



"Margareth Thatcher's Funeral, London, UK, 17 April 2013."
by Michael Hamilton

THE UNITED KINGDOM

PRESENTATION

This country review is part of a larger study on **Freedom of assembly in the Euro-Mediterranean region** in the present time, presented in two parts: **I- Legislative review**, and **II- Practice of freedom of assembly**. Part I of the regional study was published in November 2013, and Part II will be published in 2014.

The full Regional study on Freedom of Assembly in the Euro-Mediterranean Region is available [here](#). It presents international standards protecting this fundamental right, and proceeds to analyzing the legal frameworks and their compliance to international human rights standards in 13 countries of the Mediterranean and the European Union: [the EU as region](#), [Spain](#), [the United Kingdom](#), [Algeria](#), [Egypt](#), [Israel](#), [Jordan](#), [Lebanon](#), [Libya](#), [Morocco](#), [Palestine](#), [Syria](#), [Tunisia](#) and [Turkey](#).

In order to develop the assessment of national legislations in comparison to international standards and the practical implications of legal provisions concerning freedom of assembly, objective indicators were used as a reference throughout this study, together with a gender-sensitive approach to detect whether women enjoy freedom of assembly to the same extent as men, or if they are more specifically affected by restrictions.

This study is based on a process of consultation and participation involving members of the Euro-Mediterranean Human Rights Network (EMHRN), which includes 80 organizations and institutions of human rights defense based in 30 countries as well as individual members. It thus reflects the efforts of a researcher recruited in the country, assisted by members of the EMHRN Working Group on Freedom of Association, Assembly and Movement, and the active involvement of other civil society organizations and experts.

Accordingly, the objective of this study is to provide Human Rights defenders and civil society organizations, international organizations and state institutions, with an analysis that allows them to assess national policies in their country and compare them to those of other countries and to international conventions, in order to advocate for relevant reforms and help improve the situation of freedom of assembly in the countries of the Euro-Mediterranean area.

Freedom of assembly in the United Kingdom has been in the spotlight. The recent visit to the country in January 2013 by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, has demonstrated that the UK is perhaps not the bastion of good practice that some believe it to be when it comes to the protection of this fundamental right.¹ There have been many recent protests in the UK. These have included the student protests of March 2011, the Occupy London movement, anti-austerity demonstrations, various marches by the English Defence League, protests against high-profile events such as the Royal Wedding in April 2011, the Olympic Games in July 2012 and Margaret Thatcher's funeral in April 2013.

The issue of demonstrating in Northern Ireland also remains highly sensitive, as there has been a long history of conflict (dating back to the nineteenth century) concerning parades in particular areas of Northern Ireland. Between 1 April 2011 and 31 March 2012, 213 notified processions (out of 4,182) were regarded as contentious and restrictions were imposed on 146². Approximately sixty per cent of these parades are organized on an annual basis by protestant/unionist/loyalist organizations (including the Orange Order). Many catholic/nationalist/republican residents oppose what they consider to be the sectarian nature of some marches, and occasionally so do protestant residents against parades organised by catholic groups. In addition, in June 2013, there were protests against the holding of the G8 summit in Co. Fermanagh in Northern Ireland.

This chapter will examine the general legal framework currently in place in England and Wales, Scotland and Northern Ireland for the protection of freedom of assembly. It is informed, in part, by the report on freedom of assembly in the UK published by the Equality and Human Rights Commission in 2012.³ The chapter also presents a number of recommendations drawing, in part, on those made by the Special Rapporteur in his UK Mission report, published in May 2013.⁴

1. General Legal Framework

The UK ratified the European Convention on Human Rights (ECHR) on 8 March 1951 and the International Covenant on Civil and Political Rights (ICCPR) on 20 May 1976. In contrast

1 For detailed analysis of the law in England and Wales, see: David Mead, *The New Law of Peaceful Protest: Rights and Regulations in the Human Rights Act Era* (Hart Publishing: 2010). See also, Peter Thornton QC, Ruth Brander, Richard Thomas, David Rhodes, Mike Schwarz and Edward Rees QC, *The Law of Public Order and Protest* (Oxford University Press: 2010); Tom Wainright, Anna Morris, Katherine Craig and Owen Greenhall, *The Protest Handbook* (Bloomsbury Professional, 2012).

