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31 March 1980

Green Paper on Public Order

As I told you on the telephone, the Prime Minister was grateful to see the Home Secretary's minute of 26 March and the attached draft Green Paper. She has commented that the draft is "highly contentious" and that she fears that some of the suggestions in it will give rise to trouble and misrepresentation. She has asked whether the Home Secretary considers it necessary to include all the subjects in the existing draft, and has drawn attention, as an example of the most sensitive areas, to the section on election meetings.

I should be glad to know what view the Home Secretary takes on these comments.

I am copying this letter to the Private Secretaries of H Committee, Bill Beckett (Law Officers' Department), Miss M Howat (Lord Advocate's Department) and David Wright (Cabinet Office).

N J Sanders

J A Chilcot Esq
Home Office

CONFIDENTIAL

PRIME MINISTER

Any publication on this subject will lead to trouble; I have sidelined and flagged the more controversial passages. Given their tone, content, subject to the views of colleagues?

PRIME MINISTER

I am writing on behalf of the Secretary of State for Scotland and myself about our review of the law on public order. MS 28/3

In my statement of 27 June on the disturbances at Southall last year, I said I intended to review the Public Order Act 1936 and related legislation. The primary purpose of the review is to see whether a better balance can be achieved in law between the rights of those who wish to demonstrate and the interest of the rest of the community in the preservation of order.

As the first stage of the review, officials of our two Departments prepared a preliminary discussion document which was sent to organisations with the most direct interest in the administration of the existing law, that is the police and local authority associations and the Commission for Racial Equality. Copies were also sent to other Government Departments with a substantial interest in the review.

On the basis of the replies received, the attached draft of a Green Paper has been prepared, and we propose to issue this as the next stage of the review. The Green Paper is intended to set out and invite views on the complex issues which arise in this area of the law. A provisional Government view is expressed where appropriate. In general the document indicates that we would tend to favour strengthening the law in ways which would assist the police in taking action to prevent disorder - by, for example, introducing a requirement that the organisers of processions should give the police advance notice of their intention, and by applying to static demonstrations provisions thought appropriate to marches. The draft does not commit us to legislate on these points. But it does include, as an Annex, an account of the proposals in the draft Civic Government (Scotland) Bill for legislation on processions supplementing the 1936 Act, about which the Secretary of State for Scotland has

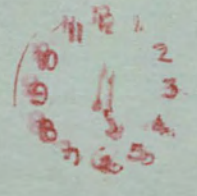
corresponded with the Chancellor of the Duchy.

I have indicated to the Select Committee on Home Affairs, which is examining public order, that I propose to issue the Green Paper next month. Indeed, it is highly desirable that it should be published before the resumption, on 28 April, of the inquest into the death of Mr. Blair Peach. But in view of the likely controversy surrounding any pronouncement in this field I believe that you and colleagues will wish to see the draft Green Paper before it is printed, and to let me know if you are content that it should be published.

I am copying this letter and the draft Green Paper to all members of H Committee, the Attorney General and the Lord Advocate, and to Sir Robert Armstrong. I should be grateful, in view of the desirable timetable for publication of the Green Paper, to receive any comments by noon on Monday, 31 March.

Willis

26 March 1980



GREEN PAPER ON THE REVIEW OF THE PUBLIC ORDER ACT 1936 AND RELATED LEGISLATION

C O N T E N T S

GREEN PAPER ON THE REVIEW OF THE PUBLIC ORDER ACT 1936 AND RELATED LEGISLATION

Foreword by [the Home Secretary and the Secretary of State for Scotland]

The freedom to demonstrate peacefully under the law is, in a democracy, essential to the health of the community as a whole. But in order to realise that principle in practice, the law needs to balance the freedom to demonstrate with the sometimes conflicting interests of those who do not wish to do so. In a democracy like ours the issue of what the framework of law should be is both complex and controversial.

Despite these inherent difficulties, the importance of the subject justifies thorough examination from time to time, to see whether the balance struck by the law is appropriate and relevant to contemporary problems and those likely to arise in the future. Recent disorders, and their damaging consequences, have persuaded the Government that a thorough review of the law on public order is necessary. The difficulties should not prevent us from taking action to amend the law if that is desirable. But before taking any such action there should be a wide-ranging and open debate.

