taken against the Picket Organizer and, in the case of official strikes, the union itself. Any other persons attempting to pose as authorized pickets or joining the picket line would be committing an offence. The Picket Organizer would be responsible for returning the armbands to the police at the end of the dispute.

There should be a further condition that lawful picketing can take place only in furtherance of a trade dispute between persons at the premises to be picketed. This rules out picketing in furtherance of secondary boycotts. This will give statutory backing (in relation to picketing) to the recent judicial decisions regarding the "remoteness test" and, in particular, to Mr Justice Ackner's judgement in *United Biscuits v. Fall* (1979).

The underlying justification for these measures is that the law should allow peaceful persuasion and information on the part of those with a legitimate interest in a trade dispute which concerns them, but should not allow outside interference, meddling in other people's disputes, or hooliganism.

What is required is a single Act dealing solely with picketing, introducing one or two new points and consolidating existing legislation and giving statutory authority to existing case law. Although the law *already* bans certain forms of behaviour such as riotous assemblies, affrays and so forth, it is desirable that Chief Constables, union officials and others who have to deal with the practical problems of picketing should have the "Do's" and "Don'ts" of picketing spelt out in one place in a modern Act of Parliament. This would have the virtue that the judges are not called upon to become embroiled in the business of developing or applying common law principles in cases where they will be accused of political bias.

Offences under the Act should be summary offences triable in a magistrates' court.

SUMMARY OF RECOMMENDATIONS

(1) The Act should create an offence of unlawful picketing. An offence will be committed by any person who knowingly organises or participates in a picket or exhorts and incites or aids and abets any person to do so, in breach of the requirements for a lawful picket. There should be a maximum fine of £300 and 200 hours community service for a first offence and six months in prison for subsequent offence (i.e. an offence commited after *conviction* of an offence). Vehicles knowingly used for transporting persons for unlawful picketing should be liable to forefeiture. Conviction should count as an automatic five-year disqualification from any union office, from the right to organise or participate in pickets, and should provide grounds for fair dismissal from employment.

(2) A picket will be unlawful if:

(a) No Picket Organizer has registered with the police and issued armbands;

(b) The registered Picket Organizer is not eligible to organise a picket by virtue of being neither a local union official nor employee at the premises with two years' service, or by having been convicted of any criminal offences (except minor motoring offences) within the previous five years;

(c) The authorised pickets or some of them are likewise disqualified by virtue of a conviction;

(d) There are more than six pickets at any one access point;

(e) The pickets are not wearing armbands issued by the police;

(f) Threats are uttered by any of the authorized pickets to non-strikers or any person is obstructed or forcibly detained or intimidated;

(g) It occurs at premises other than those of the workplace at which the pickets worked prior to the dispute;

(h) Any violence is used by any of the authorized pickets to any non-striker or if any offensive weapon is carried;

(i) It concerns a dispute other than a trade dispute between those involved at the premises to be picketed.

(3) Any person who, not being a Picket Organizer or authorized picket, nevertheless joins a picket-line, poses as an authorized picket, or purports to picket, will commit an offence.

(4) Any person attempting to intercept non-strikers on their way to work or participating in a demonstration concerning any dispute within 500 yards of any access point to the premises under picket will be deemed to be picketing.

The Socialist Workers' Party has issued a leaflet "Going on Strike" which states "The heart and soul of a strike is the picket". It emphasizes the importance of numbers, "the mass picket", the importance of "the flying picket", the importance of secondary boycotts, and stresses that the picket should be an "outlet for anger". It points out that most of the laws which can be used against pickets "involve fairly minor fines" and points out that supporters can simply raise a collection to pay them. "If you get such police intervention that your picketing is made ineffective, call for a mass solidarity picket of local trade unionists". The leaflet stresses that one advantage of large numbers of pickets is that "the police cannot arrest every striker and every picket".

Our proposals put an end to this nonsense. The penalties are designed not to be draconian but to have an impact on the individual transgressor in a way that fines alone do not. They are also designed to increase to deal with the persistent trouble-maker. They are designed to introduce an element of discipline – both internal and external – to the picket-line. They catch the inciters and organizers who usually go unprosecuted at present.

Our proposals are not particularly revolutionary. They merely seek to enforce the practices which most trade unionists acknowledge as necessary for an orderly picket. Our proposals are foreshadowed in the Social Contract between the last Labour Government and the T.U.C. (The Economy, the Government and the Trade Union Responsibilities – Joint Statement by the T.U.C. and the Government, February 1979). Under the heading "Organization" (S. 13) they state: "Pickets should be advised to act in a disciplined and peaceful manner even if they are provoked. . . It will help to ensure that picketing is peaceful if an experienced member, preferably a union official, is in charge of the picket line . . . He should ensure that the number of pickets is no larger than necessary". Under the heading "Demonstrations" (S. 18), they state: "In any situation where large numbers of people with strong feelings are involved, there is a danger that things can get out of control particularly in a confined space such as access to a factory. . . It is also important that demonstrations of this kind do not convey the impression that the object is to blockade a workplace".

The established practices of good picketing are given the force of law in our proposals in order to protect the law-abiding pickets and the public in general from the abuses of a minority, usually outsiders who have no legitimate interest in the matter but who have a desire often stemming from ulterior political motives to promote discord and violence.

The picket is industrial muscle. Legal regulation of picketing will undermine its strength to some extent but it will continue to be a formidable weapon. The purpose of our proposals is to protect the rights of all parties, to prevent disorder and violence, and to prevent the balance of industrial power being unfairly tilted in favour of strikers by illegitimate forms of picketing. The "mass picket", the "flying picket", and the "secondary picket" all must become of merely historical interest.

SECTION 3 – PICKETING: PART 2

PICKETING AND THE CIVIL LAW

So far we have been considering picketing in relation to the law of public order. The offence of unlawful or disorderly picketing would belong to the general category of public order offences such as offences under the Public Order Act 1936, affray, disturbance of the peace and so forth. Picketing has a public aspect and it is right for the law to regulate the picket-line (just as it regulates the motorist) to ensure that it is conducted in such a way as to minimize the risk of people being injured or intimidated or prevented from going about their lawful business.

But picketing also has effects on private rights. An employer who suffers loss through picketing should, in certain circumstances, be able to sue those responsible. Some people would urge that all picketing should be actionable – in other words, wherever there is loss proved (which is to be expected in all cases of picketing since that is precisely what it is designed to achieve) an employer should be able to recover damages.

The Committee does not take this view. It recognises that trade unions must be given certain immunities if they are to picket at all. Otherwise almost every instance of picketing would amount to the tort of inducing breach of contract. But this means that by legalising picketing which would (without special protection from Parliament) be unlawful in the sense of a civil wrong, though not a criminal offence, Parliament is legalizing a practice which can cause severe economic loss to employers and, by damaging a firm, its employees.

The question that presents itself is this: Given that picketing is designed to cause economic damage, under what circumstances should it be specially protected by legal immunities? Clearly the onus is on those who seek to defend the special legal privileges to justify giving them a wider scope.

The Committee accepts that picketing should be permissible where the workers are picketing their own place of work in their own trade dispute. This is "their business" – for it is their firm, their place of work, their dispute. But when they start to join in other people's disputes by inflicting them on their own employer who is not in any way responsible or where they travel elsewhere to picket somebody else's place of work, this is a very different matter. They should be told, in effect, "to mind their own business". The politicians should find this intuitively attractive and common notion an easy one to persuade the public that what is being proposed is sensible and fair.

It follows that legal immunities should be given to, but should also be confined to, *primary picketing* – that is to say, people picketing their own place of work in respect of their own trade dispute.

Section 16 of the Employment Act achieves *half* of what is needed. It permits and confines picketing to workers picketing their own workplace. But the second half remains to be achieved. At present workers can picket their own innocent employer because of some other trade dispute.

The Committee believes that Section 16 of the Employment Act, 1980,[1] should be remodelled and to this end presents below a new draft Section 16:

16. – (1) It shall be lawful but only for a person in contemplation or furtherance of a trade dispute and only for a trade dispute to which he is a party to attend –

(a) only at or near his own place of work, or

(b) if he is a full-time, permanent paid official of a trade union, at or near the place of work of a member of that union whom he represents and whom he represented prior to the trade dispute and whom he is accompanying, etc. (as in the Employment Act).

Add as subsection 4 of Section 16 the following: Same as provided for subsections 1, 2 and 3 above, acts done in the course of picketing shall be actionable in tort. For the avoidance of doubt, it is hereby declared that the criminal law regarding acts done in the course of picketing is not changed by this Section.

PICKETING AND CODES OF PRACTICE

The Secretary of State for Employment published on 5 August 1980 a Draft Code on Picketing.

This Code of Practice approach to the problem can be regarded as subtle on one view or ineffectual on another view.

1. See Appendix 4.

A Code of Practice is neither a piece of civil nor of criminal law. It is not law at all. It really consists of advice and exhortation. The problem with such advice is that, however good it may be, there is no guarantee that anyone will follow it. Those workers who are reasonable and fair-minded will picket reasonably and fairly anyway, without advice. Those union leaders who are reasonable and fair-minded will need no prompting from the Government to encourage their members to behave properly. The problem lies with the unreasonable, unfair minority – some of whom are troublemakers who are not trade unionists at all, but politically-motivated outsiders bent on creating trouble. What notice will they take of a mere Code?

It can be objected that they will take no notice of the law either. This is probably true – but the law can be enforced against them. They can, in the final analysis, be arrested. And they can be punished by a fine or, in a very serious case, imprisonment. They cannot be arrested, fined or imprisoned for breaking a code.[2]

The Draft Code on Picketing states (Introduction at p.1): "The Code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings. But Section 3 (8) of the Employment Act[3] requires any relevant provisions of the Code to be taken into account in proceedings before any court or industrial tribunal or the Central Arbitration Committee".

This passage warrants close scrutiny. When is the Code "taken into account"? How is it "taken into account"? What is the effect of its being "taken into account"? Does it mean "enforce" or does it not? As it stands the passage is delightfully ambiguous and manages to convey the impression both that the code will *not* have legal penalties of any kind for Code-breakers (reassuring to those who fear that picketing will become legally more restricted than it used to be) and that there *will* be a legal come-back on those who ignore the Code (reassuring to those who demand that something effective be done about picketing). Unfortunately it is not possible to reassures both sets of people!

It is true that Section 3 does require a court to take into account relevant provisions of the Code. But suppose someone breaks the Code. There is no criminal offence of Code-breaking – so he cannot be charged with anything, consequently he cannot be brought before a court, and therefore the court cannot take anything into account because it never gets to hear the case in the first place. If on the other hand he has actually committed a criminal offence then the fact that he has also broken the Code adds nothing – he will be punished for the offence with which he was charged.

The judiciary could create new judge-made crimes corresponding to the provisions of the Code – but they are unlikely to do so. The last occasion when the judges created a new crime – conspiracy to corrupt public morals (DPP v. Smith, 1960) – they were much criticised. The trouble with judicial creation of new criminal offences is that it is not clear in advance what is and what is not going to be a crime. If the judges were to create new crimes in the labour field they would be open not merely to the charge of creating unfairness and uncertainty in introducing retroactive law, but also of political bias in a very sensitive field. Aware as they are of these dangers the judges will rightly look to Parliament to make its intentions clear. To empower a Secretary of State to create Codes and then expect the courts to translate them into crimes is a very back-door way of law-making and puts the judiciary in a very unsatisfactory position.

Turning now to the civil law, it is not easy to see how the Code will make a great improvement. If the civil law grants an immunity a Code cannot, in contradiction to the express terms of the statute, take it away. Picketing in breach of the Code will not be unlawful in a civil law sense. Of itself it gives rise to no cause of action. Once again, if there is already a cause of action, then the breach of the Code does not add very much.

The Civil Courts are rather more likely to take account of the Code than the Criminal Courts. It may be that some judges will choose to regard breach of the Code as a basis for granting an Injunction (especially if, as the Committee recommends, Section 17 of the 1974 Trade Union and Labour Relations Act is repealed).[4] This would be a step forward. But these judges will incur much abuse, and it would surely have been preferable to make the position clear? The greater the discretion that is given to the courts and the police chiefs the greater their responsibilities and the greater the criticism that will be levelled at them for political and industrial bias. It is vital that the courts and the police are seen as neutral and that Parliament shoulders the responsibility for making the law.[5]

The Code therefore is of most use in connexion with the civil law. Unfortunately the civil law is less use in relation to picketing than the criminal law. Both kinds of law are coercive, of course, and breach of either of them can lead to a man being sent to prison. The problem with the civil law is one of enforcement. An employer may not have the resources of time, energy or money to fight a court case. Small employers, in particular, will often lack the necessary resources. Another problem is that of identifying the Picket Organizer for the purpose of obtaining an Injunction against him. The employer cannot call on the assistance of the police even for the limited purpose of identifying the organizers. The Code itself makes this clear (at p. 8): "The police have *no* responsibility for enforcing the *civil* law. An employer cannot require the police to help in identifying the

2. See SECTION 1 p.6
3. See Appendix 4.
4. See SECTION 8.
5. See SECTION 1.

unlawful pickets against whom he wishes to seek an order from the civil court. Nor is it the job of the police to enforce the terms of an order."

It is clear, then, that the police will not be expected to "take into account" the Code on Picketing in the sense of helping to enforce it.

Yet it is a great pity that the Code will not have a major impact for its contents are excellent.

Here we must declare an interest. The Code on Picketing so closely follows the recommendations we submitted earlier that it is clear that the Secretary of State for Employment has paid great attention to them. We express our thanks at seeing more than ninety per cent of our recommendations being put into the Code. It would be churlish not to emphasize this point and not to set it against any reservations expressed in this section.[6]

In the newspapers there has been a certain amount of ill-informed criticism of the Code on Picketing and the Secretary of State has had to endure criticism and abuse for it without receiving the public support he is entitled to expect from those who would normally be sympathetic. We offer him our full support for this Code as it stands.

If it is to be altered in terms of its contents it should be added to, not subtracted from – above all, none of the existing provisions in the draft should be weakened in any way.

One or two Chief Constables have objected to a limit of six on numbers of pickets on the ground that this reduces police discretion. This view is presented in the Press as the "police view" – though there is no evidence to suggest that this view is held by the majority of policemen. It is understandable that some police chiefs will want to give themselves maximum discretion. But this is not a good reason for dispensing with a fixed limit. The police will continue to have a discretion on whether or not to prosecute. The police will continue to be able to exercise their common law powers where there are fewer than six pickets. The limit is a maximum, not a minimum.

The important point is that the police should not be seen as the anchors of restrictions on pickets. There is a heavy price to pay for the exercise of discretion in any situation of distrust. Even when the discretion is exercised quite properly those who dislike its results are apt to complain of bias. If all pickets are told in advance by Parliament that there are certain limits they all know where they stand. But if a policeman, in the heat of the moment, decides to impose a limit of his own making, this is a sure recipe for resentment.

Many union leaders have criticised the limit of six.

Yet none of these critics has managed to answer two simple questions:

(1) Why are more than six pickets needed for "peaceful persuasion"?

(2) If you object to a limit of six, what do you say the limit should be – ten, fifty, five hundred, five thousand – or should there be no limit at all?

No criticism of the Code has yet been made which necessitates any changes whatever to its contents, except to add to them and fortify them.

But, for the very reason that we wholeheartedly endorse the Code, we are anxious to see it being strictly and universally enforced.

The Committee therefore recommends:

(a) That the Code on Picketing should stand in its present form or (preferably) be made a little stronger by the addition of the few points in this section not covered by the Code;

(b) That the contents of the Code be made fully enforceable at law by the creation of the appropriate torts and offences. This requires new legislation.

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6. See INTRODUCTION p.2.

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Rte Murphy
A good speech
19/3.

Release Time: 1945 hrs Wednesday 19 March 1986, 149/86

RT HON DOUGLAS HURD CBE MP

Extracts from a speech by the Rt Hon Douglas Hurd CBE MP, (Witney), Secretary of State for the Home Department, at Fulham Town Hall, Wednesday 19 March 1986.

Recorded crime has risen steadily for more than 30 years. The Conservatives are the only Party with a considered and coherent plan to combat it.

Our plan has to include: crime prevention; support for an efficient and disciplined police force; the provision of adequate powers for the courts; increasing support for the victims of crime; and a prison building programme made the more necessary by years of neglect by our predecessors.

Under the Conservatives the manpower available to the police has increased by more than 14,000. The resources going to the police service have been increased by more than a third. The strength of the Metropolitan Police has been increased by some 4,600 officers to its highest ever level, up by a fifth on the 1979 figure. Vital civilian support staff have been increased by more than 1300 in London. We have ensured that the police are paid properly to reflect the degree of professionalism which we demand of them.

Contrast this with May 1979; the police force in England and Wales was some 7,500 below establishment and police morale was only just beginning to recover from the dark days when there had even been talk of a police strike. Despite their shameful record of neglect, the Labour Party are now to be found prattling about increasing the number of "bobbies on the beat". Their record does not suggest that this pledge would survive in their amazing lottery of promises.

/I am reviewing .....

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I am reviewing the manpower needs of the police, in both London and the Provinces. to determine how many extra officers are needed in the battle against crime. I will announce the results after Easter.

We have also ensured that the police have the right range of powers for tackling crime in a modern society. The Public Order Bill will increase their powers to avert disorder and to protect the citizen. The new offence of disorderly conduct will give the most vulnerable people in our society protection against loutish and hooligan behaviour.

We must enhance the standing of the police within the community. The greatest protection a police officer has is his uniform and the respect in which he is held in the community. That is why police training has been improved. That is why the new independent Police Complaints Authority has been established. That is why we have established a network of Police/Community Consultative Committees to bring the police and constructive local people together in a dialogue. A dialogue which many Labour authorities have sought to obstruct, culminating in Lambeth with the eviction of their consultative group from the Town Hall.

The Labour Party, supported in this by the Liberals, want something quite different. My colleague, Norman Tebbit, speaking in Fulham on Monday, with characteristic moderation told you only half the tale. It is not only that Neil Kinnock takes no action against Bernie Grant and Ted Knight when they use the name of the Labour Party to undermine the police. The Labour Party is actually considering putting the police under the control of such men. To those interested in making the streets of London safer this is a lunatic prescription. The Labour Party call it 'accountability'. Its an ill-defined concept which means a lot to the hard Left in London. It brings a glint to their eyes. For they see in it the chance to establish political direction of police operations. At present Sir Kenneth Newman and his officers have operational independence in the tradition of British policing. I cannot tell them how to operate, nor can any other politician. Is it Labour policy to put this at risk? Are the Labour Party intent upon making the police subject to the political direction of the Left? I think Londoners have a right to be told.

Crime Prevention

95% of crime is against property. Most of it is opportunist and preventable. Crime prevention stresses the responsibility of individuals to take reasonable care of their property. It brings the police and the community into a working partnership. This is why the Government has given crime prevention a high priority over the last 2 years. Its effects may be beginning to work through. The one piece of good news in the 1985 crime figures was the 4% fall in residential burglaries. Still more encouraging, in the areas where the "Magpies" crime prevention advertising campaign was run, burglaries were down by around 10%.

We are encouraging a wide range of crime prevention initiatives. The most familiar are the property marking schemes and Neighbourhood Watch. There are now 9,300 Watch schemes across the country - over 3,000 in the Metropolitan Police area. One of the earliest was that on the Hurlingham Estate in Fulham. We are working with local authorities, local communities, voluntary groups and private enterprise to foster crime prevention. Through the Community Programme 4,000 long-term unemployed people are involved in over 100 crime prevention projects, representing an investment of £18 million by the Manpower Services Commission.

Last week I came to a conference run by the Borough of Hammersmith and Fulham on housing and crime prevention. At the same time that I was learning what is being done under a Conservative-led Council to improve the security of the homes of the elderly, Neil Kinnock was demanding of the Prime Minister that something should be done about crime prevention. Anyone would have thought he had invented the idea.

I am glad to bring him on board. Latecomers are always welcome. Crime prevention can only benefit from wider support. But the most constructive thing Mr Kinnock could do would be to bring his Party into line. He could usefully start in London.

/If he got .....

If he got out and about in Labour Boroughs like Greenwich, Haringey, Hackney or Lambeth he would meet local people who would tell him about the obstruction put in their way when they have sought to set up Neighbourhood Watch schemes. Obstruction through planning controls, obstruction involving bans on using the Council's street furniture for erecting signs. The local Police Committees in some of these areas seem more interested in police prevention than crime prevention. I suspect they would be more enthusiastic if the signs to be put up declared 'police-free' zones.

Law and order is too important to be the preserve of just one Party.. London can only be successfully policed with the support of its law abiding citizens of all political persuasions. It is high time the Labour leadership gave up trying to have it all ways, and repudiated those within Labour ranks who use their attacks on the police as a tool for publicity and power.

ENDS

From: THE PRIVATE SECRETARY

Prime Minister
Horrifying figures.
N.L.W
20.12.

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

20 December 1985

Dear Nigel

file below

When the Prime Minister met the Home Secretary on Monday some surprise was expressed at the figure in the paper, "A Strategic View of Crime" that nearly one third of all young men can expect to be convicted of a 'standard list offence' by the age of 28. The standard list includes all indictable offences plus some of the more serious summary offences (for example, assault on a constable and cruelty to a child) but excludes most summary motoring offences, drunkenness and prostitution.

The finding comes from a "cohort" study of the criminal records of those born during certain weeks in 1953, 1958 and 1963. Information was collected on about 8% of the total number of people born during the relevant weeks. The detailed findings are set out in the attached Home Office Statistical Bulletin which was published in April.

The 1953 data suggest that a third of young males are convicted by the age of 28; interestingly the vast majority of these young men do not re-offend. Only a small proportion become persistent offenders; 5% of the men born in 1953 accounted for nearly 70% of all convictions amongst their age group. The conviction and reconviction rates for women are very much lower; only about 6% of those born in 1953 had been convicted by the age of 28.

It is extremely disturbing that so high a proportion of young males offend even once. But what the evidence clearly suggests is that for many of them it is an adolescent phase which focusses on property offences, usually minor ones, and ends abruptly when they offend and are brought face to face with the consequences of their behaviour. The Home Secretary's view is that the study validates the emphasis the Government is placing on reducing the opportunities for crime, diverting the first-time offender from the courts by increased use of police cautioning and attempting to introduce into homes and schools a greater emphasis on civic values and the responsibilities of the citizen. It also supports the policy of providing a full range of penalties, for the small minority who continue to offend, including severe penalties for those who get involved in more serious crime.

Yours sincerely

W R FITTALL

Nigel Wicks, Esq

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CRIMINAL CAREERS OF THOSE BORN IN 1953, 1958 AND 1963

Summary

1. This bulletin gives first comparative results from a series of cohort studies of the convictions, in England and Wales for 'standard list' offences (see note 5), of persons born during four selected weeks of 1953, 1958 or 1963. The results take no account of convictions for 'non-standard list' offences, for cautioning or for offences not discovered by the police.

2. A very small proportion of males born in each year accounted for most of the convictions. For those born in 1953, the 5 1/2 per cent of males who had, before the age of 28, been convicted of 6 or more offences accounted for 70 per cent of all the convictions of the group up to that age. On the other hand, the great majority of males in the cohorts who had been convicted at all, had at most one conviction; of those born in 1953 about 83 per cent had no conviction and 93 per cent no more than one conviction, before the age of 18; 86 per cent had no more than one conviction before the age of 28. The general pattern, therefore, was one in which a large proportion of males born in 1953 had been before the courts - nearly 1 in 3 had one or more convictions for a 'standard list' offence before the age of 28; but the great majority of them had been convicted only once before the age of 28. Of those first convicted before the age of 18, about a third or more were not convicted again within 8 years.

3. The conviction rates for females were much lower than for males; only about 6 per cent of females born in 1953 were convicted of one or more 'standard list' offences before the age of 28. However, in the same way as for males, a very small proportion of females born in each year accounted for most of the convictions.

4. Information is less complete for the later cohorts but does not suggest that more males born in later years are likely to be convicted at some time. In fact males born in 1963 showed a slightly lower conviction rate in their earlier years - possibly as a result of the substantial increase in the use of cautioning of those under 17. Females born in the later years were, however, more likely to have been convicted at some time than females born in the earlier years.

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5. Of all those first convicted before the age of 18, the reconviction rate after a further 8 years was at least half as high again as the rate after 2 years - often used as an indicator of recidivism. Reconviction rates after 8 years for females were lower than those for males; however the female reconviction rates for the 1958 cohort were generally higher than for the 1953 cohort. Those, male or female, first convicted at an early age were slightly more likely to be reconvicted over any given period than those first convicted at a later age. The rates of reconviction over two years for those fined or discharged were related to the type of offence on first conviction: those convicted of burglary were generally more likely to be reconvicted, whatever sentence was imposed, than those convicted of other types of offence.

6. The most frequent type of offence on second conviction was theft and handling stolen goods, except that those first convicted of burglary tended to be convicted of burglary a second time.

Rate of first conviction (Table 1 and Figure 1)

7. Almost all the differences between the three cohorts in the estimated number of persons first convicted at different ages can be attributed to the different numbers born in 1953, 1958 and 1963. An estimated 65,000 of all males and females born in 1953 had been convicted of at least one "standard list" offence before the age of 18 compared with 73,500 of all those born in 1958 and 80,000 of all those born in 1963 (Table 1). However, there were some 669,000 births in 1953 compared with 726,000 in 1958 and 814,000 in 1963. For comparative purposes it is therefore important to consider rates per 100 population.

Males

8. For those born in 1953 the rate at which males were first convicted increased rapidly between the ages of 8 and 17 and then fell steadily until the age of 27 which was the oldest aged examined in the study. Under 1 per cent of the male population were first convicted at the ages of 8 and 9 and 1 per cent at the ages of 10 and 11. This rose to 2 per cent of the male population at age 12, 2 1/2 per cent at ages 15 and 16, and 3 per cent at age 17. Thereafter the rate fell to 2 per cent at ages 19 and 20 and at the age of 27 was back to under 1 per cent. The less complete data for those males born in 1958 or 1963 show a similar pattern of rates of first conviction starting at under 1 per cent increasing to 3 per cent at ages 15-17 and then (for those born in 1958) falling to about 1 1/2 per cent at age 22.

9. The cumulative conviction rates are the rates per 100 population born who had been convicted at least once by a certain age. The cumulative conviction rates for males in the 1953 cohort were initially higher than for males born in 1958 or 1963, partly because those born in 1953 became criminally responsible at age 8, whereas those born in the later years became criminally responsible at age 10, and partly because of the increased use of cautioning during the 1970's. In 1965 about 16,000 boys aged under 17 were cautioned; by 1975 this figure had risen to almost 150,000 as a result of a deliberate policy by the police to postpone the first appearance of young people in court. However, by the age of 17 the

cumulative conviction rate for males born in both 1953 and 1958 was about 17 per cent. For those born in 1963, the cumulative rate was consistently lower up to the age of 17 and this may be particularly related to the increase in cautioning mentioned above which affected the 1963 cohort much more than the 1958 cohort. However, the cumulative conviction rate for those born in 1963 appeared by age 17 to be converging with the rates for those born in 1958 and 1963 (Figure 1).

10. The cumulative conviction rate for males born in 1953 was about 30 per cent by the time they reached the age of 28. This means that just under one in three of males born in 1953 had been convicted of at least one "standard list" offence before the age of 28. And it needs to be remembered that this takes no account of convictions for "non-standard list" offences including most motoring offences, cautions and offences not reported to, or discovered by, the police. This result is not out of line with the deductions made by Farrington (1) who, on the basis of first conviction rates in the late 1970's estimated that over 40 per cent of males would eventually be convicted of an indictable offence at some time in their lives.

Females

11. The first conviction rates for females were much lower than for males, as was to be expected given the well-known much lower annual rates for findings of guilt. Before age 28 only 6 per cent of females born in 1953 had been convicted of one or more "standard list" offences, compared to the about 30 per cent of the males . However, it appears that for females the cumulative conviction rates for those born in 1958 and 1963 were slightly higher than for those born in 1953: the cumulative conviction rate for females born in 1958 was over 5 per cent by age 22, as compared with about 4 1/2 per cent for those born in 1953. Up to age 17 the cumulative conviction rates for females born in 1958 and 1963 were very similar. Although the conviction curves for the three cohorts are close, especially in the early years, the figures suggest that a greater proportion of the females in the 1958 and 1963 cohorts were convicted of at least one offence than of the females in the 1953 cohort. An increase in the proportion convicted at some time is thus more apparent for females than for males.

The distribution of convictions throughout the population (Tables 2 to 4)

12. There was little difference between those born in 1958, 1963 and 1968 in the distribution of convictions before the age of 18 throughout the male population - about 83 per cent had no conviction by that age, and 93 per cent had no more than one conviction, while around 2 per cent had 6 or more convictions. Before the age of 28 for males born in 1953, 86 per cent had no more than one conviction and 5 1/2 per cent had 6 or more convictions (Table 2)

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(1) FARRINGTON, D. P.(1981)."The prevalence of convictions." British Journal of Criminology, Vol 21 No. 2

13. A small proportion of the males accounted for most of the convictions. Of males born in 1953 aged 17, the 2 per cent who had by then been convicted of 6 or more offences accounted for nearly a half of the convictions up to that age. By the time this group were aged 27, 5 1/2 per cent of males had been convicted of 6 or more offences and they accounted for nearly 70 per cent of all the convictions up to that age. For those born in 1958 and 1963, convictions seem to have been even more concentrated with 2 per cent of the population aged 17 accounting for over 50 per cent of the convictions up to that age.

Number of males convicted and number of convictions (Tables 5-8)

14. Each male born in 1953, 1958 or 1963 who was convicted before the age of 18 had on average of nearly 3 convictions (Table 6). Not surprisingly, males who were first convicted at a younger age had a higher average number of convictions before age 18 (for example, between 5 and 6 convictions for males first convicted at 10 compared with nearly 2 convictions for those first convicted at age 16). Once a first conviction had occurred, however, the average number of convictions per male per year (about 3/4 of a conviction), remained fairly stable for those first convicted at age 10-15 although there was a slight rise in the number of convictions per year for those first convicted at age 16 and 17 (Table 6).

15. The peak age for convictions of males born in 1953, 1958 or 1963 was at age 17 (Table 7). The apparent discrepancy between this result and the analyses published in 'Criminal statistics, England and Wales', which show the peak age of offending for males as 15 years (see for example paragraph 5.28 and figure 5.6 of Cmnd 9349) is mainly due to the inclusion in the figures in 'Criminal statistics' of cautioning, which reduces the average age for the peak rate of offending; rates for findings of guilt alone peak at ages 17-18. The difference in the counting conventions in this study, counting all offences for which there was a conviction as opposed to only the principal offence for each court appearance, has little effect on this comparison.

16. About half of males born in 1953, 1958 or 1963 who were convicted at 17 had not been convicted of a 'standard list' offence before (Table 7). About 12 per cent - or 1 in 8 - had one previous conviction and about the same proportion had 6 or more previous convictions. Of the males born in 1953 and convicted at age 27, however, about a quarter had not been convicted before and over two-fifths had 6 or more previous convictions. For those born in 1953, 1958 and 1963 just over a third of the convictions recorded for males aged 17 were accounted for by those not previously convicted of a 'standard list' offence and just over a fifth by those who had 6 or more previous convictions (Table 8). Of the convictions recorded for males aged 27, about a fifth were accounted for by males who had not previously been convicted and over a half by males who had 6 or more previous convictions.

First sentence and number of offences (Table 9)

17. The average number of known 'standard list' offences per year (ie convictions for 'standard list' offences plus offences "taken into consideration") is given in Table 9 for males receiving different types of sentence at their first conviction. Although, as mentioned in paragraph 14, there was generally little variation in the average number of

convictions per year for different ages at first conviction, the average number of known offences committed after different first sentences do show some variation. The lowest rates were for those given conditional discharge. The highest rates were for those sentenced to a detention centre or given a care order. Care orders only came into use from 1 January 1971, and so this type of sentence is only relevant to those born in 1958 or 1963. These differences may of course, reflect the factors which the court took into account in imposing the initial sentence.

Period to second conviction (Tables 10 and 11)

18. The proportion who were reconvicted within 1 year tended to be slightly higher for those first convicted at an early age than for those first convicted at the older ages, For example, around a quarter of males first convicted at age 10 to 12 were reconvicted within one year compared with around 20 per cent of males first convicted at 16 to 17 (Table 10). A similar decline in the proportion reconvicted occurred for other periods before reconviction (although for later ages of first conviction information for the full period was not available for the later cohorts). For males born in 1953 and first convicted at age 10, about 70 per cent were reconvicted within 8 years compared with about 50 per cent of those first convicted at age 17. Those first convicted at an early age were therefore more likely to be reconvicted over any given period than those first convicted at a later age.

19. The reconviction rates after 8 years were considerably higher - often more than a half as high again as the reconviction rates after 2 years - putting into perspective the usual use of the two year reconviction rate as an indicator of recidivism as used in paragraphs 23 to 27 below. Even so, 8 years after their first conviction there was no record of a further conviction for about half of those first convicted at ages 16-17.

20. The decline in reconviction rates with the age at first conviction between the ages of 10 and 17 was generally steady except for those born in 1953 and first convicted at 16. Over every period under 8 years the proportions of those first convicted at 16 and who were reconvicted, was higher than the equivalent rates for those first convicted at 15 or 17. There is no obvious explanation for this feature which may be due to sampling error.

21. Reconviction rates for women were generally much lower than for men. However, the reconviction rates for those women born in 1958 were generally higher than for those born in 1953 and there is some suggestion of a further rise for those born in 1963.

22. Some of the results from the study described in this bulletin have been compared with those obtained from a study of persons convicted in 1971 "Previous conviction, sentence and reconviction" (1). Although there were substantial differences in the way the two studies were carried out, there

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(1) PHILLPOTTS, G. J. O. AND LANCUCKI, L. B. (1979). "Previous covictions, sentence and reconviction." Home Office Research Study No. 53

is, after allowance for these diffrences, generally good agreement between the results. For example, from this cohort study it is estimated that around 50 to 60 per cent of males first convicted before the age of 17 were reconvicted within 6 years (Table 10). In the 1971 study it was similarly estimated that 50 per cent of males first convicted under the age of 17 were reconvicted within 6 years.

First sentence and second conviction (Table 12)

23. In order to obtain a large enough sample to study the relationship between first sentence and second conviction, the records of those convicted of a 'standard list' offence before age 16 were combined for the three cohorts. These records were analysed by the type of sentence given on the first conviction and by whether a second conviction was recorded within two years. About 30 per cent were fined on first conviction; 30 per cent were discharged and 25 per cent were placed under supervision. The proportions were slightly different between males and females, partly because only males could be sentenced to detention centre and female attendance centres only became available from 20 January 1979. Hence a larger proportion of males than females received attendance centre orders, while females were given proportionally more supervision, care orders and discharges.

24. Only one third of males and one fifth of females were reconvicted of a second 'standard list' offence within two years of receiving their first sentence. The reconviction rates varied according to the type of sentence first imposed. The lowest rates for both males and females were for those who had been fined or given a conditional or absolute discharge: about 30 per cent reconviction rate for males, 15 per cent for females. The highest rates for males were for those who had been sentenced to detention centre (55 per cent) and these rates may be slightly lower than they would have been had allowance been made for the time spent in custody (on average about 1.5 months) when further offending was precluded. However when account is taken of the nature of the offence (see paragraph 26 below) some of the difference in reconviction rates disappears.

First offence and second conviction (Table 13)

25. A further factor relevant when considering reconviction rates is the type of offence first committed. Reconviction rates within two years of first conviction were thus examined by type of offence, again combining the three cohorts to give a larger sample (Table 13). For males, the lowest reconviction rates (around 30 per cent) were for those who had first been convicted of one of the summary offences (other than a motoring offence) included in the 'standard list', of criminal damage or of violence against the person. The highest reconviction rate for males was for burglary (over 40 per cent). Around threequarters of all females were first convicted of theft and handling stolen goods and the reconviction rate for this group was about 20 per cent. Reconviction rates for females first convicted of most other types of offence were higher but are based on small numbers and may therefore be unreliable.

First offence, first sentence and second conviction (Table 14)

26. It is to be expected that the type of sentence given on first conviction is related to type of offence and thus the apparent variation in reconviction rates according to type of sentence (noted in paragraph 24) may simply reflect differences in the underlying pattern of offences (considered in paragraph 25). The reconviction analysis was therefore extended to cover separately both type of sentence and type of offence at first conviction. Information from the three cohorts was again combined, but even so some of the figures are based on small numbers and it is difficult to make a reliable interpretation of the information. Statistical tests of significance were carried out on the two most common offence groups (burglary and theft and handling stolen goods) and on the three largest groups of sentence (fine, supervision and conditional/ absolute discharge). For the offences and sentences considered, the differences were found to be significant. A separate analysis was carried out for each individual type of sentence; the reconviction rates for those fined or given conditional or absolute discharges were found to be significantly related to type of offence but the reconviction rates for those given supervision were not. Those convicted of burglary were generally more likely to be reconvicted, whatever sentence was imposed, than those convicted of other types of offence. However, those results also may reflect circumstances of the offender which were taken into account when the sentence was imposed but which are not reflected in the classifications used in this analysis.

First offence and second offence (Table 15)

27. For those persons first convicted before the age of 16 and then reconvicted within two years, the type of offence on first and second conviction was examined (Table 15). The proportions in the diagonal cells show the frequency of reconvictions for the same type of offence. For those first convicted of burglary the offender was more often reconvicted of the same offence type. For those first convicted of other types of offence, the highest proportion were reconvicted for theft but in some cases the proportion in the diagonal cell was also relatively high.

NOTES

1. The estimates in this Bulletin are based on the analysis of the criminal records in England and Wales (if any) of all persons born in four randomly selected weeks (3-9 March, 19-25 June, 28 September - 4 October and 17-23 December) in each of the years 1953, 1958 and 1963. There were about 176,000 persons born in the specified weeks and they represented about 8 per cent of all those born in those three years. The estimates in this bulletin related to the total population have been based on a population of 341,140 males and 327,590 females born in 1953, 371,540 males and 354,890 females born in 1958 and 416,680 males and 396,870 females born in 1963 and the population has been assumed to be the same at all ages. In fact the estimated population at each age varied as a result of death and migration. The estimated population of those born in 1953 reached a trough when they were aged 13 and then rose to a peak at age 23; the range was about $\pm$ 2 per cent around the average. For those born in 1958 the trough occurred at age 11, a peak at age 22 and a variation of $\pm$ 2 per cent. For those born in 1963 the trough occurred at age 13; the highest population occurred at the end of the study period when they were aged 18 and the variation was $\pm$ 1 per cent. In view of the small year to year variations in the estimated size of the population no allowance has been made for death or migration in each of these cohorts up to the end of 1981. However, this does introduce an additional element of approximation into the estimates given in Tables 1 - 4.

2. The conviction rates given in this bulletin were estimated by monitoring those in the sample from 1 January 1963 (or from the time they reached the age of criminal responsibility, if later) until 31 December 1981. Convictions (if any) for 'standard list' offences (see note 5 below) were extracted from the Offenders Index kept by the Home Office Statistical Department, which records the date and nature of the final disposal for 'standard list' convictions as reported in returns of court proceedings made continuously by the police. The tables in this bulletin give details of the number of persons convicted or the number of convictions recorded. A conviction has been counted for each finding of guilt for a 'standard list' offence irrespective of the number of court appearances involved; in tables showing number of convictions for example, a person found guilty of three offences at one court appearance has been counted as having three convictions. This definition of convictions is different from than that used in Home Office Research Study No. 53, "Previous Convictions, Sentence and Reconviction", (Phillpotts and Lancucki) or in "Prison Statistics, England and Wales"; where only one conviction is counted for each court appearance. However, the difference does not effect the reconviction rates given in Tables 10 to 15 because a reconviction has been counted only if the date of the second conviction is different from the first conviction; thus a person committing two offences on separate occasions but convicted for both offences at the same court appearance has been deemed not to have been reconvicted. The conviction information available for those born in 1953 covered a period of 28 years, for those born in 1958 it covered 23 years and for those born in 1963 it covered 18 years. For the purposes of comparisons between the results for the successive cohorts, the information relating to the period after the age of 17 has, in some tables, been ommitted.

3. Convictions on the Offenders Index over the study period were linked using name, sex, date of birth and Criminal Records Office (CRO) number (if available) as identifying characteristics of the offender. In a few cases one person had two or more different dates of birth recorded for a series of convictions. Where it was not clear which of the various dates of birth was correct the person was assumed to have a date of birth within the selected weeks and was therefore included in the analysis. In a very few cases (about 0.3 per cent of those convicted), the date of birth which had been used in selecting the sample was clearly incorrect (eg because the type of sentence imposed and the age of the offender were incompatible) and in these cases the person was excluded from the analysis. The conviction details recorded on the Offenders Index usually include the date of any previous convictions and this helped considerably in the linking process. In some cases however, a previous conviction was indicated but could not be found on the Offenders Index and a search was then made of the records held at CRO. While an extra 3 per cent of convictions were found in this way, they inevitably related only to those with more than one conviction. It is likely that some convictions missing from the Offenders Index will have been of persons convicted only once and these persons will not have been located at CRO. Even when the conviction was recorded at CRO, the link between one conviction and a subsequent conviction may not always have been made because, as with any large data collection system, the information on the Offenders Index is not 100 per cent complete and the checking at the CRO may not have always succeeded in identifying the link. The total extent of this under-recording of persons and convictions is thought to be very small but in cosequence there may be a slight overestimate of those with no convictions and a slight underestimate of those convicted at only one court appearance, as opposed to those with more court appearances.

4. In this bulletin some of the estimates of conviction rates are based on smaller numbers than others and may therefore reflect less accurately the 'true' rate. In many cases the estimated number of persons in the population is given for reference and as a rule of thumb a rate related to a population estimate of 800,000 persons (eg all those born in 1963) may be taken as accurate to within $\pm$ 1/2 per cent. This is the range for which the probability is 0.95 that the 'true' value is included in that range (and often called the '95 per cent confidence interval'). A reconviction rate related to 80,000 persons (eg those born in 1963 and convicted at least once before age 18) may be taken as accurate to within about $\pm$ 1 percentage point, and one related to about 13,000 persons as accurate to within $\pm$ 3 percentage points. The sampling errors are thought to be much greater than the non-sampling errors arising from the methods of matching convictions described in the previous note.

5. The coverage of the 'standard list' of offences used as a basis for estimating conviction rates, includes all indictable offences plus some summary offences (eg aggravated assault, assault on a constable, cruelty to a child) but excludes most summary motoring offences and other less serious summary offences such as drunkenness and prostitution. A list of the offences included in the 'standard list' is given in Appendix B of Home Office Research Study No. 53 (see reference in note 2) It is important to bear in mind that no record of convictions for summary offences and motoring offences (other than those included in the 'standard list') or of

persons cautioned by the police as an alternative to prosecution is held on the Offenders Index, and so the conviction information given in this bulletin will be an understatement of the number of persons and the number of times these persons have been dealt with by the police for a criminal offence. Furthermore, there is, of course, no record of offences which do not come to the notice of the police and thus no record of the total number of offences which a person may have committed.

6. Press enquiries should be made to the Home Office Press Office, 50 Queen Anne's Gate, London SW1H 9AT, telephone 01-213 4050. The results given in this Bulletin are a summary of the initial analysis of the cohort data. Further work is planned and suggestions for the type of analysis which might be carried out on the cohort data would be welcome. Suggestions and enquiries about the figures in this bulletin should be addressed to Statistical Department, Home Office, 50 Queen Anne's Gate, London SW1H 9AT, telephone 01-213 7394.

