

FREEDOM TO PROTEST CONFERENCE, 23/10/05

Campaigning and the law - some recent developments in criminal law

These notes form a quick introduction to laws being applied to deal with protest over the last few years. Some are older laws being reinterpreted for the purpose, others are those brought in especially to counter-act successful campaigning tactics. Throughout we refer to the *Serious Organised Crime and Police Act 2005* as *SOCPA*. For more detailed information, see the briefings at www.freedomtoprotest.org.uk or at www.freebeagles.org

Harassment Offences

Protection of Harassment Act 1997

This is the 'stalking act', brought in to protect people from stalkers. However, it is being used against protestors by lumping legal and illegal protests in one pot where they are labeled as harassing. Civil proceedings are then brought, in particular by companies who use it as a legal bludgeon to restrict all forms of protest.

Under this legislation

1. A person must not pursue a course of conduct (ie two or more incidents, including 'speech') which amounts to harassment of another, though there is a defence if the conduct was 'reasonable' (s.1).
2. The 'victim' of the harassment can claim a civil injunction and it is a criminal offence to breach the injunction (s.3).
3. Enhanced offence where harassment involves threat of violence (s.4)
4. Extended to include harassment of two or more people (eg contact with two individuals of the same company) with the intention of persuading them to do / not do something they're entitled not to do / to do (s.125, *SOCPA*).

Criminal Justice and Police Act 2001

Under s.42 of this act the police have the power to direct people to move away from people's homes if they are there to persuade the resident to do /not to do something they're entitled to not to do /to do. Under *SOCPA*, this was extended to include the offence of harassment of a person at their home, even where no direction given by the police to leave (s.126, *SOCPA*), effectively outlawing so called 'home demos'. Has been used to target protesters at sites which are also dwellings.

Trespass

Normally trespass is a civil offence so the police have little power to interfere. Where there is trespass with intention to disrupt

someone's lawful activity, people can be arrested for aggravated trespass (*s.68 Criminal Justice and Public Order Act 1994*). Now applies inside as well as 'in the open air'. This effectively criminalises office occupations.

Offence to enter any 'designated site' as a trespasser. Sites designated by Sec of State can be Crown land, land belonging to Queen or area where it appears that it is appropriate in the interests of 'national security' (*s.128, SOCPA*). The burden of proof is on you to show you did not know & had no reason to suspect that the area was designated.

Demonstrations near Parliament

It is an offence to demonstrate in the vicinity of Parliament without prior authorisation by the police. Criteria applied in authorising demonstrations and any conditions attached include: hindrance to the proper operation of Parliament, hindrance to any person wishing to enter / leave Parliament, disruption to the life of the community. (*s.132 SOCPA*). Brought in to stop the 'Brian Haw' anti-war protest, this has failed, though other protesters are being arrested.

Interference with contractual relations of animal research organisations

It is an offence for one person (A), with the intention of harming an animal research organisation, to commit a civil wrong / tort causing loss to another person (B) with the likely effect of causing the second person not to enter or comply with their contract with an animal research organisation (C) (*s.145 SOPCA*).

This is a new and highly controversial aspect of law which essentially criminalises acts that were formerly simply tortious (eg public nuisance) and applies criminal sanctions. It is not clear yet how this aspect of *SOCPA* will pan out as there have only been a few arrests and no trials under this clause. However, it has the potential for wide scale abuse and criminalising of protest, including calling for boycotts. The government has said that this is not its intention, but then they also said that the Harassment Act was not going to be used to target protesters.

It appears to have been brought in to deal with high profile animal rights campaigns but can easily be extend to other campaigns, as the Secretary of State may make an order applying

these provisions to other persons or organisations, in the same way as they apply to animal research organisations (s.149 SOCPA). Likewise the definition of what an 'animal research organisation' is left unclear so could be used to cover a wide range of companies not all apparent. That you are not campaigning on animal research issues may also be irrelevant. See associated briefings on this from BUAV and freeBEAGLES.

Anti-social behaviour orders ('ASBOs')

A 'relevant authority' (police, council etc) can apply for an ASBO where the person has acted in an anti-social manner – that is, likely to cause harassment, alarm or distress - and an ASBO is necessary to protect others from further anti-social behaviour (s1(1) *Crime and Disorder Act 1998*).

- The courts can then impose an ASBO defining what cannot be done – s.1(4).
- ASBOs cannot apply to behaviour which is 'reasonable in the circumstances'- s.1(5).
- It is an offence, without reasonable excuse, to do anything prohibited by the order – s.1(10).
- The Secretary of State can extend the definition of 'relevant authority' (s.139 SOCPA).

ASBOs ban people from specific activities or from entering particular areas. Acts which are not criminal offences can be included in ASBOs, with a lower standard of proof required, yet it is a criminal offence to breach the ASBO.

Terrorism

Terrorism defined to include action or threat of action which:

1. endangers someone else's life or creates a risk to the health or safety of some of the public and
 2. is designed to influence the government or intimidate some of the public and
 3. is made for the purpose of advancing a political or ideological cause
- (*Terrorism Act 2000, s1*)

As a separate power under this act, not restricted to terrorist suspects, a senior police officer can authorise stop and search of vehicles, their passengers, and pedestrians without individual suspicions about the subject of the search - in a given area for a given period of time if they considers it expedient for the prevention of acts of terrorism (s.44 *Terrorism Act 2000*).

This greatly widens the police powers of stop and search and has been used extensively to delay, harass and intimidate protestors.

Public Order Act changes

Notification to police of forthcoming protests Under s.11 & s.12 of the *Public Order Act 1986*, processions should be notified to the police in advance, it being an offence for the organisers to not do this within six clear days or as soon as practically possible. This is an old requirement that the police have recently resurrected to target protests, in particular in London. This does not make the procession (doesn't apply to static assemblies) illegal, but it does have criminal sanctions for any organisers that the police can identify, although successful prosecutions under the act are virtually unknown. It does not criminalise the organisation itself, however.

Assemblies

Another modification of the Public Order Act is to reduce the number of people constituting an assembly from 20 down to 2.

Human Rights Act 1998 / European Convention on Human Rights

Article 10: 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority'

Article 11: 'Everyone has the right to freedom of peaceful assembly and to freedom of association with others [including trade union activity].'

These rights can be limited where necessary in a democratic society in the interests, among other things, of national security, prevention of disorder or crime, protection of the rights of others. These limitations mean the Act is slightly weaker than it appears on first reading, but the government is meant to show that the restrictions on rights are both necessary and proportionate, so the Act and Convention provides some scope for challenges to laws and police behaviour.

Useful resources:

www.acpo.police.uk/asp/policies/Data/public_safety_policy.doc - Assoc. of Chief Police Officers guidance on public events
www.opsi.gov.uk/ & www.parliament.uk - UK government websites with copies of the above legislation from 1988 onwards.

Adapted 17th October 2005, by freeB.E.A.G.L.E.S. from a briefing prepared by Mike Schwarz - Bindman & Partners solicitors (www.bindmans.com) & Alex Gask - Liberty (www.liberty-human-rights.org.uk) in July 2005

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