The law is not the only factor which can maintain public order and the freedom to protest but it is an area in which Government and Parliament can and must act if change is required. This Green Paper, therefore, sets out the issues involved in a review of the law. Where appropriate, it gives an indication of the Government's provisional views. Its purpose, however, is to seek your views. We hope it will lead to a full and informed debate, on the basis of which both Government and Parliament will be able to decide what the balance should be for the future.

[WILLIAM WHITELAW
GEORGE YOUNGER]

[Home Office
London SW1.

Scottish Office
Edinburgh.

April 1980]

REVIEW OF THE PUBLIC ORDER ACT 1936 AND RELATED LEGISLATION

INTRODUCTION

The Background to the Review

1. In a statement in the House of Commons on 27 June 1979 about the disturbances at Southall on 23 April, the Home Secretary announced that he was instituting a review of the Public Order Act 1936 and related legislation. The purpose of this Green Paper is to stimulate and seek views on the important and complex issues which the review must consider.

2. In announcing the review, the Home Secretary had in mind the need to look again at the law against the background not only of the events at Southall, but also of disturbances such as those at Lewisham and Ladywood in 1977, Digbeth in Birmingham in 1978, and Leicester in April 1979. An examination of these and other events which have posed problems for the police in maintaining public order suggests that a number of important developments have occurred since the Public Order Act was passed to cope with the disturbances which attended the activities of the British Union of Fascists in the 1930's.

3. First, the number of major demonstrations is greater than it has been at least in the relatively recent past. For example, the number of demonstrations in London involving the employment of more than 100 police officers was 55 in 1972 and 119 in 1979. The proportion of police time devoted to dealing with demonstrations has increased correspondingly: in London for example the total manpower deployed on the occasion of all major demonstrations has increased from 19,000 in 1972 to 108,000 in 1979. This means that fewer police officers are left to deal with other important matters, such as investigating crime and patrolling the streets to prevent crime.

4. Second, the amount of disorder has increased substantially and there have been indications of a greater willingness at least on the part of a small minority to resort to violence either in expressing their own views or in seeking to prevent others from doing so. The number of people arrested at major demonstrations in London in 1974 was 247, whereas it was 536 in 1979. The result has been a risk of injury to police officers and members of the public, and a tendency for larger numbers of police officers to be necessary to police individual demonstrations than hitherto. In turn this may have reinforced misconceptions of the nature of the police role.

5. Third, partly as a result of the first two factors, the cost of policing demonstrations has increased. Accurate figures of the cost of policing demonstrations are difficult to prepare, but the report of the Commissioner of Police of the Metropolis for 1978 estimated the cost of policing 18 major demonstrations in London at almost £2½ million. The Commissioner has estimated the cost of policing all demonstrations in London in 1979 which required the presence of 100 or more police officers at some £5.75 million. Cost is not, of course, the only consideration. There is also the economic and social disruption that demonstrations can cause the community. Demonstrations may disturb the normal pattern of community and individual life, causing major inconvenience through, for example, the closure of streets, the boarding up of premises in anticipation of trouble and the not inconsiderable task of cleaning up afterwards. This can result in a considerable number of complaints to the authorities. If disorder occurs it may result in personal injuries as well as in damage to property and dislocation of business life. Less quantifiable but no less important, it may adversely affect the degree of harmony between different sections of the community. And it may also affect the morale of the police, and public perception of their role.

6. The fourth distinguishing feature of contemporary public order problems is, perhaps, their immediacy. Maintaining public order has always involved complex issues. Marches and meetings held by extremist organisations and the counter-demonstrations these attract, and mass demonstrations in support of pickets are two contemporary areas of particular difficulty. The handling of events such as these calls for the exercise by the police of great patience, skill and sensitivity. The presence of television cameras means that any disorder, and the police action necessary to control it, will instantly be brought to public attention, whereas an orderly occasion attracts no publicity. The effect which all this has on the attitude of demonstrators, and the strain which it places on individual police officers, should not be underestimated.