2 See, *Annual Report and Financial Statements of the Parades Commission for Northern Ireland for the year ended 31 March 2012*. Available at: <http://www.paradescommission.org/fs/doc/publications/pc-2012-annual-report.pdf>, at pp.6-7.

3 Equality and Human Rights Commission, "Article 11: Freedom of Assembly and Association", *Human Rights Review* (2012), 377-421, available at: http://www.equalityhumanrights.com/uploaded_files/humanrights/hrr_article_11.pdf.

4 Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association: Mission to the United Kingdom of Great Britain and Northern Ireland (A/HRC/23/39/Add.1), available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/39/Add.1.

to most other European countries, however, the UK does not have a written constitution or bill of rights. Under the common law in the UK there was no *right* to assemble (let alone protest) on public roads until the Human Rights Act 1998 (HRA) came into force in 2000, whereupon most of the rights contained in the European Convention on Human Rights (ECHR) became directly enforceable in UK courts. Article 11, ECHR (which protects the right to freedom of peaceful assembly) is now effectively part of the law of England and Wales, Northern Ireland and Scotland⁵, and the authorities thus have an obligation to actively protect and facilitate the right to freedom of assembly.

Notwithstanding the positive impact of the HRA, the legislative framework relating to marches and open-air meetings essentially provides for measures that can be used to restrict such gatherings in the interests of public order,⁶ which has been highlighted as a concern.⁷

Furthermore, while the HRA applies throughout the United Kingdom, it is important to recognize that there are **three quite different legal frameworks** governing the regulation of freedom of assembly – in **England and Wales, Scotland, and Northern Ireland** respectively. In England and Wales, the power to impose conditions on public processions or other public assemblies rests with a senior police officer.⁸ The same provisions also apply in Scotland, but Scottish local authorities have additional powers to restrict public processions.⁹

In Northern Ireland, an independent body called the Parades Commission was established in 1997, and is empowered to impose conditions on public processions, or any related protest meeting. These powers were previously held by the police (which retain powers over *static* open-air meetings), but a system was designed to separate the decision-making power (which resides with the Parades Commission) from the enforcement role (which the police retain), as the decisions on processions are politically sensitive. The Parades Commission has published a “Code of Conduct” (for those organising, taking part in, or supporting public processions), a set of “Procedural Rules”, and a “Guidelines” document.¹⁰

5 The Human Rights Act requires that any new legislation be accompanied by a statement indicating that it is compatible with Convention rights. Existing legislation must also be *interpreted* in a way that is compatible with the Convention, Section 3, HRA; and all public authorities (including the police, local councils and the courts) must ensure that their actions do not violate Convention rights, Section 6, HRA.

6 Equality and Human Rights Commission (“EHRC”) *Human Rights Review 2012*, Chapter on Article 11.

7 Second report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association A/HRC/23/39 Add.1: Mission to the United Kingdom of Great Britain and Northern Ireland, para. 17.

8 Sections 12 and 14 Public Order Act, 1986.

9 Section 63, Civic Government (Scotland) Act 1982 (as amended by the Police, Public Order and Criminal Justice (Scotland) Act 2006), and Section 66, Civic Government (Scotland) Act 1982 which underlines the primacy of any directions given under section 12, Public Order Act 1986 regarding public processions.

10 Sections, 3, 4 and 5 of the Public Processions (NI) Act 1998, respectively. These documents are available at: <http://www.paradescommission.org/publications/>.

It is worth highlighting that recent years have seen much scrutiny of the regulation of freedom of assembly in the different regions of the UK:

- ▶ in England and Wales, several reports have been published by the parliamentary Joint Committee on Human Rights,¹¹ Her Majesty's Inspectorate of the Constabulary (HMIC),¹² and the Home Affairs Committee;¹³
- ▶ in Scotland, significant changes were made to the legal framework in 2006 following recommendations by the "Review of Marches and Parades in Scotland" by Sir John Orr (2005);¹⁴
- ▶ in Northern Ireland, the establishment of the Parades Commission in 1997 followed from the recommendations of an independent review body.¹⁵ There have since been several reviews of the Commission, each involving widespread consultation.¹⁶ The Northern Ireland Human Rights Commission has also published reports relating to the parading issue,¹⁷ and the legislative framework is due to be reviewed in the latter half of 2013 in an all-party process.

