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 first version of the Bill. Policy Unit Circle attached) agree. W

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 (march)

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 ....

CONFIDENTIAL

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

CONFIDENTIAL

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);

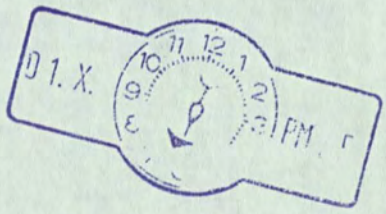
(b) to enable a police authority to recover policing costs from the organisers through civil proceedings where conditions imposed by the police on a demonstration have been breached (paras 11-13);

(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


01. X.
PM