PRIME MINISTER

PUBLIC ORDER REVIEW

I have now completed my review of public order law, and I am writing to report to you my main conclusions. I have not yet been able to discuss these with George Younger and Kenneth Cameron, but our officials have been in consultation. The Public Order Act 1936 applies to Scotland as well as to England and Wales, and the application of my proposals to Scotland will require further consideration. The Scottish Law Commission is still working on proposals which will have a bearing on that.

2. The proposals which I put forward form a substantial package of changes to the present law which will be highly controversial. If we decide to go ahead with legislation on these lines there will be difficult questions of timing and handling to be considered, although normally the first step would, of course, be the consideration of these proposals by our colleagues. It is known that we have fulfilled our commitment to complete this review by the end of 1984, and we cannot postpone the announcement of our conclusions for very long. But they need to be carefully presented in the current climate, with an indication of the timing of any legislation. I return to this issue at the end of this minute, after describing my conclusions.

3. The review has taken account of the response to our April 1980 Green Paper on the Public Order Act 1936 and related legislation, the August 1980 report on the same subject by the Select Committee for Home Affairs and the Law Commission's proposals published in October 1983 for the codification of the common law public order offences. I have also taken particular note of the lessons to be learned from recent instances of major public disorder, the NGA dispute at Warrington, demonstrations at Greenham Common, and disorder during the current miners' dispute.

4. My officials have discussed certain of the proposals with selected Chief Constables and with officials from the DPP's Department and the Department of Employment. My concern throughout has been to construct a package which makes sense in policing terms. The police have made it very clear that they do not want some of the major changes in this area of the law which have been canvassed; and I would not want to confer upon them new powers which are likely to be unenforceable. As I see it, our central aim should be to fill the genuine gaps in the law in a way which provides all the necessary powers without creating obligations and expectations which cannot be met.

5. The review has shown that there is no yawning gap in existing powers, but that there are many important points where the law could helpfully be extended and clarified, particularly in relation to the control of static demonstrations, which include both pickets and demonstrations outside embassies, and where existing common law powers could and should be translated into statutory form. In particular I propose that chief police officers should be given new powers to set conditions for the conduct of processions (paragraph (b) below) and demonstrations (paragraph (d)). These are the most politically controversial proposals in the review.

6. My conclusions are set out in greater detail in the attached note. But I would draw particularly to your attention the following points:-

(a) Advance Notice of Processions

In order to enable the police to exercise their powers more effectively, I propose to introduce a requirement that all organisers of marches or processions must give advance notice to the police. (I do not consider it practicable to extend this provision to static demonstrations).

(b) Conditions on Processions

At present the sole test in section 3(1) of the Public Order Act 1936 which can justify the police imposing conditions on a march or procession is the risk of serious public disorder. To this I propose to add the further test of the risk of serious disruption to the life of the local community, including the coercion of individuals and serious damage to property. This should considerably strengthen the ability of the police to impose conditions on marches which threaten to be seriously disruptive, or whose real purpose is to intimidate rather than to persuade. I propose at the same time to grant the organisers of a procession a right of appeal in the local magistrates' court against any police conditions which they regard as unreasonable.

(c) Bans on Processions

I believe the sole test justifying a ban should remain the risk of serious public disorder in this country, and that it should not be extended to cover the national interest or the risk of disorder overseas. I have discussed this with Geoffrey Howe and my conclusion is that to import other considerations, especially of a diplomatic nature or related to possible consequences overseas, would not be right in principle and would not have the desired effect. It would take the test out of the hands of the police, since they would in practice have to act on the views of Ministers on such questions, and would lay us wide open to blackmail from other countries who might not be too scrupulous in threatening, or even stimulating, attacks on British citizens overseas as a means of bringing

pressure to bear on us to ban marches (or demonstrations) here. I think that would give us more problems than we have now, quite apart from the difficult questions of principle involved. The test should in my judgment be related to the risk of serious public disorder in this country. The police are responsible for maintaining public order and are the best judges of what they can or cannot keep under control.

(d) Static Demonstrations

At present the police powers under the Public Order Act are restricted to marches or processions. I propose to extend these powers to static demonstrations, to enable the police to impose conditions in relation to the place, numbers and duration of any demonstration if they anticipate a risk of any serious public disorder, serious disruption to the life of the local community (which would include an embassy), the coercion of individuals (which would include embassy staff) or serious damage to property. I would stop short at giving the police the power to ban a demonstration as they can (with my approval) in the case of a march. I believe that meetings and assemblies represent a more important means of genuinely exercising freedom of speech than do marches; and the police do not favour a power to ban. Nor do the police want or need a requirement of advance notice of static demonstrations in order to impose conditions. That would burden them unnecessarily with large numbers of notifications of perfectly peaceful meetings. They consider that they will get to know anyway in advance of the relatively small number of demonstrations where there is a risk of trouble and on which they would wish to impose some conditions.