2. Procedures

Prior Notification

England and Wales

There is no advance notice requirement for *static* public assemblies (defined as "an assembly of 20 or more people in a public place wholly or partly open to the air")¹⁸ in England and Wales. However, under the Public Order Act 1986, a person wanting to organise a public *procession* must submit a formal notification to a police station within the police area where the procession will be held, 6 clear days in advance.¹⁹ It is an offence not to comply with

- 11 Eg. *Facilitating Peaceful Protest*: <http://www.publications.parliament.uk/pa/jt201011/jtselect/jtrights/123/123.pdf>
- 12 Eg. *A review of national police units which provide intelligence on criminality associated with protest* (February 2012): <http://www.hmic.gov.uk/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf>.
- 13 Eg. <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmhaff/772/11012501.htm> (Minutes of evidence concerning the use of undercover officers during the G20 protests); <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/917/11032902.htm> (Minutes of evidence regarding the policing of the TUC march on 26 March 2011).
- 14 These were introduced by the *Police, Public Order and Criminal Justice (Scotland) Act 2006*, available at: <http://www.scotland.gov.uk/Resource/Doc/35596/0026948.pdf>. See also the Scottish Executive's "Guidance for Scottish Local Authorities" (December 2006), available at: <http://www.scotland.gov.uk/Resource/Doc/159457/0043394.pdf>.
- 15 The *Independent Review of Parades and Marches* chaired by Sir Peter North (the "North Report"). The Executive Summary is available at: <http://cain.ulst.ac.uk/issues/parade/north.htm>.
- 16 Eg. *Report of the Independent Review of the Parades Commission* (the *Quigley Report*); the *Strategic Review of Parading* chaired by Lord Paddy Ashdown, "Interim Consultative Report", (April 2008): <http://cain.ulst.ac.uk/issues/parade/srp/srp290408interim.pdf> and "Views of Key Stakeholders" (June 2007): <http://cain.ulst.ac.uk/issues/parade/srp/srp290408stakeholder.pdf>.
- 17 See, for example, *Parades and Counter-Protests: Briefing Paper on Human Rights Compliance and Commission Policy*. Available at: <http://www.nihrc.org/documents/advice-to-government/2011/parades-and-counter-protests-consolidation-august-2011.pdf>.
- 18 Section 16, Public Order Act, 1986 (also applicable in Scotland).
- 19 Section 11 Public Order Act 1986. Notice can be submitted by recorded post so long as it is received by the police at least 6 days in advance (section 11(5)).

this requirement. Unusually in comparison to other European countries, the legislation defines notifiable processions in terms of their intended purpose – a procession must be notified if it is intended:

- a. To demonstrate support for or opposition to the views or actions of any person or body of persons
- b. To publicize a cause or campaign, or
- c. To mark or commemorate an event.²⁰

The Special Rapporteur has said that he finds 6 days notification to be excessive.²¹ However, the notification requirement does allow an exemption for spontaneous processions – those for which “it is not reasonably practicable to give any advance notice.”²² There is also an exemption for funeral processions, and for processions that are “*commonly or customarily held in the police area (or areas) in which it is proposed to be held*”.²³

Scotland

As in England & Wales and Northern Ireland, there is no notification requirement for static protest meetings in Scotland. A minimum of 28 days’ notice must, however, be given in an advance of a public procession under Scottish law.²⁴ A caveat exists to cover cases where the provision of 28 days’ notice has not been possible.²⁵ This 28 days’ notice is intended to allow for more informed decision making with a clearer and more consistent assessment process. The notification requirement does not apply in relation to processions that may be specified in an order made by Scottish Ministers.²⁶

Northern Ireland

In Northern Ireland, public processions must also be notified 28 days in advance, and any related protest meetings (i.e. counter-demonstrations) must be notified to the police station 14 days in advance. Processions or related protests can still be held if it is not “reasonably practicable” to comply with the 28 or 14 day requirement, but notice must then be given “*as soon as it is reasonably practicable to give such notice*.”²⁷ Other open-air public meetings do not need to be notified.

20 Section 11(1) Public Order Act 1986.

21 A/HRC/23/39/Add.1 para. 11.

22 Section 11(1) Public Order Act 1986.

23 Section 11(2) Public Order Act 1986. See further, *Kay v Metropolitan Police Commissioner* [2008] UKHL 69 (in relation to whether a recurring “Critical Mass” bicycle ride with no fixed route should benefit from the exemption for customary processions).