7. Some or all of these factors can be seen in looking at individual events. To take a few examples, during the dispute at the Grunwick plant in 1976-77, as many as 4,500 police officers were deployed on occasion; and during the whole period of the dispute a total of over 300 officers and members of the public were reported injured. More than 500 people were arrested. At Lewisham in August 1977 on the occasion of a National Front march and a counter-demonstration, 2,750 police officers were deployed and 210 people arrested. 270 police officers and 57 members of the public were reported injured. At Southall in April 1979, 2,756 officers were involved in policing demonstrations against a National Front election meeting. 345 people were arrested and 97 police officers and 63 members of the public were reported injured. One member of the public subsequently died.

The Scope of the Review

8. How successfully public order is maintained on each occasion depends on a number of factors, including the number of demonstrators involved, their attitude, the enforcement response of the police and the provisions of the law. Not all of these necessarily are or should be susceptible to action by Government or Parliament. But there is one factor which is, namely the law. Recent difficulties suggest that the time has come to take a considered look at the law on public order and at related matters. This Green Paper is primarily concerned with the law, because this sets the framework within which all concerned - those who wish to demonstrate and the rest of the public, the police and the courts - have to act. The operational arrangements made by chief officers of police to enforce the law are of course primarily matters for them and not for the Government. But it is difficult to consider the adequacy of the existing law without bearing in mind how it is enforced. The Government will therefore consider any general points about the enforcement of the law which may emerge in the course of the present review. In addition, the Government does not intend to overlook matters within its competence outside the provisions of the criminal law which bear directly or indirectly on the maintenance of public order and views on such wider matters would be welcomed.

9. Within the context of the law the present review is intended to concentrate on the main statutory provisions relating to public order applying throughout Great Britain. These are principally the Public Order Act 1936 and related legislation including Section 70 of the Race Relations Act 1976, which inserted Section 5A into the 1936 Act, and Sections 82-84 of the Representation of the People Act 1949. The common law offences of riot, rout, unlawful assembly and affray in England and Wales and of mobbing, rioting and breach of the peace in Scotland, will be directly considered only in so far as they are relevant to the statutory provisions. The common law provisions in England and Wales, along with certain older statutes, are to be the subject of a separate review by the Law Commission. The precise boundary between the two reviews will be determined as seems appropriate as the present review progresses.

10. The review is not directly concerned with the law on picketing, although relevant provisions of the general law on public order will of course be considered (see, in particular, paragraphs 78 and 81, below).

Nor is the review intended to look at the general question of police powers, which in England and Wales is already being considered by the Royal Commission on Criminal Procedure. However, there are some specific issues relating to police powers to prevent and deal with disorder at demonstrations and meetings which are directly relevant to the review and will be considered. Equally the review will consider relevant powers available to the courts.

11. In Scotland the Working Party on Civic Government, which reported in 1976, reviewed local legislation relating to the regulation of public processions. The conclusions reached by that Working Party and some of the Secretary of State for Scotland's proposals following thereon are set out in a separate Annex to this Paper. These proposals will be reconsidered as necessary to take account of the results of this review.

GENERAL PRINCIPLES

12. The review has as its starting point the need to safeguard certain fundamental human rights - the rights of peaceful assembly and public protest and the right to public order and tranquillity. The consequence of this starting point was clearly expressed by Lord Justice Scarman in his report on the Red Lion Square disorders of 15th June 1974 (Cmnd 5919). In paragraph 5 he wrote:

> "Civilised living collapses - it is obvious - if public protest becomes violent protest or public order degenerates into the quietism imposed by successful oppression. But the problem is more complex than a choice between extremes - one, a right to protest whenever and wherever you will and the other, a right to continuous calm upon our streets unruffled by the noise and obstructive pressure of the protesting procession. A balance has to be struck, a compromise found that will accommodate the exercise of the right to protest within a framework of public order which enables ordinary citizens, who are not protesting, to go about their business and pleasure without obstruction or inconvenience. The fact that those who

at any one time are concerned to secure the tranquillity of the streets are likely to be the majority must not lead us to deny the protesters their opportunity to march: the fact that the protesters are desperately sincere and are exercising a fundamental human right must not lead us to overlook the rights of the majority".

13. The fundamental question this review asks is whether the rights on the one hand of those who wish to demonstrate and on the other of the rest of the public are in balance. It is the task of Parliament to determine from time to time in legislation where that balance should lie in general and of the police and the courts to ensure that the balance is observed in particular. It follows that the law and any proposals for changing it should seek to do two things:

i) it should, so far as possible, draw a balance between the rights of demonstrators and those of the public which will generally be regarded as reasonable;

ii) it should be capable of being enforced by the police and the courts.