7. The following symbols are used in this bulletin:

.. Not available
- Nil or less than half the final digit shown
* Not applicable
( ) Figure based on fewer than 20 cases - equivalent to a population estimate of 250

Figure 1
Persons born in 1953, 1958 or 1963 who were convicted of 'standard list' offences by age at first conviction

England and Wales

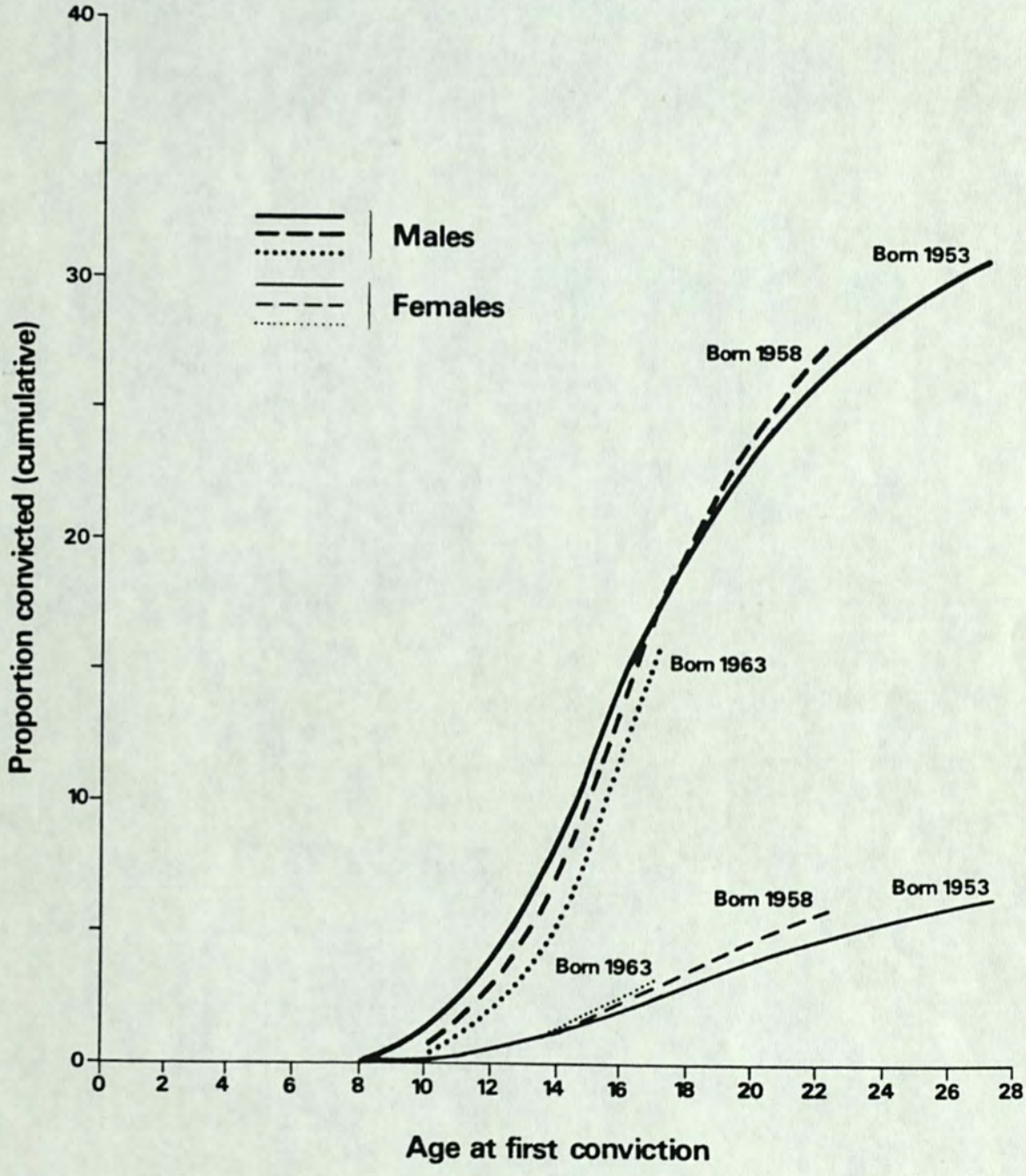

Table 1 Persons born in 1953, 1958 or 1963, and convicted of "standard list" offences in the period 1963-81 by age at first conviction.

England and Wales — Number and percentage of persons

Age at first conviction	Estimated number of persons first convicted who were born in			Percentage first convicted					
				Rate per 100 population born in (1)			Cumulative rate per 100 population born in (2)		
	1953	1958	1963	1953	1958	1963	1953	1958	1963
Males									
8	100	*	*	-	*	*	-	*	*
9	1300	*	*	0.4	*	*	0.4	*	*
10	2900	2600	1400	0.9	0.7	0.3	1.3	0.7	0.3
11	3000	3700	2800	0.9	1.0	0.7	2.2	1.7	1.0
12	5200	4900	4600	1.5	1.3	1.1	3.7	3.0	2.1
13	6700	7200	6600	2.0	1.9	1.6	5.7	4.9	3.4
14	9300	9400	10900	2.7	2.5	2.6	8.4	7.5	6.0
15	8700	12300	12900	2.5	3.3	3.1	10.9	10.8	9.1
16	8500	11500	13100	2.5	3.1	3.1	13.4	13.9	12.2
17	10900	11600	15300	3.2	3.1	3.7	16.6	17.0	15.9
18	9300	10600	..	2.7	2.8	..	19.3	19.8	..
19	7300	8800	..	2.1	2.4	..	21.5	22.2	..
20	6100	7300	..	1.8	2.0	..	23.3	24.2	..
21	5300	6700	..	1.5	1.8	..	24.8	26.0	..
22	4600	4800	..	1.4	1.3	..	26.2	27.3	..
23	4000	..	..	1.2	..	..	27.3	..	..
24	3300	..	..	1.0	..	..	28.3	..	..
25	3000	..	..	0.9	..	..	29.2	..	..
26	2600	..	..	0.8	..	..	29.9	..	..
27	2300	..	..	0.7	..	..	30.6	..	..
	104400	101300	67600						
Females									
8	-	*	*	-	*	*	-	*	*
9	100	*	*	-	*	*	-	*	*
10	200	300	200	-	0.1	-	0.1	0.1	-
11	200	300	300	0.1	0.1	0.1	0.1	0.2	0.1
12	700	600	700	0.2	0.2	0.2	0.3	0.3	0.3
13	1000	1100	1100	0.3	0.3	0.3	0.6	0.6	0.5
14	1100	1500	2400	0.3	0.4	0.6	1.0	1.1	1.1
15	1600	1800	2300	0.5	0.5	0.6	1.5	1.6	1.7
16	1500	2000	2300	0.5	0.6	0.6	1.9	2.1	2.3
17	2100	2700	3100	0.6	0.8	0.8	2.6	2.9	3.1
18	1700	2200	..	0.5	0.6	..	3.1	3.5	..
19	1200	2300	..	0.4	0.6	..	3.4	4.2	..
20	1400	1800	..	0.4	0.5	..	3.9	4.7	..
21	1200	1900	..	0.4	0.5	..	4.2	5.2	..
22	1200	1500	..	0.4	0.4	..	4.6	5.6	..
23	1200	..	..	0.4	..	..	5.0	..	..
24	1100	..	..	0.3	..	..	5.3	..	..
25	1200	..	..	0.4	..	..	5.6	..	..
26	1200	..	..	0.4	..	..	6.0	..	..
27	900	..	..	0.3	..	..	6.3	..	..
	20600	19900	12300						
Males and females									
8	100	*	*	-	*	*	-	*	*
9	1400	*	*	0.2	*	*	0.2	*	*
10	3100	2800	1600	0.5	0.4	0.2	0.7	0.4	0.2
11	3300	4000	3100	0.5	0.6	0.4	1.2	0.9	0.6
12	5900	5500	5300	0.9	0.8	0.7	2.1	1.7	1.2
13	7700	8300	7700	1.2	1.1	0.9	3.2	2.8	2.2
14	10300	10900	13300	1.5	1.5	1.6	4.8	4.3	3.8
15	10300	14100	15200	1.5	1.9	1.9	6.3	6.3	5.7
16	10000	13500	15400	1.5	1.9	1.9	7.8	8.1	7.6
17	12900	14400	18400	1.9	2.0	2.3	9.7	10.1	9.8
18	11100	12800	..	1.7	1.8	..	11.4	11.9	..
19	8500	11100	..	1.3	1.5	..	12.6	13.4	..
20	7400	9100	..	1.1	1.2	..	13.8	14.6	..
21	6400	8600	..	1.0	1.2	..	14.7	15.8	..
22	5800	6300	..	0.9	0.9	..	15.6	16.7	..
23	5200	..	..	0.8	..	..	16.4	..	..
24	4400	..	..	0.7	..	..	17.0	..	..
25	4200	..	..	0.6	..	..	17.7	..	..
26	3900	..	..	0.6	..	..	18.2	..	..
27	3100	..	..	0.5	..	..	18.7	..	..
	125000	121200	79900						

(1) The figures given in this column are estimates and are therefore subject to sampling variation; for males the sampling variation is within ± 0.2, for females ± 0.1, and for both males and females ± 0.1.

(2) The figures given in this column are estimates and are therefore subject to sampling variation; for males the sampling variation is within ± 0.6, for females ± 0.3, and for both males and females ± 0.3.

Table 2 Males born in 1953, 1958 or 1963 by age and number of convictions up to and including age specified

England and Wales

Proportion of persons

Year of birth and number of convictions by age specified	Age																	
	10 (1)	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Males born in 1953																		
0	98.7	97.8	96.3	94.3	91.6	89.0	86.6	83.4	80.7	78.5	76.8	75.2	73.8	72.7	71.7	70.8	70.1	69.4
1	1.1	1.6	2.7	4.0	5.7	7.1	8.4	10.0	11.5	12.5	13.4	14.1	14.8	15.3	15.8	16.2	16.7	17.1
2	0.1	0.3	0.4	0.7	1.1	1.4	1.6	1.9	2.1	2.4	2.6	2.8	3.0	3.1	3.3	3.4	3.4	3.4
3	0.1	0.1	0.2	0.4	0.6	0.9	1.1	1.4	1.5	1.7	1.7	1.8	1.8	2.0	2.0	2.0	2.0	2.1
4	-	0.1	0.1	0.2	0.3	0.4	0.6	0.9	1.1	1.1	1.2	1.3	1.4	1.3	1.4	1.4	1.5	1.5
5	-	-	0.1	0.1	0.2	0.4	0.4	0.6	0.7	0.8	0.8	0.9	0.9	1.0	1.0	1.0	1.0	1.1
6 to 10	-	-	0.1	0.2	0.4	0.6	1.0	1.4	1.8	2.0	2.2	2.3	2.4	2.5	2.6	2.7	2.8	2.8
11 to 20	-	-	-	-	-	0.1	0.2	0.4	0.6	0.9	1.1	1.3	1.5	1.6	1.6	1.7	1.8	1.8
21 and over	-	-	-	-	-	-	-	-	0.1	0.1	0.2	0.2	0.4	0.5	0.6	0.7	0.7	0.8
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Males born in 1958																		
0	99.3	98.3	97.0	95.0	92.5	89.2	86.0	83.0	80.1	77.8	75.8	74.0	72.7	..	..	..	..	..
1	0.6	1.3	2.2	3.5	4.9	6.8	9.2	10.0	11.4	12.5	13.6	14.6	15.2	..	..	..	..	..
2	0.1	0.2	0.3	0.6	0.9	1.3	1.6	2.0	2.2	2.6	2.8	2.9	3.1	..	..	..	..	..
3	-	0.1	0.2	0.3	0.6	0.8	1.1	1.2	1.5	1.6	1.7	1.9	1.9	..	..	..	..	..
4	-	0.1	0.1	0.2	0.3	0.6	0.6	0.9	1.1	1.1	1.2	1.3	1.4	..	..	..	..	..
5	-	-	0.1	0.1	0.3	0.4	0.4	0.6	0.7	0.8	0.9	0.9	1.0	..	..	..	..	..
6 to 10	-	-	0.1	0.2	0.4	0.7	0.9	1.6	1.8	2.1	2.3	2.5	2.6	..	..	..	..	..
11 to 20	-	-	-	0.1	0.1	0.2	0.2	0.6	1.0	1.2	1.3	1.4	1.6	..	..	..	..	..
21 and over	-	-	-	-	-	-	-	0.1	0.2	0.3	0.4	0.5	0.6	..	..	..	..	..
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Males born in 1963																		
0	99.7	99.0	97.9	96.3	93.7	90.6	87.5	83.8	..	..	..	..	..	..	..	..	..	..
1	0.3	0.8	1.6	2.7	4.4	6.4	8.0	10.0	..	..	..	..	..	..	..	..	..	..
2	-	0.1	0.2	0.3	0.6	1.0	1.4	1.8	..	..	..	..	..	..	..	..	..	..
3	-	0.1	0.2	0.2	0.4	0.7	1.0	1.2	..	..	..	..	..	..	..	..	..	..
4	-	-	0.1	0.1	0.3	0.4	0.6	0.8	..	..	..	..	..	..	..	..	..	..
5	-	-	0.1	0.1	0.2	0.3	0.4	0.6	..	..	..	..	..	..	..	..	..	..
6 to 10	-	-	-	0.2	0.3	0.5	0.8	1.3	..	..	..	..	..	..	..	..	..	..
11 to 20	-	-	-	-	0.1	0.2	0.3	0.5	..	..	..	..	..	..	..	..	..	..
21 and over	-	-	-	-	-	-	-	0.1	..	..	..	..	..	..	..	..	..	..
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

(1) Some of those born in 1953 were convicted at age 8 or 9.

Table 3 Convictions of males born in 1953, 1958 or 1963 by age and number of convictions up to and including age specified

England and Wales

Proportion of convictions

Year of birth and number of convictions by age specified	Age 10 (1)	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Males born in 1953																		
1	63.3	48.5	44.7	39.4	35.7	31.2	25.6	22.4	19.2	18.2	16.6	16.3	15.3	14.1	13.9	13.5	12.7	12.4
2	12.6	16.5	14.2	14.1	13.4	12.0	9.7	7.8	7.0	7.0	6.4	6.4	6.2	5.7	5.7	5.7	5.2	5.0
3	10.8	10.5	12.2	10.6	11.2	11.7	10.5	9.1	7.7	7.3	6.4	6.2	5.7	5.4	5.2	5.0	4.7	4.5
4	4.5	8.1	7.0	8.3	8.0	7.5	7.7	8.4	7.1	6.6	5.9	6.0	5.7	4.9	4.8	4.7	4.6	4.4
5	3.4	6.2	9.1	7.1	6.3	7.6	6.5	6.6	5.8	5.8	5.2	4.9	4.8	4.6	4.5	4.3	4.0	3.9
6 to 10	5.4	7.8	11.5	16.4	18.4	22.6	26.7	27.9	27.1	26.1	24.0	23.8	21.5	19.7	19.1	19.1	17.9	17.1
11 to 20	-	2.3	1.3	3.1	5.9	6.1	11.3	14.7	19.9	22.8	25.6	27.3	27.8	26.1	25.7	24.6	23.2	22.5
21 and over	-	-	-	0.9	1.2	1.3	1.9	3.1	6.2	6.2	9.9	9.1	12.9	19.5	21.1	23.2	27.7	30.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Males born in 1958																		
1	70.5	55.2	42.4	36.3	29.3	25.6	21.4	17.6	15.8	14.8	14.3	14.3	13.5	..	..	..	..	..
2	12.7	14.4	13.1	11.5	11.0	10.0	8.6	7.0	6.2	6.2	5.8	5.7	5.5	..	..	..	..	..
3	6.3	10.1	10.5	9.8	10.2	9.0	8.0	6.5	6.2	5.7	5.3	5.4	5.2	..	..	..	..	..
4	8.4	10.6	9.8	8.9	7.7	8.6	8.0	6.5	5.9	5.4	5.2	4.9	4.8	..	..	..	..	..
5	2.1	7.3	6.2	8.1	7.4	6.5	7.3	5.3	5.1	5.0	4.7	4.6	4.5	..	..	..	..	..
6 to 10	-	2.3	14.8	16.4	19.6	23.5	25.1	25.6	22.4	21.6	20.4	20.7	19.4	..	..	..	..	..
11 to 20	-	-	3.1	9.0	13.8	13.7	18.6	22.0	26.0	26.9	27.0	26.8	25.9	..	..	..	..	..
21 and over	-	-	-	-	0.9	3.0	2.9	9.5	12.3	14.5	17.3	17.6	21.2	..	..	..	..	..
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Males born in 1963																		
1	80.5	52.2	37.2	35.1	30.6	29.7	24.8	20.6	..	..	..	..	..	..	..	..	..	..
2	6.5	8.4	6.9	8.5	8.9	8.8	8.9	7.6	..	..	..	..	..	..	..	..	..	..
3	2.4	9.0	11.2	8.9	9.3	9.4	9.0	7.4	..	..	..	..	..	..	..	..	..	..
4	6.5	6.4	7.0	6.3	7.5	8.2	7.9	6.5	..	..	..	..	..	..	..	..	..	..
5	4.1	8.0	6.9	8.1	6.2	6.4	6.5	6.3	..	..	..	..	..	..	..	..	..	..
6 to 10	-	16.1	15.1	19.9	19.0	20.2	21.4	23.7	..	..	..	..	..	..	..	..	..	..
11 to 20	-	-	15.6	9.4	13.9	13.5	16.1	18.2	..	..	..	..	..	..	..	..	..	..
21 and over	-	-	-	3.7	4.7	3.7	5.3	9.8	..	..	..	..	..	..	..	..	..	..
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

(1) Some of those born in 1953 were convicted at age 8 or 9.

Table 4 Females born in 1953, 1958 or 1963 by age and number of convictions up to and including age specified

England and Wales — Proportion of persons and proportion of convictions

Year of birth and number of convictions by age specified	Age 10 (1)	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Females born in 1953							Number of persons											
0	(100)	100	100	99	99	99	98	98	97	96	96	96	95	95	95	94	94	94
1	-	-	-	1	1	1	2	2	3	3	3	3	4	4	4	5	5	5
2 to 5	-	-	-	-	-	-	-	-	-	1	1	1	1	1	1	1	1	1
6 and over	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Females born in 1958																		
0	100	100	100	99	99	99	98	97	96	96	95	95	95	..	..	..	..	..
1	-	-	-	1	1	1	2	2	3	3	4	4	4	..	..	..	..	..
2 to 5	-	-	-	-	-	-	-	1	1	1	1	1	1	..	..	..	..	..
6 and over	-	-	-	-	-	-	-	-	-	-	-	-	-	..	..	..	..	..
Total	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Females born in 1963																		
0	100	100	100	100	99	99	98	97	..	..	..	..	..	..	..	..	..	..
1	-	-	-	-	1	1	2	2	..	..	..	..	..	..	..	..	..	..
2 to 5	-	-	-	-	-	-	-	1	..	..	..	..	..	..	..	..	..	..
6 and over	-	-	-	-	-	-	-	-	..	..	..	..	..	..	..	..	..	..
Total	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Females born in 1953							Number of convictions											
1	(88)	67	75	77	69	65	62	58	55	52	50	47	44	44	43	43	41	39
2 to 5	(12)	33	19	20	24	26	31	31	30	33	30	29	28	26	26	26	26	27
6 and over	-	-	6	3	7	9	7	11	15	15	20	24	28	30	31	31	33	34
Total	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Females born in 1958																		
1	70	80	75	70	63	58	54	50	47	46	45	43	42	..	..	..	..	..
2 to 5	30	20	20	24	27	24	29	29	26	26	25	26	24	..	..	..	..	..
6 and over	-	-	5	6	10	18	17	21	27	28	30	31	34	..	..	..	..	..
Total	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Females born in 1963																		
1	(79)	83	63	54	55	50	44	41	..	..	..	..	..	..	..	..	..	..
2 to 5	(21)	17	31	34	36	37	38	36	..	..	..	..	..	..	..	..	..	..
6 and over	-	-	6	12	9	13	18	23	..	..	..	..	..	..	..	..	..	..
Total	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

(1) Some of those born in 1953 were convicted at age 8 or 9.

Table 5 Males born in 1953, 1958 or 1963 who were convicted of one or more 'standard list' offence before age 18 by age at first conviction and number of convictions before 18

England and Wales

Percentage of males convicted

Number of convictions before age 18	Age at first conviction and year of birth																								Total		
	10 (1)			11			12			13			14			15			16			17					
	'53	'58	'63	'53	'58	'63	'53	'58	'63	'53	'58	'63	'53	'58	'63	'53	'58	'63	'53	'58	'63	'53	'58	'63	'53	'58	'63
1	31	29	33	38	25	30	40	35	37	48	41	41	55	52	50	67	57	59	70	73	71	89	91	88	61	59	61
2	10	10	5	13	13	8	13	12	11	13	15	13	14	11	12	12	15	15	13	11	12	5	6	7	11	12	11
3	12	9	13	7	10	11	11	9	9	12	9	10	10	9	9	8	8	9	7	6	7	3	2	3	8	7	7
4	11	6	5	9	11	6	7	8	9	7	8	8	6	7	7	6	5	6	5	4	3	1	-	1	6	5	5
5	5	9	7	3	7	7	7	5	5	5	4	7	5	5	6	3	4	4	3	2	2	1	-	1	4	4	4
6 to 10	22	17	21	22	22	22	16	21	18	13	16	13	8	11	12	5	7	6	2	5	4	1	-	1	8	9	8
11 to 20	8	17	10	7	12	11	5	9	9	2	6	7	1	4	3	1	2	1	-	-	-	-	-	-	2	4	3
21 and over	1	3	7	1	1	4	1	1	1	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1
Estimated total number of males first convicted (thousands) (= 100%)	4.4	2.5	1.4	3.0	3.7	2.8	5.2	4.9	4.6	6.7	7.2	6.6	9.3	9.4	10.9	8.7	12.3	12.9	8.5	11.5	13.1	10.9	11.6	15.3	56.6	63.1	67.7
Number remaining unconvicted (thousands)	337	369	415	334	365	412	329	360	408	322	353	401	313	344	390	304	332	377	295	320	364	284	308	349	284	308	349

(1) Including those born in 1953 who were first convicted at age 8 or 9

Table 6 Males born in 1953, 1958 and 1963 who were convicted of one or more 'standard list' offence before age 18, by age at first conviction and number of convictions before 18

England and Wales — Percentage of convictions before 18

Number of convictions before age 18	Age at first conviction and year of birth																								Total		
	10 (1)			11			12			13			14			15			16			17					
	'53	'58	'63	'53	'58	'63	'53	'58	'63	'53	'58	'63	'53	'58	'63	'53	'58	'63	'53	'58	'63	'53	'58	'63	'53	'58	'63
1	7	5	5	9	5	5	10	7	8	17	11	10	22	17	16	34	23	27	40	42	41	72	79	69	22	18	21
2	4	3	2	6	5	3	7	5	5	9	8	7	11	8	8	12	12	14	15	12	14	8	11	11	8	7	8
3	8	5	6	5	6	5	9	5	6	12	7	8	13	9	8	12	10	12	13	10	11	7	6	7	9	7	7
4	9	4	3	9	8	4	7	6	7	10	9	8	10	10	9	12	9	10	11	9	8	4	2	4	8	7	7
5	5	7	6	4	6	6	9	4	5	9	6	9	10	8	10	7	9	8	8	5	7	2	1	2	7	5	6
6 to 10	35	22	27	37	34	26	32	32	30	31	32	25	24	29	30	18	20	21	9	19	17	6	2	4	28	26	24
11 to 20	24	39	24	20	32	26	21	26	29	9	21	24	6	18	16	6	11	6	4	3	4	1	-	2	15	22	18
21 and over	7	14	26	10	4	25	4	15	10	2	5	9	3	1	3	-	5	1	-	-	-	-	-	-	3	10	10
Estimated total convictions (1) (thousands)	20.3	15.1	8.5	13.0	19.6	17.5	19.9	24.9	21.5	19.1	27.1	25.9	22.8	28.0	33.5	17.0	30.1	28.2	14.6	19.8	22.7	13.5	13.4	19.5	140.2	178.5	177.6
Average number of convictions (1) per male before the age of 18	4.6	6.0	6.1	4.3	5.3	6.4	3.8	5.1	4.7	2.9	3.8	3.9	2.5	3.0	3.1	2.0	2.4	2.2	1.7	1.7	1.7	1.2	1.2	1.3	2.5	2.8	2.6
Average number of convictions(1) per male per year	0.6	0.7	0.7	0.6	0.7	0.9	0.6	0.8	0.7	0.6	0.7	0.7	0.6	0.7	0.7	0.6	0.7	0.6	0.7	0.7	0.7	0.8	0.8	0.9	0.7	0.8	0.8

(1) Including those born in 1953 who were first convicted at age 8 or 9.

Table 7 Males born in 1953, 1958 or 1963 by age at conviction and number of previous convictions

England and Wales — Percentage of males convicted

Number of previous convictions before age specified	Age at conviction																			
	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Males born in 1953																				
0	(100)	95	92	75	77	73	70	59	52	51	45	39	37	35	33	31	31	29	29	27
1	-	3	4	14	10	11	12	13	13	13	11	14	11	11	12	10	10	10	9	6
2	-	2	3	6	6	6	7	10	10	9	9	9	7	8	8	8	7	5	7	6
3	-	-	-	2	3	4	3	6	6	8	8	7	6	7	6	5	5	6	6	5
4	-	-	-	1	3	2	3	5	5	4	5	5	5	4	5	5	4	4	4	5
5	-	-	1	-	1	2	2	3	4	3	4	5	5	5	4	5	3	4	3	4
6 to 10	-	-	-	1	1	2	3	4	7	9	13	14	16	14	14	14	14	14	16	14
11 to 20	-	-	-	-	-	-	-	1	2	3	5	8	11	14	15	17	18	18	16	19
21 and over	-	-	-	-	-	-	-	-	-	-	1	1	1	3	3	5	9	9	10	13
All males convicted (=100%)	100	1400	3200	4000	6800	9200	13300	14800	16300	21400	20900	18600	16200	15200	13900	12800	10900	10300	9100	8300
Males born in 1958																				
0	*	*	98	86	76	73	65	63	53	48	45	39	39	38	31	..	..	..	..	..
1	*	*	2	7	10	10	13	11	13	12	11	12	10	10	11	..	..	..	..	..
2	*	*	-	3	6	7	8	8	10	8	9	8	7	8	8	..	..	..	..	..
3	*	*	1	3	3	3	4	5	6	6	7	6	6	5	7	..	..	..	..	..
4	*	*	-	1	1	3	3	3	5	5	5	5	5	4	5	..	..	..	..	..
5	*	*	-	3	2	1	2	3	4	5	4	4	5	3	4	..	..	..	..	..
6 to 10	*	*	-	-	2	2	4	5	7	11	12	13	14	14	15	..	..	..	..	..
11 to 20	*	*	-	-	-	1	1	2	3	5	8	11	11	13	13	..	..	..	..	..
21 and over	*	*	-	-	-	-	-	-	-	1	1	2	3	5	7	..	..	..	..	..
All males convicted (=100%)	*	*	2500	4300	6400	10000	14500	19800	21800	24500	23800	22700	18900	17600	15800	..	..	..	..	..
Males born in 1963																				
0	*	*	100	88	81	75	73	66	56	53	..	..	..	..	..	..	..	..	..	..
1	*	*	-	6	7	10	9	11	13	12	..	..	..	..	..	..	..	..	..	..
2	*	*	-	3	6	5	6	7	8	8	..	..	..	..	..	..	..	..	..	..
3	*	*	-	1	2	3	3	5	6	6	..	..	..	..	..	..	..	..	..	..
4	*	*	-	1	2	3	2	3	4	5	..	..	..	..	..	..	..	..	..	..
5	*	*	-	1	-	1	2	2	3	3	..	..	..	..	..	..	..	..	..	..
6 to 10	*	*	-	-	2	2	4	5	6	8	..	..	..	..	..	..	..	..	..	..
11 to 20	*	*	-	-	1	1	1	2	3	4	..	..	..	..	..	..	..	..	..	..
21 and over	*	*	-	-	-	-	-	-	1	1	..	..	..	..	..	..	..	..	..	..
All males convicted (=100%)	*	*	1400	3200	5700	8800	15000	19600	23100	28800	..	..	..	..	..	..	..	..	..	..

Table 8 Convictions of males born in 1953, 1958 or 1963 by age at conviction and number of previous convictions

England and Wales — Percentage of convictions

Number of previous convictions before age specified	Age at conviction																			
	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Males born in 1953																				
0	(92)	82	79	66	66	59	58	48	38	38	33	30	26	25	25	22	23	22	22	19
1	(8)	9	11	17	13	15	15	15	14	13	11	13	9	11	10	8	9	9	7	5
2	-	6	6	8	9	10	9	11	11	9	9	9	8	7	8	8	6	4	6	5
3	-	1	4	4	5	6	5	7	9	9	8	6	6	7	6	4	6	5	5	5
4	-	1	1	2	4	3	4	6	6	7	7	6	6	4	5	5	4	4	4	4
5	-	1	1	1	2	3	3	4	5	4	5	5	6	5	5	4	4	4	3	4
6 to 10	-	-	-	1	1	4	4	8	12	14	17	17	20	18	15	17	14	14	16	15
11 to 20	-	-	-	-	-	-	2	1	4	4	8	11	17	18	19	21	22	21	18	22
21 and over	-	-	-	-	-	-	-	-	1	-	2	2	3	5	7	10	12	16	17	20
All convictions	200		4300		10200		20300		28100		36800		28200		26800		17500		14500	
(=100%)		2100		5900		13900		23600		36900		32300		28100		22500		16500		13800
Males born in 1958																				
0	*	*	86	73	63	59	52	49	40	35	33	28	29	27	22	..	..	..	..	..
1	*	*	8	11	14	14	13	13	12	12	11	11	9	9	10	..	..	..	..	..
2	*	*	2	8	8	9	11	9	11	8	8	8	6	8	7	..	..	..	..	..
3	*	*	2	4	5	6	6	7	7	7	7	6	7	5	7	..	..	..	..	..
4	*	*	1	3	2	4	4	5	6	6	6	5	6	5	5	..	..	..	..	..
5	*	*	-	-	3	2	3	4	5	6	5	4	5	4	4	..	..	..	..	..
6 to 10	*	*	-	-	4	4	7	9	14	17	16	16	17	16	17	..	..	..	..	..
11 to 20	*	*	-	-	-	1	2	3	5	9	12	17	17	19	18	..	..	..	..	..
21 and over	*	*	-	-	-	-	-	-	-	1	3	4	6	7	11	..	..	..	..	..
All convictions	*		3800		10600		25900		42600		42900		31100		26700		..		..	
(=100%)		*		6600		16300		35500		48100		38900		29000		..		..		..
Males born in 1963																				
0	*	*	91	74	60	63	61	55	44	38	..	..	..	..	..	..	..	..	..	..
1	*	*	5	7	10	11	10	12	14	12	..	..	..	..	..	..	..	..	..	..
2	*	*	1	6	12	8	8	9	10	9	..	..	..	..	..	..	..	..	..	..
3	*	*	2	2	4	4	6	6	8	8	..	..	..	..	..	..	..	..	..	..
4	*	*	2	5	5	5	4	4	5	6	..	..	..	..	..	..	..	..	..	..
5	*	*	-	4	2	2	3	3	4	6	..	..	..	..	..	..	..	..	..	..
6 to 10	*	*	-	2	5	5	7	8	9	13	..	..	..	..	..	..	..	..	..	..
11 to 20	*	*	-	-	3	2	2	3	4	7	..	..	..	..	..	..	..	..	..	..
21 and over	*	*	-	-	-	1	1	-	1	2	..	..	..	..	..	..	..	..	..	..
All convictions	*		2300		11200		26400		39900		..		..		..		..		..	
(=100%)		*		5900		14900		32000		52300		..		..		..		..		..

Table 9 Average number of known offences committed per year (1) of males born in 1953, 1958 or 1963 who were convicted of one or more 'standard list' offences before age 18, by type of first disposal and age at first conviction

England and Wales		Average number of offences committed per year(1) after first conviction							
First disposal and year of birth		Age at first conviction							
		10(2)	11	12	13	14	15	16	17
	Born in:								
Detention centre	1953	*	*	*	*	2.5	2.4	2.3	5.4
	1958	*	*	*	*	5.1	2.8	3.8	5.4
	1963	*	*	*	*	2.9	2.7	3.5	2.8
Attendance centre	1953	2.0	1.9	1.3	1.2	1.5	1.8	1.1	(2.0)
	1958	1.0	1.4	1.7	1.4	1.4	2.4	2.3	(1.6)
	1963	1.8	1.7	1.5	1.4	2.2	1.6	2.4	1.5
Care	1953	*	*	*	*	*	*	*	-
	1958	*	*	2.6	2.4	2.3	3.3	2.7	-
	1963	3.5	3.9	2.9	1.7	2.2	2.9	1.8	(6.0)
Supervision/ Probation	1953	1.3	1.3	1.6	1.5	1.5	1.4	2.2	2.3
	1958	1.8	1.6	1.8	2.0	1.8	1.8	2.3	3.5
	1963	1.7	1.9	1.7	1.6	1.9	1.6	2.0	2.8
Fine	1953	0.8	0.7	0.8	1.1	1.1	1.2	1.3	1.6
	1958	0.9	1.4	1.0	1.2	1.1	1.2	1.4	1.5
	1963	0.7	1.2	0.9	1.1	1.1	1.0	1.2	1.4
Conditional discharge	1953	0.8	0.9	0.9	0.8	0.9	0.7	0.9	1.4
	1958	1.3	1.2	1.1	1.0	1.1	1.1	1.0	1.2
	1963	1.1	0.9	1.2	1.1	1.2	1.0	1.5	1.4
Others	1953	0.6	(0.2)	1.2	(0.4)	1.8	1.3	4.5	3.4
	1958	1.8	2.3	1.9	1.1	(1.1)	1.0	1.6	2.1
	1963	-	-	2.0	2.0	(0.3)	(0.6)	2.2	3.0
Total	1953	1.0	1.0	1.1	1.1	1.2	1.1	1.4	1.9
	1958	1.4	1.4	1.5	1.5	1.4	1.5	1.5	1.7
	1963	1.4	1.5	1.4	1.3	1.5	1.3	1.6	1.7

(1) Includes offences 'taken into consideration' at first conviction.
(2) Including those born in 1953 who were first convicted at age 8 or 9.

Table 10 Males born in 1953, 1958 or 1963 who were convicted of one or more 'standard list' offences before the age of 18 by time between first and second convictions and age at first conviction

England and Wales — Proportion reconvicted

Time between first and second convictions	Born in:	Age at first conviction: 8	9	10	11	12	13	14	15	16	17
Reconvicted within:											
	1953	(10)	5	7	6	7	7	6	6	6	7
3 months	1958	*	*	8	7	9	6	7	7	5	6
	1963	*	*	7	8	6	5	5	4	6	6
	1953	(10)	11	13	13	14	14	14	11	13	12
6 months	1958	*	*	14	15	13	14	13	14	12	12
	1963	*	*	18	16	15	13	14	10	13	11
	1953	(30)	16	16	15	18	20	19	14	19	16
9 months	1958	*	*	20	22	19	19	19	21	17	16
	1963	*	*	22	21	22	19	18	15	18	15
	1953	(30)	18	20	19	22	23	22	18	24	17
1 year	1958	*	*	26	28	24	25	25	27	21	18
	1963	*	*	29	29	28	27	23	21	21	24
	1953	(50)	22	27	25	25	28	25	21	29	25
1 year 3 months	1958	*	*	30	32	28	31	29	31	25	22
	1963	*	*	33	34	32	32	29	27	26	..
	1953	(60)	28	30	28	29	31	28	23	31	26
1 year 6 months	1958	*	*	35	37	33	34	33	34	27	23
	1963	*	*	34	36	34	35	33	30	29	..
	1953	(70)	30	33	32	33	32	31	26	33	30
1 year 9 months	1958	*	*	38	39	36	38	36	37	29	25
	1963	*	*	35	41	36	36	36	34	31	..
	1953	(80)	38	36	36	34	34	32	28	35	32
2 years	1958	*	*	41	43	40	42	38	40	33	28
	1963	*	*	38	45	40	38	39	36	32	..
	1953	(90)	44	43	43	44	43	42	36	44	37
3 years	1958	*	*	49	51	45	52	46	47	39	33
	1963	*	*	47	53	52	47	48	40	..	..
	1953	(90)	50	49	51	52	50	48	41	48	40
4 years	1958	*	*	57	66	52	57	49	52	43	38
	1963	*	*	54	60	58	56	49	..	..	..
	1953	(90)	59	57	56	58	54	52	45	51	44
5 years	1958	*	*	62	71	59	61	53	55	46	40
	1963	*	*	57	67	61	58	..	..	..	..
	1953	(90)	64	61	61	62	57	54	47	53	46
6 years	1958	*	*	66	74	62	64	56	57	48	41
	1963	*	*	61	70	62	..	..	..	..	..
	1953	(90)	64	65	63	64	59	56	50	54	48
7 years	1958	*	*	71	76	65	66	57	58	49	..
	1963	*	*	66	70	..	..	..	..	..	..
	1953	(90)	69	68	66	65	61	58	52	55	50
8 years	1958	*	*	72	79	66	67	59	59	..	..
	1963	*	*	66	..	..	..	..	..	..	..

Table 11 Females born in 1953, 1958 or 1963 who were convicted of one or more 'standard list' offences before the age of 18 by time between first and second convictions and age at first conviction

England and Wales — Proportion reconvicted

Time between first and second convictions	Born in:	Age at first conviction: 8	9	10	11	12	13	14	15	16	17
Reconvicted within:											
3 months	1953	-	(25)	-	(5)	-	4	5	2	2	2
	1958	*	*	(11)	-	2	5	4	3	6	6
	1963	*	*	-	-	4	5	3	1	4	1
6 months	1953	-	(25)	-	(11)	4	4	12	2	4	2
	1958	*	*	(21)	-	4	8	8	6	9	7
	1963	*	*	(8)	5	9	13	10	7	12	4
9 months	1953	-	(25)	-	(11)	4	5	16	3	9	7
	1958	*	*	(21)	-	4	10	10	11	13	11
	1963	*	*	(8)	15	15	17	13	10	17	6
1 year	1953	-	(25)	-	(11)	4	9	16	9	9	7
	1958	*	*	(21)	4	7	10	10	13	14	17
	1963	*	*	(8)	30	25	23	16	11	20	8
1 year 3 months	1953	-	(25)	(8)	(11)	6	10	18	11	10	7
	1958	*	*	(21)	4	15	10	13	15	16	18
	1963	*	*	(8)	35	25	26	20	17	21	10
1 year 6 months	1953	-	(25)	(8)	(11)	8	13	20	13	12	7
	1958	*	*	(21)	8	17	10	17	15	17	18
	1963	*	*	(17)	35	25	31	21	19	22	11
1 year 9 months	1953	-	(25)	(17)	(11)	8	13	20	14	13	7
	1958	*	*	(21)	8	17	13	19	17	20	18
	1963	*	*	(17)	35	25	32	24	21	22	..
2 years	1953	-	(50)	(17)	(16)	8	14	21	15	14	9
	1958	*	*	(21)	8	17	15	20	18	21	18
	1963	*	*	(17)	40	25	33	28	21	23	..
3 years	1953	-	(50)	(17)	(16)	12	20	24	17	17	12
	1958	*	*	(26)	8	24	19	24	24	23	20
	1963	*	*	(33)	45	32	42	32	29	23	..
4 years	1953	-	(75)	(17)	(16)	16	23	26	20	21	14
	1958	*	*	(37)	15	28	25	28	28	24	21
	1963	*	*	(42)	55	36	44	37	29	..	..
5 years	1953	-	(100)	(17)	(21)	24	25	27	20	23	14
	1958	*	*	(42)	15	33	25	30	30	26	23
	1963	*	*	(50)	60	40	44	..	..	..	..
6 years	1953	-	(100)	(17)	(21)	26	26	28	20	23	16
	1958	*	*	(42)	19	35	25	30	31	28	25
	1963	*	*	(50)	60	47	..	..	..	..	..
7 years	1953	-	(100)	(17)	(21)	26	27	31	22	23	17
	1958	*	*	(47)	19	37	27	32	31	28	25
	1963	*	*	(50)	65	..	..	..	..	..	..
8 years	1953	-	(100)	(25)	(21)	28	27	31	22	24	17
	1958	*	*	(47)	23	39	27	35	31	28	25
	1963	*	*	(58)	..	..	..	..	..	..	..

Table 12 Persons born in 1953, 1958 or 1963 and convicted of one or more 'standard list' offences before the age of 16 by type of sentence on first conviction, sex and proportion reconvicted within two years

England and Wales — Percentage of persons

Type of sentence on first conviction	Percentage of persons convicted			Proportion reconvicted within two years		
	Males	Females	Total	Males	Females	Total
Detention	1	*	1	55	*	55
Care order	3	6	3	45	32	42
Attendence centre	10	(-)	9	43	(33)	43
Supervision/probation	24	29	25	47	29	44
Fine	29	30	29	31	14	29
Conditional or absolute discharge	31	34	32	32	16	30
Other	1	2	1	40	29	38
Estimated mumber of persons in population (= 100%)	116600	17500	134000	37	20	35

Table 13 Persons born in 1953, 1958 or 1963 and convicted of one or more 'standard list' offences before the age of 16 by principal type of offence on first conviction, sex and proportion reconvicted within two years

England and Wales — Percentage of persons

Principal type of offence on first conviction	Percentage of persons convicted			Proportion reconvicted within two years		
	Males	Females	Total	Males	Females	Total
Violence against the person	4	6	4	31	16	28
Burglary (1)	32	12	29	43	35	43
Theft and handling stolen goods	42	74	46	36	18	32
Fraud and forgery	1	2	1	35	33	35
Criminal damage	11	4	10	27	15	27
Other indictable offences	1	-	1	33	(-)	32
Summary offences (2)	1	-	1	30	(50)	31
Motoring offences (3)	8	2	7	39	30	39
Estimated number of persons in population (= 100%)	116600	17500	134000	37	20	35

(1) Including robbery
(2) Excluding motoring offences
(3) mainly unauthorised taking or theft of a motor vehicle

Table 14 Males born in 1953, 1958 or 1963 and convicted of one or more 'standard list' offences before the age of 16 by principal type of offence on first conviction, sex and type of sentence on first conviction

England and Wales

Proportion reconvicted within two years

Principal type of offence on first conviction	Type of sentence on first conviction							All convicted
	Detention centre	Care order	Attendance centre	Supervision	Fine	Conditional or absolute discharge	Other	
Violence against the person	(83)	(33)	30	47	27	26	(8)	31
Burglary (1)	47	49	47	50	34	39	52	43
Theft and handling stolen goods	(59)	37	41	46	31	31	43	36
Fraud and forgery	..	(-)	(38)	56	(19)	(31)	..	35
Criminal damage	(50)	(46)	38	41	23	22	(45)	27
Other indictable offences	..	(75)	(56)	31	28	31	(-)	33
Summary offences (2)	..	(100)	(20)	46	28	23	(60)	30
Summary motoring								
Motoring offences(3)	(73)	(60)	44	50	34	37	(40)	39
Total	55	45	43	47	31	32	40	37

(1) Including robbery.
(2) Excluding motoring offences.
(3) Mainly unauthorised taking or theft of a motor vehicle

Table 15 Males born in 1953, 1958 or 1963 and convicted of one or more 'standard list' offences before the age of 16 by principal type of offence on first conviction, and principal type of offence on second conviction

England and Wales

Principal type of offence on first conviction	Principal type of offence on second conviction								Proportion reconvicted within two years		
	Violence against the person	Burglary (1)	Theft and handling stolen goods	Fraud and forgery	Criminal damage	Other indictable offences	Summary offences (2)	Motoring offences (3)	Convicted twice (= 100%)	Not reconvicted within two years	Total
Males											
Violence against the person	8	27	40	-	11	2	1	11	1300	2900	4200
Burglary (1)	4	43	34	1	7	1	2	9	16000	21100	37100
Theft and handling stolen goods	5	30	45	1	7	1	2	9	17500	31200	48700
Fraud and forgery	14	14	48	-	24	-	-	-	300	500	800
Criminal damage	7	28	41	-	12	2	2	9	3500	9500	13000
Other indictable offences	8	28	42	-	6	6	6	6	500	900	1400
Summary offences (2)	2	24	29	-	14	5	10	17	500	1300	1800
Motoring offences(3)	5	30	32	1	7	2	2	22	3800	5800	10000
All males	5	34	39	1	7	1	2	10	43400	73200	116600

(1) Including robbery.
(2) Excluding motoring offences.
(3) Mainly unauthorised taking or theft of a motor vehicle

HOME OFFICE STATISTICAL BULLETINS ISSUED IN THE PAST YEAR

Issue Number	Date	Title	Page
8/84	18.4.84	Projection of trends in the prison population to 1992	£2.50
9/84	19.4.84	Statistics on the operation of sec. 62 of the Criminal Law Act 1977, England and Wales 1983	£1.50
10/84	30.4.84	Statistics on the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976 (1st Quarter 1984)	£2.50
11/84	1.5.84	Statistics of Deaths in Police Custody or otherwise with Police England and Wales 1983	£1.50
12/84	17.5.84	Immigration from the Indian sub-continent - 1983	£2.50
13/84	30.5.84	Control of immigration statistics, 1st Quarter 1984	£2.50
14/84	5.6.84	Statistics of domestic proceedings in magistrates' courts, 1983	£2.50
15/84	25.6.84	Notifiable offences recorded by the police in England and Wales, 1st Quarter 1984	£1.50
16/84	9.8.84	Offences of Drunkenness, England and Wales 1983	£2.50
17/84	10.8.84	Statistics on the operation of the Prevention of Terrorism (Temporary Provisions) Acts 1974, 1976 and 1984, 29 November 1974 - 30 June 1984	£2.50
18/84	15.8.84	Statistics of the misuse of drugs in the United Kingdom, 1983	£2.50
19/84	30.8.84	Control of Immigration Statistics, 2nd quarter 1984	£2.50
20/84	6.9.84	Statistics of Breath Tests 1983	£2.50
21/84	14.9.84	Notifiable offences recorded by the police in England and Wales, 2nd Quarter 1984	£1.50
22/84	26.9.84	Crime statistics for the Metropolitan Police district analysed by ethnic group 1977-83	£2.50
23/84	11.10.84	Betting licensing statistics Great Britain June 1983 - May 1984	£1.50
24/84	11.10.84	Offences relating to motor vehicles, England and Wales 1983	£2.50
25/84	25.10.84	Statistics on the operation of the Prevention of Terrorism (Temporary Provisions) Acts 1974, 1976 and 1984 3rd Quarter 1984	£2.50
26/84	22.11.84	European Assembly Election Expenses, United Kingdom, June 1984	£2.50
27/84	30.11.84	Control of Immigration Statistics, 3rd quarter 1984	£2.50
28/84	19.12.84	Notifiable offences recorded by the police in England and Wales, 3rd Quarter 1984	£1.50
1/85	30.1.85	Statistics on the Prevention of Terrorism (Temporary Provisions) Acts 1974, 1976 and 1984 4th Quarter 1984	£2.50
2/85	5.2.85	Young offenders in prison department establishments under the Criminal Justice Act 1982: July 1983 - June 1984	£2.50
3/85	7.2.85	Reconvictions and Recall of Life Licensees	£1.50
4/85	6.3.85	Statistics of Mentally Disorder Offenders England and Wales 1983	£2.50
5/85	12.3.85	Control of Immigration Statistics, 4th quarter 1984	£2.50
6/85	12.3.85	Notifiable offences recorded by the police in England and Wales 1984	£1.50

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10 DOWNING STREET

12 December 1985

From the Private Secretary

THE STRATEGIC VIEW OF CRIME

The Prime Minister has seen the Home Secretary's minute of 3 December and has noted its contents but has not commented upon them.