24 Section 70, Police, Public Order and Criminal Justice (Scotland) Act 2006.

25 Following an application by a person proposing to hold a procession, a local authority *may* make an order dispensing with the 28 day notification requirement (s.62(4)) after consulting with the Chief Constable (s.62(9)), and must publicize such a dispensing order (s.62(11A)).

26 Section 62(11B), Civic Government (Scotland) Act 1982 (inserted by section 70, Police, Public Order and Criminal Justice (Scotland) Act 2006).

27 Section 6(2)(b) (regarding public processions) and section 7(2)(b) (regarding related protest meetings), Public Processions (NI) Act 1998.

These remarkably lengthy notification periods were introduced, against a backdrop of long-running conflict over some parades, to promote negotiation and mediation efforts with a view to resolving contested issues prior to the procession. The Parades Commission has a statutory duty “*to promote and facilitate mediation as a means of resolving disputes concerning public processions.*”²⁸ Nonetheless, the UN Special Rapporteur cautioned that such a notification timeframe must be regarded as “*an exceptional measure ... which should be reviewed regularly to ensure that the conditions warranting it still exist.*”

► **The timeframe for imposing restrictions**

The law in England and Wales does not indicate any timeframe for the imposition of restrictions, though any such restrictions must be given in writing.²⁹ In Scotland, any restrictions imposed by the Local Council must be delivered at least 2 days before the date scheduled for the procession.³⁰ In Northern Ireland, the Parades Commission aims “*where possible, to make its final decision five working days in advance of the notified date.*”³¹ The Commission’s determinations are published in full on its website.

► **Appeals**

In Northern Ireland, if fresh evidence becomes available after the Parades Commission has made its decision, the Commission may itself review that decision.³² Furthermore, on the application of the police Chief, the Northern Ireland Secretary of State may review a Commission decision.³³ In England and Wales, and in Northern Ireland, a person directly affected by restrictions may apply for judicial review of those restrictions.³⁴ Under Scotland’s law, appeals against a restriction imposed by a local council must be made to the sheriff (judge) within 14 days of the restrictions being imposed.³⁵

3. Restrictions

It is worth reemphasizing that restrictions can only be imposed if they comply with the necessity and proportionality requirements of Article 11 of ECHR. Most of the relevant provisions relating to restrictions on assemblies in England and Wales are contained in the Public Order Act, 1986. Even though static public assemblies do not require notification in England and Wales, the Public Order Act 1986 empowers a senior police officer to impose whatever conditions on the place, duration, or number of participants of the assembly as appear to be necessary to prevent serious public disorder, serious damage to property

28 Section 2(1)(b) Public Processions (NI) Act, 1998. See also, Parades Commission, *Mediation Services* (2012): <http://www.paradescommission.org/fs/doc/publications/mediation-services-2.pdf>.

29 Sections 12(2) & (3), and 14(2) & (3) *Public Order Act*, 1986.

30 Section 63(3), Civic Government (Scotland) Act, 1982 (as amended).

31 Parades Commission, “Procedural Rules”, para. 5.3.

32 See Parades Commission, “Procedural Rules”, para.6 – “Review of Decision or Determination”. Available at: <http://www.paradescommission.org/fs/doc/publications/acf440d.pdf>.

33 Section 9, Public Processions (NI) Act, 1998.

34 See further *In an Application by David Tweed for Judicial Review* [2006] UKHL 53.

35 Section 64, Civic Government (Scotland) Act, 1982 (as amended).

or serious disruption to the life of the community, or the intentional intimidation of others.³⁶ A senior police officer can also impose conditions on a public procession on the same grounds.³⁷

Scotland

A senior police officer has the power to restrict public assemblies and processions. Local authorities can also prohibit public processions following consultation with the police Chief Constable (though the prohibition power has been used only very occasionally). Apart from consideration of public order, damage to property, or previous breaches of the law by the same organizer and/or some of the same participants, the legislation also requires the local authority to consider *“the extent to which the containment of risks arising from the procession would ...place an excessive burden on the police”*.³⁸

In addition, Scottish Councils may seek to recover costs incurred by the holding of processions. The UN Special Rapporteur was highly critical of this practice, and emphasized that *“financial charges should not be levied for the provision of public services during an assembly.”*

Northern Ireland

There are similar public order-related powers in the Public Order (Northern Ireland) Order 1987 (as amended). Thus, even though “open-air public meetings” are not required to be notified, senior police officers have the power to impose conditions as to their location, duration and number of participants to avoid serious damage to property or serious disruption to the life of the community or aiming at intimidating others.³⁹

The Parades Commission also has the authority to restrict any persons organising, taking part in, or even supporting⁴⁰ public processions and related counter-protests according to the Public Processions (NI) Act 1998.⁴¹ Besides the reasons of disorder or disruption, the 1998 Act introduces consideration for the impact that a procession might have on relationships within the community, and failure to comply with the Parades Commission’s Code of Conduct as new grounds for restriction.

