

cc to Civil Disorder.

Minister in Parliament: legislation.



1.
Prime Minister. Parliament
Would you like to discuss
this in Cabinet on Thursday?

JMS
14 vii

PRIME MINISTER

At Cabinet last week it was agreed that I should give urgent consideration to whether it was now necessary to introduce changes in the law like those which were contained in the Riot Act 1714. This I have done.

The likely value of such a provision, and the practical difficulties to which it could give rise on the ground, are set out in the attached note, together with a brief description of the objective of the Act of 1714, and the common law powers. We now need to decide whether to proceed with legislation, and in the light of this, what approach I should take to the issue in my speech in the debate on Thursday afternoon.

I had the opportunity to test the opinion of backbenchers on the issue at the well-attended meeting of the Home Affairs Group on Monday evening. A minority of those present were in favour of some emergency legislation; a majority said they had grave doubts about the value of any "Riot Act" provision at all. Others who were prepared to consider introducing such a provision were not eager to do so as an emergency measure.

Against that background, we could certainly move to introduce a provision immediately. (A note of what the provision might look like is also attached). Its practical value might be limited, and it would certainly give rise to some difficulties of enforcement. But to act quickly would be a symbolic gesture.

On Thursday afternoon I must, therefore, choose between announcing the introduction of a provision as an emergency; rejecting the introduction of a provision altogether; or indicating that there may be some value in such a provision, but that it should be set in the context of other changes to assist the police in maintaining public order, and dealing with riots, (in which case I consider that it would nevertheless be prudent to draft the provisions of a Bill on a contingency basis).

I would prefer the third course. The introduction of legislation immediately would be portrayed as a sign of panic, at a time when the police, better equipped, are getting things under control. We shall certainly run into demands that the legislation should be temporary. If we can set it in a broader context, we shall be better able to put the new provisions in perspective.

I am copying this minute to our Cabinet colleagues, to the Attorney General and to Sir Robert Armstrong.

LMW
14 July 1981

THE RIOT ACT 1714 AND COMMON LAW OFFENCES

The essential provisions of the Riot Act 1714 were that, if twelve or more people who were "unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace" continued to be so assembled more than an hour after a justice had by a proclamation in The Queen's name commanded them to disperse, their offence was translated from the lesser offence of misdemeanour into the graver offence of felony; that they might then be "seized and apprehended by any justice or person assisting him"; and that those who thus enforced the law were fully indemnified if, by reason of the rioters resisting their efforts, in dispersing or seizing the rioters they "killed maimed or hurt them". Some recent newspaper descriptions of the effect of the Riot Act 1714 are misleading in that, contrary to what they suggest, mere presence at the scene, as opposed to active participation in the riot, was not an offence.

The Riot Act did not create the offence of riot. Like those of affray, rout and unlawful assembly, riot is an offence at common law, which existed long before the Act of 1714 and likewise survived its repeal. The Act did not remove the common law powers of the civil authority to disperse an assembly if it seemed likely to cause a breach of the peace or was breaching the peace. Those powers co-existed with the Act and remain. Indeed, if anything the Act placed some limitation on, or at least clarified, the exercise of the powers, by implying that it would be extremely imprudent to use an armed force against a mob until the proclamation had been made and an hour had elapsed. The Act was, of course, passed in a different historical context, when there was no effective police force and the response came either from the justice and such few constables and assistants as he could muster or from troops with muskets and sabres.

The abolition of the distinction between misdemeanour and felony by the Criminal Law Act 1967, which consequentially repealed the Act of 1714, did not diminish the gravity of the offence of riot. That is an indictable offence, for which considerable penalties are available to the Crown Court. There may, of course, be evidential difficulties with trial on indictment, which the Law Commission will no doubt look at in its longer term consideration of the possible codification of the common law public order offences.

DISPERSAL OF RIOTOUS ASSEMBLIES:

THE VALUE AND DIFFICULTIES OF A NEW PROVISION

The police already have wide-ranging powers to take action against rioters in statute and common law. These cover criminal damage, theft, assault on the person, threatening or offensive conduct, and obstruction. At common law they already have power to disperse an assembly where an obstruction is being caused, or they reasonably apprehend a breach of the peace, or the assembly itself is judged to be unlawful. A new statutory power to disperse assemblies would make it simply an offence for people merely to be present in riotous circumstances. It would be directed towards assisting the police to deal with a large crowd of rioters opposing them, rather than the most common theme of recent disorders, namely running gangs of looters. Some senior police officers believe that such a change would be valuable because they argue there is a degree of uncertainty about their common law powers which make the police reluctant to use them, and those who riot reluctant to accept their use. It is also evident that bringing charges for common law indictable offences is not always quick nor necessarily successful.

Apart from the limitations of the measure under consideration, certain practical difficulties would have to be resolved. The first is how many people should constitute an assembly. The minimum of three reflects the definition of an assembly or a riot at common law. But it is not a number which in commonsense terms constitute a riot. The smaller the number chosen, the more likely the criticism will be that the police had failed to deal with small groups of offenders under any such new provision, when in fact it was not appropriate.

Secondly, it would be necessary to try to distinguish in the provisions those assemblies or groups who may not themselves be causing trouble, but who may be opposed by others who wish to cause trouble. If the provisions were limited to use against those who had already caused trouble, which would be one way round the difficulty, this would then prevent the police from using a new law to disperse assemblies where they had hard intelligence that major trouble was likely.

Thirdly, it will be necessary to try to draft the provisions in such a way as to avoid catching innocent bystanders or passers-by. Representatives of the media will, no doubt, express concern that journalists might be arrested; and there is the problem of picketing.

Parliamentary discussion of any provisions will focus on some of these practical problems, but provision for the following purposes might prove acceptable (the drafting, of course, being a matter for Parliamentary Counsel).

PROVISION FOR THE DISPERSAL OF RIOTOUS ASSEMBLIES

Where any police officer not below the rank of Assistant Chief Constable, or Commander in the Metropolitan Police, is of the opinion that an assembly of three or more persons is causing or has the purpose of causing serious disorder, he may order the persons constituting the assembly to be required to disperse forthwith. (How and by whom this should be done need perhaps not appear on the face of the Bill, but would have to be announced to the House).

Where such an order is given with respect to an assembly, any person who knowing the order to be given thereafter joined or remained in the assembly or otherwise failed to comply with the order, would be liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding £1,000, or both.

A constable would, without warrant, be empowered to arrest any person reasonably suspected by him to be committing an offence under these provisions.