I am copying this letter to Joan MacNaughton (Lord President's Office), Andrew Lansley (Chancellor of the Duchy of Lancaster's Office), Rob Smith (Department of Education and Science), Alison Smith (Lord Privy Seal's Office), Robert Gordon (Scottish Office), Murdo McLean (Chief Whip's Office) and Michael Stark (Cabinet Office).

MARK ADDISON

Stephen Boys Smith, Esq.,
Home Office

file Yes

10 DOWNING STREET

From the Private Secretary

9 December 1985

PUBLIC ORDER BILL: EXCLUSION ORDERS

The Prime Minister has seen the Home Secretary's minute of 4 December.

She is content that the Home Secretary should bring in exclusion orders regardless of the position on membership cards. She remains convinced, however, of the value of membership cards in their own right, and as a means of contributing to the effective enforcement of exclusion orders. She believes the Home Secretary and the Secretary of State for the Environment should maintain every pressure on the League and the Clubs to prevent them sliding away from the commitment they gave.

The Prime Minister has suggested that the last sentence in the paragraph of the Home Secretary's minute setting out the line he proposes to take needs some amendment to reflect the Government's message more accurately. She has suggested this might read: "That is why the Government does, however, think it right to introduce exclusion orders now."

I am copying this letter to Robin Young (Department of the Environment).

MARK ADDISON

Stephen Boys Smith, Esq.,
Home Office.

BSM

cc Home Affairs
Football Hooliganism

6 December 1985

MR ADDISON

HOME SECRETARY'S MINUTES:

1. THE STRATEGIC VIEW OF CRIME (3 December)

2. EXCLUSION ORDERS (4 December)

1. The Strategic View of Crime takes a bold stand on our record, and correctly decides to "tell the story". There is one great danger in this approach which the paper only partly reflects. Paragraph 3 refers to "realism". Yes, we must be realistic and not claim too much. But the reality is that, on all indicators known to us, the public is deeply disturbed by crime, and needs some evidence that this Government is engaged not just on policing, imprisoning and statistic dispensing, but is also prepared to think about the deeper issues of crime. The Government has some answers here, too, and we must not leave this stage to the Archbishop's Committee.

In the Prime Minister's response, it would be most helpful if the Home Secretary was encouraged to think more widely than this minute suggests. We cannot allow the public to believe that crime is caused by unemployment or police brutality. We must show that the Government's message of hope on crime is not just stastistic-based, but is optimistic because we are tackling central social issues such as personal responsibility and individual involvement in the property-owning democracy.

2. The paper on Exclusion Orders follows previous minutes from this office, except that it now omits reference to the hope that football clubs should do more to improve their own security. Instead, clubs are resisting even the 50% membership agreement.

This is not good enough, and the Prime Minister should point this out in a letter to the Home Secretary. At the very least, we must have 50% membership cards - hopefully to be extended; and also the clubs must improve the quality of their stewards. They still intend employing mostly pensiooners. This is hopeless.

HARTLEY BOOTH

E.R.

PRIME MINISTER

FOOTBALL: EXCLUSION ORDERS AND MEMBERSHIP CARDS

You agreed that the Home Secretary should include in the Public Order Bill a power to introduce exclusion orders, and that he should give further consideration to the timing of their introduction. Our concern was that they should not be introduced before as much as possible had been squeezed out of the League on membership cards.

The Home Secretary, on reflection, considers it right to introduce exclusion orders regardless of the progress on membership cards. He is worried that the clubs are being reluctant to introduce cards; to link exclusion orders to them might be to throw away a useful legal weapon in the struggle against the hooligans. (This view depends on membership cards being only a helpful, but not a necessary, contribution to the effective enforcement of exclusion orders). Also, the Police do not like them. The Home Secretary says he will, however, keep up the pressure on clubs to introduce cards covering up to at least 50 per cent of the ground.

Exclusion orders themselves will no doubt be helpful. But an effective and comprehensive card system might be even better. Introducing exclusion orders willy nilly therefore carries some risk. But it is the Home Secretary's considered judgement that holding back on exclusion orders to use them as a bargaining lever is no longer worth the bargain they may be able to secure.

Agree that:

(i) the Home Secretary should bring in exclusion orders regardless of the position on membership cards, and that he should take the line as set out in his minute; and that

E.R.

(ii) you should say you remain convinced of the value of cards in their own right, and as a means of effectively enforcing exclusion orders. You believe that the Home Secretary and the Environment Secretary should maintain every pressure on the League and the clubs to prevent them sliding away from the commitment they gave.

Mark Addison

6 December 1985

JA1AFM

CC BG

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

5 December 1985

Dear Douglas

PUBLIC ORDER BILL: MAXIMUM PENALTY FOR RIOT

You wrote to me on 27 November concerning the maximum penalty for riot and the implications that the Whitton case had for our earlier decision to reduce the maximum penalty for riot to ten years in the forthcoming Public Order Bill. You considered we should retain the ten year maximum and Quintin Hailsham supported you in this view. No other member of the Committee has responded.

I have delayed replying in order to give us an opportunity to take the Prime Minister's mind on the arguments on both sides of this matter. Legislation Committee on 3 December accordingly approved the Bill for introduction subject to resolution of this point with the Prime Minister. You and I saw her yesterday and Quintin Hailsham was also consulted. We concluded that to reduce the penalty in the light of the court decision could weaken our public order stance and that therefore the maximum sentence for riot should remain as life imprisonment. This of course will not bind sentencing judges in any way and they will continue to impose such sentences as they feel justified in the circumstances of each case. It will also be important in presenting this departure from our announced intention in the public order White Paper to make clear that that decision should not be interpreted as a comment by the Government on the appropriateness of a life sentence in the Whitton case. While Whitton's appeal has still to be heard by the Court of Appeal, that case is of course still sub-judice and it is most important that we should not leave ourselves open to any charge of trying to influence them.

I thought colleagues might appreciate this explanation of why we felt we should depart from our previous decision, and I am therefore sending a copy of this letter to the Prime Minister, the members of H Committee and to Sir Robert Armstrong.

Yours

The Rt Hon Douglas Hurd MP

Home Affairs: Review of the law on Public Order Pt 2.

cc BG
LB/up

Prime Minister

PUBLIC ORDER BILL: EXCLUSION ORDERS

As you know, the Public Order Bill, which will be published later this week, will include provision for the courts to make orders banning those convicted of football-related offences from attending football matches for such period as the court may specify. This is a further indication of our determination to tackle football hooliganism.

When the possibility of an exclusion order scheme was first raised by Leon Brittan at your meeting with the football authorities on 30 July it played an important part in obtaining a commitment to progress on the membership card issue. In my letter of 1 October to Willie Whitelaw I said that I would need to consider further with you and Kenneth Baker how best to present exclusion orders, particularly in connection with membership cards.

The Football League is now committed to introducing membership cards covering "normally at least 50%" of each League ground. But I understand that there is considerable resistance on the part of the clubs, and it is not clear how much progress will in fact be made.

The police for their part are not in favour of membership cards. The Association of Chief Police Officers points to the possibility of borrowing or stealing cards, the difficulty of conducting checks of validity and identity (particularly during the short period when most spectators now enter the ground, just before the kick-off) and the possible public order problems which could develop if long queues build up at turnstiles while checks are made. ACPO are more in favour of exclusion orders (though as an alternative rather than in addition to membership cards). They think that such orders could be useful and possibly very helpful in establishing a blacklist of offenders who should be excluded. The details of any relevant exclusion orders would be included in the briefing given to officers manning the turnstiles, and CCTV

/would be used.

would be used. This would not guarantee 100% enforcement, but police action, together with the deterrent value of orders (the maximum penalty for a breach will be a fine of £400 or 1 month's imprisonment or both), should ensure that the scheme is effective in keeping most of those concerned out of grounds.

An effective membership card system would assist in the enforcement of exclusion orders, in that those who are the subjects of exclusion orders would be denied membership cards, but I think that exclusion orders can stand on their own, and are worth introducing regardless of the progress made on the membership card issue.

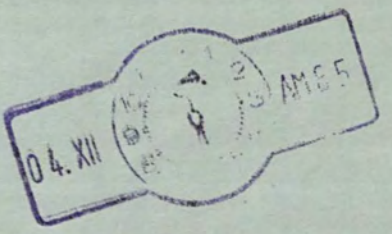
I do not therefore propose to make an effective membership card system a pre-condition for introducing the exclusion order scheme. This would restrict our freedom of action, and could prove embarrassing if, despite all our efforts, the Football League is not able to deliver its commitments.

The line I would therefore propose to take at Second Reading and later is that exclusion orders are a worthwhile further step in their own right in our efforts to combat hooliganism. The legislation shows the Government's determination. This needs to be matched by effective action on the part of the League and clubs to keep trouble-makers away from matches, through the introduction of effective membership card systems. The Government now looks to the football authorities to do this as soon as possible, so that when the exclusion order scheme is brought into effect it can be matched, and be bolstered by action on the part of clubs to regulate entry to grounds. The Government does however think it right to introduce exclusion orders ~~regardless of the progress made on membersip cards.~~

I am copying this to Kenneth Baker.

DH.

4 December 1985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SUBJECT
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BEM

File

10 DOWNING STREET

4 December 1985

From the Private Secretary

Dear Stephen

MAXIMUM PENALTY FOR RIOT

The Prime Minister held a meeting this afternoon with the Lord President and the Home Secretary to discuss the maximum penalty for riot. Mr. David Mellor and Mr. Hartley Booth were also present.

The Home Secretary said that he was inclined to the view that the maximum penalty for riot in the Public Order Bill should be 10 years, despite Judge Argyle's sentence in the Whitton case. The arguments were finely balanced, and it was important that options should not be closed off at this stage. But it seemed best not to move away from the Law Commission's recommendation that the maximum penalty for riot should be ten years rather than life, on the basis only of a single decision which might yet be overturned on appeal. In the Whitton case, a life sentence could in any case have been imposed for the grievous bodily harm charge; indeed, much of the press apparently believed that was why the life sentence had been imposed.

The Lord President accepted that leaving the Bill as it was might remove a sentencing power which Judge Argyle had recently had recourse to. But increasing the maximum sentence for riot to life might equally seem like a challenge to the Judiciary if the sentence were overturned on appeal.

The Prime Minister said she was concerned to avoid any suggestion that the Government were undermining the ability of judges to pass severe sentences for riot, particularly after the recent dreadful cases of disorder. The public would not understand it if the Government were now to reduce the maximum penalty for riot. She noted that the Public Order White Paper had been published before the worst examples of football hooliganism and inner city disorder had taken place during the year. She accepted that when riot involved injury or damage to property other charges already carrying severe penalties could be made; but it was important to bear in mind that riot often created the conditions in which these other offences took place.

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Summing up the discussion, the Prime Minister said it was agreed that, for now, however, the Bill should provide that the maximum sentence for riot should be life. But it was important for Ministers to approach the matter in such a way that account could be taken, if necessary, of the judgment of the Court of Appeal.

The Lord President said he would speak to the Lord Chancellor to report to him the outcome of the meeting.

I am copying this letter to Joan MacNaughton (Lord President's Office) and to Michael Stark (Cabinet Office).

Yours ever

Mark Addison

(Mark Addison)

Stephen Boys Smith, Esq.,
Home Office

CONFIDENTIAL

Prime Minister. (2) cc BT.

This is a useful document from the Home Sec, containing much useful information to quarry from in the attachment. Time has a copy for his diary. MEA 6/12

Prime Minister

A STATEGIC VIEW OF CRIME

I have been considering the position we should adopt on crime over the coming months and beyond.

2. We are in a strong position and can present a powerful case in support of our record and our plans for the rest of this Parliament. The Opposition in contrast have a bad record and no alternative proposals. They are wide open to attack, notably because of the destructive opposition to the agencies of law and order which is so evident in some quarters of the Labour Party. They will continue the line of criticism which we have recently seen by suggesting that this Government is in some way responsible for the increase in crime which has taken place since 1979 and that, contrary to what we say, we have not given adequate support to law and order.

3. We must keep the initiative and tell our story. No Government can solve the problems of law and order by itself. We must not fall into the trap of arguing that by Government action alone we can bring down the figures of recorded crime in the next year or so. I believe that our line can be positive and robust without making unrealistic claims. We alone have a steady and considered strategy for fighting crime, and we must make sure that this fact is rammed home on every suitable occasion.

4. I have accordingly had the attached note prepared. It is in two parts. The first deals with the incidence and the growth of crime in this country and abroad. It concludes that there is no basis for any claim that increases in crime over a particular period can be attributed to the policies of any particular administration. The second describes the Government's strategy, the measures which have already been taken or are in hand, and the significant successes we have achieved.

/5. The focus

5. The focus in the note is deliberatley kept on "ordinary" crime and away from public order; but measures to prevent a recurrence of rioting in inner cities should, of course, have some influence on the incidence of crime generally.

6. What we say will naturally have to be tailored to particular circumstances and our line focussed accordingly. I suggest, however, that it might be taken as a framework within which we can develop our presentation of the Government's record and plans in the period ahead.

7. I am sending copies of this minute and its enclosure to the Lord President, the Chancellor of the Duchy of Lancaster, the Secretary of State for Education, the Lord Privy Seal, the Secretary of State for Scotland and the Chief Whip, and Sir Robert Armstrong.

D.H.

3 December 1985

CRIME AND CRIMINAL JUSTICE : A STRATEGIC VIEW

I EXTENT AND NATURE OF CRIME

Recorded Crime

Recorded crime in England and Wales has risen almost continuously for the past 30 years. In 1955, the police recorded fewer than half a million notifiable offences; in 1984 the figure was nearly 3.5 million. The actual and projected increases are shown at Annex A.

2. To put the total figures in perspective, over 95% of all recorded crime in 1984 comprised offences against property in which no violence was used: 1.8 million offences of theft, 900,000 offences of burglary, 500,000 of criminal damage and 125,000 frauds. About 25% of recorded crime was concerned with motor vehicles - so called "autocrime". The 4.5% of recorded crimes in which there was a physical victim included 114,000 crimes of violence against the person (including 600 murders, 5,000 serious woundings), 20,000 sexual offences (including 1,400 rapes) and 25,000 robberies. Since 1955 there has been a disproportionate increase in recorded offences of violence, but the overall predominance of comparatively minor offences against property has only changed by about half of one per cent.

British Crime Surveys

3. The recorded crime figures do not give a complete picture of the extent of actual crime. The British Crime Surveys conducted in 1982 and 1984 suggest that only one in four offences is reported to the police, and the level of reporting may be much lower for offences such as minor and domestic violence and sexual offences. On the other hand, the increase in the actual crime rate is probably lower than the police figures indicate. For various reasons - easier access to telephones or to police, greater use of insurance, improved police/public relations - the proportion of offences that are recorded has risen significantly in recent years. The British Crime Surveys and General

Household Survey together indicate a rise of roughly 20% in domestic burglary since 1972, although figures for recorded offences doubled during that period.

4. The British Crime Surveys also provide important information about public perceptions of crime. There is an understandable and widespread fear among young women about being raped or robbed but they tend to overestimate the likelihood of becoming victims of these particularly unpleasant but still fortunately rare offences. Many men and women are afraid of becoming victims of burglary, a fear which also tends to be exaggerated except in those areas where its incidence is highest - poor council estates and multi-racial areas. People tend to believe that courts are more lenient than they are in practice but to support the general level of sentences which are actually imposed.

Experience of Crime

5. Most offenders (and most victims) are young males with 15 as the peak age for offending. Some experience of offending is very common - about one young man in three is likely to be convicted of a significant criminal offence by the age of 30 but very few are likely to be convicted more than once or twice. Because young men are disproportionately involved in crime in relation to the rest of the population, demographic changes can influence the level of offending. The increase in the proportion of young males in the population since 1955 will have contributed to the increase in recorded crime over the period; the proportion will fall over the next ten years until 1994, giving the prospect of some reduction, at least in the rate of increase.

Comparison with other countries

6. Crime surveys also provide a better basis than recorded crime for comparisons between different countries (the proportion of crimes recorded by the police varies between different countries and the categories of offences are rarely comparable). Surveys indicate that crime rates

in Scotland are broadly similar to those in England and Wales; that rates of burglary and of crime involving motor vehicles are higher in the Republic of Ireland; that the USA and Canada have higher rates of robbery (particularly armed robbery) and residential burglary but a lower rate of car theft; that Australian crime rates are broadly similar although the burglary rate is higher; and that Dutch rates are lower except for theft from the person.

Conclusions

7. The conclusions to be drawn from this analysis are that while the current level of offending in the United Kingdom is a matter of very serious concern, there is no reason to think that the position in the United Kingdom is significantly different from that in other Western countries; and that the increase since 1979 is not significantly different from the increases which have taken place over other similar periods during the last thirty years. There is nothing in any of the comparisons to support a claim that increases in the level of crime over any particular period are attributable to the policies of any particular administration.

8. Nor has a statistical link been established between the figures for recorded crime and for unemployment. Common sense suggests that there will be a link in some places. But the recorded crime figures began to rise at a time of low unemployment and have risen steadily since through periods of both low and high unemployment.

II GOVERNMENT ACTION AGAINST CRIME

9. Until roughly the end of the 1960s there was an optimistic belief that through increased chances of detection, higher conviction rates, carefully judged sentences and enlightened methods of treatment and rehabilitation after sentence, the criminal justice system would in time be able to "defeat" the problem of crime. The situation is now seen to be more complicated: crime is a widespread social phenomenon for which no "causes" can be readily identified although its incidence is commonly associated with the presence of wider social problems and the decline in standards of conduct and respect for authority. It follows that there is no simple "solution" to the problem of crime as such and that it cannot be dealt with through the crim-

inal justice system alone. Even so, the effective operation of the criminal justice system can still help to deter potential offenders, to protect the public from those who are most dangerous and give support to those offenders who are willing and able to benefit from it. Public confidence in the system is also essential if the rule of law is to retain respect and people are not to be tempted to take the law into their own hands.

The Government's Approach

10. The Government's approach has therefore been to

(i)
Provide additional resources where they are needed, especially for the police and prisons;

(ii)
Strengthen the powers of the police and courts to investigate and punish crime.

(iii)
Improve the efficiency and effectiveness of all parts of the criminal justice system, and

(iv)
Provide increased reassurance and confidence for victims while continuing to maintain the fairness of the system, with appropriate safeguards to prevent abuse and preserve traditional standards of justice. Within this programme the Government has given special attention to crime prevention and to measures to combat juvenile crime.

Resources

11. Total expenditure on the law and order budget in England and Wales has increased from £1.7 billion in 1978/79 to £4.3 billion in 1985/86, or by 39% in real terms. Expenditure on the police since 1979 has increased from £1.1 billion to £2.8 billion. The total manpower available to the police in England and Wales has

increased by over 13,000 (9,000 police officers and 4,000 civilian staff). Police pay and conditions of service have been improved. The demands on the police from rising crime and other duties have increased significantly during the same period. The Government is ~~therefore~~ urging police authorities and forces to make good any short-falls in recruitment and to use resources flexibly, focusing on locally determined priorities. The Government is considering urgently with them what further increases in manpower and equipment are needed.

12.

Since 1979-80, the overall level of resources provided for the Prison Service has risen from £311m. to £647m. per annum, an increase of 29% in real terms. Eleven per cent of this increase has gone on building new prisons and refurbishing the existing prison estate, in pursuit of the Government's broad policy of eliminating prison overcrowding; 18% has been for the day to day running of the service. Over the same period, the prison population has risen from 42,600 to 47,200 (11%) and staff numbers from 23,600 to 27,200 (15%).

Powers

13.

Legislation already enacted or in preparation includes

(i)

The Criminal Justice Act 1982, which strengthened the powers of the courts in dealing with young offenders and juveniles (and their parents).

(ii)

The Police and Criminal Evidence Act 1984, which strengthened and codified the powers of the police in the investigation of crime and the rules of evidence in criminal trials.

(iii)

The Sexual Offences Act 1985 and the Controlled Drugs Penalties) Act 1985 which deal with the offence of kerb crawling and increased to life imprisonment the maximum penalty for trafficking in Class A drugs.

(iv)

The Public Order Bill is based on the White Paper on the Review of Public Order Law (Cmnd. 9510) published in May 1985. It will extend the preventive powers of the police to control demonstrations; revise and codify the common

law offences of riot, unlawful assembly and affray; tighten the offence of incitement to racial hatred; and introduce further measures against football hooliganism. It will provide a balanced legal framework in which the police have the necessary powers to prevent and deal with disorder, while freedom of speech and the rights of protest continue to be safeguarded.

(v) The Bill which is to provide for the confiscation of the proceeds of drug trafficking and will make it a criminal offence knowingly to handle the proceeds of such offences.

(vi) The Criminal Justice Bill (for 1986/87) which will increase maximum penalties, modernise the law on extradition and further strengthen the powers of the criminal courts.

These legislative measures were reinforced by the restrictions on the administration of life sentences and on the grant of parole for violent and other serious offences which were introduced in 1983.

Efficiency and Effectiveness

14. The Prosecution of Offences Act 1985 provides for the establishment of the Crown Prosecution Service and for the introduction of time limits on the period before trial. Administrative measures include

(i) Special attention by the police and customs to organised and serious crime (including drug trafficking and the use of firearms) by improved methods of detection and intelligence and the use of modern technology.

(ii) Arrangements to identify potential child abusers who are seeking to work with children including the disclosure of criminal records.

(iii) The campaign against drug abuse, and the offending associated with it, through the comprehensive programme of action covering supply, enforcement, prevention and treatment which is being co-ordinated through the Ministerial Group on the Misuse of Drugs.

(iv) The effective application of financial management principles throughout the criminal justice system.

Victims

15. Victims and potential victims are receiving increase

reassurance and support through

(i)
The increased police presence on the streets.

(ii)
Improved arrangements for compensation through the courts, including measures enacted in the Criminal Justice Act 1982 and further measures planned for the Criminal Justice Bill in 1986/87.

(iii)
A statutory right to compensation for criminal injuries which is also planned for the Criminal Justice Bill in 1986/87.

(iv)
Arrangements to ensure that victims receive consideration, sympathy and appropriate advice when they are interviewed by the police or have to appear as witnesses in court (with special attention to the victims of rape).

(v)
The development of victims' support schemes.

Crime Prevention

16.
The central aim is to engage local communities in collaborative efforts to reduce the opportunities for crime, particularly theft and vandalism. The Home Office can design and test new schemes, for example "Neighbourhood Watch", and methods, like property marking. There was a well attended open session of the Standing Conference on Crime Prevention on 20th November, addressed by the Home Secretary, which concentrated on residential burglary and autocrime, and which received good press coverage. On the following day, Mr. Shaw chaired a more specialised conference on autocrime, again well attended by the media. The Home Office will continue to disseminate best practice both at

national and local level. A number of specific initiatives are in hand, including:

(i)

The crime prevention seminar, which the Prime Minister will chair on 8th January, will impress on industry (insurance, building and car manufacture) their responsibilities and the opportunities which a concerted attack can bring, particularly in reducing burglary and autocrime. The Standing Conference on Crime Prevention will follow-up the action plan agreed at that seminar.

(ii)

Five local initiatives in different parts of the country will show what can be achieved in a limited period when co-ordinated effort is directed at particular kinds of crime. In each area, the key local services will come together in a steering group, chaired in three cases by the Chief Executive of the local authority in one area by a Chief Probation Officer and in another by the police.

(iii)

A major crime prevention initiative under the expanded Community Programme will combine crime prevention activity, for example on inner city estates, with the provision of useful employment.

(iv)

Publicity in particular the successful "Magpies" campaign, will be strengthened and other campaigns can be targetted to follow: we are already spending £2.3m a year on publicity.

Juvenile Crime

17.

The capacity of schools bringing positive influences to bear on the social attitudes and behaviour of their pupils is central to the work which is now in hand to reduce juvenile crime. The Home Office and the

DES have together been studying ways of encouraging schools to accept and act upon their responsibilities. Sir Keith Joseph has already agreed that

(i) After the passage of this Session's Education Bill he will issue guidance making clear the responsibilities of school governing bodies in the promotion of good citizenship.

(ii) HM Inspectorate of Schools will carry out a review of good practice in schools in the area of relationships, behaviour, attitudes to work and discipline.

(iii) To consider making Education Support Grant available for local education authorities' schemes for combatting juvenile crime, e.g. measures to reduce vandalism in schools, constructive and demanding extra-curricular activities for pupils and projects to support the role of parents in the education of their children.

Further measures, such as improving police liaison with schools, are under consideration between the two Departments.

Achievements

18. The success of these measures is difficult to measure and will in any event only become apparent over a period of years. This is a long haul. But there have been some notable achievements:

(i) As already indicated, major legislation is now in place, or in an advanced state of preparation for enactment in the current session or the next.

(ii) The number (although not the percentage) of offences cleared up by the police has risen each year since 1979 and is now 17% higher than it was then - just under 1.2 million offences.

(iii) Those responsible for the majority of serious offences, including nearly three-quarters of offences of violence and sexual offences, are brought to justice. The police have had some notable successes against serious crime, particularly in combatting drug trafficking and in the swift arrest of dangerous offenders.

(iv) Neighbourhood watch and the "Magpies" campaign have led to significant reductions in local levels of property crime.

(v) Other parts of the criminal justice system, particularly the prison service, have coped inspite of unprecedented pressures: there have been no serious prison disturbances and no major escapes despite record overcrowding.

(vi) The use of non-custodial measures for less serious offenders, especially community service, is expanding and has the confidence of courts and the public - with benefits for the public and for the offenders themselves.

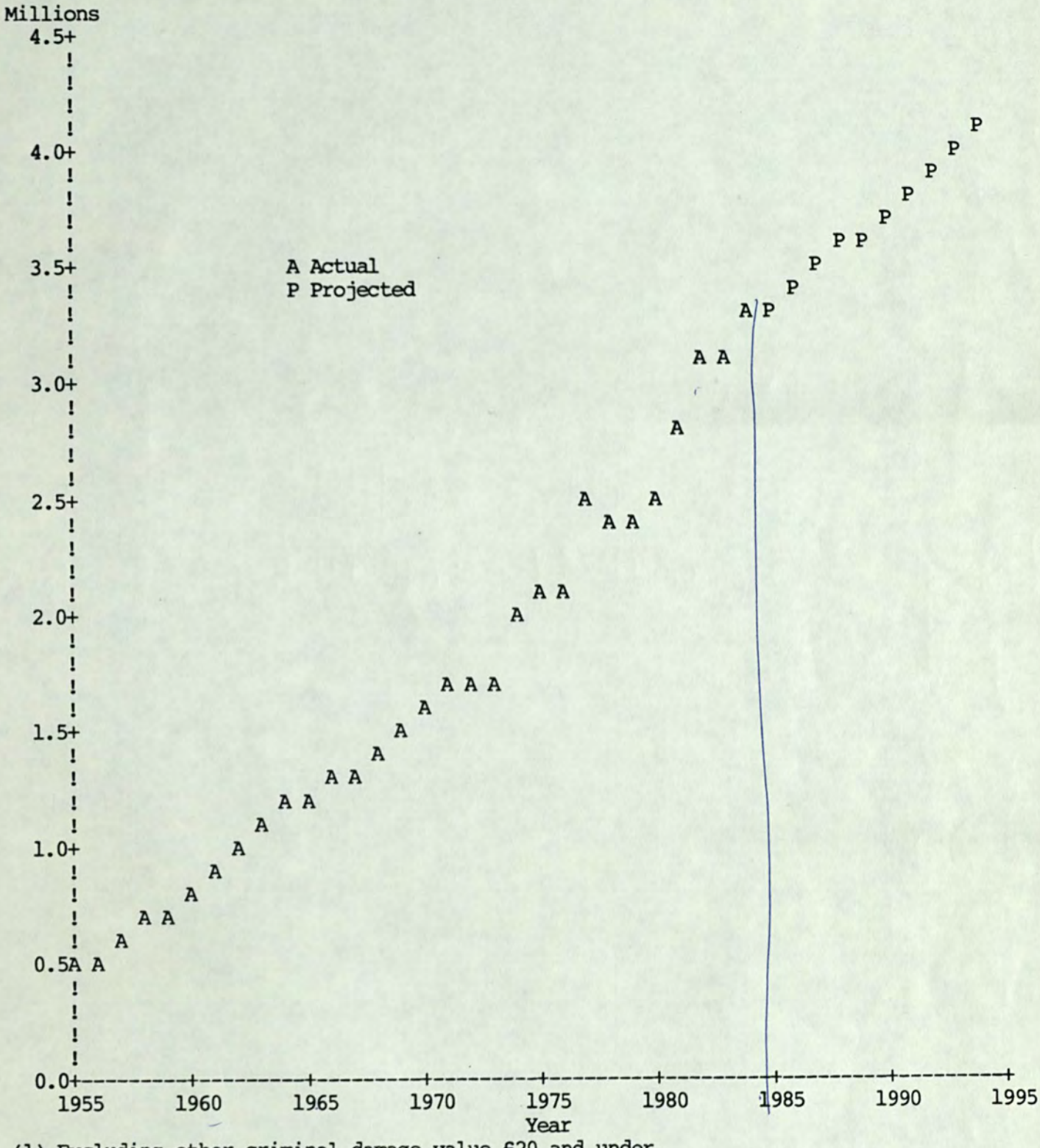
(vii) There is evidence from the British Crime Surveys and from public opinion polls that the public have greater confidence in the police, that there has been a slight reduction in the fear of crime, and that there is a large degree of public support for the Government's policies.

Conclusions

19. The measures described in this paper represent a realistic and practical programme for dealing with crime and for providing protection and reassurance for the public. They reflect a sustained commitment on the part of the Government and immense energy and dedication on the part of the services and agencies concerned. The programme will continue and will be expanded on the lines which have now been successfully established. A major reduction in the incidence of crime will involve changes in the character of society which cannot be accomplished by governments or by the criminal justice system on their own, but by holding it and developing its steady strategy the Government is giving the necessary lead.

ANNEX A

Graph 1. Notifiable offences recorded by the police (1)



(1) Excluding other criminal damage value £20 and under

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PRIME MINISTER

PUBLIC ORDER BILL

You are meeting the Lord President, the Home Secretary and David Mellor to discuss the maximum penalty for riot. You were unhappy about the Home Secretary's proposal that the Public Order Bill (which is to be published on Friday) should reduce the maximum penalty for riot from life to ten years. The issue has arisen because the judge in the Whitton case imposed the maximum sentence.

The Home Secretary knows that the arguments are finely balanced. But he still believes it would be wrong to amend the Bill at the last minute in the light of a single decision which may well be overturned. He also notes that the maximum penalty for grievous bodily harm will remain as life. So the life sentence on Whitton could still have been imposed even under the penalty maxima set out at present in the draft Bill.

The Lord President sympathises with the Home Secretary's position. (He decided he would prefer not to put the matter back to H at this late stage, and H has not therefore had another look at it). The Lord Chancellor also agrees with the Home Secretary.

One way forward may be for the bill to be left as it is, but for the Government to keep an open mind during its passage, and stand ready to respond to backbench pressure if necessary.

The back papers, if you wish to have a look at them, are at Flag A.

PAKISTAN

At the end of this short discussion, the Lord President will leave the meeting, and David Mellor will then have an opportunity to tell you about his recent visit to Pakistan.

You might press David Mellor on whether President Zia is getting to grips with this problem, whether Pakistan is still one of the principal culprits in the international trade of heroin, and enquire of the extent to which Afghanistan and India are now joining in the production of opium.

Papers on this are at Flag B though, once again, there is no need to look at them unless you wish to.

You want at some stage to have a word with the Home Secretary about the Chief Constable's report on the Handsworth riots. But there will not be an opportunity at this meeting to do so. We shall need to arrange another time in the diary for that.

MEA

Mark Addison

3 December 1985

BEMBFJ

PRIME MINISTER 3 December 1985

MEETING WITH HOME SECRETARY AND DAVID MELLOR, 4 DECEMBER 1985

1. Pakistan Visit

The visit to Pakistan by Mr Mellor and myself took place betwen 12 and 20 October. You may like to ask whether President Zia is getting to grips with this problem, whether Pakistan is still one of the principal culprits in the international trade of heroin, and enquire of the extent to which Afghanistan and India are now joining in the ~~deadly~~ production of opium?.

2. Maximum penalty for riot

Page 2355 of Archbold gives the maximum current sentence for riot at common law as; "at large". The Home Secretary's letter of 27 November states that one or two years imprisonment has been the norm for riot during the last decade. Here the political point may counterbalance the legal niceties. Politically, it may not be attractive to be seen to be reducing the maximum penalty for riot soon after the Birmingham and Brussels incidents. Home Office are right on the law. The compromise that the House of Commons committee may suggest could let us off the hook. However, despite our view on the law and the Home Secretary's statement; "we think we should look silly if we were to depart from the White Paper during the passage of the Bill" this must be balanced against the public outcry, and the latter may carry the day.

HARTLEY BOOTH

FROM:
THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

HOUSE OF LORDS,
LONDON SW1A 0PW

cc HB

CONFIDENTIAL

2 December 1985

My dear Willie:

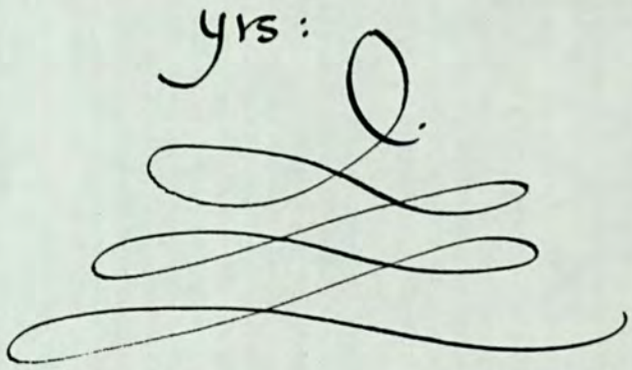
FILE WITH MRA

Douglas Hurd wrote to you on 27 November about the penalty for the new offence of riot to be inlcuded in the Public Order Bill. He pointed out that the maximum sentence proposed for this offence is 10 years imprisonment, and said that he proposed to retain that maximum, even though recently a life sentence was imposed on a charge of the common law offence of riot.

I agree with the course which Douglas proposes. The new offence is intended to be used only in very serious cases and for that a high maximum penalty is clearly justified. but in deciding what that maximum should be, I am sure it is right to take account of the fact that, on a charge of riot, it will not be necessary to prove that the defendant either injured another or damaged property. Maximum sentences in new offences must sensibly relate to the maximum for other comparable offences and I think it would be wrong now to change the decision to go for 10 years. Douglas correctly notes that the Argyle sentence is likely to be appealed. It may well be that the Court of Appeal will find that the sentence imposed is out of line with recent practice.

Copies of this letter go to the Prime Minister, Members of H Committee and Sir Robert Armstrong.

yrs:



The Right Honourable
Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
SW1A 2AT

HOME AFFAIRS

PUBLIC ORDER

PT 2

CF

PL bf H see with other papers tomorrow
MCA 2/11

PRIME MINISTER

PUBLIC ORDER BILL: MAXIMUM PENALTY FOR RIOT

You did not agree with the Home Secretary's view that the White Paper proposal , for the maximum penalty for riot to be ten years rather than life, should stand. The Home Secretary believes the arguments on this to be finely balanced and he and the Lord President think the right thing to do, in the light of the Whitton case, is to get H Committee's reactions. H meet on Tuesday, and there will be a short discussion on this point. The Lord President will reflect your views to the meeting.

You are seeing the Home Secretary with David Mellor, to discuss the latter's recent visit to Pakistan, on Wednesday at 1600 hours. I think after H you will need to have a word with the Lord President and the Home Secretary about the penalties for riot, and I have therefore arranged for the Lord President to be present for a few minutes at the beginning of the meeting. There is some urgency about this because the Bill needs to be published on Friday if the Second Reading is to be before Christmas.

Mark Addison

Mark Addison
29 November 1985

BEMBEY

CCPC

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

JU772
Secretary of State for Trade and Industry

29 November 1985

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
London SW1H 2AT

MISC

Dear Willie,

PUBLIC ORDER BILL: INCITEMENT TO RACIAL HATRED

FILE WITH MEA

Douglas Hurd's letter of 18 November proposes that the Public Order Bill should not now include extension of the offence of incitement to racial hatred to films, videos and sound recordings.

Although the extension was seen as a sensible precaution I understand that in practice there have been no problems in this area. Given the difficulty now identified by Douglas, I am therefore content with his revised proposals.

I am copying this letter to the Prime Minister, Members of H Committee, Sir George Engle and Sir Robert Armstrong.

Yours ever,
Leon

LEON BRITTAN

HOME AFFAIRS

REVIEW OF PUBLIC ORDER

PTZ

PRIME MINISTER

PUBLIC ORDER BILL: MAXIMUM PENALTY FOR RIOT

The Home Secretary proposes (letter attached) that no change should be made to the Public Order Bill in the light of the Whitton case; and in particular that the maximum penalty for riot should still be reduced from life to ten years, following the Law Commission's recommendations. The Lord President, I am told, supports the Home Secretary's view.

The key point is that under the existing proposals, a life sentence could have been imposed on Whitton, though for the grievous bodily harm charge rather than for riot. (In fact, the press gave the impression that Whitton got the life sentence for the brutal attack in the pub, rather than for riot; though that is not how the judge chose to sentence.)

Content for the White Paper proposals, that the maximum penalty for riot should be ten years, should stand?

No

I think it is politically damaging to reduce the maximum penalty at this time. There may be cases for which riot is the only offence for which conviction can be secured. It looks a tough step in the face of the Brixton riots.

Mark Addison

(Mark Addison)

28 November 1985

CC/BG

PRIVY COUNCIL OFFICE
WHITEHALL LONDON SW1A 2AT

28 November 1985

Dear Douglas

NBPM

PUBLIC ORDER BILL: INCITEMENT TO RACIAL HATRED

You wrote to me on 18 November outlining the difficulties you had encountered in your further look at whether the offence of incitement to racial hatred should be extended to cover films, videos and audio recordings. In the light of these difficulties you now propose to drop this proposal.

As you say, H Committee on 23 October (H(85) 22nd Meeting) were anxious to avoid voluntarily exposing the broadcasters' exemption and I agree that both your proposal now to drop the extension to films etc and your proposals as to the response to any pressure in this area during passage of the Bill are fully consistent with its conclusions at that meeting. You may therefore take it that you have agreement to proceed as you propose.

I am sending a copy of this letter to the Prime Minister, the members of H Committee, the Secretary of State for Trade and Industry, First Parliamentary Counsel and Sir Robert Armstrong.

Yours ever

Leon

The Rt Hon Douglas Hurd MP

CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

28 November 1985

Dear Douglas

PUBLIC ORDER BILL: INCITEMENT TO RACIAL HATRED

You wrote to me on 18 November outlining the difficulties you had encountered in your further look at whether the offence of incitement to racial hatred should be extended to cover films, videos and audio recordings. In the light of these difficulties you now propose to drop this proposal.

As you say, H Committee on 23 October (H(85) 22nd Meeting) were anxious to avoid voluntarily exposing the broadcasters' exemption and I agree that both your proposal now to drop the extension to films etc and your proposals as to the response to any pressure in this area during passage of the Bill are fully consistent with its conclusions at that meeting. You may therefore take it that you have agreement to proceed as you propose.

I am sending a copy of this letter to the Prime Minister, the members of H Committee, the Secretary of State for Trade and Industry, First Parliamentary Counsel and Sir Robert Armstrong.

Yours ever

Willie

The Rt Hon Douglas Hurd MP

HOME AFFAIRS : Review on Public Order : Pt 2

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

27 November 1985

Dear Willie.

PUBLIC ORDER BILL: MAXIMUM PENALTY FOR RIOT

As you know the recent case of the football hooligan, Kevin Whitton, who was sentenced to life imprisonment for riot, attracted a good deal of publicity. Most of the press applauded the sentence passed by Judge Argyle. But there are some oddities which will cause us trouble.

Whitton was sentenced on three counts relating to two separate incidents. The riot charge, for which the life sentence was imposed, related to fighting outside the football ground when a group of fans had linked arms and rushed forward, shouting and knocking people over in a charge against a rival group. So far as the police can recall no weapons were used and no-one was injured. The second, and much the more violent incident, occurred in a Chelsea pub later the same evening. For this Whitton received 10 years for grievous bodily harm on the manager of the pub and 8 years for affray. It was the pub incident which was highlighted in the press reports and in many ways it would have been less remarkable had that attracted the heavier sentence; the maximum penalty for grievous bodily harm as for riot is life imprisonment. It was thus the more savage and better publicised crime which received the lighter sentence. There is likely to be an appeal and it is far from clear that the life sentence for riot will be upheld since it is way out of line with current practice. In the last decade no sentence for riot has exceeded 5 years, and one or two years' imprisonment has been the norm.

I have asked for a full report on the facts of the Whitton case. Meanwhile I have had to consider the implications of the sentence for the Public Order Bill. It was the Law Commission which after careful study proposed the structure of maximum penalties of 3 years for affray, 5 years for violent disorder and 10 years for riot. We endorsed their view in the White Paper which was published in May. In the 70 responses which we received on the White Paper this was the subject of hardly any comment or criticism. Clearly the maximum sentence for riot has to be adequate to deal with serious disturbances but at the same time the penalty has to reflect the fact that on a charge of riot it is not necessary to prove that the defendant injured another or damaged property. If there is evidence of specific harm - whether grievous bodily harm, arson or criminal damage with intent to endanger life - separate charges can be brought in respect of those offences which each carry a maximum of life imprisonment.

/I have concluded

The Rt Hon Viscount Whitelaw, CH, MC

I have concluded therefore that the maximum penalty for riot in the Public Order Bill should remain 10 years as proposed by the Law Commission and endorsed in our White Paper. To reconsider the maximum sentence for riot at this stage on the basis of a single sentence which may be reduced on appeal and in a case where, in any event the judge could have imposed a life sentence in respect of other offences, would be premature. We should risk looking silly if we were to depart from the White Paper proposal now only to find during the passage of the Bill that the Court of Appeal had cut the ground from under our feet. If challenged on the implications of the Whitton case, the line which I propose to take in Parliament is that it would be improper for me to comment on this particular case as on any other, especially as it is likely to go to appeal. But once I have received a transcript and a copy of any judgment delivered by the Court of Appeal, I shall of course be prepared to look again at our proposals.

Copies of this letter to to the Prime Minister, Members of H Committee and Sir Robert Armstrong.

Yours,

Douglas.


27. XI.
AM185

Home Office

NEWS RELEASE

50 Queen Anne's Gate London SW1H 9AT
Telephone 01-213 3030/4050/5050
(Night line 01-213 3000)

November 21, 1985

Ec HB
Her file.

CARS SHOULD BE MORE THIEF-PROOF

REPORTS CALLS ON MANUFACTURERS TO "DESIGN OUT" CRIME

The vast majority of cars, even when locked, are so insecure that they are virtually gifts to a thief. This stark conclusion comes from an independent research study commissioned by the Home Office. Manufacturers could make the average car substantially more secure, with quite simple design changes and at minimal cost.

The study, by the Institute for Consumer Ergonomics at Loughborough, draws attention to the scale of vehicle crime in this country. Over one and a half million vehicles are broken into or stolen each year - almost one in every ten cars on the road. Autocrime accounts for a quarter of all recorded crime, and costs motorists over £260 million a year - and that's after insurance pay-outs. It also takes up over 800,000 police man-hours each year.

According to the study, car manufacturers could easily change all this. At present, the average car thief needs only simple skills and simple tools, such as a screwdriver or metal coathanger, to be able to quickly break into most cars.

The locks fitted to many new cars are prone to wear and to being forced. Yet for another five pounds per car more secure locks - which retain that level of security for the life of the car - can be fitted. The way that locks are fitted into the car is also crucial, and the study suggests ways in which the locks can be made tamper-proof at little if any extra cost.

The study draws attention to the increased use of electronics in vehicles, and suggests that by designing in electronic security systems and fitting them on the production line extra costs can be kept to a minimum.

At a conference at the Home Office today, to which all major manufacturers were invited, Mr Giles Shaw, Minister of State, said, "Crime involving vehicles is a blight on this country. It costs us all a tremendous amount and yet I doubt whether the average motorist realises quite how much at risk he is. In fact he has something

like a 1 in 10 chance of having his car stolen or something taken from it. The risk is considerably greater if he parks his car outside his house in an inner-city area. I am sure that, when he does realise this, he will call on manufacturers to provide him with a very much more secure car. I doubt if the cost of better protection would show a rise in the motor industry's price list, but they could well show a fall in the autocrime statistics, and above all a rise in public confidence".

For further information telephone: Sue Weinel - 01-213 4040.