Furthermore, the Secretary of State can impose a ban on a specific public procession or class of public processions in a specific area for a maximum of 28 days.⁴² While this power has not been

36 Section 14(1) Public Order Act, 1986.

37 Section 12(1) *Public Order Act*, 1986. Section 66, Civic Government (Scotland) Act 1982 (as amended) provides that the section 12 powers in the Public Order Act 1986 are also applicable in Scotland.

38 Section 63(8)(b), Civic Government (Scotland) Act, 1982 (as amended).

39 Section 4(2), Public Order (Northern Ireland) Order 1987 (as amended).

40 The Public Processions (Amendment) (Northern Ireland) Order 2005 (S.I. 2005/857 (N.I. 2)), art. 3(1).

41 Public Processions (Northern Ireland) Act 1998, sections 7, 8 and 9A.

42 Section 11, Public Processions (NI) Act, 1998.

used since 1996, its presence on the Northern Irish statute books was a cause of concern to the Special Rapporteur as stated in his recent Report.⁴³

► **Blanket bans**

In England and Wales, a chief police officer (or the Police Commissioner in London) may apply to the District Council (or in London, the Secretary of State) to prohibit a procession in a specified area for up to 3 months if he or she believes that it is likely to cause “*serious public disorder*”.⁴⁴ Such blanket bans have recently been used in respect of far right groups such as the English Defence League, but because there is no legal power to prohibit single processions, the effect of such a ban is to prohibit all processions in the given area for the specified period. As the Special Rapporteur has pointed out, “[*b*]lanket bans are intrinsically disproportionate and discriminatory measures affecting all citizens wanting to exercise their right to freedom of peaceful assembly.”⁴⁵

► **Restrictions in Parliament Square and Trafalgar Square**

An authorization requirement and specific restrictions exists for any assembly in certain areas of London – namely Parliament Square and Trafalgar Square.⁴⁶ Tents or any other structures which facilitate sleeping or staying in a place for any period are prohibited in Parliament Square⁴⁷ as well as any amplified noise equipment.

► **Trespassory assemblies and “aggravated trespass”**

A “trespassory assembly” – an assembly on land to which the public has no right of access or only a limited right of access – can be prohibited (by a district council or in London by the Police Commissioner with the consent of the Secretary of State) if it is held without permission, and if it may result in either serious disruption, or significant damage to the land, a building or monument.⁴⁸

There is also an offence of “aggravated trespass” (under section 68 of the Criminal Justice and Public Order Act, 1994) which criminalizes trespass on land with the intention of intimidating, obstructing or disrupting other persons engaging in any lawful activity. By way of example, this provision formed the basis of the prosecution of protesters who occupied the “Fortnum and Mason” shop in London in March 2011.⁴⁹

43 A/HRC/23/39/Add.1, at para. 62.

44 Section 13, Public Order Act 1986.

45 A/HRC/23/39/Add.1, at para. 13.

46 Section 5(1)(j) Parliament Square Garden Byelaws, 2012 and Section 5(1)(o), Trafalgar Square Byelaws, 2012, enacted under sections 383 – 384, Greater London Authority Act 1999. Similar byelaws may be made by District Councils in other parts of England and Wales (under section 235 *Local Government Act 1972*).

47 Section 143 Police Reform and Social Responsibility Act, 2011. Sections 143-145 of this Act were held to be compatible with Articles 6, 10 and 11 ECHR in the case of *R (on the application of Gallastegui) v Westminster City Council & Others* [2013] EWCA Civ 28.

48 Section 14(A) Public Order Act, 1986 (inserted by the Criminal Justice and Public Order Act 1994).

49 *Bauer and Others v DPP* [2013] EWHC 634.