The power to impose conditions in relation to place, numbers and duration of any static demonstration taking place in the open, using the tests I have described, would give the police all the powers they need to control static demonstrations. There would be the same right of appeal to the courts as I propose for marches.

(e) Picketing

Picketing is a form of static demonstration, and the new powers to impose conditions would apply equally to pickets. I have considered very carefully whether we should carry over into the criminal law the restrictions and guidance on picketing for civil law purposes (e.g. limiting the number of pickets to six). My conclusion is that the existing law, with the additional package of measures which I now propose, will give the police all the powers which will be of practical use to them. The police themselves feel this strongly. The disorder during the miners' dispute has revealed difficulties of enforcement rather than major deficiencies in the law. However, section 7 of the Conspiracy and Protection of Property Act 1875 has proved useful in dealing with intimidation at and away from the picket line during the present dispute and to make it more effective I propose that it should carry a power of arrest and an increased penalty of six months' imprisonment or a fine of £2,000, compared with the present three months' imprisonment or a fine of £100.

(f) A Statutory Power to Disperse

I propose to leave the police with their existing powers at common law to deal with or prevent a breach of the peace, to which they and I attach considerable importance.

The police have suggested, however, that their common law power to disperse an unlawful assembly is not widely known or understood. I therefore propose to give them a statutory power to order demonstrators who had become disorderly to disperse, with a related summary offence to catch those demonstrators who remained after such an order had been given.

(g) Revision and Codification of Common Law Offences

Subject to certain amendments which are necessary to sort out the overlap between the Law Commission's proposals and section 5 of the Public Order Act 1936, which was outside their remit, I propose to accept their recommendations for the revision and codification of the common law offences of riot, unlawful assembly and affray. These changes will not significantly affect the overall scope of the criminal law. But they will give prosecutors greater flexibility over the mode of trial, and introduce statutory maximum penalties. By enabling most of these offences in less serious cases to be tried in a magistrates' court, it will be possible to proceed more swiftly against public order offenders.

(h) Incitement to Racial Hatred

I should like to propose some changes to tighten up the definition of this offence; but I have come down on balance against extending it to broadcasting.

HANDLING

7. I return to the difficult question of how best to handle this major political issue. I shall need to discuss first with George Younger and then to consult other colleagues concerned.

with a view to publishing our conclusions. Given the extensive consultations which have already taken place on our Green Paper in 1980, and the further publications by the Select Committee and the Law Commission, I see no need for another Green Paper or widespread consultation. The next step could be a White Paper, which would no doubt elicit comment and provide the opportunity for a Parliamentary debate.

8. Before deciding on the content and timing of that White Paper, however, we must decide whether we wish to introduce legislation and, if so, when. I have entered a provisional bid for a Public Order Bill as a marker for next session. If we do not legislate then, the new powers could not be enforced until late 1987 at the earliest. It might be feasible to legislate first for England and Wales. If we do decide to legislate in 1985/86, it will be necessary to publish the White Paper in the spring.

9. The issues raised obviously have far-reaching political implications and I would welcome an opportunity to discuss these with you before proceeding any further.

10. I am sending copies of this minute to Geoffrey Howe, George Younger and Sir Robert Armstrong only at this stage.

L. B.

15 January 1985

REVIEW OF PUBLIC ORDER

CONCLUSIONS AND RECOMMENDATIONS

General Questions About the Law

1. The review has concluded that there is a continuing need for the Public Order Act 1936, which enables conditions or a ban to be imposed on public processions, with penalties for non-compliance, and which prohibits offensive conduct conducive to breaches of the peace, including offences of incitement to racial hatred. As now, there should be no statutory right to demonstrate, and the merits of decisions made by the Secretary of State in consenting to an order banning a procession under section 3 of the 1936 Act should continue not to be subject to appeal in the courts.

2. The review went on to consider whether the powers under the 1936 Act in relation to processions should be changed, and whether they should be applied to static demonstrations, including pickets. Finally, it considered what changes should be made to the law prohibiting offensive conduct.

Powers in Relation to Processions

3. The powers to prohibit processions, under section 3 of the 1936 Act, should remain unchanged and the basic test on which the power should be exercised should continue to be the apprehension by a chief officer of police of serious public disorder. In relation to the powers to impose conditions, the basic test should continue to be the same test of serious public disorder, but to that test should be added alternative tests of the apprehension by him of serious disruption to the life of the local community, including coercion of individuals, or of serious damage to property. These proposed extensions would enable the police to deal with cases which arise where intimidation or damage can take place without creating serious public disorder.