E.R

PRIME MINISTER

PUBLIC ORDER BILL: INCITEMENT TO RACIAL HATRED

I think you will wish to note that the Home Secretary is not proposing in the Public Order Bill to extend the incitement to racial hatred provisions to films, etc. He had earlier hoped it might be possible to do this without creating a specific exemption for broadcasting (an immunity which it had earlier been agreed should be left alone at this stage). That proved not to be the case. H Committee felt that the broadcasters' exemption is something which should not be voluntarily exposed.

The Home Secretary also notes, however, that it may be necessary to move on this if there is strong pressure during the passage of the Bill. But even then he would propose to continue to exempt broadcasting from the provisions if possible.

MSA

(MARK ADDISON)
20 November 1985

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SWIH 9AT

18 November 1985

Dear Willie.

PUBLIC ORDER BILL - INCITEMENT TO RACIAL HATRED

At our meeting on 23 October H Committee decided that we should not extend the offence of incitement to racial hatred to cover broadcasting, but that the offence should apply to films, video and audio recordings unless this disclosed unforeseen problems.

Further consideration has disclosed a problem: it will not be possible to extend the incitement provisions to films etc without creating a specific exemption for broadcasting. You will remember the strong feeling at H that we should not voluntarily expose the broadcasters' exemption. I cannot claim that there is a problem at present of racist films or videos or audio tapes; and since extending incitement to these other media would expose the broadcasters' exemption, I believe that it would be contrary to our discussion at H to pursue this proposal. I therefore propose that the Public Order Bill should not include provisions extending incitement to films, video or audio recordings. If during the passage of the Bill there is strong pressure to extend incitement to broadcasting, it would be right to include these other media; but we agreed that it would be wrong to advertise the broadcasting exemption at this stage. Equally if (as seems less likely) there is pressure to extend incitement to the new media, it would be in keeping with H's decision to bow to that pressure but to continue to exempt broadcasting if we can.

Copies of this letter go to the Prime Minister, Members of H Committee, Leon Brittan, Sir George Engle and Sir Robert Armstrong.

Yours,

Douglas.

The Rt Hon Viscount Whitelaw, CH, MC

PRIME MINISTER 25 October 1985

'H' ON PUBLIC ORDER BILL

The following was agreed:

- this week 'H' decided that we should abandon the proposed new power to ban single marches. The police feel they would be vulnerable politically if they had this power.

- The proposed power for Magistrates to order hooligans (after criminal convictions) to be excluded from football pitches was supported.

- There was agreement that all vehicles above a seating capacity (to be determined) should be brought within the scope of the Sporting Events (Control of Alcohol etc) Act 1985 - to prevent alcohol being taken to matches in as many vehicles as practicable.

- The suggested power to cover all broadcasting (except for the BBC and ITV) by the incitement to racial hatred provisions in the Public Order Bill should be abandoned. This would waken a dangerous sleeping dog. The Committee was frightened that this would reopen the vexed subject of whether BBC or ITV should be subject to the provisions against racial hatred.

Conclusions

We do not recommend you intervene. It is probably sensible not to anger the BBC unnecessarily but ultimately it must be the right and the courageous thing to do to remove from the BBC and ITV their curious immunity from prosecution for incitement to racial hatred, especially as Channel 4 is becoming less responsible.

HARTLEY BOOTH

PRIME MINISTER

'H' on Wednesday discussed three items:

1. A DOE proposal to develop a new scheme to offer financial incentives to council tenants encouraging them to move out and buy, with the aim of tackling the problem of homelessness and reducing calls on expensive B&B accommodation. 'H' thought the scheme's cost effectiveness was in doubt and its value as a measure to tackle homelessness uncertain. Further work is to be done on the possibilities of setting up a pilot scheme.

2. The Home Secretary's amendments and additions to the Public Order White Paper. Hartley Booth has summarised the key points in his note attached. 'H' decided to proceed with introducing legislation to exclude football hooligans from matches, though the Home Secretary will be considering further, (and then reporting to you) on whether the provisions should be brought into force before the football authorities have moved ahead with their (50 per cent) membership card proposals.

3. A proposal by the Home Secretary and Secretary of State for Social Services to amend the Infant Life (Preservation) Act 1929, to change from 28 to 24 weeks the length of pregnancy providing prima facie proof that a child is capable of being born alive. 'H' concluded that that was not a Bill the Government, on its own initiative, should offer to a Private Member successful in the ballot, unless the member concerned proposed in any case to introduce a Bill on this topic.

MARK ADDISON

25 October 1985

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

22 October 1985

Dear Willie,

PUBLIC ORDER BILL: INCITEMENT TO RACIAL HATRED

We are to discuss my Memorandum on the Public Order Bill (H(85)45) on 23 October. I am writing to seek the consent of colleagues to widening one of the proposals which is mentioned in the Annex to the Memorandum.

The proposal is the extension of the offence of incitement to racial hatred to cover broadcasting (paragraphs 8-10 of the Annex to H(85)45). On further examination we have concluded that it would be illogical to stop at broadcasting, and that the opportunity should be taken to extend the offence to cover media such as films, videos and sound recordings. Although the Cinemas Act 1985 provides for the licensing of cinemas, and the Video Recordings Act 1984 for the classification of videos, there is nothing to prevent the distribution of a racist video, or a racist film being shown at a private film show. There is no problem of which we are yet aware of racist films or videos or audio tapes, but since the other changes in the White Paper will make it more difficult to circulate written racist material, there is a danger that racist groups may resort to these other media to spread their message. Extending the incitement offence to film, video and sound recordings would block this potential loophole.

The offence of incitement to racial hatred already applies to the theatre (Theatres Act 1968) and cable television (Cable and Broadcasting Act 1984). There should be no difficulty of principle in extending it to other media; and all prosecutions would require the consent of the Director of Public Prosecutions. If colleagues accept the proposed extension, we would ensure that the offence applying to all media was drafted in the same terms: this would include extending to film etc the proposed new offence of possessing racially inflammatory material with a view to its publication or distribution.

I must apologise for consulting colleagues about this revision to our proposals at short notice. Before making any announcement I would want to consult the British Board of Film Classification (about film and video), and the BBC and the IBA (about the proposal to continue their exemption).

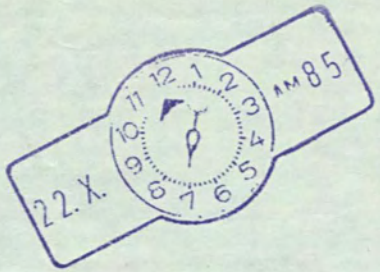
Copies of this letter go to the Prime Minister, Members of H Committee, Leon Brittan, Sir George Engle and Sir Robert Armstrong.

Yours ever,

Douglas.

The Rt Hon Viscount Whitelaw, CH, MC

CONFIDENTIAL


22.X.
AM 85

cc HMT

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

The Rt Hon Douglas Hurd MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
LONDON SW1H 9AT

16 October 1985

Dear Douglas

PUBLIC ORDER BILL

In your letter of 1 October to Willie Whitelaw you asked for any comments on the memorandum you attached to your letter by 15 October.

I note from paragraphs 23 and 24 of the memorandum that you have come down against extending to all minibuses the prohibitions on drunkenness and the carriage of alcohol which the Sporting Events (Control of Alcohol etc) Act imposed upon public service vehicles. I am afraid I cannot agree with you. I do not believe that it is fair or right for it to be a criminal offence for the licensed commercial coach or minibus operator to do something which can be done on other minibuses with total impunity. It will simply encourage football supporters to abandon licensed operators and find someone who is prepared to let them "use" a minibus. And whether or not such a vehicle ought to have the proper PSV licences, in practice it will not be identifiable as a public service vehicle. If our aim is to keep bus loads of drunken spectators away from football matches, then surely we should relate the offence to the size of the vehicle and not to the licence under which it is operated.

You say that bringing in private vehicles will be controversial. I do not think it will be more controversial than discriminating against legitimate licensed coach operators. Other provisions in the Sporting Events (Control of Alcohol etc) Act interfere with private rights, but we judged that the trouble caused by football hooliganism justified them. As for the difficulty of justifying a different treatment of minibuses from private cars, I do not think one can defend one dividing line by pointing out that another is not entirely logical.

I am copying this letter to the Prime Minister, members of H Committee, Richard Tracey, Sir George Engle and Sir Robert Armstrong.

NICHOLAS RIDLEY

Home Aff: Review Public Order

PGR

CONFIDENTIAL

CONFIDENTIAL

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the
Home Department
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

16 October 1985

Dear Home Secretary,

PUBLIC ORDER BILL

Thank you for sending me a copy of your letter of 1 October to Willie Whitelaw. I did not contact you earlier regarding your proposal for a new offence of 'disorderly conduct' as I was quite content with your announcing it at the Party Conference. Although there already exists an offence of disorderly behaviour in Northern Ireland, as with Section 5 of the Public Order Act 1936 it is linked to 'breach of the peace' and therefore inappropriate for dealing with the sort of situations you envisage. I therefore intend that something along parallel lines should be considered for Northern Ireland, including, as appropriate, your initiative on alternative verdicts.

Exclusion Orders/Football Issues

The scale of football attendance in Northern Ireland is very different from that in England and Wales, with gates rarely consisting of more than a couple of hundred spectators. Given that we do not have any of the resultant problems concerning crowd behaviour I do not envisage introducing legislation on exclusion orders or those issues you identified raised by Mr Justice Popplewell. Nevertheless I am still interested to see the final report of the latter.

Power to Ban a Single Match

Your decision not to proceed with the suggestion that there should be a power to ban selected processions does not cause me any difficulty. As you may recall, so far as Northern Ireland is concerned

CONFIDENTIAL

/I have

I have a power to ban all processions or open-air public meetings (or specified classes of processions or meetings) in a particular area; or to permit one to go ahead while banning all (or specified classes of) others. This seems to me to be a useful and flexible arrangement which would be particularly helpful if there was a need to deal with counter-demonstrations (whether static or taking the form of a procession) which could give rise to a risk of serious public disorder or otherwise justify the use of my power to make banning orders.

The RUC have recently been consulted and agree that the present arrangements should stand. However there is no reason why this particular aspect of public order law should be the same in both jurisdictions, there are, after all, many other differences and I see no difficulty in the fact that this difference will be perpetuated.

General

Having said that we have, as you will recall, been looking at one or two issues in the public order field (the law on the control of parades and marches; the law on incitement to hatred; and the provisions of the Flags and Emblems Act), and I will shortly be taking decisions about amending the Public Order (Northern Ireland) Order 1982. Any proposals I make on the control of parades and marches and on incitement will tend to bring the law here more into line with the proposals in the White Paper on Public Order Law, though there will continue to be a number of differences of detail. I am therefore pleased with the way your Public Order Bill is proceeding as it should strengthen my hand when I come to consider the amendment of the equivalent Northern Ireland legislation.

I am copying this letter to the recipients of yours.

Yours sincerely,

Jonathan Duke-Evans

T K

(Approved by the Secretary of State and signed in his absence)

Review of Public order:

Home Affairs A 2

CC HB

CONFIDENTIAL

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

16 October 1985

16/10

Dear Douglas,

PUBLIC ORDER BILL

I wrote to you on 7 October about your proposal to include in the Public Order Bill a new offence of disorderly behaviour; I am now able to let you have comments on the rest of your proposals.

Dick Tracey and I welcome what you suggest. We support the proposals for exclusion orders and welcome their application to offences related to football but committed elsewhere. This and the new disorderly behaviour offence should go a long way to fill a gap, or what is commonly seen by the public and media as a gap, between the apparent severity of outbreaks of violence and the number of arrests and convictions that follow them. It sometimes appears that the police are not able to find the appropriate charges for people involved in these incidents. The two proposals substantially enhance the Government's package of measures against football hooliganism,.

We feel that more offences may yet be needed to help the police catch as many football offenders as possible. As well as the Popplewell recommendations you are inclined to reflect, we understand Sir Oliver may also comment in his final report on an offence of encroachment on the pitch. We see potential attractions in this. However, whilst reserving our position on these other possible proposals, I am content to leave consideration of them until the report is to hand.

I am copying this letter to the Prime Minister, Willie Whitelaw, other members of H and, to Sir George Engle and Sir Robert Armstrong.

Yours ever

Kenneth

KENNETH BAKER

The Rt Hon Douglas Hurd MP

CONFIDENTIAL

HOME AFFAIRS
PUBLIC ORDER
PT 2

CONFIDENTIAL

CHB

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

7 October 1985

Dear Home Secretary,

Thank you for sending me a copy of your letter of 1 October to Willie Whitelaw asking for comments on your proposals for the Public Order Bill. I will give you general comments soon. But you sought views before the Conference on the particular proposal to create a new offence of disorderly conduct.

Dick Tracey and I strongly support you in making this announcement. Like you I think this would be a useful indication of our commitment to the maintenance of law and order. In the particular context of football, such an offence should be a potentially valuable weapon in deterring the sort of rowdy behaviour that often occurs before and after matches. I hope you will refer to this particular advantage when making the announcement; the proposal should represent a useful addition to the package of football measures.

For football in particular, I would make one comment on the proposal. We know that hooligans' football fines are usually paid by a "whip round" among friends and associates; there is even some positive gain in status from a fine and conviction. I wonder therefore whether it would not be a more effective deterrent to introduce the option of a short spell of imprisonment. I would be grateful if you would consider this possibility.

I am copying this letter to Lord Whitelaw and to the other recipients of your letter.

Yours sincerely,

pp KENNETH BAKER

(Approved in draft by the Secretary of State and signed in his absence)

The Rt Hon Douglas Hurd MP

CONFIDENTIAL

Home Affairs.
Public Order PL 2.

010

CC HB

CONFIDENTIAL

CABINET OFFICE,
WHITEHALL, LONDON SW1A 2AS

Chancellor of the Duchy of Lancaster

Tel: 233 3299
7471

3 October 1985

The Rt Hon Douglas Hurd MP
Secretary of State for the
Home Department
Queen Anne's Gate
LONDON
SW1H 9AT

W 4/10.

D Douglas.

Letter with TF?

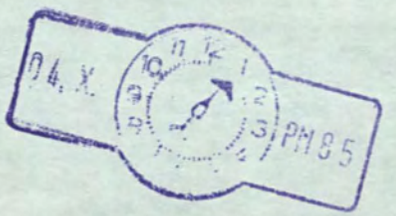
PUBLIC ORDER BILL

Thank you for copying to me your letter of 1 October to Willie Whitelaw.

I welcome the proposals as set out in your letter, and in particular as they relate to the creation of a new offence of disorderly conduct. I would welcome it if you were able to announce our intention in this respect at next week's party conference.

I am copying this letter to the Prime Minister, members of H Committee, Richard Tracey, and to Sir Robert Armstrong and Sir George Engle.

NORMAN TEBBIT


04. X.
PM 8 5

PRIME MINISTER

2 October 1985

THE PUBLIC ORDER BILL

We support the three amendments suggested by the Home Secretary. We have conducted some independent research which further supports the suggestion that Exclusion Orders should be included in the Bill.

You will recall the Policy Unit suggested early this year that Exclusion Orders were appropriate, and that they were used by German magistrates. We have now checked and find that, although German citizens all carry identity cards, there is no check on their identity as they enter football grounds; and therefore, despite the absence of an identity check, the Exclusion Orders there work satisfactorily.

We recommend that you take no action, and allow the proposal to include Exclusion Orders in the Public Order Bill to proceed.

Hartley Booth

HARTLEY BOOTH

CONFIDENTIAL

CCMO 4

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

Prime Minister:

1st October 1985

To note the final version of the Bill. Policy Unit (note attached) agree.

Dear Willie

PUBLIC ORDER BILL

The Public Order Bill which we hope to introduce in the new Session will 2/10 be largely based on the proposals published in a White Paper in May (Cmnd 9510), following our review of the law in Great Britain relating to public order. The White Paper has been given a broad general welcome by the police and other organisations concerned with law enforcement as well as by other commentators. However, proposals for public order legislation will always be controversial. Predictably the Labour Party and the civil liberties lobby have claimed that our proposals represent a significant shift in the balance between the powers of the police and the rights of the individual.

I have considered whether the White Paper proposals need amendment in the light of the comments received. For the most part I have concluded that they do not, but there are some particular matters on which I have reached conclusions which are different from the White Paper, or which the White Paper left subject to consultation. These are set out in the attached Memorandum. I also have some additional proposals to help in the control of football violence and hooliganism following the events at the end of last season. These are also set out in the Memorandum. I would particularly draw your attention and that of colleagues to my proposals for a new offence of disorderly conduct, and for giving the courts power, when convicting a person of a football related offence, to order him not to attend football matches for a specified period.

Power to ban a single match

First I should briefly deal with a departure from the White Paper, which proposed a new power to ban a single match. At present the police may apply for a ban only on all public processions or any class of public procession. On occasion this means that the innocent suffer with the guilty. However the police fear that any more selective power could jeopardise their political impartiality, and increase the pressures on them to ban marches by unpopular groups like the National Front. I believe it is important to avoid politicising the role of the police in this area, and I am satisfied that dropping this proposal would not prejudice their operational freedom of maneouvre. In order to ensure that innocent marches suffer as seldom as possible from blanket bans, I will continue the policy of scrutinising banning orders to see that they are as narrowly drawn as the circumstances will allow. This change will be strongly criticised by the Labour Party, but I believe it will save the police and ourselves trouble in the future.

Disorderly conduct

The White Paper put forward a proposal at paras 3.21-3.26 for a possible new offence of disorderly conduct to be included at the bottom end of the range of public order offences in England and Wales. This offence could be brought to bear on all public order situations, including football matches and picketing; its principle focus would be minor acts of hooliganism which do not warrant prosecutions for a more serious offence. It would be used to prosecute anti-

CONFIDENTIAL

The Rt Hon Viscount Whitelaw, CH., /cont ....

social behaviour which in Scotland is generally caught by the common law offence of breach of the peace. Examples are banging on doors, peering in at windows, knocking over dustbins, and other rowdy behaviour. Concern about this sort of conduct has frequently been expressed through the new police consultative machinery. It is especially important that the police should have adequate powers to deal with anti-social behaviour when it is directed at the more vulnerable members of the community, including the elderly and members of ethnic minority communities.

The White Paper proposal received a good deal of support. In particular all three of the police staff associations are strongly in favour, and have urged me to include a suitable provision in the new Bill. I have concluded that such an offence should be created, but I believe that it should be stronger in some respects than the offence set out in the White Paper. In particular I propose that there should be a power of arrest if the conduct is persisted in after a warning, and that the maximum penalty should be a fine of £400 rather than £100. It should also be made possible to obtain a conviction on police evidence alone, in order to overcome the difficulty that vulnerable complainants will not be willing to give evidence because of fear of reprisals. This is a point which the police themselves believe is very important.

The creation of an offence in the terms proposed amounts to a significant extension of the criminal law. There are bound to be some accusations that it constitutes a revival of 'sus'. But I believe that a new offence is justified and will receive wide public support, particularly in the urban areas where hooliganism of this kind is a significant social problem. It would be a further indication of our commitment to the maintenance of law and order.

Exclusion orders

Leon Brittan first broached the possibility of football exclusion orders at the Prime Minister's meeting with the football authorities on 30 July. The chances of detecting and convicting those who commit offences inside grounds have been significantly improved with the development of closed circuit television. But having identified offenders there is a need to prevent trouble by keeping known troublemakers out of grounds. That is the concept behind the proposals for membership card systems which we have urged on the football authorities. They have, however, been very resistant. At the meeting on 30 July Leon said that he was prepared to contemplate giving the courts power to order football offenders not to attend matches if the football authorities would do their part by introducing a membership card scheme. Exclusion orders would then buttress membership cards, and membership cards would provide a means of enforcing exclusion orders. The football authorities said that they would reconsider their attitude to membership cards in view of what Leon had said about exclusion orders. Having reconsidered the matter they now propose to introduce membership card systems covering normally at least 50% of each ground of clubs in the First and Second Divisions of the Football League. While this does not go as far as had been urged on them, it does at least represent a move away from their earlier position. I have therefore considered whether we should now seek to include an exclusion order-making power in the Public Order Bill.

I have consulted the police. They are in favour of exclusion orders, but not in favour of membership cards. They doubt whether a membership card system could work effectively on its own without substantial police involvement. (As you know they are very concerned at present at any attempts to put fresh responsibilities on them without fresh resources). In enforcing exclusion orders they would include in pre-match briefing details of persons ordered to be excluded, and officers at the gates would keep an eye open for them. Closed circuit television could be used to scan the crowd to see if an excluded person had gained admission. The introduction of a 50% membership card system would be

of some help to the police in limiting the areas of the ground where those subject to exclusion orders might get in.

Although 100% enforcement of exclusion orders cannot be guaranteed I believe that, with the action promised by the football authorities and police enforcement, it will be quite difficult for those subject to exclusion orders to gain entry to grounds and remain there without detection. Further action by the clubs in extending membership card systems would reduce the chances of evasion still further.

Accordingly, subject to colleagues' views, I propose that an exclusion order procedure should be included in the Bill on the lines set out in the attached Memorandum. The police and the football authorities are already in favour. I believe that the general public will welcome this further indication of our determination to deal with football troublemakers effectively. Our action on this should help to reassure countries in Europe, and the international football authorities, that we mean business in tackling football violence and hooliganism. Whether we should commit ourselves to bringing the provisions into force until the football authorities have carried their membership card proposals somewhat further is a matter which I would wish to consider further in consultation with the Prime Minister and Kenneth Baker.

I should be grateful for H Committee approval of the amendments and additions to the earlier White Paper proposals which I now put forward. I hope that this can be cleared in correspondence and I should be grateful for any comments by 15 October. I would, however, like to announce at the Party Conference our intention of seeking to create a new offence of disorderly conduct. I propose to do this in general terms without going into the details of the offence. If any of our colleagues see any objection to an announcement on these lines I should be glad to be informed as soon as possible, and in any event by next Monday, 7 October.

I am copying this letter to the Prime Minister, members of H Committee, Richard Tracey, Sir George Engle and Sir Robert Armstrong.

Yours,

Douglas.

MEMORANDUM BY THE HOME OFFICE

Amendments and additions to the legislative proposals contained in the White Paper "Review of Public Order Law" (Cmnd 9510)

Disorderly conduct

1. At paras 3.21-3.26 of the White Paper the Government put forward a proposal for a possible new offence of disorderly conduct, on which it particularly asked for comments. The need for a new offence follows in part from difficulties in using section 5 of the Public Order Act 1936 to deal with anti-social behaviour which is undoubtedly a public nuisance but which does not necessarily threaten a breach of the peace.

2. The White Paper proposed that the main elements of the new offence might be:-

(a) threatening, abusive, insulting or disorderly words or behaviour in or within view of a public place;

(b) which causes substantial alarm, harassment or distress.

It was proposed that no power of arrest should be attached. The maximum penalty would be a fine of £100.

3. In the light of comments received it is now proposed to make the following changes in the offence:-

(i) It was argued that because of the reluctance of victims to give evidence (especially the elderly and vulnerable whom the offence was designed to protect) it should not be a requirement that the conduct complained of actually caused alarm or distress. Accordingly it is proposed to extend the offence to cover conduct which is likely to cause alarm or distress or constitute harassment.

(ii) It was represented that the courts might find difficulty in deciding whether the alarm or distress in question was

"substantial". Accordingly it is proposed to delete this requirement, but to substitute the concept of unreasonableness in order to exclude trivial cases.

(iii) The reference to disorderly words was criticised as being difficult to interpret. Accordingly it is proposed to omit this, and to apply 'disorderly' solely to behaviour. Words which are threatening, abusive or insulting would still be caught by the offence.

(iv) It was argued that the police must have power to bring the conduct complained of to an end, and that the powers of arrest under the Police & Criminal Evidence Act did not cover all the situations in which this would be necessary. Accordingly it is proposed to create a power of arrest exercisable if the person concerned persists in disorderly conduct after being told by a police officer to stop.

(v) It is considered that a maximum fine of £100 (level 2 on the standard scale) may be insufficient to mark the gravity of some cases (for example on second conviction). It is proposed to set the maximum fine at £400 (level 3).

Alternative verdicts

4. The White Paper proposed that lesser public order offences should be available as alternative verdicts to any of the more serious charges (so that, for example, it should be possible on indictment for riot to convict instead of affray). The possibility of extending alternative verdicts to

the magistrates court received general approval on consultation. It is therefore proposed that the Public Order Bill should provide for alternative verdicts for the public order offences in the Crown Court, and that we should announce our intention to introduce in next session's Criminal Justice Bill a general provision for alternative verdicts in magistrates' courts. It would be inappropriate to introduce alternative verdicts on summary trial for the public order offences in advance of a more general scheme.

Power to ban a single march

5. The Public Order Act 1936 provides for the making of an order, in certain circumstances, banning "the holding of all public processions or of any class of public procession" in a district or any part of it. This power, which was used on 11 occasions in 1984, makes it possible to ban marches where serious public disorder is apprehended. However, it has been represented that broad bans catch the innocent as well as the guilty, and that therefore there should be power to make a more selective ban. The White Paper accordingly proposed that the law should be amended to allow a single march to be banned.

6. The police however have considerable reservations. The Metropolitan Police suggested that organisers could change their name to avoid a ban; and that the power might create in the eyes of the public a political perception of the police which was neither true nor desirable. The Association of Chief Police Officers also stressed how important it was that the impartiality of the police should be manifestly apparent in all matters connected with public order; bans directed at particular marches organised by political groups or other organisations would detract from this. Chief constables in the cities feared that the power would pose problems in practice, because of the eagerness of politically motivated councils to ban their opponents, and reluctance to ban marches by their supporters.

7. Accordingly it is not now proposed to make provision for the banning of a single march. However, as indicated in the White Paper, the Government will continue to ensure that orders are as narrowly framed as possible.

(In England & Wales, the Home Secretary's consent is required for all such orders.) In Scotland regional councils have power, under the Civic Government (Scotland) Act 1982, to ban single marches; it is not proposed to alter this.

Broadcasters' exemption

8. Under section 5A of the Public Order Act 1936 it is an offence for any person to publish or distribute written matter or to use in public words which are threatening, abusive or insulting in a case where hatred is likely to be stirred up against any racial group in Great Britain by the matter or words in question. This does not extend to broadcasting. The Select Committee on Home Affairs recommended in 1980 that this "exemption" should be ended. The White Paper concluded that this was not necessary because there was no evidence that the broadcasting authorities had ever broadcast material which was likely to incite racial hatred. The Cable and Broadcasting Act 1984 extended liability to cable operators unless they could show that it was not reasonably practicable to remove the offending words before distributing the programme.

9. A number of commentators on the White Paper were against the continuation of the broadcasting exemption. There is already a degree of inconsistency in maintaining the exemption while applying the incitement provision to cable. And recent developments in broadcasting (pirate stations such as Radio Enoch, and now the development of community radio) make an exemption for broadcasting based on publicly accountable broadcasting authorities more difficult to defend.

10. Accordingly it is now proposed to extend the incitement provisions to broadcasting, but to retain the exemption for broadcasts made by the BBC or IBA. (It may be necessary to re-consider this last point if significant opposition develops during the Parliamentary passage of the Bill.)

Other White Paper matters

11. The White Paper particularly asked for comment on three matters, two of which (the proposed offence of disorderly conduct and provision for alternative verdicts) have been discussed above. The third matter was the

possibility of introducing a power to enable a police authority to recover policing costs from the organisers through civil proceedings where conditions imposed by the police on a demonstration had been breached. This was discussed at paras 6.16-6.19 of the White Paper.

12. The comments received on this possibility were almost universally adverse. Most importantly the local authority associations who represent police authorities were strongly opposed. The most commonly expressed grounds of opposition are summarised in the submission from the Association of County Councils (representing 34 out of the 43 police authorities in England & Wales):-

> "The Association cannot see any legal powers vested in the organisers to control the conduct of the participants. A perfectly innocent march may be - and sometimes is - "hijacked" by individuals or groups who then misconduct themselves.
>
> The calculation of costs would give enormous problems. It would be feasible if the proposal were to bill all organisers for the actual costs, irrespective of conduct. The White Paper's suggestion is, however, either that misconduct would render the organisers liable for all costs, which is irrational, or that it would make them liable for the extra costs arising from the misconduct, which are incalculable.
>
> Implementation of any form of recovery of costs would inevitably result in processions being organised by men of straw. This would result in further police expenditure in seeking to recover costs before the impossibility was recognised. The problem could only be solved by requiring insurance or a bond, which would be unacceptable in principle and would cause further problems.
>
> The Association's view on the provision of powers to recover costs is therefore that its operation in practice would not be possible."

13. In the light of the strongly expressed opposition, particularly from those whom the proposal was intended to benefit, and in view of the practical difficulties identified, it is not proposed to pursue the possibility canvassed in the White Paper.

Football: exclusion orders

14. It is proposed to include in the Bill a power for a court, when convicting a person of a football-related offence, to issue an exclusion order banning him from attendance at football matches for a prescribed period. In more detail:-

(i) The order would extend to attendance at football matches at Football League grounds, Wembley stadium or non-League grounds when used for matches with league opposition.

(ii) The order could be made following conviction either for any offence committed inside or while seeking entry to one of the relevant grounds or for a football-related offence committed away from the stadium (eg on the way to the match).

(iii) Subject to a minimum of 3 months it would be left to the courts to specify the period of exclusion. The person concerned would however have a right to apply to a court to quash an order if he could satisfy the court that he had now mended his ways.

(iv) Copies of the order would be served on the person concerned, the police and the football authorities.

15. As to enforcement, it is proposed that the maximum penalty for entering a ground in breach of an order should be a fine at level 3 (at present £400) or one month's imprisonment or both. The court would also have power to make a fresh exclusion order. Under the Police and Criminal Evidence Act the police would have power to arrest a person in breach of an exclusion order if certain conditions are met, in particular if they cannot satisfactorily establish name and address or that arrest is necessary to prevent injury etc. This should suffice in most cases of a suspected breach of an order, but in order to ensure that they have adequate powers in all circumstances it is proposed to give the police statutory power to expel from a football ground any person whom they reasonably suspect to be present in breach of an order.

16. The immediate need is for an exclusion order procedure in respect of association football. But it is possible that the procedure could be needed in the future in respect of other sports. It is therefore proposed to take power to extend the procedure to other sports by order subject to affirmative resolution.

Football; possession of smoke bombs etc

17. In his interim report Mr Justice Popplewell recommended, inter alia, that consideration should be given to making it a criminal offence in England & Wales to have a smoke bomb or similar device at sports grounds. There is no good reason for taking such devices into grounds, and they are potentially harmful particularly if they induce panic. At the suggestion of the Home Office the Football League has already added fireworks, smoke canisters and other similar articles to the list of items which are not permitted in Football League grounds. But it can be argued that the risks, particularly of panic, are sufficiently great to justify making the possession of smoke bombs or fireworks a criminal offence. And under the Sporting Events (Control of Alcohol Etc) Act 1985, it is already an offence to be in possession of a bottle, can or other container which can be used as a missile at a designated sports ground. It is therefore proposed to implement this Popplewell recommendation by making it an offence to be in possession of smoke bombs, fireworks or other similar devices at sporting events designated by the Secretary of State under the 1985 Act (at present only association football matches). The offence would extend to the possession of such items while entering or attempting to enter as well as possession in the ground itself.

Football: missile throwing

18. Mr Justice Popplewell also recommended that there should be a specific offence in England & Wales of throwing a missile at sports grounds. The law relating to missile-throwing was reviewed in para 3.12 of the White Paper on Public Order Law. The Public Order Bill will include a provision which makes it clear that the offence under section 5 of the Public Order Act 1936 (threatening behaviour etc; the offence is to be redefined in the forthcoming Bill) can be deployed against missile throwers. This will clarify the law and close any gap in relation to the throwing of missiles. So far as football matches are concerned steps have already been taken to ban some items which can be used as missiles. This summer's alcohol legislation made it an offence to be in possession of bottles, cans and other drink containers which, if thrown, are capable of causing injury. And it is proposed (above) to make it an offence to be in possession of smoke bombs, fireworks and other similar devices.

19. In these circumstances it is not proposed that the Public Order Bill should seek to make it an offence to throw a missile at sports grounds as Mr Justice Popplewell recommends.

Popplewell: provisional recommendations

20. In his interim report Mr Justice Popplewell also made some provisional recommendations which he proposes to return to in his final report (due in December). Among these there are three possible candidates for inclusion in the Public Order Bill, concerning police powers of search, police powers of arrest, and racial or obscene chanting. It is not proposed that any of these should be included in the Public Order Bill as introduced, but it may be necessary to re-consider the position on receipt of Mr Justice Popplewell's final report, against the possibility of tabling amendments to the Bill during its later stages.

Sporting Events (Control of Alcohol Etc) Act 1985

21. Occasional licences Inter alia, this Act controls the sale of alcohol inside grounds. Some clubs have attempted to get round the Act by applying for occasional licences, which are not disapplied by the Act. It is proposed to include a provision in the Public Order Bill which would close this loophole by, in effect, disapplying occasional licences where they have been granted for the sale of alcohol inside grounds in circumstances which come within the scope of the Sporting Events (Control of Alcohol Etc) Act. It is also proposed to take the opportunity to rectify one small drafting error.

22. Private boxes During the Parliamentary passage of the Act Ministers also undertook to monitor its effect on the revenue which clubs derive from private boxes and restaurants. No information is yet available on this, but it may be necessary in due course to consider the possibility of tabling an amendment to the alcohol legislation during the later stages of the Public Order Bill.

23. Minibuses Also during the passage of the alcohol legislation Ministers undertook to consider, with a view to possible amendment in the

public order legislation, whether the controls on alcohol on vehicles travelling to matches might be extended. The point particularly arose in relation to minibuses. Following the Scottish precedent in the Criminal Justice (Scotland) Act 1980 the 1985 Sporting Events Act makes it an offence to be drunk or in possession of alcohol on any public service vehicle which is being used for the principal purpose of carrying passengers to or from a designated sporting event. The definition of public service vehicle covers vehicles adapted to carry 8 passengers or more which are carrying passengers for hire or reward. This catches some minibuses, but others will not be caught. In particular it is necessary to prove that passengers have been charged and that will be difficult at the roadside; in practice therefore only vehicles run under licences or permits, with discs on their windscreens are likely to be caught.

24. There is no doubt that minibuses are used to carry football supporters to football matches, and that alcohol is sometimes carried and consumed on such vehicles so that the fans arrive drunk or "tanked up". It seems desirable in principle (as the Bus and Coach Industry have urged) that all minibuses used for this purpose should be brought within the scope of the controls in the 1985 Act. But in order to cover all minibuses it would be necessary to bring in private vehicles and this would be controversial, particularly since stop and search powers would be attracted. Moreover, if private vehicles were brought in it would be difficult to justify drawing the line at vehicles adapted to carry eight passengers or more. The controls in the 1985 Act have only been in operation for 7 weeks and on balance it is not proposed to include an amendment on this point in the Public Order Bill. The position will however be kept under review against the possibility of legislating at a future opportunity.

Summary

25. It is proposed that, in addition to the proposals in the White Paper, the Public Order Bill as introduced should include clauses:-

(i) to create a new offence of disorderly conduct (paras 1-3 above);

(ii) to provide for alternative verdicts for the public order offences in the Crown Court, but not at this stage in the magistrates' court (para 4);

(iii) to create a new offence of incitement to racial hatred in a broadcast, but with an exemption for any material included in a broadcast made by the BBC or IBA (paras 8-10);

(iv) to make provision for football exclusion orders (paras 14-16);

(v) to make it an offence to be in possession of a smoke bomb, firework or other similar device at a designated sporting event (para 17), and;

(vi) to close the loophole in the Sporting Events (Control of Alcohol Etc) Act 1985 relating to occasional licences, and to deal with a small drafting error (para 21)

It is <u>not</u> proposed to include provisions:-

(a) to confer power to ban a single march (paras 5-7);

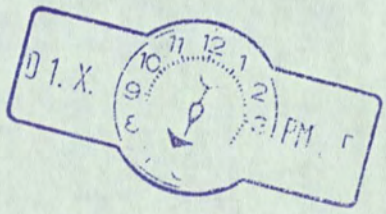
(b) to enable a police authority to recover policing costs from the organisers through civil proceedings where conditions imposed by the police on a demonstration have been breached (paras 11-13);

(c) to make it an offence to throw a missile at a sports ground (paras 18-19);

(d) to implement provisional recommendations in Mr Justice Popplewell's interim report (para 20), and;

(e) to extend the definition of "public service vehicle" in the Sporting Events (Control of Alcohol Etc) Act 1985 so as to cover minibuses more widely (paras 23-24).

30 September 1985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PM

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

15th May 1985

Dear Mr Flesher

The Home Secretary thought that the Prime Minister and Cabinet colleagues would like to have the enclosed copy of the White Paper on Review of Public Order Law which is to be published ~~this~~ tomorrow afternoon.

Copies of this letter go to the Private Secretaries of Cabinet Members, the Attorney General, the Chief Whip and Sir Robert Armstrong.

Sue Rex.

SUSAN REX

Tim Flesher Esq

PUBLIC ORDER WHITE PAPER
STATEMENT ON PUBLICATION
NOTES FOR SUPPLEMENTARIES

MARCHES AND PROCESSIONS: ADVANCE NOTICE

1. Why is there to be a national requirement of advance notice?

The Select Committee recommended a requirement of advance notice, as did Lord Scarman in his report on the Brixton riots. An advance notice requirement currently exists in Scotland and in 92 local authority areas in England and Wales, and works well. The Government is merely proposing an extension of these arrangements to the rest of the country. Most responsible organisers of marches already give advance notice to the police: the statutory requirement will simply formalise that practice.

2. Why is the minimum period of advance notice seven days?

The period must be sufficient for the police to conduct any necessary discussions with the organisers, and to make their own preparations. It is clearly desirable for organisers to get in touch with the police before distributing publicity about the route for their march. Seven days is the statutory period of notice in Scotland: the Government proposes to adopt the same period for England and Wales.

3. What about emergency events?

The seven day advance notice requirement can be waived for marches called at short notice for good reason, for example, in response to an assassination or the invasion of a foreign country.

4. Will advance notice be required for all processions?

No. In order to save the police and the organisers from unnecessary notifications there will be a general exemption for processions of a religious, educational or ceremonial character customarily held in an area - such as Lord Mayors' shows or May Day parades.

MARCHES AND PROCESSIONS: NEW POWERS TO IMPOSE CONDITIONS

5. Why do the police need new powers to impose conditions on marches and processions?

The new powers will not enable the police to ban a march, but merely add to their existing power to impose conditions, for example about a march's route, or its numbers. At present the police can only impose conditions if they apprehend serious public disorder. The Government propose to widen this power by the addition of two new tests.

The first new test, of serious disruption to the local community, was proposed by the Home Affairs Committee. Their report vividly described the degree of disruption which can be caused by a procession of even average size: where the disruption threatens to be serious, it is right that the police should have the power to re-route a procession to reduce the dislocation caused to the wider community. The White Paper gives examples of circumstances in which the new power might be used, to divert marches from Oxford Street or busy city centres in the rush hour.

The second new test, to prevent the coercion of individuals, is a libertarian safeguard designed to prevent demonstrations being used as a means of intimidation. It might be used to divert a National Front march from an

ethnic minority area, or to limit the numbers of people marching to demonstrate outside someone's private house, to protect him and his family from intimidation.

MARCHES AND PROCESSIONS: POWER TO BAN

6. Will these new powers extend the power to ban marches?

No. The sole ground which will justify the police in applying for a ban will continue to be the unavoidable risk of serious public disorder.

7. Should there be a power to ban on other grounds, such as incitement to racial hatred?

It is one thing for the police to bring a prosecution for incitement to racial hatred in respect of words which have already been uttered and whose effect can be considered by the DPP; it is quite another to ask the police to judge in advance whether a particular march is likely to incite racial hatred. There might be demands that some groups be prohibited from all public processions, making them martyrs for free speech: the police would be drawn uncomfortably into the political arena. In practice those marches which threaten to intimidate ethnic minorities will be subject to controls: they can be banned if they threaten serious public disorder, and they can be re-routed if they are likely to result in coercion or intimidation.

8. Will there be any changes in the procedure for banning marches eg in the role of local councils?

No. The existing procedure works well. Outside London the police apply to the district or borough council for a ban, subject to the consent of the Home Secretary. This gives

fair representation to all interested parties: local councils contribute local knowledge, and the Home Secretary provides the necessary element of political accountability.

9. Why is there no role for local councils in banning marches in London?

Local councils have never had a power to ban processions in London. The Metropolitan Police Act 1839 conferred power to regulate power to regulate processions in London on the police. Under the Public Order Act 1936 the Metropolitan Police Commissioner can ban processions subject to the consent of the Home Secretary. That procedure has worked well: where necessary London borough councils have made their views known to the police or the Home Office about the threat to public order posed by a particular march.

STATIC DEMONSTRATIONS AND ASSEMBLIES

10. Why is there no requirement of advance notice similar to that proposed for marches?

There is no legal definition of a static demonstration: an assembly covers the whole range of public gatherings, from political rallies to religious services and pop festivals to football matches. It has not proved possible to devise a definition restricted to those events which might be of interest to the police. An advance notice requirement would therefore inundate them with notifications of perfectly peaceful meetings.

11. Why do the police need new powers over static demonstrations and assemblies?

Meetings and assemblies can just as frequently be the occasion of disorder as marches and processions. The disorder at Southall which led to the inception of the

public order review was caused by a static demonstration outside an election meeting; and many recent public order problems have been associated with static demonstrations - at Greenham Common, Warrington, the Stop the City campaigns, and the picketing during the miners' dispute.

12. What new powers are proposed?

Assemblies and meetings are so fundamental to free speech that the Government believes it would be wrong for there to be any power to ban them. But the police will be given power to impose conditions on an assembly in the open air if they believe that it threatens to result in serious public disorder, serious disruption to the community or the coercion of individuals (the same three tests as for marches: see question 5).

13. How will the police be able to impose conditions on static demonstrations without a requirement of advance notice?

In practice the police already know in advance about most large assemblies which are likely to pose public order problems. They are able to impose conditions on marches at present without a statutory requirement of advance notice.

14. How will this affect demonstrations outside embassies, such as South Africa House?

The police have a special duty under the Diplomatic Privileges Act 1964 (which gives effect to the UK's obligations under the Vienna Convention) to protect diplomatic premises and to preserve their peace and dignity. When last year the police sought to move demonstrators further away from South Africa House before President Botha's visit, certain of the demonstrators defied police instructions and were charged with obstruction. They were subsequently acquitted by the Chief Metropolitan

Magistrate because he found that the demonstrators' actions did not disturb the peace and dignity of the South African Embassy. This illustrates the desirability of making police decisions to impose conditions on demonstrators subject to challenge in the courts, as the Government proposes. The right to demonstrate peacefully outside embassies will not be affected by the White Paper proposals: the police will only have power to impose conditions on demonstrations which threaten serious disorder, disruption or coercion. Police conditions which are not justified by one of these specific threats can be challenged in the courts.

15. What difference would the new powers have made to the incident outside the Libyan Embassy?

None. The demonstration was peaceful, and the demonstrators were kept by the police behind crush barriers on the opposite side of the road from the embassy. The violence which occurred was caused not by the demonstrators but by those inside the Libyan People's Bureau. Measures to try to control abuse of diplomatic privilege in relation to the possession of firearms and unacceptable behaviour by diplomats were announced in the Government's reply to the report of the Foreign Affairs Committee on the Abuse of Diplomatic Privileges and Immunities (Cmnd 9497).

PICKETING

16. Will the new powers extend to pickets?

Yes. In the light of the disorder outside Grunwick's, at Warrington and during the miners' dispute there can be no possible justification for exempting pickets from the new controls on static demonstrations.

17. Could there not be an exemption for peaceful picketing?

In practice there will be. The right peacefully to picket will not in any way be infringed. Pickets whose purpose is peacefully to persuade will not have anything to fear from the new controls because their behaviour will not breach any of the three tests, that is, risk of serious public disorder, serious disruption to the community or the coercion of individuals. Where the behaviour of pickets does breach any of these three tests the police will have power to impose conditions about their numbers and location, but there will be no power to ban pickets.

18. Why not make mass or secondary picketing a criminal offence?

Because of the difficulties of enforcement. The police cannot be expected to know which pickets are employed at a particular workplace and which come from elsewhere: the police are concerned only that pickets (secondary or otherwise) should be peaceful, should not obstruct the highway and should not commit offences such as criminal damage, assault or intimidation.

The suggestion that picketing in excess of six should be made a criminal offence would be unenforceable. When the police are faced with very large numbers of pickets their main concern is to preserve order: if they were expected to arrest most of the pickets the risk of disorder would be greatly increased. The police feel that the existing law, together with the new measures proposed in the White Paper, will give them all the powers which will be of practical use to them.

19. Has picketing in numbers greater than six not been declared illegal by the High Court?

In the case of Thomas and Others v NUM Mr Justice Scott said "Paragraph 31 /of the Code of Practice on Picketing/ does not make it a criminal offence or tortious to have more than six persons on a picket line. Nor is less than six any guarantee of lawfulness. The paragraph simply provides a guide as to a sensible number for a picket line in order that the weight of numbers should not intimidate those who wish to go to work." In the circumstances of that particular case the judge felt that six was a reasonable limit: but how many pickets might be lawful will depend on their behaviour and the circumstances of each individual case. In the circumstances of Piddington v Bates (1960), a small printing works with only eight employees working, the Divisional Court upheld a limit of two pickets per entrance.