► Restrictions on “threatening or abusive” speech

An offence is committed if those exercising their right to freedom of assembly use language that is threatening or abusive.⁵⁰ This can be in relation to speech or signs or other “visible representations”. It is worth noting here that under international human rights law, freedom of expression extends to information or ideas which “*offend, shock or disturb the State or any sector of the population.*”⁵¹ The UN Special Rapporteur has raised concerns that direct action by peaceful protestors could be seen as falling within such a broad definition and that this may curtail freedom of peaceful assembly.⁵²

► Preventive interventions and injunctions

The UK authorities have relied on various common law and statutory provisions to prevent protests from either occurring or continuing. These include:

- The common law power to take measures to prevent a “breach of the peace”;⁵³
- Injunctions issued under the Protection from Harassment Act 1997⁵⁴ – most frequently used against protests by animal rights or environmental activists;⁵⁵
- Injunctions to prevent a nuisance (in tort law).⁵⁶

The UK Joint Committee on Human Rights (JCHR) expressed concern that injunctions are being used so frequently against protesters, and often in private hearings at short notice, with little possibility of challenging them.⁵⁷ As these measures often extend not only to criminal acts, but also to mere presence at particular locations, they significantly erode the right to peaceful protest.

A law currently in drafting, the Anti-Social Behaviour, Crime and Policing Bill 2013-14,⁵⁸ would empower local councils, following consultation with the local policing body, to impose Public Spaces Protection Orders (PSPO) for a period of up to 3 years (extendable), prohibiting, or imposing conditions on activities “*in a public place*” which have had or are likely to have “*a detrimental*

50 Section 5, Public Order Act, 1986. See further, for example, *Munim Abdul v DPP* [2011] EWHC 247 (Admin).

51 *Handyside v United Kingdom* 5493/72 [1976] ECHR 5, at para. 49. See also, for example, Philip Johnston, *Feel Free to Say It*, Civitas (March 2013) <http://www.civitas.org.uk/pdf/FeelFreeToSayIt28Feb13.pdf>.

52 A/HRC/23/39/Add.1, at para.16.

53 See, for example, *Hicks, “M”, Pearce and Middleton v Commissioner of Police of the Metropolis* [2012] EWHC 1947 (Admin) regarding the arrest of protesters in advance of the Royal Wedding, based on what the court found to be the police officers’ reasonable belief of an imminent breach of the peace. Available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2012/1947.rtf>. This judgment is highly deferential to the police view, and fails to give adequate weight to the right to freedom of peaceful assembly under Article 11 ECHR.

54 Section 8 of the 1997 Act applies to Scotland. Similar provisions to the 1997 Act exist in Northern Ireland under the Protection from Harassment (Northern Ireland) Order 1997.

55 See, for example, *Harlan Laboratories UK Ltd & Others v Stop Huntingdon Animal Cruelty (“Shac”)* [2012] EWHC 3408 (QB). In addition, sections 145-49 Serious Organised Crime and Police Act 2005 create specific offences of interfering with contractual relationships [by way of a criminal or tortious act, or threat] so as to harm an animal research organisation; and intimidation of persons connected with an animal research organisation.

56 See, for example, *Olympic Delivery Authority v Persons Unknown* [2012] EWHC 1012 (Ch).

57 See, Joint Committee on Human Rights, *Demonstrating Respect for Rights* (HL Paper 47-I; HC 320-I, published 23 March 2009) at paras. 42, 96-100; See also David Mead, *The New Law of Peaceful Protest*, at pp.264-89 and 394-97.

58 <http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0093/14093.pdf>

effect on the quality of life of those in the locality”.⁵⁹ If enacted in its current form, there is clear potential for any such provisions to be used against peaceful protesters.

► Stop and search powers, and the wearing of masks

Former stop and search powers (under section 44 of the Terrorism Act 2000) allowed police officers to stop and search individuals without reasonable suspicion. These powers have been repealed⁶⁰, but police can still stop and search an individual in a specified area when a senior police officer reasonably suspects that an act of terrorism will take place.⁶¹ Such powers can potentially be used to inhibit the enjoyment of the right to peaceful assembly.

Under section 50, Police Reform Act 2002, a police officer may require that a person give his name and address if the officer reasonably believes that they have been, or are, acting in an “anti-social manner”.⁶² It is a criminal offence not to give one’s name and address when requested to do so, and such powers seem to be increasingly used by the police in the context of protest actions.

In addition, a police officer may request⁶³ the removal (or seizure) of items that they believe are being worn mainly to conceal one’s identity (and refusal to do so constitutes an offence).⁶⁴ The law permits a person to cover their face if the main purpose is not to conceal their identity. Calls to extend police powers to request the removal of masks at protests were initially rejected but the issue has since been raised again (though no further powers have yet been enacted).