4. The review also considered whether to reduce the test of serious public disorder to merely one of public disorder. The present power has been used sparingly, and a lowering of the stringency of the test might enable the powers to be used more widely and more flexibly, at least in imposing conditions on a procession rather than a ban. The conclusion was, however, that it was better to extend the tests as proposed in paragraph 3 rather than to reduce the level of the public disorder test itself.

5. It seems unnecessary and undesirable, given the width of the proposed extensions under paragraph 3, to take additional powers to ban political marches per se or to ban marches on the ground that the views to be expressed are offensive or likely to incite racial hatred, or that the local police were unable to control a march from their own resources. A power to ban a march altogether on these grounds would be uncertain and difficult to apply and would tip the balance too far against freedom of speech.

6. Demonstrators should not in general be obliged to pay towards the cost of policing their own marches or demonstrations. Although this idea has considerable attractions at first sight, detailed examination has shown that there would be considerable practical difficulties in devising such a scheme which could be operated by the police for charging and recovering such costs without fettering their essential flexibility to deploy the number of officers which they considered necessary. Further consideration might be given, however, to the possibility of an exceptional provision enabling the police authority to recover compensation through the courts from the organisers of a demonstration in cases where conditions had been breached.

7. The power to make banning orders should continue to be wide enough to enable all processions to be banned in an area for a specified period. But there should also be a provision in section 3 for the making of an order prohibiting a single procession, so that particular marches could be singled out and the innocent did not inevitably suffer with the guilty. This will prevent the manipulation of the present system whereby one group can effectively stop another one from marching, even though the latter march might well have been peaceful, by the

expedient of indicating an intention to march themselves at the same time, with a threat of serious public disorder, so that they get themselves banned under a "blanket" order, which is all that can be imposed now.

8. A new requirement should be introduced, obliging anyone who wants to hold a procession to give advance notice to the police of that intention. This new power would consolidate and give general application to some existing local Act provisions, which could consequently be repealed. Failure to comply with this requirement would be an offence, with appropriate penalties.

9. It should also be a specific offence knowingly to participate in a prohibited procession, with appropriate penalties.

10. The existing procedural arrangements for making a banning order should remain unchanged, and the initiative for applying for bans and conditions should continue to be the responsibility of the chief officer of police and should not be given to local authorities.

11. Section 3(1) should be amended to make it clear that the senior police officer present at a procession may issue directions under the section, to provide that the power of the Commissioner of Police of the Metropolis under the section is capable of delegation to an Assistant Commissioner; and that the same power of a Chief Constable is capable of delegation to Assistant Chief Constables.

Static Demonstrations and Meetings (Including Picketing)

12. In general, static demonstrations in the open air, but not those in closed premises, should be brought within the scope of the controls available under section 3 to impose conditions (e.g. as to place, duration and numbers), but not to ban them or to require advance notice of them. Meetings and assemblies are a more important means of exercising freedom of speech than are marches, and the police do not favour a power to ban them. A requirement for advance notice would produce much unnecessary work for the police to little purpose: they envisage no problem without it in getting to know of and impose conditions on demonstrations which are likely to cause disorder.

13. The police's power to impose conditions on static demonstrations should not be subject to the consent of the local authority, a court or a Minister, and should be exerciseable either in advance of the demonstration or, if necessary, on the spot at the time. If the chief officer is informed in sufficient time of the organiser's intention to hold a demonstration, he should impose any conditions he considered reasonable no later than seven days before the demonstration, and the organisers should have a right of appeal to the magistrates against the imposition of the conditions. The chief officer would still be able to impose conditions subsequently on the demonstration but, if challenged, he would be required to show that the circumstances had changed materially in the intervening period since the appeal hearing. The police would remain free to impose conditions on the spot and to exercise whatever powers were necessary to maintain order at the demonstration.

14. The police should be given a specific statutory power to order an assembly to disperse, and there should be a related summary offence of non-compliance with such an order, with appropriate penalties.

15. These extensions of the statutory law would apply equally to picketing, which need not and should not attract any special powers in its own right. However, it is worth noting that during the miners' dispute increasing use has been made of section 7 of the Conspiracy and Protection of Property Act 1875 which makes inter alia the following acts criminal if they are done with a view to compelling any person 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.