20. If enforcement is so difficult, how will the police enforce their new powers to impose conditions on pickets?

The powers are discretionary, and - as with their existing Public Order Act powers - the police are unlikely to seek to impose conditions unless they are reasonably confident that they can be enforced.

21. What efforts has the Government made to learn the lessons of the miners' dispute?

Chief officers of police are reviewing police operations during the miners' strike both individually and collectively through the Association of Chief Police Officers. These reviews will be completed as soon as possible, and my Department is keeping in close touch with their progress. I have naturally taken into account the experience of the dispute in the review.

22. Which of the proposals in the White Paper stem directly from the experience of the miners' dispute?

The proposals are based on a wide range of recent disorders: the review has run for six years and is not simply a response to the miners' dispute. Two measures may however help the police to deal more effectively with intimidation: the power to impose conditions on demonstrations (including pickets) in order to prevent the coercion of individuals; and the proposal to strengthen section 7 of the Conspiracy and Protection of Property Act (which makes intimidation a criminal offence) by making it arrestable and increasing its penalty.

FOOTBALL HOOLIGANISM

23. How will these proposals affect football hooliganism?

The power to impose conditions on assemblies in the open air will apply to football crowds. If the police apprehend serious public disorder in connection with a match they can if necessary impose conditions limiting the numbers of spectators. This will give clubs an incentive to control their supporters in order not to reduce the gate.

24. What is the Government's general approach to football hooliganism?

Football hooliganism needs to be tackled both by the football authorities and by the police and the courts. The Prime Minister held a meeting with the football authorities on 1 April. It was clear from the meeting that the football authorities share the Government's commitment vigorously to combat violence at football matches. They agreed to take a

number of steps, including a re-examination of FA rules, the acceleration of the introduction of CCTV and the investigation of a practical scheme of membership cards. For its part the Government will support the football authorities, in particular by introducing legislation to ban the sale of alcohol at, or on the way to, grounds, extending designation under the Safety of Sports Grounds Act, encouraging magistrates to make full use of their powers and discussing with the police what further changes are required.

25. What is the Government doing about the sale of alcohol to football supporters?

We have announced our intention of introducing legislation in England and Wales along similar lines to that in Scotland where the Criminal Justice (Scotland) Act 1980 created a number of new offences relating to alcohol at designated sports grounds. In particular it made it an offence to be drunk or in possession of alcohol on entry to, or while in the relevant area of a designated sports ground. Other offences covered the possession of alcohol on football coaches and the possession of containers which might be used as missiles. There is strong anecdotal evidence of the success of this legislation in Scotland.

26. Should there be a new offence of criminal trespass on a sports ground, as recommended by the President of the Justices' Clerks' Society?

Serious forms of pitch invasion are already covered by the general criminal law (criminal damage, assault, threatening behaviour). Where large numbers invade the pitch simply to congratulate players, the police would be unable to arrest them all and the offence would be unenforceable: but one of

the themes of the White Paper is that police should only be given powers which are of practical use. It would also be difficult to restrict an offence of encroachment simply to football grounds. The Government believes that the solution lies in improvements to perimeter fencing, subject of course to considerations of crowd safety which are to be examined in the Popplewell Inquiry following the Bradford fire.

POLICE POWERS

27. Why does the Government not seek to control the police's wide-ranging new powers to stop and turn back innocent people?

The power derives from the police's long-established common law power to take any action which is reasonbly necessary to prevent or control breaches of the peace. These powers include limiting the numbers of people if that is necessary to prevent disorder. The exercise of these powers by the Nottinghamshire Police during the miners' dispute was upheld by the Divisional Court last November in the case of Moss and Others v McLachlan. The court held that the police were justified in halting a convoy of pickets to enquire into their purpose, and if the police reasonbly believed that the pickets threatened a real risk of a breach of the peace, then it was their duty to prevent the convoy from proceeding.

/If questioned about the Dartford Tunnel:
I understand that an injunction was sought to prohibit the police action in turning back pickets at the Dartford Tunnel, but was not granted. The Divisional Court held in Moss v McLachlan that the police must reasonably believe that there was a risk of a breach of the peace which was in close proximity both in place and time./

28. Do we need a new Riot Act?

The Riot Act 1714 made it an offence for a group of rioters, at least 12 in number, who had been ordered by proclamation to disperse, to remain together for an hour or more after hearing the proclamation. It was repealed as obsolete in 1967. Calls for its revival are similar to the recent proposal by the President of the Justices' Clerks' Society that there should be a new offence of summary riot, ie that the police should have statutory power to order disorderly crowds to disperse; and that failure to disperse should be a summary offence.

The police already have power at common law to disperse an assembly in order to prevent or deal with a breach of the peace. Lord Scarman in his Brixton report recommended that no new powers were necessary. The Government agrees. The police have not reported any difficulty in using their common law powers when necessary, whether to disperse crowds outside pubs after closing time, unruly fans outside football grounds, or dispersals using shields and batons during a riot. Those who fail to disperse are obstructing the police in the execution of their duty.

PUBLIC ORDER OFFENCES

29. Will the new statutory offence of riot not be impossible to prove?

The Government recognises that the Law Commission's proposed statutory definition is more restrictive than the present common law offence, by increasing the minimum number

required for riot from three to 12, and introducing the requirement that each defendant must be shown to have used unlawful violence (to people or property). As a result riot may be less commonly charged than it is now. But if these elements are abolished, together with a requirement of common purpose, the offence of riot would become indistinguishable from the new statutory offence of violent disorder. That will be the successor offence to some cases currently charged as riot, and carry a maximum of five years' imprisonment: riot would in future be reserved for very grave offences against public order, involving large numbers.

30. Does the proposal to make affray and violent disorder triable either way not detract from the seriousness of these offences?

Other offences carrying higher maximum penalties (theft, burglary) are triable either way. No case can be tried in the magistrates' court except with the consent of the prosecution and defendant. Most cases will probably continue to be tried in the Crown Court; but it would enable less serious cases to be tried more speedily and economically.

31. Why is there a need for a new offence of disorderly conduct?

Concern over hooliganism of various kinds has frequently been expressed at meetings held under the new police consultative machinery, especially when it is directed at vulnerable people such as the elderly. Disorderly conduct of this kind may not be caught by section 5 of the Public Order Act because it may not constitute threatening, abusive

or insulting behaviour; or because it may not be likely to occasion a breach of the peace. The Government recognises the difficulty of creating an offence of wider scope which nevertheless conforms with the precise definitions of the criminal law. For this reason we have specifically invited comments on whether a new offence of this kind is needed, and if so how it should be defined.

32. Why is there a need to strengthen the offence of incitement to racial hatred?

The offence will be strengthened by:

(a) extending it to conduct which is likely or intended to stir up racial hatred. This is necessary to catch material which is circulated to groups of people (such as clergymen or MPs) who are unlikely themselves to be incited to racial hatred.

(b) making it an offence to possess racially inflammatory material with a view to distribution or publication. This is being introduced because of the difficulty of bringing prosecutions against those who produce or supply racially inflammatory material unless a specific instance of distribution can be proved against them.

(c) by removing the exemption for material circulated to members of an association. This provision was intended to protect freedom of expression within a group, but it is possible that those who already hold racist views may be incited or incited further to racial hatred, and the Government does not believe that material circulated privately should be exempt from prosecution.

33. Why not make demonstrators pay their policing costs?

The White Paper makes clear the Government's sympathy with the proposal that demonstrators should meet all or some of the costs of policing their own demonstrations. But there are formidable practical difficulties. It would be difficult to distinguish those public order events which should properly be the subject of charges and those which should not [examples: Pope's visit; Falklands peace march; Falklands victory parade]. And where more than one organisation was involved it would be difficult to apportion the costs between them, difficult to ensure that the organisations paid the costs assigned to them, and difficult to identify which individuals in an unincorporated organisation should be made responsible for payment.

But the Government does believe that there is a real difference between a demonstration which passes off peacefully and one which burdens the police with extra costs because of organised disorder. The White Paper therefore offers the suggestion that where conditions imposed by the police on a demonstration have been breached the police authority should be able to recover policing costs from the organisers through civil proceedings. The Government would welcome comments on this suggestion.

PUBLIC ORDER EQUIPMENT

34. Why not equip the police with water cannon?

Water cannon are used by some countries for public order purposes, but in the only part of the United Kingdom where they have been used - Northern Ireland - they did not prove particularly effective. Their main disadvantage is their

limited capacity and lack of manoeuvreability. Nevertheless since the 1981 riots we have kept an open mind about possible new methods of controlling rioting, and to this end two prototype water cannon have been manufactured in this country, and are currently being evaluated. Should water cannon ever be authorised by the Home Office the decision whether or not to acquire them would be a matter for each chief officer of police and his police authority.

35. What are the rules governing the use of CS and plastic baton rounds?

Home Office guidelines stipulate that baton rounds are to be used only with the express authority of the chief officer of police or his deputy, under the direction of a senior officer and by policemen trained in their use. They are to be used only as a last resort where conventional methods of policing have been tried and failed, and where the chief officer judges such action to be necessary because of the risk of loss of life or serious injury or widespread destruction of property. Wherever possible a warning must be given.

Similar guidelines govern the use of CS smoke for crowd control. Baton rounds have never been used on the mainland in Great Britain, and CS only once, in Toxteth in 1981. The Government fully shares the view of the police that wherever possible public order events should continue to be policed in the traditional way by officers in ordinary uniform deployed alongside the crowd. Neither the Government nor the police wish to see or encourage the use of more aggressive equipment; but after the 1981 riots the Government felt it would be irresponsible to deny the police access to such equipment in circumstances of last resort.

GENERAL

36. Will there be a debate on the White Paper?

This is entirely a matter for my rt hon Friend, the Leader of the House.

37. When will legislation be brought forward?

The Government intends to bring forward proposals at the first legislative opportunity.

38. Do the proposals conform with the requirements of the European Convention on Human Rights?

The Government has taken full account during this review of our obligations as a signatory both to the European Convention, and to the UN's International Covenant on Civil and Political Rights.

SPEAKING NOTE

What difference will the White Paper proposals make to the powers of the police on the picket line?

The police already have extensive common law powers to control action by pickets which threatens to result in a breach of the peace or obstruction of the highway, but these are to be found in a number of court decisions and may not be sufficiently well known or understood by pickets. The police's new powers to impose conditions will be clearly defined in statute and should be better understood.

The police's common law powers can be exercised only on the spot. Under the White Paper proposals the police will have power to impose conditions in advance if they apprehend that pickets will cause serious disorder, disruption or coercion. This will encourage the police and picket organisers in difficult situations to agree the ground rules in advance.

The power to impose conditions in order to prevent coercion goes wider than the existing power to prevent a breach of the peace. During the miners' dispute certain police forces (eg Kent) felt that they had no power to control pickets - often numbering 40 or 50 - who assembled outside working miners' homes. The new power would enable the police to reduce the numbers of pickets which threatened to be intimidatory, or to move them away from directly outside someone's house. Pickets who fail to comply with police directions would be guilty of an offence and liable to arrest.

The new power of arrest and increased penalty for section 7 of the Conspiracy and Protection of Property Act 1875 will also help the police and the courts to deal more effectively with intimidatory picketing.

BACKGROUND NOTE: NEW POLICE POWERS IN RELATION TO PICKETING

Existing police powers

Police powers over pickets derive mainly from their duty to prevent breaches of the peace and obstruction of the highway. To this end they may control numbers of pickets (Piddington v Bates (1960)); their location (Tynan v Balmer (1967)); and may form a cordon to keep the pickets away from vehicles coming to the premises (Kavanagh v Hiscock (1974)). Pickets have no legal right to make people or vehicles stop (Broome v DPP (1974)): they may only peacefully seek to persuade a person to stop.

New police powers

The main differences are outlined in the speaking note.

The new statutory power to impose conditions will not add significantly to police powers on the spot, save that police may impose conditions as to duration if that is necessary to prevent serious disorder, disruption or coercion. This could amount to an (immediate or delayed) power to disperse: it is not likely to be a power the police would resort to frequently.

The police are concerned only with the preservation of order and breaches of the criminal law. They have no responsibility for enforcing the civil law. However the judgement in Thomas and Others v NUM does contain possible guidance for the police on the criminal law: especially the statement that mass picketing, defined as picketing by sheer weight of numbers to prevent entry, is clearly both common law nuisance and an offence under section 7. The judgement also said that the picketing in South Wales, where between

50 and 70 pickets hurled abuse from the side of the road, was in the circumstances highly intimidatory and a breach of section 7.

A summary of the Thomas judgement is attached.

53

From: Robert Hazell, F8 Division, 25 February 1985

cc Mr Sibson
Mr Webber*
Mr Partridge
Mr Hilary*
Mr Hammond*
Mrs Evans*
Mr Belfall*
Miss Smith*
Mr R Harris
Mr Ashken, DPP*
Mr Wilson, DE
Mr Galloway, NRC*

* with copies of transcript

Mr Taylor

JUDGEMENT IN THE SOUTH WALES PICKETING CASE

1. We have now obtained a transcript of Mr Justice Scott's judgement, of which a copy is attached.

Summary

2. The judgement is fairly long. The following is a guide to the main elements:-

p3 The plaintiffs sought three injunctions:-

(a) to restrain the organisation by the South Wales Union of unlawful picketing or demonstrations at the colliery gates;

(b) to restrain the South Wales Union from organising or funding secondary picketing;

(c) to restrain the Union from using its funds to meet the expenses of unlawful picketing, and to pay the legal expenses and fines of pickets who fell foul of the law.

pp6 - 22 The affidavit evidence in relation to the picketing at each of the five collieries is reviewed, including the picketing at two of the plaintiffs' homes.

pp24 - 25 The judge concludes that the picketing described is intimidatory.

pp27 - 35 The plaintiffs' argument that the picketing is tortious because it was in breach of section 7 of the Conspiracy and Protection of Property Act 1875 is considered and rejected.

pp35 - 36 The six pickets at the gate might claim immunity in tort under section 15 of the Trade Union and Labour Relations Act 1974 (as amended), but the others could not do so; their numbers indicated that their purpose was not to communicate information or peacefully to persuade.

pp37 - 41 The judge rejects a number of possible torts advanced by the plaintiffs as possible causes of action: assault, obstruction of the highway, unlawful interference with contracts. He eventually settles on unreasonable interference with the rights of others (40G - 41F).

p42 Picketing or demonstrations per se are not tortious, but only if they constitute unreasonable harassment.

p43 Regular picketing at someone's home, regardless of the pickets' numbers and peaceful conduct, is per se common law nuisance.

pp44 - 48 There was no evidence of organisation of the picketing by the NUM or its National Co-ordinating Committee. The picketing was organised by the colliery Lodges, for which the South Wales Union was responsible on ordinary principles of vicarious liability.

pp49 - 50 On a balance of convenience the plaintiffs needed the protection of injunctions.

pp51 - 54 The injunction to be enforceable must be specific. The South Wales Union is restricted from organising picketing or demonstrations at colliery gates by numbers in excess of six. No distinction can be drawn between pickets at the colliery gates and demonstrators standing nearby.

p56 The South Wales Union must give clear instructions to the Lodges not to organise pickets in excess of six, and to instruct the pickets against using threats or abusive or intimidatory language.

If, notwithstanding the best efforts of the South Wales Union and the Lodges, unreasonable harassment continues, the plaintiffs could apply for an extended injunction.

p57 Three injunctions are granted restraining the organising of picketing at a training college attended by one of the plaintiffs, and outside two of the other plaintiffs' homes.

p61 In the absence of evidence, the judge declines to grant an injunction to control the picketing at the other South Wales collieries.

pp62 - 64 He also declines to grant an injunction to control secondary picketing, which is not necessarily ultra vires the South Wales Union: although tortious secondary picketing is not criminal.

p66 The South Wales resolution that any fines would be paid by the NUM is declared invalid, and an injunction granted restraining the Union from making any payment under it. But the Union may have power to pay fines in individual cases.

pp68 - 70 Injunctions against the NUM and National Co-ordinating Committee prohibiting the continuing to induce or encourage ultra vires secondary picketing are refused: because the secondary picketing was not ultra vires, and because the NUM could claim immunity under section 13 of TULRA 1974 (acts done in furtherance of a trade dispute).

p74 The injunctions granted are listed.

The basis of the judgement

3. This is to be found at pp40G - 41F. "The law has long recognised that unreasonable interference with the rights of others is actionable in tort . . . The tort might be described as a species of private nuisance, namely unreasonable interference with the victim's rights to use the highway. But the label for the tort does not, in my view, matter."

Section 7 of the Conspiracy and Protection of Property Act 1875

4. The judge followed Ward, Lock and Co v Operative Printers' Assistants' Society (1906) in holding that conduct must be tortious in order to be an offence under section 7 (35A following the dicta at 33F and 35A). Whether mass picketing was per se criminal under section 7 was considered in the context of deciding whether the picketing organised in South Wales was ultra vires the rules of the South Wales Union. The judge held that it would be ultra vires for a union or company deliberately to embark on a series of criminal acts, but not acts which merely carried the risk that torts might be committed (59 - 60). Secondary picketing was not in his view per se a common law nuisance and would not necessarily constitute an offence under section 7 (63D); but mass picketing, defined as picketing by sheer weight of numbers to prevent entry, was clearly both common law nuisance and an offence under section 7 (63F). Had there been evidence that the South Wales Union had been persistently organising mass secondary picketing, the judge would have granted an injunction to restrain the Union from ultra vires conduct.

Nature of the picketing in South Wales

5. There was no evidence that the picketing in South Wales was mass picketing intended to obstruct entry. At each pit there would typically be on average between 50 and 70 pickets, with six men allowed by the police to stand at the colliery gate, and the rest placed back from the road to allow vehicles to pass. The judge held that in view of their numbers, the abuse they hurled, and the background of community tension, picketing of this kind was highly intimidatory (25D). He also said that this kind of picketing represented offences under section 7 (60G).

Possible appeal

6. When the NUM offered no defence on 12 February to the applications for similar injunctions by the Yorkshire miners we understood that it was because they intended to go straight to the Court of Appeal, and to ask for an expedited hearing. No notice of appeal has been served, and it now seems quite likely that the defendants will not appeal. This would leave the law in a rather uncertain state, with this major new tort depending on a judgement at first instance.

Implications for the police

7. The police are not responsible for enforcing the judgements of the civil courts. Any enforcement action will have to be brought by the plaintiffs in contempt proceedings against the defendants, the South Wales Union, with the usual penalties of sequestration etc if they fail to comply. However it will be difficult for the police to stand entirely aloof from the judgement, for the following reasons:

(a) the judge declared that picketing of the kind described in paragraph 4 above with a crowd of 50 - 70 shouting threats and abuse, was not merely tortious but criminal. Picketing of this kind has been tolerated by the police at many pits during the present dispute;

(b) if the unlawful picketing continues without union organisation and the plaintiffs apply for an extended injunction against the pickets themselves (56G), it may be difficult for the police to ignore breaches of the injunction by individual pickets;

(c) as an illustration of (b), the injunctions against picketing outside the plaintiffs' homes constitute an absolute prohibition. If pickets attempted to assemble outside one of the men's homes the police would probably move them on or arrest them if they refused, thus in effect enforcing the injunction.

We hope to discuss the implications of the judgement with the police at the meeting of Mr Partridge's Steering Group which has been convened to discuss the conclusions of the public order review on 12 March. It will almost certainly be necessary to issue some form of guidance, and if the Home Secretary agrees, this can probably best be formulated in the course of the reviews to be conducted by ACPO and the Home Office in the aftermath of the dispute.

8. The judgement may also have implications for the review of public order law. If the police are given power under the Public Order Act to impose conditions on the numbers and location of demonstrators in order to prevent the coercion of individuals, plaintiffs in the position of the working miners in this case may in future look to the police to protect them from intimidation rather than to the courts. This is not necessarily undesirable, save in two respects. First, the promising development of the readiness of workmen to seek remedies in the courts, and the readiness of the courts' response, may fade if there are easier and more immediate remedies to be found at the hands of the police. Second, the police will be drawn increasingly into industrial disputes, in a way that goes deeper than their traditional concern with public order and breaches of the peace, as they seek to interpret what conduct by pickets is tortious and intimidatory and what conduct is not. In the interests of simplifying the police task there may be a resurrection of the demand that a statutory limit of six pickets should be introduced into the criminal law.

Richard Hazell

R J D HAZELL
25 February 1985

F8 Division

QPE/84 62/2/561

Mr R. Butler

As requested

Hugh Taylor

With the Compliments

of the

PRIVATE SECRETARY

Home Office
Queen Anne's Gate
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PUBLIC ORDER WHITE PAPER

DRAFT STATEMENT FOR THE HOME SECRETARY

With permission, Mr Speaker, I should like to make a statement about the review of public order law.

The Government is today publishing a White Paper announcing the conclusions of the review, which was commenced in 1979, and which I have conducted in conjunction with the Secretary of State for Scotland. In conducting the review we have taken into account the lessons to be learned from the varying forms of major public disorder in recent years. We have also considered carefully the response to the 1980 Green Paper on the Public Order Act 1936 and related legislation, the report of the Select Committee on Home Affairs, Lord Scarman's report on the Brixton riots, and the Law Commission's proposals for the codification of the common law public order offences.

The rights of peaceful protest and assembly are amongst our fundamental freedoms: they are numbered among the touchstones which distinguish a free society from a totalitarian one. But these rights, fundamental though they are, have never been regarded as absolute.

The European Convention on Human Rights, for example, in the Article guaranteeing the right to freedom of peaceful assembly, recognises that it may need to be restricted by law for the prevention of disorder and for the protection of the rights and freedoms of others.

Even so, any limitations on the rights of peaceful protest and assembly should be imposed to the minimum extent necessary to preserve order and protect the ordinary citizen. That has been our approach in this review.

Most of the present law relating to these matters is either to be found in the Public Order Act 1936 or derives from the common law. The 1936 Act was passed to deal with a particular problem of the day: the threat to freedom posed by the fascist use of intimidation and violence. It is hardly surprising that since 1936 different problems should have come to the fore and the rights of the citizen should need protection from altogether different sorts of threat.

Nonetheless, the review has revealed no yawning gaps in the law. It is also important to bear in mind that even where there may be a theoretcial case for change, there is no point in passing laws or conferring powers which are of no practical value because they are unenforceable. There are, however, a numer of areas where the law can and should be extended and clarified, mainly in improving the opportunities for the police to try to prevent disorder or disruption before it occurs. To this end, the first proposed change is the introduction in England and Wales of a national requirement to give advance notice for marches, subject to certain exemptions for religious and traditional processions and those for which longer notice was not possible. A requirement of advance notice already exists in Scotland and certain other parts of the country and helps reduce the risk of disorder by giving

the police and organisers time to make the necessary preparations.

Under the Public Order Act the powers of the police to impose conditions on a march are confined to circumstances when serious public disorder is anticipated. We have concluded that the power to impose conditions should also apply where what is anticipated is a serious disruption of the life of the community or the coercion of individuals. There will, however, be the opportunity to challenge police conditions imposed on any of these grounds in the courts, and there will be no extension of the existing power to ban marches.

One of the major developments of recent years has been that the threat to public order or to the rights of the individual is nowadays often posed not by a march but by a static demonstration or assembly - whether it is a football crowd that has turned into a mob or a mass picket behaving in an intimidatory manner.

The use of open-air assemblies is, however, so fundamental to free speech and the right to protest that we think it would be quite wrong to confer any power to ban them in the way that processions can now be banned. But where such assemblies threaten to result in serious public disorder, serious disruption or the coercion of individuals we have concluded that it is right for the police to have the power to impose limitations on the number of people,

the location and the duration of the assembly. The imposition of such conditions, too, would also of course be subject to challenge in the courts.

The power to impose them would apply in the case of all types of assembly in the open air. We do not, for the most part, consider that there should be special limitations on particular types of demonstration, such as pickets or demonstrations by foreign nationals. It is both in principle and in practice preferable for the general law to apply, and we consider that the general changes we propose are adequate to deal with disorder and violence whatever its cause or source.

One of the most objectionable assaults on the rights of the individual citizen is the use of intimidation against his person or property in an attempt to prevent him doing what he has a legal right to do or force him to do what he has a right to abstain from doing. Such conduct is already an offence under section 7 of the Conspiracy and Protection of Property Act. But for this to be an effective remedy it is not sufficient for the police to bring charges after the event. They must be able to nip intimidation in the bud. We therefore propose that this offence should carry a specific power of arrest, and that the maximum penalty should be increased from three months' and £100 to six months' imprisonment or a fine of £2,000.

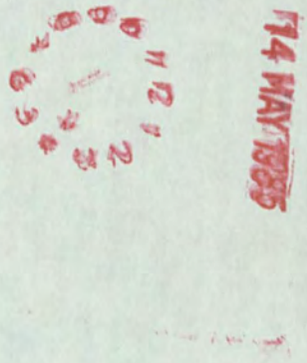
I turn now to the common law public order offences. In England and Wales the Law Commission have recommended the modernisation of the offences of riot, unlawful assembly and affray. Subject to certain minor amendments, the Government proposes to accept their recommendations for new statutory offences of riot, violent disorder (the successor to unlawful assembly) and affray. These changes will not significantly affect the overall scope of the criminal law. But they will restate these offences in clearer modern language, they will introduce statutory maximum penalties, and give prosecutors greater flexibility over the mode of trial, by enabling less serious cases of affray and violent disorder to be tried in a magistrates' court.

The White Paper contains a number of other improvements to public order law, including some tightening up of the offence of incitement to racial hatred; but I have outlined the main proposals which will apply in England and Wales. Scotland already has some of the provisions we now proposed for marches, including advance notice. The regulatory powers of local authorities there over marches will continue, and the police will be given the same powers as in England and Wales to impose conditions both on marches and on static assemblies. The proposed change to the Conspiracy and Protection of Property Act and those on incitement to racial hatred will extend to Scotland, but the common law there will remain unchanged pending recommendations from the Scottish Law Commission on mobbing and rioting.

As the House already knows, legislation will also be introduced in England and Wales to control the availability of alcohol at or on the way to football matches along the lines of the existing Scottish legislation.

Mr Speaker, the White Paper contains a set of proposals which bring up-to-date the age-old balance between fundamental but sometimes competing rights in our society. We must and shall continue to preserve the basic and crucial right to freedom of speech and freedom of assembly. These freedoms are essential to any democratic society. They must be given full and effective protection. But people also have the right to protection against being bullied, hurt, intimidated or obstructed, whatever the motive of those responsible may be, whether they are violent demonstrators, rioters, intimidatory mass pickets or soccer hooligans. I believe these proposals will contribute in a practical way to protecting both sets of freedoms.

Home Aff. - Public Order



cc H. Booth

SECRETARY OF STATE FOR THE ENVIRONMENT

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

30 April 1985

Dear Nigel

NBPM

PUBLIC ORDER WHITE PAPER

My Secretary of State was grateful for the Home Secretary's letter of 25 April. As I told you on the phone he has noted the Home Secretary's comments, and is content for the White Paper to be published on that basis.

I am copying this to the Private Secretaries to the Prime Minister, the Lord President, other members of H, the Foreign Secretary, the Chancellor of the Duchy of Lancaster, the Minister without Portfolio, the Attorney General, the Lord Advocate, the Paymaster General and Sir Robert Armstrong.

Yours ever

Alan Davis

A H DAVIS
Private Secretary

Nigel Pantling Esq

HOME AFFAIRS : Public Order : Pt 2.

005/1282

CONFIDENTIAL

a H. Booth

Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Leon Brittan QC MP
Secretary of State
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

MBPM

30 April 1985

Dear Leon

PUBLIC ORDER WHITE PAPER

Since I wrote to you on 18 April, our officials have undertaken the fuller appraisal of the probable use of the proposed powers which I sought.

The outcome of these discussions, is, I understand, agreement that across the board the proposals will not lead to extra net demands on resources. On this basis I am entirely content that the White Paper should be published. In future, it would be better for all concerned if joint assessment of costings of future proposals were to be initiated at a much earlier stage.

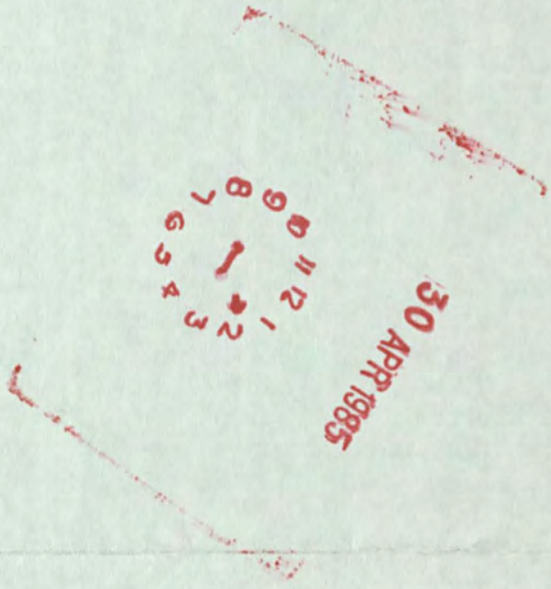
I am sending copies of this letter to the Prime Minister, members of H Committee, Geoffrey Howe, Grey Gowrie, David Young, Michael Havers, Kenneth Cameron, John Gummer, and to Sir Robert Armstrong.

Yours ever

PETER REES

CONFIDENTIAL

Home AFFAIRS: Public Order: PT 2.



cc HB.

QUEEN ANNE'S GATE LONDON SW1H 9AT

25th April 1985

Dear Patrick.

NWSpm.

PUBLIC ORDER WHITE PAPER

file with NEA.

Thank you for sending me a copy of your letter of 18 April to Willie Whitelaw commenting on the draft text of the White Paper announcing the conclusions of the review of public order law.

You asked that the proposals it contains be amended so as to include a power for the police to impose conditions on football matches as to the date, time and class of spectator. I appreciate your concern that the powers available should be adequate and that their presentation should be in keeping with the rest of our response to the problem of football hooliganism, but for the reasons below I do not think the text of the White Paper should be altered in this respect.

I should say first that I believe the difference between us to be a question of presentation rather than of substance. We would envisage the power to impose conditions of any sort as a reserve power to be exercised only at the end of a period of negotiation between the police and the football authorities. In practice, an indication that the police might have to use their power to impose a condition on the number of those attending a particular match if it took place on a certain day (such as a Bank Holiday) or at a certain time, would be a powerful incentive to the football authorities to re-arrange it, since they would not wish to lose the revenue from large numbers of spectators.

On the question of presentation, I believe there is far more at risk than there is to be gained. Throughout the White Paper all marches and processions, whatever their purpose, are treated alike. Similarly, static assemblies in the open air, be they political demonstrations, religious meetings, pickets or football crowds are all subject to the same power to impose conditions. To make separate provision for football crowds would undermine this approach

The Rt Hon Patrick Jenkin, M.P.

/cont ...

and would leave us vulnerable during the passage of a Public Order Bill to amendments seeking separate provision for a whole range of other classes of static assembly, some not so easily defined as football or sporting crowds. In particular we would be placed in an invidious position if amendments proposing more stringent controls on picketing were put down. The alternative of applying these extra conditions to all static demonstrations would be even less welcome. The extension of police powers to impose conditions to static demonstrations is in itself a controversial change, and if those powers were to be capable of amounting to a ban, as they would be if able to affect date, time, place, duration and numbers, the implications would be seen as very far-reaching. I would not be prepared to give the police such unfettered powers, nor, I think, would Parliament.

Nevertheless I agree that we need to take care, when the White Paper is published, to explain the implications for football clubs of the proposed controls on static demonstrations, and in particular to bring out the powerful nature of the possible limits on numbers, given the commercial position of football clubs. This needs to be explained both to the press and to the football authorities. If you agree, our officials can pursue this.

I note what you say about the Football Association's concern about the misuse of the Union flag. I shall, of course, consider any proposal they make if they comment on the White Paper. As the present draft of the White Paper indicates, we have given serious thought to the possibility of an offence of misusing the Union flag but have been unable to devise a workable and acceptable way in which its use by certain groups or on certain occasions could be restricted or prohibited. It would, for example, clearly be unsatisfactory either to prohibit its use at sporting events altogether or to prohibit any words being printed on it, since there may be good commercial or patriotic reasons for their appearance. Equally, it would be unworkable to draw up a list of objectionable words and phrases which should not be written on it. A more subjective definition of what amounted to defacing it would, I fear, make an offence both unfair and unenforceable.

As you will see from the final text of the White Paper, I have accepted your suggestion that the White Paper should refer specifically to our proposal to restrict the availability of alcohol at or on the way to football matches.

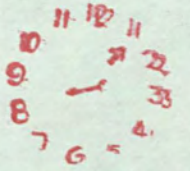
Our officials are still discussing the application of the proposed public order offences to football hooliganism but as you say, this need not affect the White Paper.

I hope you will now feel able to agree by Monday that the White Paper should be published on this basis. In order to keep to our plans I really need to have confirmation by Monday.

I am copying this letter to the Prime Minister, Willie Whitelaw, others members of H, Geoffrey Howe, Grey Gowrie, David Young, Michael Havers, Kenneth Cameron, John Gummer and Sir Robert Armstrong.

Yours,

Ian



CC HB

NORTHERN IRELAND OFFICE
WHITEHALL
LONDON SW1A 2AZ

SECRETARY OF STATE
FOR
NORTHERN IRELAND

N3Ry.

The Rt Hon Leon Brittan QC MP
Secretary of State for the
Home Department
Queen Anne's Gate
LONDON
SW1H 9AT

24 April 1985

Dear Leon.

You were kind enough to let me see a copy of the White Paper on Public Order which you intend to publish in the near future.

Although the conclusions and proposals in the White Paper do not apply directly to Northern Ireland, where we have some distinct problems, the White Paper touched upon a number of areas, particularlythose relating to the control of public processions, which do have a bearing upon the Northern Ireland situation. I would therefore be most interested to be kept in touch with progress on discussions on this White Paper.

I am copying this letter to the recipients of yours.

Yours,
Douglas.

te

HOUSE OF LORDS,
SW1A 0PW

NBPM

23 April 1985

PUBLIC ORDER WHITE PAPER

My dear Leon,

Thank you for your letter of 19th April. I look forward to our meeting tomorrow.

I note that you do not consider that your proposals would add significantly to the workload of the Divisional Court. I am not so sanguine for two main reasons.

First, you propose to move from a subjective test about the necessity of any conditions imposed upon a demonstration to an objective one. This will surely increase the number of cases. As you say, even the subjective test is not immune to judicial review but it is only impeachable on severely restricted grounds: the "Wednesbury" principles. An objective test is a question of fact. Two reasonable people can hold diametrically opposing views about the necessity of a condition, and, on an objective test, only a judge can decide between them. But neither view is unreasonable, so on a subjective test there is no case. This becomes even more important when considering the procedure for obtaining judicial review. In order to apply for the substantive relief sought, the leave of the court must first be obtained. This is done (ex parte) either on the papers, or (at the instance of the applicant) at an oral hearing. About one-third of applications for leave are refused. It is obviously much more difficult to refuse leave if a question of fact is involved than if it is a question of reasoned behaviour. Therefore, provided of course the police do continue to act as reasonably as you predict, I see every possibility of the time of the court being wasted on unmeritorious applications on which leave was granted because a question of fact was involved upon which both sides should be heard.

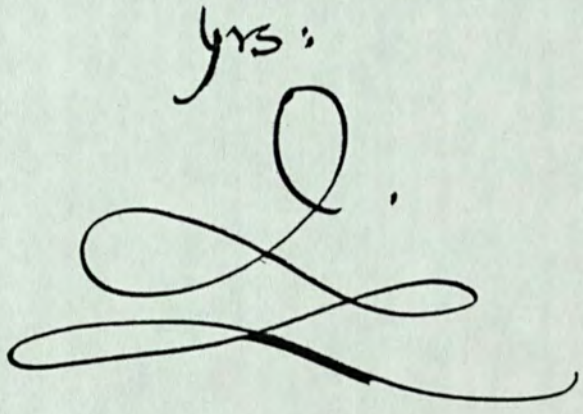
/ ....

The Right Honourable
Leon Brittan, Q.C., M.P.
Secretary of State for the Home Department.

This leads me to my second concern: the organisers of demonstrations are sometimes overtly political and are well aware of their rights. I suspect they would make more use of the provision than you predict. You are proposing to give the police wider powers: numerous organisations will want to challenge those powers and make political capital out of their success or failure.

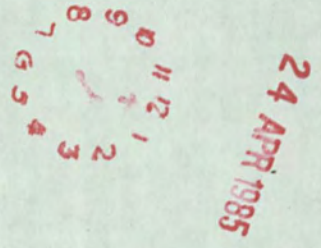
I believe you will be seeking a meeting to discuss these matters; I look forward to seeing you.

I am sending copies of this letter to the Prime Minister, colleagues on H, Geoffrey Howe, Grey Gowrie, David Young, Michael Havers, Kenneth Cameron, John Gummer and Sir Robert Armstrong.



HOME AFFAIRS: Public Order

Pt 2



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10 DOWNING STREET

From the Private Secretary

22 April 1985

Review of Public Order Law

The Prime Minister was grateful for the explanation contained in your letter of 19 April, about the Home Secretary's decision not to proceed with the proposal to disperse crowds, and is content with it.

I am sending copies of this letter to the Private Secretaries to members of H Committee and to the Foreign and Commonwealth Secretary, Chancellor of the Duchy of Lancaster, the Minister without Portfolio, the Attorney General, the Lord Advocate, the Paymaster General and Sir Robert Armstrong.

Mark Addison

Nigel Pantling Esq
Home Office.

CONFIDENTIAL

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

22 April 1985

NBPM
MEA 22/4

Dear Leon

PUBLIC ORDER REVIEW

Thank you for your letter of 3 April with MEA enclosing the draft White Paper on the Review of Public Order.

No colleagues have raised any general objections by your deadline of 17 April, and you may take it that you have general H Committee approval for the draft. However, before publishing the text it will be necessary to respond to the points raised by the Prime Minister (in her Private Secretary's minute of 16 April) and by Peter Rees in his letter of 18 April; and to reach agreement with Quintin Hailsham, Patrick Jenkin and Michael Havers on how their comments shoudl be dealt with. I believe Geoffrey Howe also intends to write, and I should be grateful if he would do so quickly so that you can take account of his views too.

I am sending copies of this letter to the Prime Minister, the members of H Committee, the Secretary of State for Foreign and Commonwealth Affairs, the Chancellor of the Duchy of Lancaster, the Minister without Portfolio, the Attorney General, the Lord Advocate, the Paymaster General and Sir Robert Armstrong.

Yours

The Rt Hon Leon Brittan QC MP

CONFIDENTIAL

HOME AFFAIRS
Public Order
PR2

FCS/85/103

Home Secretary

Public Order White Paper

1. Thank you for sending me a copy of your letter of 3 April to Lord Whitelaw (which reached me on 16 April). Several aspects of this subject are of continuing interest to my Department and I am sorry we were not represented at the H Committee meeting which discussed your memorandum in February. In my minute to you of 6 March I suggested collective discussion about the criteria for banning demonstrations, but I accept that now there is no time for this.

2. I am content therefore with the text of the White Paper as it stands. I am glad that you have included a separate section (paragraph 5.12) on demonstrations outside Embassies since this is of particular concern to us. I note that although there will be no new powers related to the protection of Embassies the police will in fact have all the powers they need to control demonstrations outside Embassies. I believe that it would be useful to include a cross-reference at this point to the passage on consultation by the Police with the Home Office and FCO on policy in relation to the policing of demonstrations outside Embassies in our White Paper on Diplomatic Immunity. My office have given yours a suggested footnote to cover this point.

3. I particularly welcome the statement that foreign nationals committing Public Order offences can expect to have their immigration status reviewed, with possible

/deportation

deportation in mind.

4. As you also know from my minute of 6 March, I still think that very careful consideration should be given to extending the racial hatred provision to broadcasting, in view of the problems caused by Dr Chauhan's broadcast last year. I note that in Chapter 9 this is one of the points on which you have particularly asked for comments.

5. I am sending copies of this letter to the Prime Minister, Grey Gowrie, David Young, Michael Havers, Kenneth Cameron, John Gummer, to other colleagues on H Committee and to Sir Robert Armstrong.

GEOFFREY HOWE

Foreign and Commonwealth Office

22 April 1985

HOME AFFAIRS
Public Order
Pt 2

E.R.

PRIME MINISTER

REVIEW OF PUBLIC ORDER LAW

You will remember you queried the Home Secretary's decision not to proceed with the proposal to introduce a statutory police power to disperse crowds, in his draft white paper (Flag A).

The Home Secretary has now responded. (Flag B). He says the police already have sufficient powers at common law, and that they now accept that putting these on a statutory basis might well be of no real help at all.

Content with the Home Secretary's explanation?

Yes no

Mark Addison
19 April 1985

From: THE PRIVATE SECRETARY

CONFIDENTIAL

B

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

19 April 1985

Dear Mark,

REVIEW OF PUBLIC ORDER LAW

Thank you for your letter of 16 April, in which you reported the Prime Minister's inquiry about the decision not to proceed with the proposal for a new statutory power to disperse disorderly crowds.

The police already have power at common law to disperse an unlawful assembly, as part of their more general common law power to deal with or prevent breaches of the peace. The one thing to which they have attached considerable importance throughout the review is that there should be no diminution or alteration in their common law powers, which continue to prove extremely useful (it was under these powers, for example, that the police stopped and turned back pickets during the miners' dispute). The proposed statutory power to disperse would not therefore have added to police powers, but would merely have clarified and restated in statute an existing power which the police already have at common law.

The police were initially attracted by the suggestion in the Green Paper that they might be given statutory powers similar to those contained in section 24 of the Northern Ireland (Emergency Provisions) Act 1978, which enables the police to disperse an assembly if they are of the opinion that it may lead to a breach of the peace or public disorder. As the Home Secretary reported in his minute to the Prime Minister of 15 January, the police saw advantage in a statutory power because they felt that their common law power to disperse an unlawful assembly was not widely known or understood. However at a meeting with ACPO on 12 March their representatives reported that a substantial majority of chief constables were now opposed to the idea. The reasons advanced for their change of heart were the experience of the miners' dispute, which revealed how limited would be the usefulness of such a power when the police were faced with a large crowd which refused to disperse; the risk of a statutory power being hedged around with restrictive conditions; and the absence of any evidence that the statutory power had been used in Northern Ireland. This last point is correct: enquiries of the Northern Ireland Office have revealed that the RUC have never apparently used the powers contained in the 1978 Act.

The Prime Minister will recall that one of the matters stressed in the White Paper is the Government's desire to confer on the police powers which will be of practical value to them. Since a statutory power would not add anything of substance to the police's existing common law powers, and since a majority of chief constables are now reported to be against the proposal, the Home Secretary decided not to pursue the matter.

/Copies of

Mark Addison, Esq

CONFIDENTIAL

Copies of this letter go to the Private Secretaries to H Committee members, the Foreign Secretary, the Chancellor of Duchy of Lancaster, the Minister without Portfolio, the Attorney General, the Lord Advocate, the Paymaster General and Sir Robert Armstrong.

Yours Nigel

N A PANTLING

CONFIDENTIAL

QUEEN ANNE'S GATE LONDON SW1H 9AT

19 April 1985

Dear Lord Chancellor,

PUBLIC ORDER WHITE PAPER

Thank you for your letter of 17 April.

I am very sorry that there was not time to consult your Department about the proposal to extend the availability of judicial review. As you know, the original proposal was to confer a right of appeal to the magistrates' court against conditions imposed by the police; but on reflection I felt that a bench of magistrates would not carry sufficient weight to decide controversial cases, and on occasion might find it difficult to be impartial. (For example, I doubted whether local magistrates would be the right forum to consider an appeal against any conditions the police might need to impose in controversial picketing cases; or in the case of major CND demonstrations where local passions were strongly aroused.)

I therefore looked for a tribunal with greater authority as a judicial check against the imposition of arbitrary or unreasonable conditions by the police. I considered the possibility of a circuit judge, but decided against for two reasons. The first is the awkwardness of spelling out the time limits for a statutory right of appeal, given that the minimum period of advance notice of a procession is to be 7 days, and that the police may need to impose conditions up until the last moment. The second is that there is already the possibility of judicial review against any decision by the police to impose conditions, which was inserted by Parliament into section 3(1) during the passage of the Public Order Act 1936. It would be very difficult to remove this right of judicial review; and in seeking to provide demonstrators with some check against arbitrary police action it seemed preferable to build on the existing mechanism of judicial review rather than to provide an alternative right of access to the courts which would sit alongside it.

You asked for an estimate of the number and weight of cases which might come before the Divisional Court as a result of the proposed extension in the right of judicial review. I quite understand your concern about the current workload of the Divisional Court, but I do not think that my proposals would significantly add to it. In the White Paper I was anxious to stress the availability of judicial review as an effective remedy for aggrieved demonstrators, but I doubt whether in practice they will resort to it at all frequently, for the following reasons.

First, although the right of judicial review of police decisions under section 3(1) of the Public Order Act has existed for 50 years, we are not aware of any application ever having been made to the courts to challenge the imposition of conditions by the police. This is largely because the formal imposition of conditions is itself a rare event. The four examples cited in paragraphs 4.19 and 4.20 of the White Paper are the only cases

/we have

The Rt Hon Lord Hailsham of St Marylebone, CH, FRS, DCL

CONFIDENTIAL

we have been able to trace in which the police have imposed conditions in recent years. As the White Paper goes on to explain in paragraph 4.21, we do not intend to encourage the police to resort more frequently to the formal imposition of conditions. The police have made it clear that they regard the new powers essentially as reserve powers, but the intention that the existence of these powers will strengthen their hand in negotiating with the organisers of demonstrations which threaten to be disruptive or coercive. Only in the rare cases where the police fail to reach agreement with the organisers will they need to resort to the formal imposition of conditions; but we hope and expect that these cases will not be significantly more frequent than at present.