► Undercover Policing, Intelligence databases and the categorization of protesters as “Domestic Extremists”

Perhaps the most recently exposed practice in the policing of protests in England and Wales is the use of undercover police officers to infiltrate mainstream protest groups, sometimes working undercover for many years (and, amongst other things, forming intimate relationships with individual protesters).⁶⁵ Relatedly, there are a number of intelligence databases that are used to record details about campaigners, members of activist groups, organisers of and participants in public protests, even where these individuals have not committed any

59 See sections 55-68 of the draft Bill.

60 The repeal of these provisions by the Terrorism Act 2000 (Remedial) Order 2011 followed the ECtHR judgment in *Gillian and Quinton v UK* (App.no. 4158/05, judgment of 12 January 2010). See further the 2011 Code of Practice (England, Wales and Scotland) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97941/code-of-practice.pdf.

61 Section 47A Terrorism Act, 2000 (as amended).

62 Anti-social behaviour is defined under the Crime and Disorder Act, 1998 as acting “*in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons ...*”.

63 Where an order under Section 60/60AA of the Criminal Justice and Public Order Act 1994 is in place.

64 As inserted by section 94, *Anti-Terrorism, Crime and Security Act*, 2001 (section 95 amends Article 23, Public Order (NI) Order 1987 to create similar powers in Northern Ireland). See also: <http://www.legislation.gov.uk/ukpga/2001/24/contents>.

65 See, for example, Rob Evans and Paul Lewis, *Undercover: The True Story of Britain’s Secret Police* (Faber and Faber, 2013). See further, The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (as amended) S.I. 2010/521.

offence. The continued retention of such data was recently found to have breached the right to private life of two individuals under Article 8 ECHR.⁶⁶

The police intelligence databases on protesters also contain the names of around 9,000 individuals whom the police categorise as “domestic extremists.”⁶⁷ No clear definition of who can be categorized as a “domestic extremist” is available. The Special Rapporteur made clear his dismay when he learned that the “Occupy London” movement was categorized as a terrorist organization.⁶⁸

4. Protection

Mechanisms for the protection of the right to freedom of assembly in the United Kingdom are not always as effective as they could be. There are three human rights institutions – the Equality and Human Rights Commission,⁶⁹ the Scottish Human Rights Commission,⁷⁰ and the Northern Ireland Human Rights Commission.⁷¹ In addition, there are number of bodies established to monitor and review the actions of the police.

One such body in England and Wales is **Her Majesty’s Inspectorate of Constabulary** (HMIC). The HMIC has responsibility for inspection of the police force and is answerable to Parliament. The HMIC seeks to ensure that police powers are not used unlawfully or disproportionately, and stated in its 2009 review, the importance of each individual officer is legally accountable for his or her actions.

The **Independent Police Complaints Commission** (IPCC)⁷² is the body that deals with the gravest complaints against the police. However, its credibility has been called into question following a number of high-profile incidents.

In Northern Ireland, the Policing Board and local District Policing Partnerships afford political and community oversight of policing. The independent **Police Ombudsman**⁷³ has a duty to investigate the discharge of any weapon including baton rounds. The reports of these investigations are published on the Ombudsman’s website.⁷⁴

66 *John Catt & Another v The Association of Chief Police Officers & Others* [2013] EWCA Civ 192.

67 See, <http://m.guardian.co.uk/uk/2013/jun/25/undercover-police-domestic-extremism-unit>.

68 Para. 35 A/HRC/23/39/Add.1.

69 See, <http://www.equalityhumanrights.com/>.

70 See, <http://www.scottishhumanrights.com/>.

71 See, <http://www.nihrc.org/>.

72 See, <http://www.ipcc.gov.uk/en/Pages/default.aspx>.

73 See, <http://www.policeombudsman.org/>.

74 See further, http://www.policeombudsman.org/modules/investigation_reports/index.cfm.

Ostensibly, the newly established role of **police liaison officers** in some police services in England and Wales is to facilitate assemblies by proactively engaging with protesters, and to reduce the likelihood of force being used by the police. However, these officers have already been the subject of criticism as they also gather intelligence on protesters.⁷⁵ The UN Special Rapporteur expressed his dismay when officials from the Home Secretary's office and the City of London Corporation stated that police liaison officers *do* have a mandate to gather intelligence in the interests of maintaining order.⁷⁶