The Police Role

14. The nature of the police role in handling disorder should not be misunderstood. The role of the police is and must continue to be confined to maintaining order. Under our law every citizen is under a duty to preserve the "Queen's Peace", that is, the normal peaceful and orderly state of society. A police officer has a special duty in that respect, which he accepts when he assumes the office of constable. The law already gives him a number of powers which he must use when disorder occurs or is reasonably anticipated. But it is no part of the policeman's task to judge between the views of opposing factions in the street. He is not present at demonstrations either to oppose some or to protect others. His duty is simply to preserve order and prevent offences and to enforce the law, no more and no less. Any review of the law must bear this fundamental point in mind.

15. A second fundamental point is that the police depend for their effectiveness on the consent and cooperation of the public whom they serve. In this country, the style of policing is based on the assumption of the consent of the community. The police are the servants of the community. This applies to the

policing of demonstrations as to other aspects of policing. The British police do not have sophisticated riot equipment - such as tear gas or water cannon - to handle demonstrations. Their traditional approach is to deploy large numbers of officers in ordinary uniform in the passive containment of a crowd. Neither the Government nor the police wish to see this approach abandoned in favour of more aggressive methods.

16. Two important considerations for the review flow from these major points. First, the object should be to clarify and improve the law for the sake of the public at large and those who wish to demonstrate. Accordingly any change which would make the law harder to administer or the task of the police more difficult is unlikely to be of general benefit. Secondly, any changes in the law should be designed to cope with the developments mentioned in paragraphs 3 - 7 without harming the relationship between police and public on which the British approach to policing public order is based. Both of these factors need to be kept in mind in considering whether changes, and if so what changes, are desirable.

THE EXISTING LAW

17. To consider whether we have got right the balance between demonstrators and the rest of the public we need to begin by looking at the existing law. There is, under our law, no statutory right to assemble in a public place or to process along the highway, although the European Convention on Human Rights, of which the United Kingdom is a signatory, guarantees the right of freedom of peaceful assembly. However, the courts have recognised that people are free to process along the highway, subject to certain specific restrictions mentioned below. In particular, they can do so provided that they do not interfere with the use of the highway by others or cause a nuisance to occupiers of property adjoining the highway. Essentially, to be lawful, the use of the highway must be a use for the purposes of passage along the highway. The present law regarding what constitutes a lawful use of the highway rests on this principle.

18. The fundamental assumption in our law is that a citizen is free to do something unless there is a specific provision to the contrary. This applies to the law on public order as to other aspects of the law. The law on public order therefore consists in essence of those restrictions on the exercise of the freedom to demonstrate in public which, over the years, have been felt by Parliament and the courts to be necessary in the interests of maintaining order. As such, the appearance of the law reflects the slow process of historical development. It is not codified in a particular statute : various Acts of Parliament as well as important provisions of the common law are relevant to it. A number of local Acts also contain provisions, for example, affecting the freedom to march through a particular locality.

19. In addition to provisions like the Public Order Act 1936 and others aimed specifically at maintaining order at marches, demonstrations and meetings, the general criminal law applies to acts of violence against persons and property. Thus there are for example the offences of assault, assault occasioning actual bodily harm, wounding and causing and inflicting grievous bodily harm. The Criminal Damage Act 1971 creates the offence of destroying and damaging property belonging to another. There are provisions relating to obstruction of the highway and, in the Police Act 1964, of assaulting or obstructing a police officer in the execution of his duty. The Prevention of Crime Act 1953 also supplements provisions in the Public Order Act 1936 prohibiting the carrying of offensive weapons. Moreover, under the common law, police officers have a

general power to act to prevent a breach of the peace; and there are the offences of affray (fighting to the terror of Her Majesty's subjects), unlawful assembly (where there is a common purpose among three or more persons to achieve an object by resort to or threat of violence), rout, riot and public nuisance.

20. In Scotland, as in England and Wales, the combination of common law and statutory provisions applies : the Criminal Damage Act 1971 does not apply in Scotland and the common law offences of greatest relevance there are assault, malicious mischief, mobbing and breach of the peace. Although the Public Order Act 1936 and the Prevention of Crime Act 1953 apply to Scotland, there are other statutory powers available to district and islands councils under the Burgh Police (Scotland) Act 1892 and various local enactments which enable them to prohibit or regulate public processions in parts of their areas.