Secondly, simply as a question of law, the actual extension in the availability of judicial review is less significant than presented in the White Paper. I have already mentioned that the police decision to impose conditions is already susceptible to judicial review: the only new element in the proposals is a right to challenge the nature of the conditions themselves. At present the test is subjective: the chief officer of police may impose "such conditions as appear to him necessary", and I propose to make this an objective test (on the lines of "such conditions as are necessary"). But as you know even subjective tests nowadays are not immune to judicial review, and I doubt whether this small extension will significantly increase the workload of the Divisional Court.

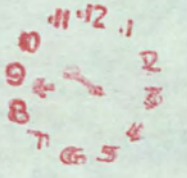
I should add that I do attach considerable importance to the availability of judicial review as a check on arbitrary or unreasonable police actions. I am very anxious to give demonstrators an effective right of redress should the police abuse their new powers; and having considered and rejected the alternatives mentioned at the beginning of this letter I am satisfied that judicial review is the most appropriate and effective means of providing a right of access to the courts. It may also be the most economic: a statutory right of appeal which appeared on the face of the statute might prompt more appeals than a right of judicial review which is merely implicit.

Your second comment was about Article 11 of the European Convention on Human Rights. As the White paper explains (paragraph 2.15), we have taken account of our obligations under the Convention in the course of the review. While one can never be completely confident about the outcome of European litigation, we are reasonably satisfied that the new tests can be justified by reference to the proviso in Article 11 that the right to freedom of assembly may be made subject to lawful restrictions which are necessary for the protection of the rights and freedoms of others. I attach importance to the qualification that the disruption must be serious before the police would be justified in imposing conditions; and there is no power to ban simply because of the risk of disruption. I believe that with these qualifications the new criterion can be justified before the European Court as being necessary for the protection of the rights and freedoms of others.

I am sending copies of this letter to the Prime Minister, colleagues on H, Geoffrey Howe, Grey Gowrie, David Young, Michael Havers, Kenneth Cameron, John Gummer and Sir Robert Armstrong.

Yours sincerely,
Nigel Lawson

2 Approved by the Home Secretary and signed in his absence



014/109

CONFIDENTIAL

C.H. Booth

Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Leon Brittan QC MP
Secretary of State
Home Office
50 Queen Anne's Gate
London
SW1H 9AT

18th April 1985

Dear Leon

PUBLIC ORDER WHITE PAPER

Thank you for your letter of 3 April enclosing a draft copy of the text of this White Paper. Your officials, in dealing with the remit from H on 27 February, put to mine at the same time their view that the net overall implications in terms of resources could be treated as nil. Unfortunately this conclusion does not appear to have been arrived at by quantified appraisal of the probable use of the proposed powers, and my officials have accordingly suggested to yours a number of questions that might be considered. I hope that together they can report to us quickly enough not to prevent the White Paper from being published next month. But I should like to be reassured that the proposals would not lead to extra net demands on resouces which would affect both local authorities and, through specific grant, the Exchequer.

I am copying this letter to members of H Committee, the Prime Minister, Geoffrey Howe, Grey Gowrie, David Young, Michael Havers, Kenneth Cameron, John Gummer, and Sir Robert Armstrong.

Yours ever

PETER REES

CONFIDENTIAL

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref: C H Booth

18 April 1985

Dear Willie,

PUBLIC ORDER WHITE PAPER

Leon Brittan copied to me his letter of 3 April to you with the draft text of the Public Order White Paper. You will appreciate that in present circumstances my major concern is the relevance of the proposals to football spectator violence. I understand and support Leon's desire to ensure that the White Paper is not seen as a reaction to specific incidents or problems, but the result of a painstaking review. Our recently announced package of measures to combat hooliganism included this Review, and it is right therefore to make sure that the references and proposals are adequate. I think they are, and I am grateful to the Home Secretary for the drafting amendments made since the discussions on Football with the Prime Minister and the governing bodies of football.

I support the proposals in the White Paper. I have comments on the public order offences and on the proposals dealing with static demonstrations; I think the proposed legislation on alcohol should be mentioned; and I would like Leon to think again on the issue of the flag.

Public Order Offences

I welcome the proposals in paragraph 3.7, and in particular the way in which missile throwing would be brought within the definitions of these offences. I should like our officials to consider just how these offences would be applied to football hooliganism, and in particular whether they meet the concern about the difficulty of collecting evidence, recognised in paragraph 1.10 of the draft, and the question of a specific offence of invading the playing arena. This was left open at the Prime Minister's meeting on 28 March. These considerations need not affect the White Paper, but they are important and highly relevant matters.

Static demonstrations

I very much welcome the proposed powers to place conditions on static demonstrations, which I understand would include football matches. I have one particular concern. I do not think that the types of conditions which the police would be able to impose are adequate for football matches. Date and time are frequently crucial factors. The type of person attending - as well as the numbers - can also be important in this respect. The police might, for example, wish to restrict attendance to home supporters or to season ticket holders, or to make a particular match all-ticket. Each of these could be a sensible condition, and I should be reluctant for the police to have to forego the power to impose them. I appreciate Leon's concern not to give the police powers which might be seen as too wide.

CONFIDENTIAL

Though it will not mean any changes to the White Paper, it is important that our officials should now discuss in detail how these provisions could be applied to football matches.

I have in mind too that we might need powers of this type if the football authorities are unwilling or unable to put their own house in order. Though we may feel that the FA's verdict in respect of trouble at the Luton v Millwall match was weak, it seems likely that the clubs will ask the Courts to set aside the sentences. The police ought to be in a position at least to impose the all-ticket condition in this sort of case if the Football Association is unable or unwilling to do so itself.

I hope, therefore, that appropriate amendments can be made to the White Paper. I appreciate the reasons for the proposed limits on conditions, but these were defined before we considered the application of the power to football matches.

Alcohol

Despite the difficulties, there should be some reference in the White Paper to our proposal to include in this legislation provisions to restrict the availability of alcohol along the lines of the Criminal Justice (Scotland) Act 1980. As Leon says, we have announced our intentions; and many will expect to see a reference in the White Paper. Could I suggest an additional short paragraph in Chapter 6 ? -

> "The government intends to bring forward legislation for England and Wales restricting the availability of alcohol at or on the way to football matches based on the legislative provisions contained in the Criminal Justice (Scotland) Act 1980".

The Flag

The Football Association would argue against the conclusions in the present draft about the flag. Its misuse by football hooligans (abroad especially) does cause offence and is provocative - it is now quite common to see the Union Jack over-printed with NF Branch names, for example. I wonder if we could create an offence of defacing the flag? I should be grateful if the Home Secretary would look at this issue again.

We can expect the football authorities to comment on several issues in the Paper. We should in particular resist them on police charges.

I am copying this letter to the Prime Minister, Leon Brittan, and other Members of H, Geoffrey Howe, Grey Gowrie, David Young, Michael Havers, Kenneth Cameron, John Gummer and to Sir Robert Armstrong.

Yours ever

Patrick

PATRICK JENKIN

The Rt Hon the Viscount Whitelaw CH MC

CONFIDENTIAL

cc H. Booth.

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

NBPM

16 April 1985

The Rt Hon Leon Brittan QC MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
London SW1

Dear Leon,

PUBLIC ORDER WHITE PAPER

Thank you for your letter of 3 April 1985 enclosing the text of the draft White Paper.

As you know I welcome this package. However, I think it right that there should be a further short period during which interested parties can comment upon what is proposed, though I hope a Bill can be prepared for the next session.

I have two comments on the draft as it stands. The first is in relation to the proposed new statutory public order offences of riot, violent disorder, and affray. In each case the unlawful conduct has to be "such as would cause a person of reasonable firmness present at the scene to fear for his personal safety". As it is intended that the court should decide objectively whether the conduct is such as would cause a hypothetical person present to fear for his safety, I think it might be clearer to insert the word "if" between "firmness" and "present" in all the definitions of the new offences so that this element would read "such as would cause a person of reasonable firmness if present at the scene to fear for his personal safety". This is after all what the Law Commission originally proposed.

.../Secondly

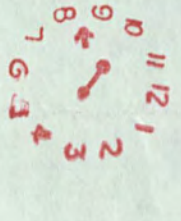
Secondly, at paragraph 6.8, which deals with the new offence of possessing racially inflammatory material with a view to its distribution or publication, I think it would assist a reader if the White Paper spelled out that the new offence is to be tied to the same elements as the amended section 5A. Thus the prosecution would still have to prove that the material was threatening, abusive and insulting, and likely to stir up hatred against a racial group in Great Britain.

I have copied this letter to members of H Committee, the Prime Minister, Geoffrey Howe, Grey Gowrie, David Young, Kenneth Cameron, John Gummer and Sir Robert Armstrong.

Yours ever.

Michael.

HOME AFFAIRS : Public Order; A-2.



CONFIDENTIAL

file (45) BOT

bc: Hartley Booth

10 DOWNING STREET

16 April 1985

From the Private Secretary

Review of Public Order Law

The Prime Minister has seen the Home Secretary's letter of 3 April to the Lord President, together with the attached draft text of the White Paper.

She has noted the Home Secretary's wish not to proceed with the proposal to introduce a statutory police power to disperse crowds, and has asked what is to take its place. She understood that the police earlier took the view that this was the one thing they thought would give them the necessary extra authority they needed. She has also asked when and for what reason the police changed their mind.

BF

I am sending copies of this letter to the Private Secretaries to the members of H Committee and to the Foreign and Commonwealth Secretary, Chancellor of the Duchy of Lancaster, the Minister without Portfolio, the Attorney General, the Lord Advocate, the Paymaster General and Sir Robert Armstrong.

(Mark Addison)

Hugh Taylor, Esq.,
Home Office

CONFIDENTIAL

BOT

INDIA BOX

E.R.

PRIME MINISTER

Review of Public Order Law

I attach a copy of the Home Secretary's draft White Paper on public order law, together with his covering minute to the Lord President. He hopes to publish the White Paper in May.

You discussed the proposals contained in the draft with the Home Secretary in January. At that time you questioned the proposed new powers for the police to be able to disperse crowds and you may therefore wish to note that this idea has been abandoned (para 6.15). The other two changes mentioned in the Home Secretary's covering letter seem unexceptionable.

You may also remember that, on your suggestion, the Home Secretary consulted colleagues on the possibility of leaving the broadcasting authorities exempt from the offence of incitement to racial hatred while extending the offence to individuals who appeared in broadcasts. His preference was, on balance, to leave matters as they are, in the absence of real abuse, and colleagues at H agreed that line.

Hartley Booth has read through the draft White Paper and is content.

Content for me to signal you have no further comments on the draft, and that you are happy with the timetable for publication? In view of the limited number of changes, I do not think you need to plough through the White Paper unless you wish to.

Mark Addison

9 April 1985

MR ADDISON

4 April 1985

REVIEW OF PUBLIC ORDER LAW

The draft text of the White Paper, which will be published at the beginning of May, sets out the proposals that were considered by the Prime Minister in the Autumn while they were being formulated, and in January when they were originally drafted. On the second of these two occasions, the Prime Minister asked the Home Secretary to justify the power he then sought for the police to be able to disperse crowds with related offences of non-compliance. At that time, the Home Secretary stated that this power was needed and it should therefore be noted that this power has been abandoned, as is discussed in paragraph 6.15.

The two other material changes in the final draft of the White Paper are less significant and are unexceptionable.

I suggest that the Prime Minister need not be involved further than to make her aware of the date of change and of the one major change in the draft paper's proposals.

HARTLEY BOOTH

CONFIDENTIAL

cc HB PL.

HOME SECRETARY

QUEEN ANNE'S GATE LONDON SW1H 9AT

3 April 1985

Dear Willie,

PUBLIC ORDER WHITE PAPER

At the meeting of H Committee on 27 February you invited George Younger and me to consult colleagues in writing about the text of the White Paper before it was published.

I now enclose a draft text of the White Paper, which we hope to publish at the beginning of May. It contains certain changes from the proposals which were set out in my Memorandum of 20 February (H(85)14); but I think you will probably agree that they are not sufficiently substantial to merit discussion at a further meeting. The changes are as follows:

(a) one of the proposed new tests for imposing conditions on demonstrations, the risk of serious damage to property, will be presented not as a separate test but as included in the test of serious public disorder (paragraphs 4.21 and 5.8 of the draft White Paper);

(b) I have decided that the magistrates' court is not the right forum for hearing appeals by demonstration organisers against conditions imposed by the police, and that it would be preferable instead to strengthen and extend the opportunities which already exist for judicial review of police conditions: this builds on the existing structure of the Public Order Act, and avoids the need for spelling out any time-limits for the imposition of any conditions (paragraphs 4.25 and 5.6);

(c) the police have had second thoughts about the desirability of a statutory power to disperse, with a related offence of non-compliance. Since it will be a controversial proposal I would not wish to press for it in these circumstances (paragraphs 6.15-6.16);

You also asked to know the views of chief officers of police on the content and enforceability of the provisions on static demonstrations and picketing. The Association of Chief Police Officers (ACPO) support the extension of Public Order Act controls to static demonstrations, but agree that this should not include the power to ban. They accept that static demonstrations must include pickets: they also accept that conditions on static demonstrations may not always be easy to enforce, and where this is the case I would expect them to move with care, and not to impose conditions unless they were reasonably confident that they could enforce them. ACPO (Scotland) take a slightly different view, in that they do not see any need for a power to impose conditions on a static demonstration

The Rt Hon Viscount Whitelaw, CH, MC

in advance, but do wish to be able to impose conditions on the spot. ACPO(S) also take a different view from their colleagues in England and Wales about some aspects of the tests to be applied in relation to static demonstrations and processions. These are matters I must discuss further with George Younger, and, subject to your agreement, I would not propose to trouble colleagues with them unless we fail to find a satisfactory solution.

There are two further matters which I should briefly mention. We were asked to consult the Treasury about the financial and manpower implications of the proposals, and my officials have written to the Treasury about this. Second, at the Prime Minister's meeting on football hooliganism on 28 March it was decided to bring forward legislation for England and Wales restricting the availability of alcohol at or on the way to football matches based on the legislative provisions contained in the Criminal Justice (Scotland) Act 1980. Subject to the clearance of these proposals by QL and H Committees, the intention is to include these measures in the public order legislation. But I do not intend to mention these proposals in the White Paper, which I do not want to be delayed: they have in fact of course already been announced.

In order to enable us to publish the White Paper at the beginning of May, I would be grateful if we could have any comments on the draft text by Wednesday 17 April. Copies of this letter and enclosure go to colleagues on H, the Prime Minister, Geoffrey Howe, Grey Gowrie, David Young, Michael Havers, Kenneth Cameron, John Gummer and Sir Robert Armstrong.

HOME AFFAIRS: Review on
Public Order: Pt 2.

HOME OFFICE

SCOTTISH OFFICE

REVIEW OF PUBLIC ORDER LAW

Presented to Parliament by the Secretary of State for the Home Department and the Secretary of State for Scotland by command of Her Majesty.

1985

LONDON

HER MAJESTY'S STATIONERY OFFICE

Cmnd £

CONTENTS

PUBLIC ORDER WHITE PAPER

CHAPTER ONE

INTRODUCTION

1.1 This White Paper sets out the conclusions of the review which the Government has conducted of the law in Great Britain relating to public order. The review was announced by the previous Home Secretary on 27 June 1979 following the disturbances at Southall in April of that year. In June 1980 he and the Secretary of State for Scotland published a Green Paper entitled "Review of the Public Order Act 1936 and related legislation" (Cmnd 7891), which set the agenda for the review. Many organisations and individuals commented on the Green Paper, and the Government has found those comments very helpful in formulating its conclusions.

The position in Scotland

1.2 The provisions of the Public Order Act 1936 extend to Scotland but the common law there is different from that in England and Wales and there are separate legislative provisions. In particular, since the Green Paper was published, Part V of the Civic Government (Scotland) Act 1982 has been enacted, introducing a detailed system for regulating public processions. In addition the Scottish Law Commission has undertaken but not yet completed, a review of mobbing and rioting. These factors mean that conclusions applying to England and Wales require to be adapted in relation to Scotland. Chapter 7 explains how the Government proposes that this will be done.

Reports and developments during the review

1.3 During the review a number of relevant reports have been published. In particular, the Government has taken special account of the report of the House of Commons Select Committee on Home Affairs entitled "The Law relating to Public Order" (HC 756 I and II, August 1980). The Government's response to the Committee's report is contained in this White Paper. Most of the Committee's recommendations are accepted.

1.4 The scope of the review was widened following the publication in October 1983 of the Law Commission's report on Offences relating to Public Order (HC 85, Law Com No 123), dealing with the common law offences of riot, unlawful assembly and affray. The Government has accepted the Law Commission's recommendation that the common law offences are in need of revision and codification; the way in which the Government proposes to implement the Commission's recommendations is also set out in this White Paper.

1.5 The third report published during the review was Lord Scarman's report on the Brixton riots of 1981 (Cmnd 8427, November 1981). Many of his recommendations with regard to policing strategy and training have already been implemented; his observations on public order law have been considered in this review.

1.6 In addition to taking into account the riots of 1981 the Government has been concerned to learn the lessons from other recent instances of major public disorder. These include not only the events of Southall, but earlier disturbances such as those at Grunwick's in 1976 - 77. During the review the most serious disorders have been associated with the 1981 riots and the 1984 - 85 miners' dispute; but many other public order problems have arisen, as a result of demonstrations by animal rights protesters, the Stop the City

campaign, the anti-nuclear movement, the National Front, and the continuing disorder associated with football hooliganism.

The Government's approach: balancing freedoms

1.7 The Government is in no doubt of the importance of the principles at issue in the review. The rights of peaceful protest and assembly are amongst our fundamental freedoms: they are numbered among the touchstones which distinguish a free society from a totalitarian one. Throughout the review the Government has been concerned to regulate these freedoms to the minimum extent necessary to preserve order and protect the rights of others.

1.8 For these freedoms, although fundamental, are not one-sided: the European Convention on Human Rights, in the Article guaranteeing the right to freedom of peaceful assembly, recognises that it may need to be restricted by law for the prevention of disorder and for the protection of the rights and freedoms of others. It is worth remembering, 50 years after the passage of the Public Order Act 1936, why that Act was considered necessary: because the right to demonstrate had been turned by the Fascist marchers into an instrument of intimidation and provocation. They have their counterparts today in those whose real aim in demonstrating is not to persuade others of their point of view, but to prevent them by force from doing what they have a lawful right to do, or simply to foment disorder. The Government has been concerned in the review to ensure that the law provides the police with adequate powers to deal with disorder, or where possible to prevent it before it occurs, in order to protect the rights and freedoms of the wider community.

The limits of the law

1.9 The review has revealed no yawning gaps in the law; but there are important points where the law can helpfully be extended and clarified, mainly in improving the opportunities for the police to try to prevent disorder or disruption before it occurs. In proposing these changes the Government is keenly aware of the limits on how far the law itself can reduce or avert disorder. No amount of tightening of the law, short of draconian measures which would be quite unacceptable, can guarantee the prevention of all disorder. Some who seek violence and confrontation are unlikely to be prevented by changes in the law from causing it. What the law can do, however, is to clarify individuals' rights and obligations, and to provide the police with sufficient powers both to try to prevent disorder and control it if it breaks out.

1.10 It must be recognised that once disorder has broken out the problem confronting the police is not a shortage of legal powers but is essentially one of enforcement. The police themselves have made this quite clear, and recognise that their operational tactics need to be reviewed from time to time just as the law has been reconsidered in this review. The 1981 riots led to major changes in the way the police are equipped and trained to deal with public disorder, following the recommendations of Lord Scarman. Similarly in the aftermath of the miners' dispute the police are keen to ensure that the right lessons are learnt about how to cope with widespread public disorder in the future. Reviews are in hand to see what improvements can be made to police tactics, deployment, equipment and training; and the police service will ensure that the conclusions of those reviews are properly communicated and implemented by all forces.

The rights and obligations of demonstrators

1.11 The police cannot be expected to quell all disorder; but they can and do deserve the support of the community in their attempts to do so. The avoidance of disorder depends ultimately on the willingness of us all to observe the law. The vast majority of demonstrations pass off quite peacefully, thanks to demonstrators' respect for the law, for the rights of others, and for the responsibilities of the police in carrying out their duties to maintain the peace. These demonstrations take place without disorder because all those involved - the demonstrators, their opponents, the rest of the public and the police - recognise that they have obligations as well as rights.

1.12 This has important practical implications for the way demonstrators and the police approach events which may pose public order problems. There is a clear responsibility on those who organise marches or demonstrations to take sensible precautions to maintain order among their own supporters. These include a willingness to discuss the arrangements openly and responsibly with the police, proper and adequate stewarding, and firm leadership on the day. The Government has been concerned that any changes in the law should enhance the development of a responsible approach by the organisers of events, and should encourage them at an early stage to seek an understanding with the police on the ground rules of how the event will be run. During the review the Government has discussed with chief officers of police the practical steps which might help in this respect, and has benefited greatly from the advice which they have given.

Practical policing

1.13 The police have made it clear that they do not want the simplistic changes which have been canvassed in this area of the law; and the Government has

no wish to seek to confer upon them new powers which are likely to be unenforceable. The aim throughout the review has been to identify powers which will be of practical value to the police; and where appropriate,examples will be given in this White Paper of how it is envisaged that the proposed changes in the law might operate in practice. The Government's objective has been to fill the genuine gaps in the law, in a way which provides the police with the necessary powers without infringing civil liberties and without creating obligations and expectations of the police which they cannot meet.

1.14 The police continue to depend for their effectiveness on the consent and co-operation of the public. This applies to the policing of demonstrations as to all other aspects of policing. Despite the adoption of special protective equipment after the 1981 riots, the vast majority of demonstrations continue to be policed by officers in ordinary uniform deployed alongside the crowd. The main object of public order policing should continue to be to prevent and defuse disorder in a manner which commands the confidence and support of the community. The proposals in this White Paper reflect the Government's concern that the law on public order should support a balanced legal framework, in which the police have the necessary powers to prevent and deal with violence and disorder, while freedom of speech and the right of protest continue to be safeguarded.

PUBLIC ORDER WHITE PAPER

CHAPTER 2

THE EXISTING LAW

2.1. In public order law, as in other aspects of the law of this country, it is a basic assumption that anyone is free to do something unless there is a specific rule to the contrary. The law contains, then, no statutory right to assemble in a public place or to process along the highway, although the European Convention on Human Rights guarantees the right of freedom of peaceful assembly (discussed further in paragraph 2. below). The law on public order consists in essence of the restrictions that Parliament and the courts have felt necessary over the years to impose on the freedom to assemble in public, in the interests of maintaining order. The law thus reflects the slow process of historical development: in quite a large area it still depends on common law, for public order law has not been codified in any single statute, and where statutes have been enacted they have generally been in response to a particular mischief.

The common law: police powers

2.2. The concept of a breach of the peace derives from the early days of the common law. Breach of the peace is not in England and Wales a criminal offence,although it is in Scotland; but it forms the basis of important police powers. If the police reasonably apprehend an imminent breach of the peace they may take any action which is necessary to control or prevent it, including arresting those who are responsible. The police may limit numbers

in any particular place in order to prevent breaches of the peace: it was under this common law power that the police stopped and turned back pickets during the miners' dispute (Moss and others v McLachlan Times Law Report 29 November 1984), and that they similarly stopped and turned back National Front members outside Wakefield in January 1984, after they had been banned from marching in neighbouring towns. The common law power to disperse an unlawful assembly derives from the police's general power to control breaches of the peace. The police may also bring anyone who threatens the peace before the courts to enter into a recognizance and find sureties to keep the peace or to be of good behaviour, or in default to be imprisoned for up to six months. This preventive power to bind someone over to be of good behaviour is traced back to the Justices of the Peace Act 1361, and is still frequently used in public order cases.

Common law offences in England and Wales

2.3. The offences of riot, rout, unlawful assembly and affray are early extensions of the concept of breach of the peace and were established as common law misdemeanours in the sixteenth century. They all involve the idea of open force or public violence which causes terror to other people. None of the offences is frequently charged in modern times, with the exception of affray: between 1976 and 1983 on average 30 people were charged with riot each year, 98 with unlawful assembly and 1,075 with affray. There is not complete agreement in the reports of decided cases and textbooks about the precise elements of each offence, but they can broadly be defined as follows. Riot is committed when three or more people in execution of a common purpose use force or violence so as to alarm people of reasonable firmness, and with intent to help one another by force if necessary against anyone who may oppose them. Typical occasions on which riot has been charged in recent years include the storming and sacking of a pub by a large crowd of people, a similar attack on

a nightclub, and fights between rival gangs of Hell's Angels. Rout is similar to riot but may be complete without the execution of the common purpose; it is no longer charged as a separate offence.

2.4. Unlawful assembly has also been classed as an incipient riot: the old authorities define it as an assembly of three or more persons with intent to commit a crime by open force. Modern textbooks offer a wider definition, of an assembly of three or more persons with a common purpose either to commit a crime of violence or to achieve any other object, lawful or not, in such a way as to cause reasonable men to apprehend a breach of the peace. It may be charged when a demonstration results in violence, or when one group deliberately sets out to attack another. Affray is typically charged in cases of spontaneous fights in or outside pubs and dance halls, and revenge attacks on individuals. It consists of unlawful fighting, including an unlawful display of force without actual violence, in a way which is likely to cause alarm. If the offence takes place in private premises it is necessary to show the presence of a terrified innocent bystander. The penalties for all four common law offences are at large.

Common law offences in Scotland

2.5. The common law in Scotland has developed rather differently, and does not include offences of riot, rout, unlawful assembly and affray. The common law public order offences in Scotland are breach of the peace and mobbing and rioting. Breach of the peace covers a very wide range of circumstances from a minor public nuisance offence, such as shouting in the street, to offences approaching mobbing and rioting in seriousness. Mobbing and rioting is charged where persons are accused of asembling for some violent or unlawful common purpose; actual violence is not necessary, and intimidation or a demonstration of force to the alarm of the lieges can be sufficient to

constitute the crime. It is relatively rarely used (over the years 1976-83 annual figures for mobbing and rioting show an average of 23 crimes recorded and 38 persons proceeded against). The penalties for both breach of the peace and mobbing and rioting are limited only by the powers of the court hearing the case. Thus in the High Court of Justiciary a person convicted of either of these common law offences could be sentenced to life imprisonment and/or an unlimited fine.

Statute law

2.6. As stated in paragraph 2.1, statutes in the field of public order law have generally been enacted in response to a particular mischief. The Tumultuous Petitioning Act 1661 and section 23 of the Seditious Meetings Act 1817 both sought to prevent disorder around Parliament by limiting the number of people who should be allowed to present a petition. The Unlawful Drilling Act 1819 prohibited assemblies for the purpose of training or drilling in the use of arms or practising military exercises without lawful authority. These Acts are still in force but no prosecutions have been brought in modern times. The Riot Act 1714 made it an offence for a group of people, at least 12 in number, having assembled together riotously and to the disturbance of the public peace, and having had a proclamation made to them to disperse, to remain together for an hour or more after hearing the proclamation. The Act was repealed as obsolete by the Criminal Law Act 1967 (in Scotland, the Statute Law Repeals Act 1973). Whether there should be a new statutory power to disperse, with a related offence of non-compliance, is considered in chapter 6 (paragraphs 6.14-6.16).

2.7. The Public Meeting Act 1908 was a Private Member's Bill which was passed in an attempt to prevent the deliberate disruption of public meetings by the suffragettes. Section 1 makes it an offence to endeavour to break up a public meeting by acting in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together. The maximum penalty is a sentence of six months' imprisonment and/or a fine of £2000. In practice the offence has been little used: the initiative for requesting the police to take action rests with the chairman of the meeting (section 1(3)). There is a similar offence in relation to disturbances at election meetings in section 97 of the Representation of the People Act 1983, but with a lower maximum penalty of a fine of £400 (to be raised by the Representation of the People Bill currently before Parliament to £2000).

The Public Order Act 1936: section 3

2.8. Much the most important statute in public order law is the Public Order Act 1936 which was enacted following the disorder caused by the Fascist marches in the East End of London. Powers to control the route of processions had long existed, in the Metropolitan Police Act 1839 and the Town Police Clauses Act 1847; the 1936 Act introduced for the first time the power to ban. The powers contained in section 3 are directed to preventing serious public disorder rather than dealing with it when it has occurred. The framework of control has two stages, in order to ensure that banning orders are used only as a measure of last resort. For the first stage, if a chief officer of police has reasonable grounds for thinking that a procession may lead to serious public disorder, he may impose such conditions upon it as he considers necessary to prevent this. If, however, he thinks that these powers will not be sufficient to prevent serious disorder, then the second stage of the process is used, and he must apply in England and Wales to the district or borough council for an order banning processions within the council's area or

any part of it. The order may ban all processions or particular classes of processions for a period of up to three months, but must have the consent of the Home Secretary. In London the process is slightly different, in that the Commissioner of Police of the Metropolis or the Commissioner of the City of London Police may himself make an order prohibiting processions within his area if he thinks that his power to impose conditions is insufficient to prevent a march causing serious public disorder. But again, the consent of the Home Secretary is required.

2.9. There is no provision in general legislation in England and Wales requiring advance notice to be given of a procession or demonstration. However, certain local Acts include provisions requiring organisers of a procession to give the police in each district through which they will pass advance notice of the date and route. The period of advance notice varies from 24 hours to five days. There is a related offence in these local Acts of organising or conducting a procession along a route of which the police have not been notified. The maximum penalty is £400 and the consent of the Director of Public Prosecutions is required for a prosecution. In most of England and Wales there is no legal requirement to give advance notice, and the police rely on the good sense of those organising demonstrations to inform them in advance.

2.10 The preventive powers in section 3 of the Public Order Act 1936 are available in Scotland, where the police application for an order banning processions is made to the regional or islands council and the consent of the Secretary of State for Scotland is required. With the enactment of the Civic Government (Scotland) Act 1982, however, a more modern code for the regulation of processions, itself based on local provisions of long standing, was introduced. It provides that, subject to certain exemptions, written advance

notice of all processions must be given to the regional or islands council at least seven days beforehand. These notices are made available to the chief constable, who is consulted by the regional or islands council as to the need for an order banning or imposing conditions on any individual procession. It falls to the regional or islands council to make such an order, where it appears necessary to them, and Ministerial consent is not required. There is no specific test for making such an order but the council must give their reasons for doing so, and an appeal on certain limited grounds lies to the sheriff. Provision is made for related offences and penalties. Despite the existence of these detailed regulatory provisions, the normal procedure, as in England and Wales, is for the police to agree informally with the organisers on the arrangements to be made for processions.

Section 5: threatening behaviour

2.11 In addition to the preventive powers in section 3 the 1936 Act also creates in section 5 a specific offence, consisting of conduct which is threatening or insulting to members of the community in a way which is intended or likely to occasion a breach of the peace. The offence carries a power of arrest without warrant and is triable summarily with a maximum penalty of six months' imprisonment and/or a £2000 fine. The section makes an important contribution in England and Wales to the ability of the police to preserve order: it has been used to catch behaviour as varied as taking part in a "die-in" during the Cenotaph ceremony on Remembrance Day, and running onto a football pitch to threaten the players. As explained in chapter 7, section 5 is infrequently used in Scotland, and the Government intends to repeal its extension to Scotland and instead to rely upon the Scottish common law offence of breach of the peace.

Section 5A: incitement to racial hatred

2.12 In a form broadly similar to section 5, although differing from it in some significant ways is section 5A of the Act which was inserted by section 70 of the Race Relations Act 1976. Under this section, it is an offence for any person to publish or distribute written matter or to use in public words which are threatening, abusive or insulting in a case where hatred is likely to be stirred up against any racial group in Great Britain by the matter or words in question. There is, however, an exemption for material published or distributed within an association only and not to the public at large. The offence can be tried summarily or on indictment, the maximum penalty on indictment being two years' imprisonment and/or a fine. The Attorney-General's consent is required for a prosecution. While not as broad in its terms as section 5, section 5A has led to successful prosecutions for behaviour which includes publishing an offensive cartoon, shouting racist slogans in the street and distributing leaflets against Asian planning applications.

Other sections of the 1936 Act

2.13 The other forms of offensive conduct caught by the 1936 Act reflect more closely than does section 5 the circumstances of the Fascist marches which led to the legislation. Section 1 places a general prohibition on the wearing of political uniforms in any public place or at any public meeting, except for uniforms worn on ceremonial, anniversary or other special occasions where public disorder is not likely to be provoked. Section 2 creates an offence of controlling, managing, organising or training an association of persons for the purpose of usurping the functions of the police or the armed forces or for the use or display of physical force in promoting any political object. Section 4, which creates the offence of unlawful possession of an offensive

weapon while at a public meeting or procession, has largely been overtaken by the more general offence of possession of an offensive weapon which is contained in the Prevention of Crime Act 1953.

Other statutory offences

2.14 These offences in the 1936 Act have lost some of their immediate relevance and nowadays are less frequently charged on occasions of public disorder than offences in the general criminal law such as obstructing the highway (section 137 of the Highways Act 1980), obstructing a police constable (section 51(3) of the Police Act 1964), assaulting a police constable (section 51(1) of the Police Act 1964) and committing criminal damage (section 1(1) of the Criminal Damage Act 1971), and their Scottish equivalents. Of some 10,000 charges brought in England and Wales for offences committed in connection with the miners' dispute in 1984-85, for example, over 4000 were brought under section 5 of the 1936 Act: over 1500 for obstructing the police; just over 1000 for criminal damage; 640 for obstructing the highway and 360 for assaulting a police constable. A similar range of charges is used against football hooligans and on other occasions of public disorder.

International obligations

2.15. Underlying any consideration of the law on public order must be the awareness of the United Kingdom's undertakings as a party to the European Convention on Human Rights and the UN's International Covenant on Civil and Political Rights. The European Convention has been ratified by all 21 member States of the Council of Europe. It guarantees a number of principles, of which the most relevant to this review are set out in Articles 10 and 11. Article 10 guarantees the right to freedom of expression, including freedom to hold opinions and to receive and impart information and ideas without

interference by public authority; Article 11 guarantees the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions. Articles 19 and 21 of the International Covenant contain similar guarantees of freedom of expression and the right of peaceful assembly. Both the Convention and the Covenant recognise that the exercise of freedoms carries duties and responsibilities and that they may be subject to lawful restrictions necessary in a democratic society for, inter alia, public safety, public order, and the protection of the rights and freedoms of others. The Government has borne the obligations of being a signatory to the European Convention and the International Covenant in mind during the review.

PUBLIC ORDER WHITE PAPER

CHAPTER 3

COMMON LAW PUBLIC ORDER OFFENCES

3.1 The existing common law public order offences have been described in Chapter 2. In October 1983 the Law Commission published proposals for the abolition of the offences of rout, riot, unlawful assembly and affray, and the replacement of the last three by statutorily defined offences (Offences relating to Public Order, HC 85, Law Com 123). This chapter describes the way in which the Government proposes to implement the Law Commission's recommendations, together with consequential changes to section 5 of the Public Order Act and certain ancillary matters.

3.2 The Law Commission announced their provisional conclusions for the reform of riot, unlawful assembly and affray in a Working Paper published in March 1982 (Working Paper 82). This was followed by widespread consultation, which included Government departments, the judiciary and the police. The Law Commission made significant changes to take account of the comments received, and then engaged in a further round of consultation with the judiciary, legal profession and the Government before publishing their final report. The Government is grateful to the Law Commission for the thoroughness of their report and the wide degree of consultation upon which it is based.

The Law Commission's proposals

3.3 The Government agrees with the Law Commission that the offence of rout is obsolete and should be abolished. In place of the offences of riot, unlawful assembly and affray the Law Commission proposed the following statutory offences:-

Riot

Where twelve or more persons are present together, whether in a public or private place, using or threatening unlawful violence to persons or property for some common purpose (which may be inferred from their conduct) and their conduct, taken together, is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of them who uses unlawful violence for the common purpose commits the offence of riot. The offence would require the consent of the Director of Public Prosecutions to the institution of proceedings and would be triable on indictment with a maximum penalty of ten years' imprisonment and a fine.

Violent Disorder

Where three or more persons are present together using or threatening unlawful violence to persons or property, whether in a public or private place, and their conduct, taken together, is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of those persons who uses unlawful violence commits the offence of violent disorder. The offence would be triable either way with a maximum penalty on indictment of five years' imprisonment and a fine.

Affray

Where two or more persons use or threaten unlawful violence against each other, or one or more persons use or threaten unlawful violence against another, whether in a public or private place, and the conduct of those using or threatening unlawful violence is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of them commits the offence of affray. The offence would be triable either way with a maximum penalty on indictment of three years' imprisonment and a fine.

Conduct intended or likely to cause fear or provoke violence

Where three or more persons are present together, whether in a public or private place, using threatening, abusive or insulting words or behaviour which is intended or is likely either to cause another person to fear immediate unlawful violence to persons or property or to provoke the immediate use of such violence by another person, each of them commits the offence. The offence would be triable either way with a maximum penalty on indictment of two years'imprisonment and a fine.

3.4 Four statutory offences are proposed instead of the three common law offences because the Law Commission suggested in their final report that unlawful assembly should be split into two new offences, the more serious offence of violent disorder and a lesser offence of conduct intended or likely to cause fear or provoke violence. The Government agrees with the Law Commission's proposed statutory definitions of riot and affray. In relation to unlawful assembly, the Government does not propose to enact the Law

Commission's lesser offence of conduct intended etc because of its substantial overlap with section 5 of the Public Order Act 1936. Dropping this offence will require a consequential amendment to the offence of violent disorder which is explained further in paragraph 3.13 below.

The overlap with section 5 of the Public Order Act 1936

3.5 Section 5 of the Public Order Act 1936 lay outside the Law Commission's terms of reference. It creates the following offence:-

Any person who in any public place or at any public meeting:-

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

b) distributes or displays any writing, sign or visible representation which is threatening, abusive or insulting,

with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence and shall on summary conviction be liable to imprisonment for a term not exceeding six months or to a fine not exceeding £2,000 or to both.

The Law Commission suggested that further consideration would need to be given to the terms of section 5 in the light of their recommendations. There is a substantial overlap between the Law Commission's two replacement offences for unlawful assembly and section 5, especially as the Government proposes it should be amended (see paragraphs 3.8-3.11 below). These three offences deal with broadly the same circumstances, and differ among themselves mainly in whether the offender used violence or merely threatened it, and whether or not he was part of a group of three or more. Such a multiplicity of offences seems undesirable, and in approaching the Law Commission's recommendations the Government considered first whether any of the lower level offences might be amalgamated.

3.6 The most promising candidates for amalgamation are the Law Commission's proposed lesser offence to replace unlawful assembly (conduct intended or likely to cause fear or provoke violence) and section 5. In the Law

pommission's view it was only the element of numbers (paragraph 5.41 of their report) which set their proposed lesser offence apart from section 5 and justified the higher penalties available on indictment. Shorn of the requirement of three or more, the Law Commission's proposed offence and section 5 are virtually identical. The Government has concluded that it would be sensible to fuse the two.

The Government's proposals

3.7 The range of statutory public order offences proposed by the Government is therefore as follows:-

Riot

Where twelve or more persons are present together, whether in a public or private place, using or threatening unlawful violence to persons or property for some common purpose (which may be inferred from their conduct) and their conduct, taken together, is such as would cause a person of reasonable firmness present at the scene of fear for his personal safety, each of them who uses unlawful violence for the common purpose commits the offence of riot. The offence would require the consent of the Director of Public Prosecutions to the institution of proceedings and would be triable on indictment with a maximum penalty of ten years' imprisonment and a fine.

Violent Disorder

Where three or more persons are present together using or threatening unlawful violence to persons or property, whether in a public or private place, and their conduct, taken together, is such as would cause a person of reasonable firmness present at the scene of fear for his personal safety, each of those persons who uses or threatens unlawfuil violence commits the offence of violent disorder. The offence would be triable either way with a maximum penalty on indictment of five years' imprisonment and a fine.

Affray

Where two or more persons use or threaten unlawful violence against each other, or one or more persons use or threaten unlawful violence against another, whether in a public or private place, and the conduct of those using or threatening unlawful violence is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of them commits the offence of affray. The offence would be triable either way with a maximum penalty on indictment of three years' imprisonment and a fine.

Section 5 of the Public Order Act 1936 (as amended)

Any person who, whether in a public or private place, uses threatening, abusive or insulting words or behaviour which is intended or likely:-

a) to cause another person to fear unlawful violence, or

b) to provoke the use of unlawful violence by another

shall be guilty of an offence, and shall on summary conviction be liable to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or both.

The amendments proposed to section 5 of the Public Order Act 1936

3.8 Each of the new statutory offences proposed by the Government will be described in slightly greater detail, starting at the bottom with the amended section 5. The first amendment proposed is that section 5 should be capable being committed in a public or private place. At present the scope of section 5 is confined to any public place or any public meeting (as defined in section 9). This restriction has given rise to difficulties: during the miners' dispute section 5 summonses were dismissed where men charged with threatening words or behaviour were able to show that they were on National Coal Board or other private property, while the victims of the threats were on the public highway. The Government sees no merit in this distinction, which does not exist in the case of the common law public order offences. With regard to riot, unlawful assembly and affray the Law Commission proposed the retention of the existing rule at common law, which is that these offences can be committed in a public or private place. The Government therefore proposes to extend this rule to section 5, but in order to exclude domestic disputes there will be a proviso that the offence cannot be committed inside a private dwelling house.

3.9 The second change proposed to section 5 is to adopt the Law Commission's reformulation of breach of the peace which appears in their proposed offence of conduct intended or likely to cause fear or provoke violence. Recent case law (notably Marsh v Arscott (1982) 75 Cr App Rep 211) and Parkin v Norman [1983] QB 92 suggests that in certain circumstances intimidatory conduct may

not be caught by section 5 if the victim (for example a policeman, or an elderly lady) is someone who is not likely to be provoked into violence by the defendant's behaviour. This is clearly a loophole which needs to be closed, and the first limb of the Law Commission's reformulation ("likely to cause another person to fear immediate unlawful violence...") is designed to resolve this problem.

3.10 The Law Commission's reformulation was considered unduly restrictive in one respect, which was the requirement of immediacy. The Law Commission propose that the defendant's behaviour should be such as to cause another person to fear immediate unlawful violence, or to provoke the use of immediate unlawful violence by another. This requirement does not exist in the present wording of section 5, and insofar as the Law Commission felt the restriction was necessary in order to exclude threats uttered in private that objective has been met by the exclusion of private dwelling houses from the scope of the offence. The requirement of immediacy has accordingly not been adopted.

3.11 The effect of the present section 5(b), which penalises the display of any writing, sign or visible representation which is threatening, abusive or insulting, will be retained: under the Law Commission's proposals 'words or behaviour' would include the distribution or display of any written matter, sign or other visible representation (clause 8 of their draft Bill). And the requisite mental element will be the same objective test that currently exists in relation to section 5: "threats, abuse and insults are within the section whether or not they were intended to be threats, abuse or insults" (Parkin v Norman, supra).

Missile throwing

3.12 Under the Law Commission's proposals unlawful violence will include violent conduct towards property as well as towards persons, and will not be

restricted to conduct causing or intending to cause injury or damage. The Law Commission's reformulation which the Government proposes to adopt in section 5 thus goes as wide as the existing test of breach of the peace, as interpreted in Reg v Howell [1982] QB 416. In one respect the Law Commission's definition of unlawful violence may prove particularly useful: the police have suggested that at football matches and on similar occasions it can sometimes be difficult to find appropriate offences with which to charge those picking up and throwing missiles in circumstances where the injury or damage caused by particular missiles cannot be identified. The Law Commission give as an example of unlawful violence "throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short" (clause 8 of their draft Bill). This should remove evidential difficulties related to intent or recklessness; and in cases of group violence the police should be able to charge missile-throwers with violent disorder (thus exposing them to a maximum penalty on indictment of five years' imprisonment).

Violent disorder

3.13 Violent disorder will be the main successor offence to unlawful assembly, and to some cases currently charged as riot. Like the Law Commission, the Government anticipates that it will be used in the future as the normal charge for serious outbreaks of public disorder. But it will be capable of being applied over a wide spectrum of situations ranging from major public disorder to minor group disturbances involving some violence. The proposal to make it triable either way will give it a useful degree of flexibility for dealing with lesser outbreaks of group violence, such as those commonly associated with football hooliganism.

3.14 The amendment proposed to the definition of the offence in paragraph 3.7 is necessary because of the Government's decision to omit the Law Commission's proposed offence of conduct intended or likely to cause fear or provoke

violence. Like the Commission, the Government believes that in cases of group violence it is important to have an offence or offences which enable all the members of the group to be tried together on indictment if their behaviour merits it. The Law Commission proposed to confine violent disorder to those who use unlawful violence: they therefore had to insert below it the new either way offence of conduct intended etc to catch those who merely threaten violence. The Government proposes instead to extend the scope of violent disorder to catch those who threaten unlawful violence. This will enable prosecutors in cases where summary trial under section 5 would not reflect the gravity of the groups's behaviour to try all the members of the group together on indictment. Without the amendment, those defendants who had used unlawful violence could have been tried on indictment, but those whose behaviour had merely been threatening would have had to have been left to separate summary trial. Any difference in the gravity of the conduct of the respective defendants can of course be reflected in the penalty imposed on those found guilty.