5. Sanctions

It is not possible here to list every offence that exists in the law of England and Wales, Scotland or Northern Ireland, but many such provisions have already been touched upon in the section on "Restrictions" above. This final section seeks merely to highlight some further issues and specific offences.⁷⁷

In general terms, organisers of public processions in England and Wales will commit an offence if they fail to satisfy the 6-day notice requirement (unless it is a spontaneous event) or if the event differs from the time, date or route of the procession as detailed in the notification. It is a defence that the person did not know about the requirements of notification.⁷⁸ Non-compliance with this requirement can lead to a fine on summary conviction of £1000. Those who organise, take part in, or encourage others to take part in a procession which has been banned under section 13 of the Public Order Act commit an offence punishable by imprisonment for up to 3 months or a fine of £2500. Similar penalties apply in Northern Ireland and in Scotland.⁷⁹ A further offence of "obstructive sitting, etc., in public space" may be committed by those taking part in a sit-in if, for example, it is shown that they sought to obstruct traffic or others seeking to exercise their right to freedom of peaceful assembly.⁸⁰

It is worth noting that the Guidance recently issued by the Director of Public Prosecutions in relation to "Public Protests" emphasized that cases must be dealt with proportionately and consistently,⁸¹ in particular taking into account if a public protest was "*essentially peaceful*", and whether "*the suspect took a leading role in and/or encouraged others to commit violent acts*", among others.

⁷⁵ See, The Guardian, 4 September 2012, *Police liaison officers accused of harassing activist*. Available at: <http://www.guardian.co.uk/uk/video/2012/sep/04/police-liaison-officers-uk-uncut-video>.

⁷⁶ At para.51.

⁷⁷ A non-exhaustive list of offences that might be committed during public protests is available at: http://www.cps.gov.uk/legal/assets/uploads/files/public_protests_annex_a_offences.doc.

⁷⁸ Section 11(7)-(9), Public Order Act, 1986.

⁷⁹ Section 6(7) and 7(6) Public Processions (NI) Act 1998 and section 65, Civic Government (Scotland) Act 1982 (as amended).

⁸⁰ Eg. Article 20 Public Order (Northern Ireland) Order 1987.

⁸¹ See, http://www.cps.gov.uk/legal/p_to_r/public_protests/

Recommendations

1. The Human Rights Act 1998 should be amended so as to expressly emphasize the importance of the right to freedom of peaceful assembly - as section 12 of the 1998 Act currently does in relation to freedom of expression;
2. That the definition of “domestic extremism” be clearly and more narrowly defined so as only to include those who have been convicted of a serious criminal offence;
3. That protests be expressly excluded from the potential application of provisions in the Anti-Social Behaviour, Crime and Policing Bill 2013-14 relating to Public Spaces Protection Orders (PSPOs), and that the use of anti-harassment laws, provisions relating to anti-social behaviour, and the powers under s.50 of the Police Reform Act 2002 be monitored on an annual basis with a view to ensuring their exceptional usage in relation to freedom of peaceful assembly;
4. That any blanket prohibition on erecting tents and/or sleeping in certain locations (such as Parliament Square) be repealed;
5. That the prohibition power in section 13, Public Order Act 1986 be amended to enable the prohibition of single public processions where there is a likelihood of serious public disorder (and the section 12 powers are insufficient), rather than requiring that all public processions be prohibited;
6. That courts more closely scrutinize the evidential basis of any public order justification to restrict freedom of peaceful assembly by the police, local councils or authorities, the Parades Commission or the Secretary of State (as applicable);
7. That a public judicial inquiry be established into the historical (and continuing) deployment of undercover police officers and other covert surveillance of protest groups, and that there be prior and constant judicial oversight of any such exceptional measures in the future;
8. That further consideration be given to the role of Police Liaison Officers and that a written policy document concerning their role and deployment be made publicly available. Any intelligence-gathering function should be explicitly excluded from their role, and appropriate safeguards should be put in place to ensure that there can be no slippage between “liaison” and “intelligence gathering” roles;
9. That the forthcoming all-party review (chaired by Dr. Richard Haass) of legislation relating to parades and protests in Northern Ireland seek primarily to ensure that a mutually accepted and commonly understood human rights framework is at the core of any revised regulatory framework.