21. The existing law on public order is therefore complex and fragmented. Over the years it has on the whole succeeded in adapting flexibly to new situations. Nevertheless there is scope for rationalisation and improvement. There are a number of real uncertainties. A particular feature is that while it contains much that is designed to enable the police to cope with disorder once it occurs, it contains relatively little short of the ultimate sanction of a ban on a procession to help them prevent disorder before it breaks out.

The Public Order Act 1936

22. The Public Order Act 1936 is the main exception to this. It is in fact central to this review because it embodies two principles directly relevant to its purpose. First, unlike other powers available to the police which can only be exercised after an offence has been committed, the Act provides, in respect of processions, powers to take preventive action where a proposed event is likely to cause serious disorder. Secondly, in respect of threatening, abusive and insulting conduct and (by virtue of the amendment made to the 1936 Act by the Race Relations Act 1976) incitement to racial hatred, it makes unlawful certain types of words and behaviour which are offensive to the community at large or sections of it.

GENERAL QUESTIONS ABOUT THE SHAPE OF THE LAW

23. Before going on to examine in detail questions about the effectiveness of the existing law, however, it may be appropriate to ask two fundamental

questions which affect the shape of the law on public order. First, is there a case for introducing a statutory right to demonstrate into our law? Secondly, is the 1936 Act (which was passed in very different circumstances) still appropriate and indeed do we need a public order act at all?

A Statutory Right to Demonstrate

24. There is frequent mention in public debate of the "right to demonstrate". In fact, as the analysis in paragraphs 17-18 above shows, our law does not in terms recognise a specific right to demonstrate. This is because the basic assumption in the law is that one is free to do whatever is not specifically prohibited by the law. So while there is in law no specific right to demonstrate, one is certainly free to do so, provided specific provisions of the law (eg those relevant to one's conduct while demonstrating) are not contravened.

25. It has been argued that this means that the right to demonstrate is inadequately protected, and that the balance of the law should be redressed by enshrining a statutory right to demonstrate in our law. In particular, it is sometimes said that the law gives undue prominence to the right of passage along the highway, and that it should also recognise a right to stand in the highway provided the rights of passage of others are not thereby infringed. A statutory right to demonstrate might help in this and other respects. Such a statutory right could not, however, be absolute and would need to be subject to limitation in the interests of maintaining order. Countries with written constitutions which include protection for freedom of expression and assembly do not regard these rights as unfettered, and articles 10 and 11 of the European Convention on Human Rights, which affirm these rights, include a recognition that they may need to be restricted by law for, among other things, the prevention of disorder or crime and for the protection of the rights and freedom of others.

26. The inclusion in our law of a statutory right to demonstrate would be a novel and uncharted step. In modern times it has not been usual to introduce general rights into the law - as distinct from specific and precisely defined rights (such as rights of appeal and rights to inspect or receive information). The objections that have been made to a statutory right to demonstrate include broad philosophical as well as more practical points. It is argued that it is desirable to maintain the common law tradition under which the citizen has the freedom to do whatever is not prohibited by the law. In this way the boundaries

of rights can be known to be as set by long established case law or approved by Parliament and are not open to extensive judicial redefinition. (The general issue of judicial involvement in the merits of decisions eg to ban processions, to which the question of a right to demonstrate is related, is discussed later in this Green Paper).

27. On the more practical level, it is argued that there would be difficulties in defining the precise boundaries of a right to demonstrate and that the existence of such a right, rather than simplifying the law, would greatly increase its complexity. This uncertainty might pose problems for the police in maintaining order, and increase the scope for misunderstanding between police and public about what are the actual rights and duties of those who wish to demonstrate.

28. It is also argued that in practice the freedom to demonstrate is adequately recognised under existing law and needs no further protection. It is relevant that in paragraph 134(6) of the Red Lion Square Report, Lord Scarman regarded the enactment of a positive right to demonstrate as unnecessary, except as part of any general codification of this branch of the law. "The right", he commented, "of course exists, subject only to limits required by the need for good order and the passage of traffic".

Why have a Public Order Act at all?