Affray

3.15 In purely numerical terms affray is by far the most important of the common law public order offences, charged against some 1,000 people a year. The Law Commission's proposed statutory definition is substantially the same as the common law offence, the essence of which is to penalise fighting or acts of violence. The frequency with which affray is charged shows that it has a useful part to play in the calendar of public order offences, and the Government is content to accept the Law Commission's proposed statutory definition. The Government also accepts the proposal that the offence should become triable either way.

Riot

3.16 This charge is the least frequently used of the various public order offences. The Law Commission felt that if riot was to continue to be reserved only for very grave offences against public order, involving large numbers, then its definition needed to reflect that gravity:

"we think that any offence of riot in the future must in terms refer to those matters which justify it being regarded as a serious offence with a higher penalty ... we would not expect that such an offence would be commonly charged: it should be reserved for the most serious occasions of violent disorder by a substantial number of persons." (Paragraphs 2.10-2.11 of the report).

3.17 The Government agrees with this approach, and the Law Commission's proposed statutory definition of riot. This is a more restrictive definition than the common law offence, in that it increases the minimum required for riot from three to twelve, and introduces the requirement that each defendant must be shown to have used unlawful violence. But if these elements are abandoned, together with the requirement of common purpose, the offence of riot would become indistinguishable from violent disorder. The Government agrees with the Law Commission that if riot is to be retained as a separate offence it has to be distinct and markedly more serious than the public order offences ranged below it.

3.18 There are three ways in which this distinction is marked in the new definition of riot. The first is the question of scale. A riot in common parlance involves more than three people: the new limit of 12 derives from the minimum number which was required to justify the reading of the Riot Act. The second is the requirement of common purpose: it was the possession of a common purpose by a number of people which at common law was held to constitute the particular danger of riot. The third is the requirement that each defendant must be shown to have used unlawful violence. On the Law

Commission's definition this would include violence to property as well as to people: those encouraging or assisting the violence would also come within the scope of the offence, since they would be liable to be charged with inciting or aiding and abetting the rioters.

Alternative verdicts

3.19 The Government proposes that in the new statutory scale of offences all the lesser offences should be available as alternative verdicts to any of the more serious charges. This is in line with the Law Commission's proposals, save that section 5 (as amended) would also be available as an alternative charge. The Government believes there is a case for enabling magistrates' courts to convict of a lesser offence from the one which has been charged, without the need for separate informations to be laid. The point is one of general application extending beyond the field of public order offences, and the Government would welcome comment on the merits of giving magistrates a power of this kind and on any procedural questions which might arise.

Penalties

3.20 The Law Commission propose maximum penalties on indictment of ten years for riot, five years for violent disorder and three years for affray. The Government accepts these recommendations, which are in line with current sentencing practice. The maximum penalties for violent disorder and affray tried summarily will be six months' imprisonment or £2,000, as will the maximum penalty for section 5 of the Public Order Act (as amended).

Disorderly Conduct

3.21 Section 54(13) of the Metropolitan Police Act 1839 makes it a summary offence, punishable with a maximum fine of £100, for a person to "use any threatening, abusive or insulting words or behaviour within intent to provoke

a breach of the peace or whereby a breach of the peace may be occasioned." The Law Commission recommended that this offence should be repealed, together with the similar offence in section 35(13) of the City of London Act 1839. The wording of these provisions is virtually identical to section 5 of the Public Order Act 1936, which was based on these and similar local Acts, all of which (except for the two London Acts) will shortly have lapsed or been repealed by virtue of section 262 of the Local Government Act 1972. The Government accepts that there is no justification for retaining these separate provisions in London.

3.22 However these local Acts, and to some extent section 5 of the 1936 Act in its present form, have been used to deal with minor acts of hooliganism which it would be less appropriate to prosecute under section 5 as the Government proposes to amend it. These acts might, for example, include:

hooligans on housing estates causing disturbances in the common parts of blocks of flats, blockading entrances, throwing things down the stairs, banging on doors, peering in at windows, and knocking over dustbins;

groups of youth persistently shouting abuse and obscenities or pestering people waiting to catch public transport or to enter a hall or cinema;

someone turning out the lights in a crowded dance hall, in a way likely to cause panic;

rowdy behaviour in the streets late at night which alarms local residents.

3.23 Concern over hooliganism of this kind has frequently been expressed at meetings held under the new police consultative machinery. The Government believes that the police should have adequate powers to control this sort of behaviour. This control is particularly needed when the behaviour is directed at the elderly and others who may feel especially vulnerable, including members of ethnic minority communities. These people may not only feel unable to take action themselves to remove the nuisance, but may also be intimidated by the disturbance from taking part in activities in which they have every right to engage, or indeed from leaving their houses at all. The Government is concerned that the law should provide sufficient protection for those in this position.

3.24 If a person who causes this type of disturbance is drunk, he may be charged with the offence of being drunk and disorderly; but there is no corresponding offence to cover similar conduct by a person who is not drunk, even though the nuisance caused is no less, and may be thought more culpable in someone who is sober. On occasion such behaviour may be dealt with by bringing someone before the court to be bound over to keep the peace or be of good behaviour, but the preventive nature of the bind over means that no immediate penalty can be imposed. The police have sometimes been reluctant to use section 5 of the 1936 Act to deal with minor acts of hooliganism. They do not wish to over-react to such incidents by charging too serious an offence with a disproportionately high maximum penalty; and the courts have on occasion deprecated the use of section 5 in cases where it was doubtful whether the conduct in question amounted to "threatening, abusive or insulting words or behaviour". These reasons would apply also to section 5 as the Government proposes to amend it.

3.25 Even if it amounts to threatening, abusive or insulting behaviour, disorderly conduct of this sort may not be caught by section 5 at present because it may not be intended or likely to occasion a breach of the peace; or when the section is amended, because it may not be likely to cause fear of violence to people or property. This may be because the fear engendered is not directed to any specific result likely to follow from the conduct but instead consists of a more general state of anxiety or alarm. Alternatively the apprehension may be directed at a consequence of this behaviour, such as a stampede by a crowd or an accident being caused by the articles used to blockade an entrance, which is not in itself unlawful violence. But behaviour of this kind does constitute a real nuisance to the public which would seem to justify invoking the protection of the criminal law.

3.26 The main elements of a new offence intended to cover disorderly conduct which falls outside the scope of section 5 as amended might be as follows:-

a) threatening, abusive, insulting or disorderly words or behaviour in or within view of a public place;

b) which causes substantial alarm, harassment or distress.

It is not easy to define the offence in a manner which conforms with the normally precise definitions of the criminal law, but which at the same time is sufficiently general to catch the variety of the conduct aimed at. The Government recognises that there would be justifiable objections to a wide extension of the criminal law which might catch conduct not deserving of criminal sanctions. For this reason the offence contains the safeguard that the behaviour must actually cause someone to feel alarmed, harassed or distressed (not that it is merely likely to do so). Any degree of annoyance or disturbance will not suffice: because the offence would be concerned primarily to protect the weak and vulnerable, the proposed definition requires evidence that the victim suffered <u>substantial</u> alarm, harassment or distress.

The Government would welcome comments on the suggestion that a new offence on the lines described above should be created, and whether any further mischiefs or safeguards should be incorporated into it. If there were to be such an offence, it would not seem necessary for it to carry a specific power of arrest, and a sufficient maximum penalty might be a fine of £100.

Riot (Damages) Act 1886

3.27 This Act provides for compensation to be paid in England and Wales, out of the police fund for the area, for damage to buildings and their contents caused by "persons riotously and tumultuously assembled together". Case law has established that before a claim can be made under the Act the claimant must show that the offence of riot has been committed. The suggestion has been made in recent years that the Act should be repealed. It is undoubtedly archaic, but it does provide assistance to small businesses and households in inner city areas which may be vulnerable to riots. The Government inclines to the view that the Act should remain in being, but that in future claims should be subject to the test of the new statutory offence of riot.

Repeal of redundant statutes

3.28 The Government accepts the Law Commission's recommendations for the repeal of the Tumultuous Petitioning Act 1661, the Seditious Meetings Act 1817, the Shipping Offences Act 1793, and that part of section 4 of the Vagrancy Act 1824 which penalises possession of an offensive weapon.

PUBLIC ORDER WHITE PAPER

CHAPTER 4

CONTROLS ON MARCHES AND PROCESSIONS

4.1 Marches and processions are a traditional form of celebration and of protest in our society. They range from summer carnivals and Lord Mayor's parades to political marches about many different causes, both domestic (abortion, Northern Ireland) and international (Vietnam, the Middle East). The vast majority of processions pass off without incident, but the damage caused by the small minority which are not peaceful goes wider than the immediate disorder on the streets: it leads some people to question the right of others to hold marches at all. The Government is determined to uphold the right of peaceful protest, including the right to march. This means ensuring that the right is not abused. Marches and processions will be accepted by the wider community if they are satisfied that the police have adequate powers to prevent and control disorder, and to ensure that marches are held without causing undue inconvenience to the rights of others.

Advance notice

4.2 The Select Committee recommended that there should be a national requirement to give advance notice of an intention to hold a procession, and this view was supported by the majority of commentators on the Green Paper. In his Brixton report Lord Scarman said that he was also persuaded of the need for advance notice. The arguments for such a requirement were stated by the Committee as follows:-

"We have reached the conclusion that a national notice requirement would be desirable. First, a notice requirement might, as the Green Paper puts it, "serve as the formal trigger for discussion between police and organisers designed to agree the ground rules for a march", thus enabling agreements to be reached without recourse to formal directions or bans. Secondly, such a provision would underline for the organisers of a march their responsibilities for the safety and good behaviour of their supporters, and would help to avoid occasions where disorder and disruption arise more from inexperience and over-enthusiasm than from malicious intent. Thirdly, it is obvious that although the police may come to know of intended marches, additional expense and pressure on a public service might be reduced if a reasonable period of notice and full details as to expected numbers and the like were given. There is an element both absurd and slightly sinister in the police of a democratic country having to resort to chance and intelligence in order to obtain knowledge about matters touching upon their duties to minimise traffic disruption and to preserve the peace." (HC 756 vol I paragraph 35).

4.3 The Government agrees that there should be a national requirement of advance notice. The introduction of such a requirement will remove the current anomaly under which local legislation provides for an advance notice requirement in some areas but not in others. There are currently local provisions requiring advance notice in some 92 local authority areas in England and Wales: but many of these local Acts are due to expire in 1986 as a result of the Local Government Act 1972. Subject to discussions with the local authority associations, the Government proposes that any remaining advance notice requirements in English and Welsh local Acts should be repealed, as recommended by the Select Committee, once a national advance notice provision is in place. This is similar to the action taken in Scotland, where the Civic Government (Scotland) Act 1982 and associated orders replaced local legislation and introduced a national provision for advance notice.

4.4 The Committee noted a tendency over the years for the periods of notice required in local legislation to increase, and recommended 72 hours as a minimum period of notice. In approaching this question the Government has been mindful that its proposals include additional grounds for the police to

impose conditions on a march when necessary. The period of advance notice must be sufficient for the police to conduct any necessary discussions with the organisers, and to make their own preparations. The Government has also been impressed by the practical point made by the Metropolitan Police that organisers should be encouraged to get in touch with the police before distributing any publicity about the route for their march. For these reasons the Government proposes to adopt the same period of notice as in Scotland, and to require the organisers of a procession to give at least seven days notice of their intention to the police. As the Select Committee observed, this statutory period of notice will be the minimum: longer notice will generally be of assistance to the organisers, the police and the local community.

4.5 All those calling for a re uirement of advance notice have recognised the desirability of providing an exception for marches arranged in response to some unexpected event. The Select Committee recommended adopting the provision in the West Midlands County Council Act, which after stipulating a minimum statutory period, adds the rider "or as soon as reasonably practicable after that time". This opens the way for the seven day requirement to be waived in the case of marches called at short notice for good reason, or if the police decide to prosecute, for the organisers to show that it was not reasonably practicable to give longer notice. The Government agrees that some form of waiver is required, and proposes to adopt the formula recommended by the Select Committee. To save the police and the organisers from unnecessary notifications, there should also be a general exemption for processions of a religious, educational or ceremonial character customarily held in an area.

4.6 Advance notice provisions in local Acts are generally backed up by a penalty for non-compliance, and the Government proposes that failure to comply with the national requirement of advance notice should be an offence. The

offence would apply only to the organisers of a procession of which the required notice had not been given; the Government does not propose that it should be an offence in England and Wales knowingly to participate in such a procession. The offence would be triable summarily, with the same maximum penalty as currently applies in local legislation, which is a fine of £400.

The power to ban

4.7 The vast majority of commentators on the Green Paper recognised the continuing need for a power to ban processions; as did the Select Committee. The Green Paper observed that the power to ban had been used less frequently in recent years than immediately after the 1936 Act was passed; but since 1980 banning orders have been made far more often. In the eleven years from 1970 to 1980 a total of 11 banning orders were made in England and Wales. In 1981 there were 42 banning orders; in 1982 13; in 1983 nine; and 11 in 1984. Neither the Government nor the police welcome the need to resort to bans; the greater incidence of banning orders is a reflection of the persistence of those who believe in provoking disorder and confrontation rather than in engaging in the politics of persuasion. In the Government's view the experience of recent years does underline the continuing need for a power to ban.

(a) The criteria for banning marches

4.8 At present the sole test justifying a ban is the risk of serious public disorder (and then only if the police's powers to impose conditions are not sufficient to prevent it). During the course of the review a number of suggestions have been made for additions to this test. Several received little support. The Government confirms the conclusion already reached in the Green Paper that there should not be bans on political marches per se, nor on organisations other than those terrorist organisations which are proscribed.

The next suggestion mentioned in the Green Paper was that marches might be banned on the ground that the views to be expressed would be seriously offensive: this would place an impossible task upon the police and be an unacceptable infringement of freedom of speech. A third proposal, for a test of disruption, the Select Committee regarded as too restrictive, and the Government agrees: although it is proposed as a test for imposing conditions (see paragraph 4.22 below). Finally, the suggestion that demonstrations and processions might be prohibited except in certain designated areas would be impracticable, unenforceable and an unacceptable infringement of traditional freedom of movement and expression.

4.9 Rather more thought has been given to the possibility of a test based on the idea of disproportionate cost. One way of expressing this is the suggestion that a police force should apply for a ban if it cannot police a march from its own resources. The Government believes that this would be haphazard in its effect and tend to concentrate major marches in the areas with larger forces. The mutual aid arrangements, whereby a chief constable may call upon assistance from his colleagues, should continue to operate in this as in other fields. The Select Committee came to the same conclusion, but proposed as a refinement of the test that chief constables should agree a standard ratio of home to mutual aid forces in determining the resources to be regarded as available for public order purposes. After careful examination, the Government has concluded that it would not be possible to arrive at a single ratio which took adequate account of the varying sizes of forces and the demands of different events on the police. A better way to keep down costs lies not in a greater readiness to ban but in a more flexible and frequent use of the power to impose conditions. The possibility of requiring demonstrators to pay their policing costs is examined in chapter 6.

4.10 The second test to which the Government has given careful consideration is the proposal that a march might be banned on the ground that it would incite racial hatred. This proposal was supported by, amongst others, the Commission for Racial Equality, the Trades Union Congress and the Board of Deputies of British Jews. It was put forward for two reasons. A subsidiary reason was concern that banning orders directed at marches by racialist organisations frequently resulted in marches by their opponents and third parties being banned as well. The solution to this problem is to narrow the scope of banning orders: this is discussed further in paragraphs 4.12-14 below. But the main reason behind the proposal is an understandable desire to curb the activities of those who engender and exploit racial intolerance. The Government condemns all forms of racial intolerance, and a number of measures designed to strengthen the offence of incitement to racial hatred are described in chapter 6. But the proposal that there should be a power to ban a march on the ground that it would incite racial hatred, although it would not lead to serious public disorder, raises difficulties of principle and of practice which were well expressed by the Select Committee:

> "Assessment of the likelihood of a breakdown in public order remains a relatively technical matter upon which the chief officer of police may pronounce. The <u>likelihood</u> of a procession stirring up racial hatred or intolerance is a more difficult test to apply. A measure which rested on the judgement that racial incitement or intolerance was <u>likely</u> to be caused would present insuperable problems of enforcement and could easily backfire by creating martyrs for free speech out of groups whose policies and activities, having been subjected without hindrance to the judgement of the electorate, have been decisively rejected. It seems probable that some groups would be automatically prohibited from all public processions since it could be held that the notoriety of their views of itself constitutes an insult and provocation to ethnic and religious minorities"(HC 756 vol I paragraph 50).

The Government finds these arguments persuasive, and like the Committee, has concluded that the likelihood of incitement to racial hatred should not be an additional ground for banning a procession.

4.11 The Government shares the view of the Committee and of the majority of commentators on the Green Paper that considerations of public order should continue to be the sole test for banning of processions. The Green Paper suggested a possible change from the current test of the apprehension of serious public disorder to a test merely of public disorder. That has been supported by several commentators, but the Government believes that the word 'serious' represents a real distinction and an important safeguard. The Government has concluded that the apprehension of serious public disorder should remain the one ground for the prohibition of processions under section 3 of the Public Order Act.

(b) More selective bans

4.12 Section 3 of the Public Order Act provides for the making of an order prohibiting, for a period not exceeding three months, "the holding of all public processions or of any class of public procession" in a district or any part of it. This affords useful discretion and flexibility in determining the precise terms in which individual orders are drawn. The Government fully appreciates the concern that orders drawn in broad terms, sometimes known as 'blanket bans', may catch processions which could not themselves be expected to occasion disorder. Experience has nevertheless shown that there may be circumstances (for example immediately after the 1981 riots) when such bans are necessary. Like the Committee, the Government has concluded that the scope of the power to make banning orders should continue to include 'blanket bans'.

4.13 Nonetheless, the Government has always been concerned that banning orders should be as restricted and selective in scope as is compatible with the primary objective of preventing serious public disorder. When considering whether to grant his consent the Home Secretary has on occasions suggested

that orders could be more restricted in duration or in geographical scope. Orders in recent years have included a class definition of "all public processions of a political nature"; a limitation to one London Borough; and a period of one day. The Government will continue to ensure that orders are as narrowly framed as possible; but it does not consider that this would be assisted by seeking a better definition of class, as was suggested by the Select Committee. The difficulties arise from the wide variety of circumstances in which it may be necessary to make banning orders and not from the theoretical framework.

4.14 In one respect however the Government does consider that the law should be amended, to allow a single march to be banned. When the Public Order Act 1936 was passed Parliament did not want to confer powers to single out a specific organisation or a specific procession for a ban, because of concern that bans should not be open to accusations of political bias. But the consequence is that the innocent suffer with the guilty. Although the power will need to be exercised with great care, the Government considers that power to ban a single march would add to the flexibility of the banning procedure, and accommodate the circumstances in which no more than the prohibition of one march would be needed to preserve public order. This would also help to prevent the manipulation of the present system whereby one group can effectively stop another from marching, even though the latter march might well have been peaceful, by the expedient of indicating an intention to march itself at the same time. This then raises the threat of serious public disorder which can be averted at present only by a blanket ban.

(c) The banning procedure

4.15 Under section 3(2) of the Public Order Act a chief constable must apply for a banning order in England and Wales to the district or borough council. The local authority may make the order with or without variation, subject to

the consent of the Home Secretary. In London the police apply direct to the Home Secretary. Both the Government and the Select Committee considered various proposals to change these arrangements, but no consensus emerged from the critics. The Committee believed that the procedure had stood the test of time well and afforded fair representation to the various interested parties. The Government agrees. Since the one test for a ban is to remain that of serious public disorder, it is right that the power to initiate the process should continue to rest with the police. The local councils and the Home Secretary add the necessary elements of local knowledge and political accountability, and none of the critics were able to point to any difficulties which had arisen in practice out of the present arrangements. As noted in chapter 7, a separate procedure will continue to operate in Scotland.

(d) Participation in a banned procession

4.16 Under Section 3(4) of the Public Order Act it is an offence to organise a procession held in contravention of a banning order or to incite anyone to take part in such a procession. The maximum penalty is three months' imprisonment and/or a fine of £1000. The Government proposes that it should also be an offence knowingly to participate in a prohibited procession, but with a lower maximum penalty of a fine of £400.

The power to impose conditions

4.17 Banning is a procedure of last resort, which is only permitted under the Public Order Act if the police believe that their powers to impose conditions under section 3(1) are insufficient to prevent serious public disorder. Section 3(1) gives a chief officer of police power, where he has reasonable ground for apprehending that a procession may occasion serious public disorder, to impose such conditions as appear to him necessary for the

preservation of public order, including conditions prescribing the route. There is an exception for the display of flags, banners and emblems, but even in respect of these, conditions can be imposed that are reasonably necessary to prevent risk of a breach of peace.

4.18 There was little dissent amongst commentators on the Green Paper that the power to impose conditions should continue to rest exclusively with the police. A majority of commentators and the Select Committee supported the idea floated in the Green Paper that section 3(1) should be amended to enable wider and more flexible use of the power to impose conditions. At present the sole test which can justify the imposition of conditions is the risk of serious public disorder.

4.19 The formal power to impose conditions is rarely used. The police prefer to discuss the plans for a march with the organisers and to negotiate an informal agreement about the route and other matters. In general these arrangements work well: the Metropolitan Police have given only two examples of cases where they have imposed formal conditions in order to prevent serious public disorder in the last five years. The first was a march by the Hackney Trades Council in December 1979 which the police re-routed in order to prevent it passing the headquarters of the National Front. The second was a march by the British Union for the Abolition of Vivisection on which the police similarly imposed conditions in order to prevent a confrontation with the Biorex Laboratories in Islington.

4.20 The power has also been used by forces outside London. The police in Leicester, for example, in 1974 and again in 1979 re-routed National Front marches away from Highfields, a part of the city with a large Asian population. On the first occasion the risk of serious public disorder was

increased by a counter-demonstration planned by the Racial Solidarity Group to march through the same area, and the power to impose conditions enable the police to keep the two factions apart.

4.21 In proposing an extension of the police's power to impose conditions the Government has no intention of altering the present arrangements whereby the police negotiate agreements with march organisers. The Government anticipates that in the great majority of cases the police will continue to proceed on the basis of informal agreements. But the Government does intend to alter the legal framework within which agreements are negotiated, by widening the circumstances in which the police will be empowered to impose conditions in default of agreement, or where they suspect that an agreement will not be kept. This means widening the present test of serious public disorder in section 3(1) by adding other criteria to it. The Green Paper suggested a reduction in the test for imposing conditions to one of public disorder. But there has been no evidence from the police that they have experienced difficulties in imposing conditions on marches where this was necessary <u>to prevent disorder</u>. The only change the Government would propose to the existing test is to make it clear that serious public disorder can include serious damage to property. But in addition the Government believes that greater flexibility can usefully be conferred by the introduction of two new tests.

4.22 The first test is one proposed by the Select Committee, who vividly describe the degree of disruption which can be caused even by a procession of average size. Some degree of disruption must of course be accepted by the wider community; but it does not seem right that the police should have no power to re-route a procession in order to limit traffic congestion, or to prevent a bridge from being blocked, or to reduce the severe disruption

sometimes suffered by pedestrians, business and commerce. The Committee therefore suggested an additional test which would enable the police to impose conditions on a procession in order to prevent serious disruption to the normal life of the community. The Government agrees that a new test of this kind is required, in order to prevent marches from causing unreasonable disruption to local residents, other users of the highway, and adjoining shops and businesses. An example of the circumstances in which the test might operate is provided by the policy of the Metropolitan Police in seeking to discourage demonstrators from using Oxford Street during business hours. A number of other police forces have given examples of marches being held through shopping centres on Saturdays, or through city centres in the rush hour. At present the police have no legal powers should the organisers of a march be minded to defy police efforts to persuade them to change their plans. The proposed test would enable the police to re-route a march if they believed that it was likely to be seriously disruptive to the traffic, the shops or the shoppers.

4.23 Serious disruption can be caused by marches organised with the best of intentions. But the second new test proposed by the Government is directed at those who organise processions with more malicious intent. It would confer on the police a power to impose conditions in order to prevent the coercion of individuals. This is a libertarian safeguard designed to prevent demonstrations whose overt purpose is to persuade people, from being used as a cloak by those whose real purpose is to intimidate or coerce. Sometimes, however, their purpose is not even concealed: their literature proclaims their inte tion as being to 'stop' or 'smash' their opponents. (An example was provided last year in Manchester by the National Front, who when organising a counter-demonstration to a march by the Troops Out Movement described their purpose as being to "stop this vermin ... don't let them march").

4.24 On some such occasions the police will often need to impose conditions in order to prevent serious public disorder. Sometimes there is no clear risk of disorder because the target of the demonstration is a single individual, or a peaceful group who are unlikely to respond with violence. When the National Front march through Asian districts the reaction of the local community may be to board up their shops and businesses and to stay at home. It is on these occasions that the law needs to give the police powers to ensure that individuals are free to go about their business without fear of intimidation. Another example of marches whose purpose is to coerce is provided by animal rights protesters, who on occasion have marched on furriers' shops or food factories with the intention of preventing the employees from working. On other occasions a march may be coercive simply by reason of the number of marchers compared with its objective (for example, 1000 people marching on the home of a local councillor, or an inquiry inspector). On such occasions there may not be a risk of public disorder, but the police may need to impose conditions on the march in order to protect the individual or individuals who are its target. In maintaining the balance between the freedom to demonstrate and the rights of the wider community the law must ensure that people are not so harassed by demonstrators that they are no longer free to come and go without fear of coercion or intimidation.

4.25 It must be emphasised that these new tests will not enable the police to ban a procession, but only to impose conditions if they reasonably apprehend that a procession will be seriously disruptive or coercive of individuals. As with the existing test in section 3(1), the decision to impose conditions will be subject to judicial review. When the Public Order Act was enacted Parliament insisted that the question of whether the police were justified in imposing conditions should be capable of challenge in the courts, by amending the wording of section 3(1) so that it carried the possibility of judicial

review. Since then the availability of judicial review as an effective remedy has been greatly extended, by case law and by the procedural reforms of recent years; and the Government intends to enlarge and strengthen the scope for judicial review which currently exists in section 3(1). Demonstrators will have the right to challenge police conditions in two ways: first, by showing that no conditions were necessary, because the police apprehension of disorder, disruption or coercion was incorrect; second, by showing that although the circumstances justified the imposition of conditions, the actual conditions imposed were unnecessary as a means of preventing the risk in question. By providing these two avenues to judicial review the Government proposes to ensure that demonstrators have an effective means of challenging both the imposition of conditions and the reasonableness of the conditions themselves.

The scope of conditions

4.26 The Select Committee commented that the conditions imposed by the police were generally concerned with the route of a march, but that their powers to impose conditions went much wider. They recommended that the full range of powers conferred by section 3(1) should be drawn to the attention of the police, and that they should be encouraged to use them. The Home Office will include such advice when it next issues a circular to the police about the operation of the Public Order Act.

Police powers

4.27 The power under section 3(1) to impose conditions can be exercised in advance or on the spot, but its exercise is confined to the chief officer of police. The Select Committee observed that while this might have been appropriate in 1936, when there were 183 police forces, it was unlikely nowadays for a chief constable to be in personal command of policing a

procession. The Committee recommended that section 3(1) should be amended to allow the senior police officer present at a march to issue directions under the section. The Government accepts this recommendation.

4.28 The imposition of conditions in advance and applications for bans will still need to be considered by senior officers, but the Government doubts whether they must always be dealt with by chief constables. The Government proposes to amend section 3 to provide that the power of a chief constable to impose conditions in advance, or to apply for a ban, is capable of delegation to an Assistant Chief Constable; and that the similar powers of the Commissioner of Police of the Metropolis and of the Commissioner of the City of London Police are capable of delegation to an Assistant Commissioner.

4.29 The Public Order Act does not provide the police with a power of arrest for offences under section 3(4) (knowingly failing to comply with directions, organising or assisting in the organisation of a prohibited procession and inciting participation in such a procession). The police have to resort to their common law power to arrest where such an offence makes a breach of the peace seem likely. Like the Government in the Green Paper, the Committee thought it preferable for the police to be given a specific power of arrest for these offences. The general arrest conditions in the Police and Criminal Evidence Act 1984 will not necessarily confer a power of arrest in all the circumstances where offences under section 3(4) are committed. The Government has concluded that a specific power of arrest is necessary for these offences, and for the new offence proposed in paragraph 4.16 of knowingly participating in a prohibited procession.

The offence of failing to comply with police directions

4.30 The existing offences of organising and inciting participation in a prohibited procession are distinct from the proposed new offence of

participating in a procession, and carry a heavier penalty (paragraph 4.16). In relation to the other offence in section 3(4), of knowingly failing to comply with police directions or conditions, the law draws no such distinction between organisers and participants. The Government believes that those who organise or incite others to disobey police directions on a march should be subject to heavier penalties than the rank and file. Accordingly the amendments proposed to section 3 will include provisions to separate organisers, inciters and participants in connection with this offence. Organisers and inciters will be subject to a maximum penalty of three months' imprisonment and/or a fine of £1000; but those who disobey police directions without organising or inciting others to do so will be subject to a maximum penalty of a fine of £400.

PUBLIC ORDER WHITE PAPER

CHAPTER 5

STATIC DEMONSTRATIONS AND MEETINGS

5.1 The powers contained in the Public Order Act 1936 to impose conditions on, and to ban, demonstrations apply only to processions and marches. They do not apply to static demonstrations, assemblies or meetings, whether public or private. Some three-quarters of the demonstrations in London which come to the attention of the police come into the category of static demonstrations: they comprise meetings, counter-demonstrations outside meetings, demonstrations outside embassies, lobbies of Parliament, pickets and demonstrations in support of pickets. These meetings and static demonstrations may just as frequently be the occasion of public disorder as marches. Home Office evidence to the Select Committee showed that between 1974 and 1980, of the 17 events in the Metropolitan Police District at which severe public disorder (defined as over 30 arrests) occurred, eight were processions, three were meetings and six were assemblies. Since 1980 some of the most serious public order problems have been associated with static demonstrations - at Greenham Common, the picketing at Warrington, and of course the mass pickets during the miners' dispute.

5.2 One of the most important questions in this review has been whether statutory controls similar to those applying to processions should apply also to static demonstrations and meetings. The Select Committee recommended that they should, but suggested that Public Order Act controls should be confined

to static demonstrations on the highway. The Committee proposed that the organisers of such demonstrations should be required to give 72 hours' advance notice, whereupon the police could make such conditions as they judged necessary to prevent serious public disorder or serious disruption to the life of the community; or if these were insufficient the police should be able to seek a ban. The Government agrees with the Committee that, in the light of the major disorder associated with static demonstrations in recent years, it is no longer acceptable that they should be completely exempt from the Public Order Act framework of controls. Those controls do now need to be extended in order to give the police power to take preventive steps to minimise the risk of disorder at static demonstrations: this means giving the police powers to impose conditions similar to the powers proposed in relation to processions. However the Government does not believe that an advance notice requirement is necessary; nor would the Government go so far as proposing a power to ban.

No power to ban

5.3 A new power to ban static demonstrations would be a substantial limitation on the right of assembly and the right to demonstrate. The Government has been very concerned not to extend statutory controls over static demonstrations any further than is strictly necessary. Meetings and assemblies are a more important means of exercising freedom of speech than are marches: a power to ban them, even as a last resort, would be potentially a major infringement of freedom of speech (especially at election time). It might also be difficult to enforce: and there was no strong request from the police for a power to ban. The Government has concluded that the new controls which it proposes over static demonstrations should not include a power to ban. The power to impose conditions should in most cases be sufficient to control those demonstrations which threaten to be disorderly, disruptive or intimidatory.

Advance notice

5.4 The Government has been greatly assisted by advice from the police as to what powers they consider would be useful and practicable in relation to static demonstrations. Discussion of an advance notice requirement has made it clear that it would produce much unnecessary work for the police to little purpose. There is no legal definition of a static demonstration: an assembly covers the whole range of public gatherings, from political rallies to religious services and pop festivals to football matches. The Government has considered possible definitions based on the nature of an assembly, or its likely size; but it has not proved possible to devise a definition which restricts the category to those events of interest to the police. An advance notice requirement would therefore inundate the police with notifications of perfectly peaceful meetings. The administrative burden would far outweigh the information gain.

The power to impose conditions

5.5 The Government does, however, propose that static demonstrations in the open air, but not those in closed premises, should be brought within the scope of the extended powers proposed in the previous chapter to impose conditions on marches. The criteria for the exercise of the power will be the same: the police will be enabled to impose conditions on static demonstrations if they reasonably apprehend serious public disorder (including serious damage to property), serious disruption to the life of the community or the coercion of individuals. But the power will extend only to demonstrations in the open air (including the highway): meetings in closed premises are discussed in paragraph 5.16 below. Where disorder has been associated with meetings in closed premises, it has usually been confined to counter-demonstrations outside (which would be subject to the new powers).

5.6 In order to prevent the imposition of conditions whose effect would be tantamount to a ban, the conditions which the police will be able to impose will be limited to the location, numbers and duration of a static demonstration. The police will not be able to prevent a demonstration from going ahead on the date and at the time planned by the organisers, but they will be able to impose conditions about its size, location and duration if they reasonably apprehend circumstances defined in one of the three tests mentioned in the preceding paragraph. Both the decision to impose conditions and the nature of the police conditions will be subject to the same possibility of challenge in the courts by means of judicial review that will operate in relation to marches: see paragraph 4.25.

5.7 It is right to give examples of how the Government anticipates that the new powers might operate in practice. The first test would enable the police to take preventive action to avoid serious public disorder. This might have proved useful on occasions in the past when marches have been banned and the organisers have announced their intention to hold a meeting instead. The National Front has on occasion staged a rally, after a march has been banned. The new power would not enable the police to ban the rally: but if they apprehended serious public disorder they would be able to insist that it was held in a less sensitive area. The power might also prove useful in relation to picketing which has resulted in outbreaks of serious public disorder: at Grunwick's or Warrington, for example, the police could have imposed conditions limiting the numbers of demonstrators, or moving the demonstration in support of the pickets further away from the factory. And the power could in suitable cases be used in relation to football matches: where the police apprehend serious public disorder in connection with a fixture they could where necessary impose conditions limiting the number of spectators.

5.8 As with marches, the test of serious public disorder will include serious damage to property. In most cases serious or widespread damage cannot be committed by demonstrators without engendering serious public disorder; but on occasion the clarification might prove useful in enabling the police to impose conditions on a demonstration where the main risk is damage to property (for example, animal rights protesters demonstrating outside an isolated laboratory or mink farm).

5.9 The second test is serious disruption to the life of the community. Static demonstrations may be thought in general to be less disruptive than marches, but on occasion they can deliberately or inadvertently result in serious disruption, and where this occurs it is right that the police should have power to take preventive action. An example of deliberate disruption is provided by the Stop The City demonstrations in 1983-84. These were intended to bring the City of London, and on one occasion Leeds, to a halt by a variety of disruptive activities. In the City of London the Commissioner had powers under the City of London Police Act 1839 to issue directions to his constables to keep order and to prevent any obstruction of the thoroughfares. No equivalent powers exist outside London. In such circumstances the police might on occasion find it helpful to be able to impose conditions limiting the numbers of demonstrators or indicating that certain areas would be out of bounds to them. In the diplomatic quarter of London residents have occasionally complained about the disruption caused by demonstrations outside neighbouring embassies: if the disruption was shown to be serious the police could limit the numbers or duration of a demonstration, or move it further away.

5.10 The third test is the coercion of individuals. The obvious example is picketing: where pickets deliberately try to obstruct the passage of those going to work, as they did at Grunwick's and during the miners'dispute, the

police should be able to limit their numbers, or move them further away from the path of the workers. But examples can be given of other demonstrations which have attempted by force to obstruct the free movement of people or vehicles: in such cases it is right to give the police preventive powers to ensure that this does not happen. And examples of coercion go wider than deliberate obstruction: in the South Wales picketing case (Thomas and others v National Union of Mineworkers (South Wales) Area Times Law Report 18 February 1985) the judge held that mass picketing which was not obstructive could nevertheless be intimidatory, especially outside someone's home.

5.11 It is not envisaged that the police will need formally to impose conditions at all frequently. But as with marches, their ability to do so will affect the legal framework within which negotiations with demonstration organisers are conducted. The police and the demonstrators will know that, in default of obtaining agreement about the ground rules, the police will be able to impose conditions if they apprehend that the demonstration will result in disorder, disruption or coercion. The organisers will have an incentive to negotiate; and the police will have to be reasonable, because if they impose conditions unreasonably, or the conditions themselves are unreasonable, their decision will be open to challenge in the courts by judicial review.

Demonstrations outside embassies

5.12 Following the shooting incident outside the Libyan People's Bureau in April 1984, the Home Secretary informed Parliament that the question whether demonstrations by foreign nationals should be subject to special controls would be considered in the public order review. The Government has concluded that it would be neither practicable nor desirable to make any changes to public order law in this respect: the police could not be expected to distinguish whether demonstrators were foreign nationals or British citizens,

and it would be repugnant to our traditions of asylum and freedom of speech to ask them to do so. Foreign nationals must be free to demonstrate in this country just as British citizens are free to demonstrate in democratic countries overseas. But where the laws of this country are broken by foreign nationals committing public order offences they can expect to have their immigration status reviewed with a view to possible deportation in appropriate cases. The Government has also considered, in consultation of the Metropolitan Police, whether any special controls are necessary over demonstrations outside embassies. It has concluded that the police's existing statutory and common law powers, together with the new controls which are proposed in relation to static demonstrations, should provide the police with all the powers which they need to maintain order outside embassies, and to fulfil their special duty under the Diplomatic Privileges Act 1964 to protect diplomatic premises and to preserve their peace and dignity.

Picketing

5.13 It will be apparent from the examples given in paragraphs 7 to 10 that the new powers to impose conditions on static demonstrations will apply to pickets. The Select Committee suggested that supporting demonstrators or secondary pickets should be subject to Public Order Act controls, but that those picketing their own place of work should be exempt. It would not be practicable for the police to make such distinctions: they cannot normally be expected to know who amongst pickets is employed at the workplace in question and who comes from elsewhere. The experience of the miners' dispute shows that such distinctions have no place in public order law: it matters not whether serious public disorder or intimidation is caused by secondary pickets, demonstrators in support or people picketing their own place of work. The effect on those attempting to go to work and on the police who have to protect them is the same. The Government has concluded that where picketing

threatens to result in serious public disorder, serious disruption or the coercion of individuals, it is right that it should be subject to the same controls as other forms of static demonstration.

5.14 The right of peaceful picketing will not in any way be infringed. Pickets whose purpose is peacefully to persuade or to communicate information will have nothing to fear from the new controls, because their picketing will not breach any of the three tests. But where the effect of picketing is physically to obstruct or to intimidate rather than to persuade, the police will have powers to impose conditions about the numbers or location of pickets. The reasonableness of police conditions can be tested in the courts; and the Government does not intend that the power should be used to undermine the right of pickets in reasonable numbers to stand by the entrance to a workplace. The circumstances in which conditions may be imposed will often be ones in which a breach of the criminal law is likely to occur. If the imposition of conditions averts such a breach it will have a beneficial effect from the point of view of the prevention of crime as well as the maintenance of order.

The offence of intimidation

5.15 The law has always drawn a distinction between picketing whose purpose is peacefully to persuade or communicate information, and picketing whose purpose is to intimidate or obstruct. Intimidatory picketing has never been lawful, and is in itself a criminal offence. The current statutory provision against intimidation is section 7 of the Conspiracy and Protection of Property Act 1875. This section makes the following acts criminal if they are done with a view to compelling any person to do or abstain from doing any act which that person has a legal right to do (such as going to work):

(i) using violence to or intimidating that person or his wife or children or injuring his property;

(ii) persistently following that person about from place to place;

(iii) watching or besetting his house, or place of work, or the approach to such house or place, or wherever the person happens to be.

5.16 The section has been criticised as archaic; but the circumstances of the miners' dispute have shown how important it is to have an offence penalising conduct of this kind. The provision was used mainly in dealing with intimidation away from the picket line, in particular the besetting of people's homes. It was also used for offences on the picket line; but its effectiveness is hampered by the fact that it is not an arrestable offence, and by the maximum penalty being three months' imprisonment or a fine of £100. To enable the police to deal more effectively with criminal intimidation, the Government proposes that section 7 of the 1875 Act should be made an arrestable offence; and that the maximum penalty should be increased to six months' imprisonment or a fine of £2000.

Meetings in closed premises

5.17 Serious public disorder is less frequently associated with indoor meetings than with assemblies in the open air. The majority of commentators on the Green Paper and the Select Committee felt that it was neither necessary nor desirable to extend the controls in section 3 of the Public Order Act to meetings in closed premises. The Government agrees with this conclusion: but it has looked with particular care at the problem of disruption of statutory local inquiries. It has concluded that there is no gap in the substantive law: the common law, section 5 of the Public Order Act 1936 and section 1 of the Public Meeting Act 1908 between them provide adequate coverage. They confer powers upon the inquiry inspector, and the police where appropriate, to

curtail offensive, threatening or disorderly conduct which threatens to prejudice the conduct of the inquiry. Discussions between departments have helped to clarify the respective roles of the inquiry inspector and the police, and the Government proposes to amend the Inquiries Procedure Rules to include a specific reference to the inspector's statutory powers to require a person behaving in a disruptive manner to leave the inquiry.

Election meetings

5.18 It was an election meeting that occasioned the violent disorders in Southall of April 1979; and there were serious disturbances at other election meetings held by the National Front during the 1979 general election campaign at Leicester, West Bromwich and Bradford. The Green Paper asked whether changes in the law and procedures associated with election meetings might reduce the potential for disorder. It recognised however that proposals to limit the rights of candidates to hold election meetings in publicly-owned rooms would need compelling reasons in justification. The response to the Green Paper has confirmed the difficulty of making any changes in this area.

5.19 The Select Committee recommended that a power should be introduced to allow a local authority, in consultation with the police, to require a candidate to hold his meeting elsewhere in the constituency or the electoral area. The power would be exercisable "on reasonable apprehension of serious public disorder or serious disruption to the normal life of the community", and would require the Home Secretary's consent. The Government does not feel able to adopt this recommendation. It would encroach upon the right of the candidate to convey his message to electorate in the area of his choice; and it would involve the police and the public authorities in decisions bearing upon the political fortunes of particular candidates. The Select Committee's second recommendation stemmed from concern that candidates who hold what are

in effect closed, all-ticket rallies should not enjoy the financial benefit of a room free of hire charges; and that people opposed to a particular candidate should not be able to pack a meeting and effectively exclude those who wish to hear him. The Committee recommended that, to meet these concerns, a substantial proportion of seats at election meetings should be open to the public. The Government considers that there would be considerable practical difficulties in achieving this, given the Committee's concern (which the Government shares) that a candidate's stewards should continue to have the right to refuse entry to those intent on breaking up a meeting. The Government has concluded that a stricter definition of 'public meeting' in electoral law is unlikely to solve this problem, or to reduce the potential for disorder at election meetings.

PUBLIC ORDER WHITE PAPER

CHAPTER 6:

MISCELLANEOUS MATTERS

6.1 Previous chapters have explained the Government's proposals for building on the framework of control in section 3 of the Public Order Act 1936. This chapter sets out the Government's conclusions in respect of the other provisions of the 1936 Act described in chapter 2. It also deals with other suggestions discussed in the Green Paper or put forward during the review. Where the Government has decided that no legislative change is needed, it is right to explain fully the reasons for reaching these conclusions.

Sections 1 and 2 of the Public Order Act 1936

6.2 The Select Committee took the view that sections 1 and 2 of the 1936 Act, prohibiting uniforms in connection with political objects and prohibiting quasi-military organisations, should be retained. They felt that a permanent measure was necessary to suppress any attempt on the part of a political group to parade as a uniformed force. The Government recognises that these sections deal with a problem less immediate now than it was in the 1930s, but agrees that they should keep their present form in order to prevent the re-introduction of quasi-military methods of organisation and display for political purposes. For the same reason, the Government proposes that the Unlawful Drilling Act 1819 should be retained. Section 1 of this Act prohibits meetings and assemblies for the purpose of training or drilling in the use of arms, or for practising military exercises without lawful authority.

Section 4 of the Public Order Act 1936

6.3 There is a significant overlap between the offence of possessing an offensive weapon at a public meeting or procession in section 4 of the 1936 Act, and the more general provision contained in section 1 of the Prevention of Crime Act 1953. The latter creates the offence of possessing an offensive weapon in any public place without either lawful authority or reasonable excuse. There are differences in the scope and terms of the two offences, and also in their degree of gravity, as reflected in their modes of trial: offences under section 4 may only be tried summarily, while the offence in the 1953 Act can be tried summarily or on indictment. The Government believes, like the Select Committee, that it is unsatisfactory for two separate statutes to contain offences so similar in nature, and accordingly proposes that they should be consolidated into a single either way offence.

The Union Flag

6.4 In the course of the review of public order law it has been suggested to the Government that the use of the Union Flag should in some way be restricted. This suggestion reflects concern at the use of the national flag by extremist right-wing groups. The Government considers this use of the flag deeply offensive, and believes that most people share this view. But it has proved impossible to devise a provision which defines satisfactorily those organisations or individuals who should be allowed to use the flag or those occasions on which its use would be permitted. Accordingly the Government has concluded that it is not practicable to try to legislate to control the use of the flag.