For the most part the provision has been used in dealing with intimidation away from the picket line (in particular the 'besetting' of people's homes);

but in Nottinghamshire it has been used for offences on the picket line. In fact, the section covers much of the ground that has been the cause of concern, as it makes clear that anyone who participates in or organises a picket, the purpose of which is to prevent people from going to their workplace, is guilty of a criminal offence. In the case of organisers, the inevitable evidential problem of proving the necessary intent is bound to be a considerable one; but, nonetheless, this section provides a way of dealing with intimidatory picketing. A weakness of the provision as it stands is that it is not an arrestable offence and that the maximum penalty is three months' imprisonment or a fine of £100. It should therefore be made an arrestable offence; and the maximum penalty should be increased to six months' imprisonment or a fine of £2,000.

16. The police's existing common law powers to maintain order should not be codified but should be retained in their present form, so as to give the police the necessary flexibility to control new and unforeseen situations.

Public Order Offences

17. The Law Commission's proposals to revise and codify the common law offences relating to public order should be adopted, subject to certain amendments which are necessary to sort out the overlap between the Law Commission's proposals and section 5 of the Public Order Act 1936. The new range of statutory public order offences will be:

(a) Riot. 12 or more people, using or threatening unlawful violence for a common purpose so as to cause fear: each person using unlawful violence will be guilty of riot.

(b) Violent Disorder. Three or more people using or threatening unlawful violence so that their conduct taken together causes fear: each person using or threatening unlawful violence will be guilty of violent disorder.

(c) Affray. Two or more people using or threatening unlawful violence against each other, or one or more using it against another so as to cause fear.

(d) Threatening Behaviour. Using threatening, abusive or insulting words or behaviour which is intended or likely:

(i) to cause another person to fear unlawful violence;

(ii) to provoke the use of unlawful violence by another.

(section 5 of the Public Order Act, as amended).

18. All these ofrfences will be capable of being committed in a public or private place but, in the case of (d), private dwellings will be excluded. Unlawful violence covers violence to persons or property. The test of causing fear is hypothetical ("such as would cause a person of reasonable firmness if present at the scene to fear for his personal safety"). Riot will be indictable only. Violent disorder and affray will be triable either way; section 5 (as amended) will remain a summary offence. The maximum penalty for riot will be 10 years; for violent disorder five years; for affray three years; and for section 5, six months or £2,000. The lesser offences will be available as alternative verdicts to those higher up the scale.

19. Overall, the scope of the criminal law will not be altered, save that certain cases of public nuisance currently charged under section 5 will no longer be criminal under that section as amend Consequently there should in addition be a proposal for a new public nuisance offence of disorderly conduct, to cover rowdy disturbance to local residents or passers-by, without contravening the amended section 5 because it does not actually cause fear of or provoke unlawful violence. The sort of conduct which this might cover would be loud shouting or singing late at night in a residential area, or young people disturbing elderly residents by banging on their doors or making a nuisance of themselves to a queue of elderly people waiting to enter a bingo hall. This would be a summary offence with a maximum penalty of a fine of £100.

20. If necessary the police might be given a preventive power to seize articles which are intended to be used in the commission of riot or violent disorder.

Incitement to Racial Hatred

21. There should be a new offence of possessing racially inflammatory material with a view to its publication or distribution. This would make the offence of incitement to racial hatred more effective against those who manufacture or supply racially inflammatory material. At present it is difficult to prosecute such people unless a specific instance of distribution can be proved.

22. There should be a power of search, seizure and forfeiture in respect of offending material. This is a necessary adjunct to the proposed new offence of possessing racially inflammatory material.

23. The definition of 'publish' and 'distribute' in sub-section 5A(6) should be amended to remove the exemption for circulation of material to members of an association. Members of even a racialist association may be incited to racial hatred, and the proposed redefinition would close a loophole in the present offence.

24. The offence of incitement to racial hatred should be extended from the publication of material or conduct which is likely to stir up racial hatred to publication or conduct which is intended to do so. The strictness of the present test makes it unnecessarily difficult to prove an offence where clearly inflammatory material is circulated but because of its restricted circulation (e.g. to clergymen or M.Ps) is unlikely to incite the recipients to racial hatred, although it is intended to do so. The proposed extension would enable distributors of such material to be prosecuted and would make the offence similar in form to the main section 5 offence of conduct intended or likely to provoke a breach of the peace.

25. The offence of incitement to racial hatred should not be extended to include material used in a broadcast. The Select Committee's recommendation in favour of that extension was based on apprehension for the future rather than on any examples of proven abuse. In the absence of any real abuse, the disadvantages of trying to bring the criminal law into this area seem to outweigh the hypothetical gain. The White Paper will, however, need to present the arguments in full.

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