29. Before discussing possible changes to the Public Order Act, it may be appropriate to ask whether the Act is still needed. It has been suggested that since the problems the Act was passed to deal with (the disturbances of the 1930's) have long since passed away, the Act itself should be repealed.

30. There are two main answers to this argument. First, while the problems of the 1980's may be different from those of the 1930's, disorder may still occur on a scale which prevents other people from pursuing their own activities. There is therefore still a need for an Act designed to help the police preserve order. Second, some of the provisions of the 1936 Act, such as section 5, have proved and continue to prove useful to the police in keeping the peace. But other provisions are arguably less effective than they might be. For example, the provisions in the Act intended to help prevent disorder are essentially last resort measures whose application is limited to processions; they do not extend to meetings and demonstrations which may give rise to the same problems.

It is sensible therefore to review the 1936 Act to see how deficiencies like this can be overcome in ways which might assist in preventing disorder, no matter what the circumstances in which it might arise and without the need to rely on last resort measures.

REVIEW OF POWERS TO PRESERVE ORDER:

(1) POWERS TO CONTROL PROCESSIONS

31. Powersto ban processions have been used less frequently in recent years than immediately after the 1936 Act was passed: in all they have been employed in England and Wales on some 11 distinct occasions since 1936 (though that figure includes as single occasions periods from 1937 to 39, and from 1948 to 51, when an almost continuous ban was in force in certain areas). The powers have also been used recently in Scotland. In the sense that they are today used relatively rarely, the powers to ban are perhaps less important to the maintenance of public order on a day-to-day basis than other powers. Nevertheless the imposition of a ban directly affects civil liberties. Moreover, discussion of the circumstances in which it may be right to consider banning a procession goes to the heart of the question of balance between the freedom to demonstrate and the right to peace on the streets. It seems appropriate therefore to start by considering the provisions relating to the banning of processions.

32. Statutory powers relating to the banning of processions are contained in section 3 of the Public Order Act 1936. They provide that, in England and Wales outside London and in Scotland, where a chief officer of police considers that the powers conferred on him by the Act to impose conditions on marches will not be sufficient to enable him to prevent serious public disorder, he shall apply to the district council (the regional council in Scotland) for an order prohibiting for up to three months the holding of all public processions or any class of public procession. Upon receipt of the application the council may, with the consent of the Secretary of State, make an order. In similar circumstances in London, the Commissioner of Police of the Metropolis or for the City may, with the consent of the Secretary of State, make an order.

Should there be any Changes in the Criteria for Banning a Procession?

33. At present, a ban can only be imposed where serious public disorder cannot otherwise be averted. Is this still the right test? Should there be powers to ban processions on grounds other than public order? If public order remains the basic consideration, should the test remain that of serious disorder or should it be less stringent?

Bans on other than public Order Grounds

34. Apart from public order considerations, it can be argued that marches cause such disruption that it should be possible for them to be banned on other grounds. This is not unprecedented. Powers exist in Scotland under the Burgh Police (Scotland) Act 1892 and in local legislation for district and islands councils (with certain reservations in respect of the former cities) to ban public processions without stated reason. Councils are not required to consult the Chief Constable before exercising this power.

A Ban on Political Marches

35. It has been suggested from time to time that the right to march for a political cause should not be treated as a fundamental right on a par with freedom of speech. It is argued that modern means of communication make marches less necessary as a means of drawing attention to a point of view. There may be some public sympathy with this viewpoint. Nevertheless, the great majority of marches do not cause serious disorder, and those who participate in marches regard them as an important means of expressing their views. Access to the media is not equally available and a ban on all political marches might bear more heavily on the relatively disadvantaged. Such a ban would undoubtedly be resisted as an encroachment on traditional liberties unparalleled in democratic countries. There would be difficulties of distinguishing political from non-political marches. Substantially defied, a ban on this basis could create more problems than it would solve.

36. The Government cannot agree that a permanent ban on political marches of all kinds is justified or desirable. The freedom to demonstrate one's views in public - within the law - is fundamental to a democracy.

Bans on Organisations

37. Nor can the Government agree with the argument that, since much of the recent disorder has resulted from confrontations between supporters of the National Front and others including members of the Socialist Workers Party, there are grounds for banning one or other of these organisations or both. It has been maintained by successive Governments that, provided they act within the law, people should have the right to form themselves into organisations, to express their views and to contest elections, and that this right should be denied only in the most exceptional circumstances. Proscription has in Great Britain been confined in recent years to organisations openly and avowedly dedicated to violent terrorist acts and to the overthrow of the civil authorities.