Section 5A: Incitement to racial hatred

6.5 The terms of the present offence of incitement to racial hatred are described in paragraph 2.6. The Select Committee took the view that an

offence of this nature was required, as did most of the commentators on the Green Paper. The Government agrees. A variety of amendments to the section were suggested, many of which would alter the basis of the offence, so that the criminal law would be used against the production of material or the expression of views which are offensive in a multi-racial society. The Government believes that the reasonable exercise of freedom of expression should be protected, however unpleasant the views expressed, and has concluded that section 5A should continue to be based on considerations of public order. Within the public order context, however, the Government proposes certain changes to make the section more effective.

6.6 One area in which difficulties have been experienced with section 5A is where circulation of the material is to selected groups of people, such as clergymen or Members of Parliament who might be thought unlikely to be incited to racial hatred. At present, the more level-headed the recipients of racially inflammatory material, the more difficult it is to show that racial hatred is likely to be stirred up, even when the material itself is so threatening, insulting or abusive that this was clearly the intention of the distributor. The public order consideration is relevant here since the material may well find its way to other, less equable, audiences, although not directly distributed to them, and its effect may be to stir up racial hatred. The Government proposes that section 5A should be re-cast to penalise conduct which is either <u>likely</u> to stir up racial hatred or which is <u>intended</u> to do so. The offence will then be in similar terms to the main section 5 offence of conduct which is <u>likely</u> or <u>intended</u> to cause a breach of the peace.

6.7 The likely character of the recipients of racially inflammatory material is relevant also to the amendment the Government proposes to the definitions of "publish" and "distribute" in section 5A(6). In its present form the

section does not apply to material published or distributed to members of an association. This provision was intended to protect freedom of expression within a group holding particular views, but it is possible that even those who already hold racialist views may be incited or incited further to racial hatred, and the mischief at which section 5A is aimed could occur. The Government sees no justification for allowing material to be circulated privately when it would be open to prosecution if circulated more generally and may have the same effect in both cases; accordingly it proposes to remove the exemption for material circulated to members of an association.

6.8 There has also been some difficulty in making section 5A effective against those who manufacture or supply racially inflammatory material unless a specific instance of distribution can be proved against them. The Government proposes to create an offence of possessing racially inflammatory material with a view to distribution or publication. Under this proposal the court would be required, in the case of a person charged with possessing prohibited material, to draw such inferences as seemed reasonable from the nature or quantity of material in his possession, and to consider the likely or intended consequence of its distribution. This would mean that someone handed a racially inflammatory leaflet in the street would not be committing the offence, but that someone keeping several hundred leaflets for distribution might well come within the scope of the provision.

6.9 At present, even where a source of such material is located, there is little that can be done to obtain the evidence needed to bring proceedings. Investigations often depend on the willingness of suspects to allow premises to be searched. This is unsatisfactory, and it would be more so for the new offence of possessing racially inflammatory material described above to be dependent on the co-operation of those whose conduct it seeks to catch. To

make the proposed new offence enforceable, the Government considers that there should be an associated power of search, seizure and forfeiture in respect of racially inflammatory material.

Incitement to racial hatred: Broadcasting

6.10 The one amendment to section 5A which the Select Committee recommended was that incitement to racial hatred by broadcasting should be liable to prosecution in the same way as the publication of written material or the use of words in a public speech. The Government recognises the force in the view that it seems wrong in principle that a person can be prosecuted for uttering words on a street corner or for distributing written material, but cannot be prosecuted for uttering the same words in a broadcast programme.

6.11 It would not however be possible to confine the scope of the offence to the person uttering the offensive words. The Cable and Broadcasting Act 1984 extended liability to cable operators unless they could show that it was not reasonably practicable to remove the offending words before distributing the programme. The same logic would have to apply to the broadcasters: if those who appeared on their programmes were made subject to the incitement provisions, it would not be possible to exclude from liability programme producers or the broadcasting authorities.

6.12 There is however a difference between cable and broadcasting. An offence of incitement to racial hatred was considered necessary in the case of cable because it was a medium intended to operate with the minimum of centralised regulation over a large number of cable operators. In the case of broadcasting, the means of transmission is not owned by the individual companies, but by the broadcasting authorities, who are already responsible to Parliament. They have the power to refuse to transmit material which might

incite to crime or be offensive to public feeling, and there is no evidence that they have ever broadcast material which was likely to incite racial hatred. In the absence of such evidence, the Government believes that there is no need to extend section 5A to broadcasting at the present time.

Police powers

6.13 The Green Paper invited comments on the question whether the police common law powers in relation to public order should be codified or strengthened in any way. The main argument for codifying the powers would be to clarify them in order to make them better known and understood. The Government believes, however, that there is advantage in the flexibility of common law powers which are defined and controlled by the courts; and the police have not sought codification and see no benefit in it. The Select Committee considered a proposal from the Commissioner of Police of the Metropolis that the police should have power to remove dangerous or offensive articles from demonstrators; but they felt that there was insufficient evidence of actual difficulties to justify any change in the existing law. The Government agrees: the common law powers for the police to take any action which is necessary to prevent breaches of the peace are wide enough to include the removal of provocative articles, and the Public Order Act expressly recognises that this may on occasion include flags, banners or emblems.

6.14 The Government has considered with particular care proposals that there should be a statutory power to disperse an assembly, with a related criminal offence of failure to comply with police directions. The police already have power at common law to disperse an assembly in order to prevent or deal with a breach of the peace. In his report on the Brixton disorders, Lord Scarman recommended that no new powers were necessary. He pointed out that the police had adequate powers of arrest for a breach of the peace, or for

breaches of section 5 of the 1936 Act; and that there would be difficulties in incorporating a public warning given in the din of turmoil as a necessary ingredient of the offence.

6.15 The Government accepts the force of these considerations. Even if the purpose of a statutory power was merely to declare the common law there would be significant difficulties in framing an acceptable and clear provision. These include whether there should be a statutory limit on the area to be cleared; whether there should be an exemption for those who could be said to have a reasonable excuse for remaining, such as journalists or those providing first aid; and how to ensure that the offence caught only those heard the order but refused to disperse. A statutory power might in practice be no more certain than the common law power and might create additional problems for the police. The police have not reported any difficulty in using their common law powers on appropriate occasions. These have ranged from minor incidents of dispersing a crowd outside a public house after closing time, to dispersals using shields or batons during a riot. Other common uses of the power include dispersal of a march which becomes disorderly on reaching its destination, and dispersing unruly crowds in the streets near major football grounds. The Government has concluded that there is no advantage in introducing a statutory power to order an assembly to disperse, with or without a related offence of non-compliance.

Costs of policing demonstrations

6.16 The increased cost of policing demonstrations in recent years has been of some concern to the Government and was one of the developments in the public order field which was taken into account in the decision to institute the review in 1979. This increase results in part from the higher number of demonstrations and in part from a greater tendency to disorder. The

Commissioner of Police of the Metropolis estimates that the gross cost of policing demonstrations in London in 1984 which required the deployment of 100 or more officers was of the order of £5.9 million. Among the more expensive of the demonstrations in that year were the march by the British Union for the Abolition of Vivisection on 12 May, the Anti-Apartheid march and rally on 2 June about the visit of Mr Botha, and the Democracy for London Campaign march and rally on 7 November, each of which cost more than £100,000 to police and involved the deployment of more than 1,000 officers. Nor is the cost of demonstrations a burden in London alone: the cost of the CND demonstration at RAF Greenham Common over the Easter weekend in 1983 was estimated at £340,200. While in no way wishing to inhibit the peaceful and lawful expression of opinion the Government has considerable sympathy with the views of those who believe that demonstrators should meet all or some of the costs of policing their own demonstrations.

6.17 After weighing this question carefully, however, the Government has concluded that it would not be possible to devise a general workable provision of this kind. There are formidable practical difficulties arising mainly from questions of enforcement and identification. A scheme whereby demonstrators paid for their policing would give organisers a legitimate reason to demand to become involved in police planning for the demonstration, with the constraints that this would impose on police operational flexibility. There would also be problems in ensuring that the organisation paid the costs assigned to it. Nor would a discretionary scheme in which the chief constable could take account of the scale of an operation, the degree of disorder and the ability of organisations to pay be satisfactory, since the exercise of this discretion would place an unreasonable burden upon the police. Where more than one organisation was involved it would be difficult to apportion the costs between them, and even where the demonstration was on behalf of a single organisation, identifying who within that group should pay the charge would be formidably difficult.

6.18 The Government believes also that in a general provision there would be no clear and acceptable way of distinguishing between those demonstrations which should properly be the subject of charges and those which should not, on the basis either of the scale or the nature of the demonstration. It seems unfair that an orderly assembly which requires extensive policing merely because of the widespread support its purpose commands - such as the 200,000 who gathered at Liverpool airport on 30 May 1982 for the Pope's visit - should render its organisers liable to a considerable financial burden. Any consideration apart from scale seems equally objectionable. For example, in 1982 2,140 officers policed the march by the Ad Hoc Committee for Peace in the Falkland Islands on 23 May, while on 12 October 1,921 officers were deployed in connection with the City of London Salute to The Task Force: it seems impossible to envisage any criteria which could determine in a satisfactorily objective way, which, if either of these two demonstrations should become the subject of charges.

6.19 The Government does, however, believe that a distinction can usefully be made between those demonstrators who wish to express their views peacefully within the law, and those who are prepared to disregard the law or the rights of the rest of the community. There is a clear difference in principle between a demonstration which passes off peacefully and the cost of which arises just from the large numbers attending, and a demonstration in which the organisers and participants deliberately flout conditions imposed by the police (or, in Scotland, the local authority). One suggestion is that where conditions imposed by the police on a demonstration had been breached, the police authority should be able to recover policing costs from the organisers through civil proceedings. The Government recognises that such a power would be used only very rarely and that it would be open to some of the practical disadvantages identified in paragraphs 6.18-6.19. But it believes that

concern with the costs of policing disorderly demonstrations is such that the possible availability of a civil remedy for the recovery of costs should be fully explored. The Government would, therefore, welcome comments on this possibility.

CHAPTER 7

APPLICATION OF PROPOSALS IN SCOTLAND

7.1 The 1980 Green Paper noted that in some respects the law on public order in Scotland differed from that in England and Wales. There is, therefore, a need for separate consideration of any proposals for change. Because of the differences in the law itself and in the administrative arrangements, different provisions as a result of the review are needed. The aim must be to ensure that any new provisions in Scotland, while remaining generally in harmony with those introduced in England and Wales, also accord with the different Scottish legal and administrative background and draw full advantage from it. This chapter explains how this will be done.

7.2 The broad purpose of the law in Scotland and of considering what changes in it are appropriate is, of course, the same as in England and Wales. It is to provide society with a balance between the interests, on the one hand, of those who wish to exercise their rights to express their opinions, to take part in processions and to assemble together peacefully and, on the other hand, the interests of society as a whole, which has the right not to be subjected to violence, disorder or disruption as a result. It is for the law to provide practicable and enforceable means whereby this balance may be held.

Scottish Differences

7.3 Having regard to this common purpose, there are two main respects in which the position in Scotland needs to be considered in its own right. First, the Scottish

common law is different from that south of the Border. There is no exact equivalent of the English common law offences of unlawful assembly and affray, though there is common law on mobbing and rioting; in addition the common law offence of breach of the peace in Scotland is much wider in ambit, dealing with all sorts of disorderly behaviour, for which a successful prosecution can lead to fines or imprisonment, whose maxima are determined by the powers of the court hearing the case. Secondly, since the Green Paper was published, Parliament has enacted the Civic Government (Scotland) Act 1982: Part V of the Act contains a statutory code for the regulation of processions in Scotland which is parallel to, but different from and more detailed than, the provisions in the Public Order Act 1936. These considerations have influenced the Government's proposals in relation to Scotland.

Common Law

7.4 The Government do not propose codification of the Scottish common law in this area. The Scottish Law Commission are at present considering the law of mobbing and rioting (Scottish Law Commission Consultative Memorandum No 60, published in July 1984) and legislative changes in advance of their recommendations are not contemplated. Nor is it proposed to codify the powers which the police derive from common law: the flexibility which these powers provide to deal with public disorder should not be lost.

Statutory Offences

7.5 Accordingly, the new range of statutory public order offences to be introduced in England and Wales will not extend to Scotland, where the common law will

remain unchanged, pending receipt of the Scottish Law Commission's advice. Nor will the proposed public nuisance offence of disorderly conduct extend to Scotland, since such behaviour is already adequately covered by the common law offence of breach of the peace. Section 5 of the Public Order Act 1936 applies to Scotland at the moment, but is little used, because the offence which it defines is also covered by the common law offence of breach of the peace, as would be the offence which its proposed amendment would create. The Government, therefore, intends to take the opportunity to repeal section 5 so far as it extends to Scotland.

7.6 The proposed amendment to section 7 of the Conspiracy and Protection of Property Act 1875 will apply in Scotland, as will the changes proposed in relation to incitement to racial hatred.

Processions

7.7 In regard to the regulation of processions the position in Scotland is substantially more complex than that in England and Wales and is different now from what it was when the Green Paper was published in 1980. The provisions of section 3 of the Public Order Act 1936 on regulation of processions continue to apply in Scotland as elsewhere. But, in addition, with the enactment of Part V of the Civic Government (Scotland) Act 1982, Parliament introduced for Scotland alone a second set of provisions on the same topic.

7.8 In Scotland there are, therefore, two separate legislative codes on processions. The 1980 Green Paper suggested that there would be merit in the future in allowing modernised legislation on processions to continue in force side by side with an amended 1936 Act. The expectation then was that the new legislation for

Scotland would come forward at the same time as the outcome of the public order review and would take full account of that review. In the event the review had not been concluded when, as noted above, the Civic Government (Scotland) Act 1982 introduced its new, detailed and, in some respects, different system of regulating processions. Since its enactment it has indeed been possible for the two sets of legislation to continue in force without practical difficulty. But with the prospect that the provisions of the Public Order Act 1936 will not only be amended in detail in regard to processions but also extended in some respects to static demonstrations, it seems plain that there would be no advantage - and perhaps only a measure of confusion - in the continued existence of two separate codes, differing in detail, applying in Scotland.

7.9 The Government takes the view that in the main the system of regulating public processions in Scotland should continue to be that set out in the recently-introduced provisions of the Civic Government (Scotland) Act 1982. These provisions, which were themselves developed from the earlier local provisions of long standing which they replaced, have worked well since they came into operation. Subject to minor adjustment, therefore, they will continue to provide the statutory basis for regulating processions. In view of the detailed procedure which they contain, as outlined below, involving the regional council in a regulatory capacity, it follows that there will be no need to invoke the regulatory provisions of section 3(2) of the Public Order Act 1936: this provision will be repealed in relation to Scotland.

7.10 The 1982 Act already requires organisers of processions, subject to agreed exceptions, to give not less than 7 days' notice to the regional council. The Act

also provides power to ban, or impose conditions on, individual processions and confers a right of appeal to the sheriff, on certain limited grounds, against a ban or conditions imposed. It is for the regional council, after consulting the chief constable, to decide whether or not to impose a ban or conditions. No specific test is laid down for this but the council is required to give reasons for its action where it does impose a ban or conditions. Such a step would of course be exceptional and the normal practice will continue to be for the organisers of processions to discuss and agree informally with the police what arrangements for their conduct should be adopted in the general interest. Having regard to the experience of this system, and of the local systems which preceded it and were replaced by it, and in view of the detailed provision for early appeal to the sheriff, it is not proposed to require in Scotland Ministerial consent where a regional council decides, after consulting the chief constable, that a ban is essential; nor is it considered necessary to extend the power to ban beyond individual processions to encompass all processions or classes of processions over a period. But it is proposed to amend section 62 of the 1982 Act in one minor respect. At present notice of a proposal to hold a procession must be given to the regional or islands council, and it is for that body to send a copy of the notice to the chief constable. When notice is received by a council at weekends, especially if public holidays are involved, this sometimes leaves inadequate time for proper consideration by both police and council. Time would be saved if, as is proposed, the section were amended to provide that the person proposing to hold the procession should send a copy of the notice direct to the chief constable at the same time as he sends one to the local authority.

7.11 As in England and Wales, however, it seems desirable to provide the police with clear statutory authority to issue directions for the control of a procession should this be seen to be necessary either immediately before the procession starts or when it is in progress. Since the general arrangements for the procession will already have been vetted by the local authority, in consultation with the police, any such directions or conditions which the latter find it necessary to impose on the spot will be justified by an immediate operational need to maintain public order. This aspect falls to be dealt with more appropriately in Public Order legislation, and the necessary provision will therefore be included in the proposed amendments to that legislation.

Static demonstrations

7.12 As in England and Wales, it is not proposed to involve local authorities in the regulation of static demonstrations. Nor is it intended to introduce any requirement that advance notice of demonstrations should be given or that there should be any power to ban the fundamental freedoms of expression and assembly in the open air. After consultation with the Association of Chief Police Officers (Scotland), the Government is satisfied that, in Scottish circumstances, the need to regulate static demonstrations will be met, first, by the normal process of informal discussion between organisers and police which is customary and, secondly, by providing the police with a statutory power, to be used when necessary in the interests of public order, to impose conditions in regard to the place, the numbers attending or the duration of a static demonstration. As with the corresponding provision in regard to processions, the relevant provision to be included in Public Order legislation will apply, so far as appropriate, in Scotland.

In practice such a power would be likely to be used only on the spot, when circumstances made its use essential.

7.13 Implementation of these proposals will mean that, with the minor change mentioned in paragraph 10, the existing system for the regulation of processions by local authorities and police, acting together, will continue to function as laid down in Part V of the Civic Government (Scotland) Act 1982. Where, however, the police find it necessary, in order to preserve public order, to give directions to a procession or static demonstration, they will derive the statutory power for doing so from the appropriate provisions in the amended Public Order legislation which will replace section 3(1) of the Public Order Act 1936. The present section 3(2) will be disapplied in relation to Scotland but the other sections of the Act (apart from section 5 but including the amendments proposed in relation to incitement to racial hatred) will continue to apply.

PUBLIC ORDER WHITE PAPER

CHAPTER EIGHT

CONCLUSIONS

8.1 It is almost 50 years since the Public Order Act 1936 was enacted. Events since this review was announced in 1979 have confirmed the importance of reviewing the framework of public order law to ensure that it is adequate to deal with the public order problems of today, and flexible enough to cope with those that may arise in future. Throughout the review the Government has been concerned to strike a balance between protecting the rights of those who wish to demonstrate and the interests of the wider community. The Government believes that in many cases this balance can best be achieved by seeking to prevent disorder and disruption before it occurs.

8.2 This approach is exemplified in the Government's proposals in relation to controls on marches and static demonstrations. The Government plans to give to the police powers designed to ensure that marches and demonstrations do not cause serious disruption to the life of the community or the coercion of individuals; and to provide in relation to static demonstrations in the open air similar powers to prevent disorder, disruption or coercion. The interests of the wider community will be protected by these powers, and the interests of demonstrators will be protected by the important safeguard that there will be no extension of the power to ban.

8.3 In addition the proposals to modernise and codify the common law offences amount to an important series of proposed changes in public order law.

8.4 In the case of certain of the proposals the Government has not come to any final decisions and would welcome comments. Where comments are particularly invited this has been indicated in the text. Comments should be sent in writing before 30 June 1985 to:

The Secretary
Review of Public Order Law
F8 Division
Home Office
Queen Anne's Gate
LONDON SW1H 9AT

Telephone enquiries about the submission of comments may be made by ringing (01)-213 5345 or (01)-213 6249.

Comments on enquiries from bodies or individuals in Scotland should be addressed to:

The Secretary
Division IB/2
Scottish Home and Health Department
Room 361
St Andrew's House
EDINBURGH EH1 3DE
(Telephone: (031)-556 8501 ext 2664/2683)

PUBLIC ORDER WHITE PAPER

CHAPTER NINE

SUMMARY OF PROPOSALS

The Government would particularly welcome comments on the proposals marked with an asterisk.

COMMON LAW PUBLIC ORDER OFFENCES

1. The common law public order offences of riot, rout, unlawful assembly and affray should be abolished (paragraph 3.3).

2. Section 5 of the Public Order Act 1936 should be amended to conduct likely or intended to cause fear of unlawful violence or to provoke the use of unlawful violence (paragraphs 3.8 - 3.11).

3. There should be a statutory offence of violent disorder which would those using or threatening unlawful violence to persons or property in a group of three or more (paragraphs 3.12 - 3.13).

4. There should be a statutory offence of affray penalising those threatening or using unlawful violence (paragraph 3.14).

5. There should be a statutory offence of riot which would catch those using unlawful violence in a group of twelve or more using or threatening such violence with a common purpose (paragraphs 3.15 - 3.17).

6. In the statutory scale of offences all the lesser offences should be available as alternative verdicts to any of the more serious charges (paragraph 3.18).

7. The maximum penalties on indictment for these offences should be ten years for riot, five years for violent disorder and three years for affray (paragraph 3.19).

8.* There should perhaps be a new offence of disorderly conduct to catch those who behave in an abusive, insulting, threatening or disorderly manner, causing people to be substantially alarmed, harassed or distressed (paragraphs 3.20 - 3.25).

9. The Riot (Damages) Act 1886 should remain in being but claims should be subject to the test of the new statutory offence of riot (paragraph 3.26).

10. Certain obsolete statutes relating to public order should be repealed (paragraph 3.27).

CONTROLS ON MARCHES AND PROCESSIONS

11. There should be a national requirement, with a related offence of non-compliance, for organisers to give advance notice of a march or procession seven days before the event, or as soon as reasonably practicable thereafter. There would be an exemption for processions of a religious, educational or ceremonial character customarily held (paragraphs 4.2 - 4.6).

12. The sole ground for the prohibition of processions under section 3 of the Public Order Act should continue to be the apprehension of serious public disorder (paragraphs 4.8 - 4.11).

13. In addition to the existing provision for 'blanket' bans, there should be a power to ban a single march or procession (paragraphs 4.12 - 4.14).

14. There should be no change to the existing procedure for making banning orders, involving Chief Constables, local authorities and the Home Secretary (paragraph 4.15).

15. There should be an offence of knowingly participating in a prohibited procession (paragraph 4.16).

16. The basis for exercising the power to impose conditions on a march or procession should be extended by adding to the present sole test of the apprehension of serious public disorder, those of serious disruption to the local community or the coercion of individuals (paragraphs 4.21 - 4.25).

17. Section 3(1) should be amended to allow the senior police officer present at a march to issue directions under the section (paragraph 4.27).

18. The power to impose conditions in advance of a march or procession or to apply for a ban should be capable of delegation from a chief constable to an assistant chief constable, and from the Commissioner of Police of the Metropolis to an Assistant Commissioner (paragraph 4.28).

19. There should be a specific power of arrest for offences under section 3(4) of the Public Order Act 1936 and for the proposed new offence of knowingly participating in a prohibited procession (paragraph 4.29).

20. Section 3(4) should be amended to distinguish between those who disobey police directions on a march and those who organise or incite others to do so (paragraph 4.30).

STATIC DEMONSTRATIONS AND MEETINGS

21. There should be no new power to ban static demonstrations (paragraph 5.3).

22. There should be no advance notice requirement for static demonstrations or assemblies (paragraph 5.4).

23. There should be a new power to impose conditions on static demonstrations in the open air, exercisable by reference to the same criteria as are proposed for processions, but limited to the location, numbers and duration of the demonstration (paragraphs 5.5 - 5.14).

24. The offence of intimidation in section 7 of the Conspiracy and Protection of Property Act 1875 should carry a specific power of arrest and should have an increased maximum penalty of six months' imprisonment or a fine of £2,000 (paragraphs 5.15 - 5.16).

25. There should be no change in the substantive law relating to meetings in closed premises (paragraph 5.17).

MISCELLANEOUS MATTERS

26. The provisions in section 4 of the Public Order Act and section 1 of the Prevention of Crime Act 1953 about possesing an offensive weapon should be consolidated (paragraph 6.3).

27. The offence of incitement to racial hatred contained in section 5A of the Public Order Act should be re-cast to penalise conduct intended to stir up racial hatred as well as that likely to do so (paragraph 6.6).

28. The exemption in section 5A for material published or distributed within an association should be removed (paragraph 6.7).

29. There should be a new offence of possessing racially inflammatory material with a view to distribution or publication; with related police powers of search, seizure and forfeiture in respect of offending material (paragraphs 6.8 - 6.9).

30*. The offence of incitement to racial hatred should not at present be extended to broadcasting (paragraphs 6.10 - 6.13).

31. Police common law powers in relation to public order, including the power to disperse an unlawful assembly, should not be codified (paragraphs 6.14 - 6.16).

32*. The possibility should be explored of introducing a power to enable a police authority to recover policing costs from the organisers through civil proceedings where conditions imposed by the police on a demonstration had been breached (paragraphs 6.17 - 6.20).

APPLICATION OF PROPOSALS IN SCOTLAND

33. The Scottish common law public order offences should not at present be altered, pending the report of the Scottish Law Commission (paragraph 7.4).

34. The common law police powers should not be codified (paragraph 7.4).

35. Section 5 of the Public Order Act should be repealed in its application to Scotland (paragraph 7.5).

36. The changes proposed to section 7 of the Conspiracy and Protection of Property Act 1875 and to section 5A of the Public Order Act should apply in Scotland (paragraph 7.6).

37. In view of the provisions in the Civic Government (Scotland) Act 1982

for regulating processions, section 3(2) of the Public Order Act should be repealed in relation to Scotland (paragraph 7.9).

38. There should be a minor amendment to section 62 of the Civic Government (Scotland) Act to require those giving advance notice of a procession to inform not just the local authority but also the chief constable (paragraph 7.10).

39. The local authority's power in Scotland to impose conditions on a procession in advance should be supplemented by a statutory police power for use where there is an immediate operational need to maintain public order (paragraph 7.11).

40. The police in Scotland should have a stautory power to impose limited conditions on static demonstrations in circumstances broadly similar to those for processions (paragraph 7.12).

CONFIDENTIAL

Prime Minister.
I think you spoke about this to Hetty Booth this a.m. MEA 22/3

PRIME MINISTER

22 March 1985

We will have a meeting about this - should Leon not.

CRIME STRATEGY

You will recall the Home Secretary's speech at Blackpool gave a clear commitment, that while the conquest of inflation had been the principal objective of your first Government, tackling law and order was the main aim of your second administration.

Our promise to the Electorate will fail unless we press hard on three fronts.

(a) General Crime Prevention eg compulsory locking devices on cars and houses would probably produce a net reduction in theft, burglary, autocrime and related offences of between 20% and 60%. (The crime prevention industry is also a good job-creator.) Home Office are developing proposals (Crime Prevention Unit). DTI, Transport and DoE should be more closely involved.

(b) Juvenile (time on their hands) Crime Prevention. The Chief Constable of Northumbria rightly said recently: "if you could occupy the under 22 year old, we would solve the largest crime problem". Home Office and DES have produced papers - inconclusive. YTS alone has been the biggest help. More interdepartmental agreement desperately needed as well as a full strategy to iniform parents, churches and schools.

CONFIDENTIAL

(c) Statistics - A Major Rethink. The Chief Statistician in the Home Office said at a meeting I had with the seven principal statisticians there: "it is questionable if crime has increased since the War". Our methods of crime recording have changed so much and there is so much more reported crime. The public are bemused. The sake of relieving fear, besides fulfilling our policy, statistics need to be explained to the public. A Ministerial seminar for the press would help.

We recommend a further discussion with Ministers of these issues, when you return from Singapore.

HARTLEY BOOTH

E.R.

WORKING NOTE 12 March 1985

CRIMINAL STATISTICS OF ENGLAND AND WALES

Government statistics are unsatisfactory at present for a number of reasons.

1. The offences recorded by the British Transport Police and the Post Office Investigation branch are not included in the statistics unless they have been reported to a statutory police force or have come to their notice as a result of court proceedings.

2. Where defendants are found not guilty at the end of the their trial, their cases are recorded as 'cleared up'.

3. There is a massive proliferation in statistic taking without any apparent reference to the question how will they be used? For example, it is difficult to conceive of the uses of classification 83 in the list of indictable offences, page 203 in the latest volume of CSEW. This is the offence of failing to surrender to bail.

4. For a variety of reasons many offences are either not reported to the police or not recorded by them and so the statisticians are the first to recognise statistics are far from accurate as a reflection of the amount of crime committed.

5. Criminal statistics do not indicate in any effective way how serious a particular crime is, for example, an incident in which a child forcibly takes something from another child may be reported as an offence of robbery.

E.R.

6. Similarly, there is no break-down of criminal damage as to whether the offence is describing a 50p cracked pane of glass or an explosion involving the loss of millions of pounds worth of property.

7. There is a useful table which breaks down the value of theft. However, this is not used to make the overall figure of crime more understandable for those who would try and use the statistics as a measure of serious and disturbing criminal activity (see CSEW, pages 41 and 42).

8. New counting rules that have been introduced since 1980 make statistics prior to 1980 and post 1980 almost impossible to compare.

9. Information is gathered locally in the 43 police districts and is not always recorded in the same way. Only cases of offences involving firearms and offences of homicide are recorded centrally (see also Swansea Licencing Centre and the Nottingham Reporting Centre).

HARTLEY BOOTH

NEW ST. ANDREWS HOUSE
EDINBURGH EH1 3SX

pa DMB 25/2

Rt Hon Leon Brittan QC MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON
SW1H 9AT

Prime Minister (2)

19 February 1985

To note Mr Younger's views, which will be considered by H Committee. The main point is on page 3 — the S of S does not share the Home Secretary's conviction that a new law on picketing could be enforced. He suggests more consultation with Chief Constables. DMB 20/2

Dear Leon,

PUBLIC ORDER REVIEW

Since I received your minute of 15 January about the review of public order law I have been considering what the implications of your proposals are for Scotland and what legislative change is needed here. I hope it will be helpful if I briefly outline my provisional conclusions. You will appreciate that, in coming to a view, I must have regard not only to the separate (and, in some respects, quite different) common law in Scotland, but also to the detailed system of regulating processions that we ourselves enacted here as recently as the Civic Government (Scotland) Act 1982. Indeed, the existence of this Act, which itself replaced earlier local powers, substantially complicates our position as regards the Public Order Act 1936.

First, I see no difficulty in what you propose as regards incitement to racial hatred: the changes and extensions you propose to the 1936 Act could extend, as do the existing provisions, to Scotland also. I agree, too, with the proposals for power of arrest and increased penalties in the Conspiracy and Protection of Property Act 1875: these are particularly apt in the light of experience during the miners' dispute.

What you propose about the revision and codification of common law offences, following the Law Commission Report, would not of course apply in Scotland, and I do not propose any parallel changes here. In this, as in other respects, the existing common law in our two countries is different; and the Scottish Law Commission (SLC) are at present considering the Scots Law of Mobbing and Rioting. It would be premature to reach, or announce, any conclusion for Scotland before the results of the SLC's work are available. (It should not be assumed that

they will recommend any comprehensive codification of the Scots common law in this area since, unlike England and Wales, we do not have, nor do we propose to have, a programme of statutory codification of the common law.) On this point, therefore, any action for Scotland, should we decide any is needed when the SLC do report, will have to await a later legislative vehicle.

This leaves questions relating to processions and static demonstrations, including picketing. On processions, I doubt if there is much need for change in Scotland, as our 1982 Act already provides, though in different form, most of what you propose for England and Wales. Thus we already have provision for requiring 7 days' advance notice of processions to be given: for power to ban individual processions or to impose conditions on them; and for a right of appeal to the sheriff against a ban or conditions. These provisions differ from your proposals in that the power to ban or impose conditions here vests in the regional council and my consent is not required; no test justifying a ban or conditions in prescribed, though the regional council must state its reasons for its action; and the appeal to the sheriff is on limited grounds only and not on merits.

Accepting that this system, which we ourselves introduced so recently, has operated satisfactorily and no problems have arisen, I see no case for substantial change in it. I would, however, like to ensure that the police continue to have a statutory right to impose conditions on a procession while it is in progress and, accordingly, I would want them to continue to have access to section 3(1) of the 1936 Act, or a similar provision.

Turning to regulation of static demonstrations (which term includes but goes wider than picketing situations), I must say that I am not persuaded that it would be right to legislate along the lines you suggest. I agree that, if the Government did decide to do so, there should be no requirement for advance notice of meetings and demonstrations in the open to be given, as this would inundate the authorities receiving the notice and would in practice, I feel sure, prove unworkable. Nor should we provide powers to ban demonstrations. It would, no doubt, be possible for me to extend the Civic Government (Scotland) Act 1982 structure so as to provide powers for imposing conditions on demonstrations and a comparable right of appeal to that which already exists in relation to processions. There is, of course, something of a difficulty in that the power of imposing conditions would need to be given to the regional councils, after consultation with the police, if the provision is to be in accord with the existing one on processions. Although this would be acceptable enough in regard to the generality of demonstrations, recent events have shown how unlikely it is that some regional councils would be prepared to impose conditions on picketing. Accordingly, a regional council power to impose conditions in advance, and subject to

appeal, would need to be supplemented by a specific power to impose conditions, if necessary, at the time of the demonstration itself; and this, for obvious operational reasons, would have to be given to the police. With this, together with a specific power to the police to disperse demonstrations, it should be possible broadly to match in Scotland what you have in mind for England and Wales.

That said, however, the question remains: whether we ought to go down this road at all. I recall that in the earlier stages of the public order review, and the earlier draft White Paper which was agreed between us but was laid aside in 1983, there was no intention to introduce new controls on static demonstrations. No doubt the main feature leading to the change of intention has been the picketing disorders and, accordingly, if the police are provided with powers over demonstrations in general, these powers will be seen as our response to picketing. I think we should consider carefully whether we should put the police in the difficult situation of having powers which they will be publicly expected to enforce but which are likely in many picketing situations (and other large and politically sensitive demonstrations) not only to be virtually unenforceable but also to exacerbate the situation should they be resorted to.

In saying this, I agree with you that the picketing disorders have revealed difficulties of enforcement rather than major deficiencies in the law. I also agree that our aim should be to give the police those powers, and only those, which will be of practical help to them. I think we need to consider carefully, and discuss in detail with the police, whether a power to impose conditions on picketing (itself an activity which differs from ordinary demonstrations in that the object of the latter is to persuade the general public and the object of the picketing is to persuade only a limited section of it) would be an assistance or an embarassment to them in the kinds of inflamed situations we have seen. I know that you have taken the minds of individual chief constables on this but I am sure how extensive your consultations have been or how representative of police opinion they are on an issue which has major political and practical implications. Certainly, Scottish chief constables would like more time to consider the operational implications.

No doubt we can look with particular care at this when your proposals come before H Committee. In the light of the decisions we reach there I shall be able to consider what changes will be needed in the Scottish provisions, to produce - as is clearly desirable - broadly similar results as regards static demonstrations and picketing, on both sides of the Border. That in turn will largely determine whether the amendment 1936 Act, in whole or part, can continue to apply to Scotland in parallel with a (possibly extended or adjusted) Scottish 1982 Act; or whether we need to disapply parts of the 1936 Act in relations to Scotland and rely on the 1982 structure as extended; or vice versa. The complexities of existing legislation make it difficult to see a legislative way clear until we have taken decisions on the substance of the changes, but it would certainly have been helpful if my Department and at least some Scottish Chief Constables had been brought into this exercise at an earlier stage.

I am sending a copy of this letter to the Prime Minister Geoffrey Howe and Sir Robert Armstrong; it might be circulated to H when your own paper goes round.

Yours ever,

George

20 FEB 1985

HLE

CONFIDENTIAL

DA

(10)

10 DOWNING STREET

From the Private Secretary

18 February 1985

Public Order Review

Thank you for your letter of 15 February. The Prime Minister would be content for the Home Secretary now to circulate his paper on the public order review to members of H Committee. She is also content with the way in which he proposes to handle the question of extending to broadcasting the offence of incitement to racial hatred.

David Barclay

Hugh Taylor, Esq.,
Home Office.

CONFIDENTIAL

From: THE PRIVATE SECRETARY

CONFIDENTIAL

Prime Minister (1)

Agree (i) circulation to H? Yes

(ii) colleagues views to be invited on the extension of the incitement offence to broadcasting? Yes MS

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

15 February 1985

Dear David,

PUBLIC ORDER REVIEW

When the Home Secretary discussed the conclusions of his review of public order law with the Prime Minister on 29 January it was agreed that the next step was to circulate a paper to H Committee. The Prime Minister said that the paper should not be circulated until it was clear whether current talks would bring about an end to the miners' dispute, but she invited the Home Secretary to consult her again about this in two to three weeks time if the strike persisted.

There is still no definite sign of an end to the dispute; but the Home Secretary would now like to consult his colleagues on H Committee if the Prime Minister agrees. We understand that there is a meeting of H arranged for 27 February. Would the Prime Minister be content if the Home Secretary now proceeded to circulate his paper for discussion at that meeting? Yes

On the question of making broadcasting subject to the offence of incitement to racial hatred, the Home Secretary undertook to consider further the possibility of leaving the broadcasting authorities exempt, while extending the offence to individuals who appeared in broadcasts. The difficulty is that the broadcasters cannot really escape responsibility for the content of recorded programmes. This was acknowledged in the Cable and Broadcasting Act 1984, which extended the offence of incitement to cable operators unless they could show that it was not reasonably practicable to remove the offending words before distributing the programme. The Home Secretary feels that the same logic must apply to the broadcasters: they must either be subject to the incitement provisions, together with those who appear on their programmes, or they must continue to be exempt. Subject to the further views of the Prime Minister he is still inclined therefore, on balance, to leave matters as they are, in the absence of any real abuse, but would take the opportunity of his paper to invite the views of colleagues on this. Yes MS

Yours ever,

Hugh

H H TAYLOR

David Barclay, Esq

CONFIDENTIAL

From: THE PRIVATE SECRETARY

Please p.a.
DMB 13/2

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

12 February 1985

Press Office

Dear David, I have made the two points indicated in pencil. OK otherwise?

DMB 13/2

..... I enclose a copy of an article which the Home Secretary has sent to the "Daily Star", for use probably on Thursday. The article was provided at their request; and a is in response to the general campaign on law and order issues which they have been running this week.

To BARCLAY DMB 14/2
Fine - But see my minor boo amendments & add to yours

Yours (v/v)

Hugh

14/2

H H TAYLOR

David Barclay, Esq.

ARTICLE FOR THE "DAILY STAR"

The Daily Star is right to make its voice heard in the fight against violent crime. We have all read with repugnance incidents of mindless violence which have ruined individual lives. And which have debased and disfigured our way of life as a whole.

Almost as bad is the fear created in the lives of others. It's true that some of the worst of these crimes are thankfully not everyday events. Most assaults by far are carried out on young men and typically during a Saturday night punch up. But the impact - particularly on the frail and elderly - is real enough. We do not want to become a society where any of our citizens are afraid to walk to their local shops.

And violence isn't confined to organised crime. We have seen violence on our football terraces and - most recently on a huge scale in the miners' dispute. If ever violence becomes accepted as a means to a quick end then our whole way of life is in danger. We must not allow that to happen.

The Star is right too in reminding us that the Government is committed wholeheartedly to resisting this kind of social breakdown. We know our responsibilities and shall not shirk them. Most recently we have thankfully seen the defeat and retreat of violence on the picket lines in the face of police courage and determination.

One reason why the police have succeeded is because we have ensured that the forces of law are not starved of resources. Since this Government came to office we have recruited 9,000 more policemen. The police are better trained, better equipped and better used. During this dispute, thousands have had to be deployed to deal with picket line violence. But once it ends, they'll be back where the public want to see them - on the beat. And thousands more have gone back on the beat since we took office.

The police have been successful in bringing to justice the worst type of violent offender. 95 per cent of homicides were cleared up in 1983. And around three quarters of "violence against the person" and two thirds of sexual assaults.

The Star is right again to talk about tough sentences for these violent criminals. No-one believes that tougher sentencing will by itself put an end to violence. But the public rightly expect to see punishment which fits the crime. There are very high maximum penalties for the worst type of offences like rape and grievous bodily harm - life in many cases. We are currently supporting or will shortly introduce bills to increase to life the maximum sentences for carrying firearms, indecent assault and serious drug trafficking - which is increasingly associated with violent crime.

I am very aware that there are times when public concern is expressed about a particular sentence that seems over lenient. But such cases are very much the exception rather than the rule. That is why I suggested a power to ask the Appeal Court to look at such a case and lay down the sentence it feels should be passed in future.

Where I, as Home Secretary, have the final say in the length of time served in prison, I have already made clear my position. Terrorist murderers, those who commit sadistic murders of children, murderers of policemen and those who murder in the course of armed robbery can now expect to serve at least 20 years. And that is the minimum. Many will have to stay in for longer. It is risk to the public, not other considerations, which will be taken into account when I am finally considering such people's release. In some cases life will mean life.

check with lawyers

Similarly I have put into place new guidelines for the release on parole of offenders in prison for the most serious crimes of violence and of drug trafficking. They will not normally receive parole, except in the last few months of their sentence when it might be in the wider interest to get them used to living in the community again.

But these measures, announced in the Autumn of 1983, are now fully in place and substantially stiffen the effective penalties against violent crime.

Finally I have ensured that we provide enough prison places to lock up those whom the courts so direct. It gives me no pleasure to see a growing prison population: even less to have to spend more public money on building new prisons. But we cannot have men of violence set free early just because there is not enough prison space to house them.

But the Daily Star is also right in saying that everybody should be involved in this debate. There is no sense in my pretending that if we could afford to double the police force all crime would go away. Or that if sentences were twice as tough, the violent criminals would all suddenly disappear. All of these things have some effect: none of them offers a complete answer.

We all have a part to play in shaping the sort of community that we want to have as parents, teachers, journalists and television producers in influencing others for good rather than evil. We must all denounce violence wherever it crops up at home, on the soccer terraces or in industrial disputes. And we all have a responsibility in helping the police bring offenders to justice.

There's no quick way to beat violence. You can't quickly stop indiscipline at home and at school turning to disorder and crime in our streets. The causes of today's problems lie deep in the past. But we've more prisons. We've more deterrent sentences. And we've more police, the finest in the world. What we want now is total commitment from everyone to help the police make our country a safer place to live.

PART 1 ends:-

Scottish Office to DB 30/1/85

PART 2 begins:-

Home Office to DB + att. 12/2/85.

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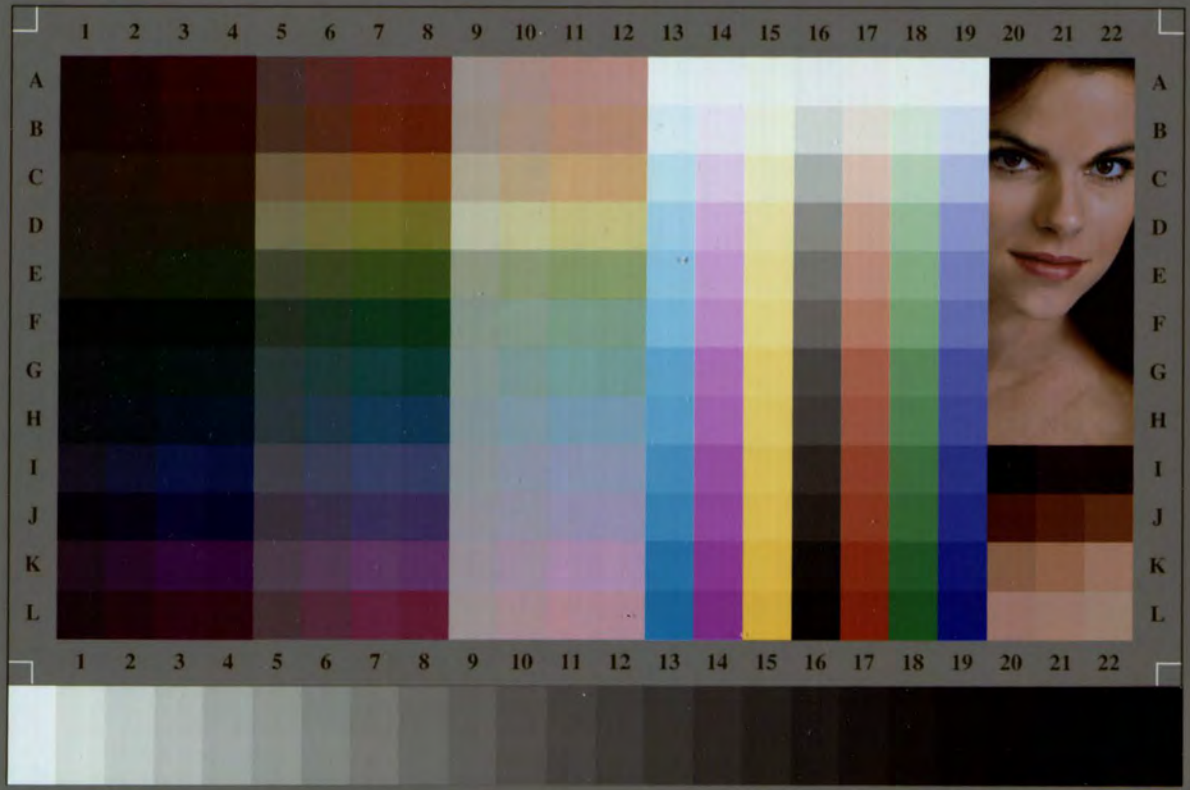

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