Should the Test be one of Offensiveness?

38. But if it would be unjustified to ban all political marches or to proscribe certain political organisations, are there other criteria which could be applied? In particular would it be right, as has sometimes been suggested, for marches to be banned where serious offence is likely to be caused to certain sections of the community - for example, on racial or religious grounds - even though serious disorder is not likely to ensue? This suggestion has some attractions. However, on examination it would seem to have a number of drawbacks. Is it right, for example, in a democracy to deny the holders of certain views the right to express them in public - subject to the existing law on racial incitement, libel, etc - even though there is no risk of their expression being attended by disorder? If offensiveness were to be a criterion for banning a march, who should judge the degree of offensiveness of a particular march - the police, the local authority, the Secretary of State or some other body? Could the police be asked to enforce laws based on a criterion of "offensiveness" without becoming seen as the agents of one political or social view, thus violating the principle referred to in paragraph 14 of this Paper? The Government would welcome views on these questions. Its provisional view is that the fact that a march is being conducted by people who hold views which the majority of the community find offensive should not in itself be a sufficient reason to ban the march, and that to provide power to ban on such grounds alone would be an unacceptable infringement on traditional freedom of thought and expression.

Should the Test rather be Disruption to the Local Community?

39. Marches can cause serious traffic congestion, disruption to business life and inconvenience to those who wish to go about their business or pleasure without obstruction. It may be that, at present, the balance is too heavily weighted in favour of the demonstrators and there should be powers to prevent undue disruption. On the other hand, Lord Scarman suggested in his Red Lion Square report that concern to secure the tranquillity of the streets should not lead the law to deny protesters the opportunity to march. The difficulty with a test of disruption to the community - as with a test of "offensiveness" - would be defining the test in a way which could be sufficiently precise and avoid presenting opportunities for undue interference with democratic rights. If the criterion was to be "disruption", again the question would arise whether the decisions to ban could more appropriately be taken by the police, by the local authority or by the Secretary of State.

40. It is sometimes suggested in this context that local authorities should have powers to designate certain areas only for demonstrations and processions, eg that they should be confined to recognised "Speakers' Corners". There are already provisions forbidding the holding of parades or meetings in certain areas, either absolutely or without permission, and there may be arguments for some limited extension of restrictions of this type. To introduce provisions forbidding processions or meetings outside certain limited ares, however, would be altogether different. Most demonstrators choose as their focus an objective (such as an embassy or Government Department) associated with the matter about which they are protesting. A provision that only allowed marches or demonstrations within certain defined areas or along certain specific routes might well prove both unduly restrictive and difficult to enforce. The better course might be to give the police a wider power than at present to apply conditions, including a power to prescribe the route - to individual events. The freedom to demonstrate does not necessarily imply a liberty to do so wherever one wishes regardless of the implications for public order.

A Public Order Test

41. The test for imposing a ban on processions embodied in the 1936 Act is that of serious public disorder. It seems clear that,in deciding on that test, Parliament had in mind the need to adopt a criterion which was, as far as possible, both objective and independent of political considerations. The power to initiate consideration of a ban was left to the professional judgement of those whose duty it is by law to maintain the peace - chief officers of police.

42. The Government will welcome views on whether some alternative to a test of public order should be introduced /into the 1936 Act. Having considered several possibilities the Government's provisional conclusion is that the risk of public disorder should remain the basis on which a ban on an event is considered, though the addition of other criteria /(as suggested in paragraph 45 below) need not be ruled out. The arguments which weighed in favour of a public order test when the 1936 Act was passed seem just as strong today. If this is accepted, the question then arises whether the test of serious public disorder is in practice too stringent. Does it unnecessarily inhibit the police in initiating a ban on a procession when they think one is necessary? Should a less /stringent public order test be imposed?

A Less Stringent Public Order Test?

43. The fact that under the Public Order Act a ban can be imposed only where serious public disorder cannot otherwise be averted seems to have been interpreted

by chief officers of police to mean that, where serious disorder can be avoided by calling for assistance from other forces, then a ban is not appropriate. However, it can be argued that the test in the 1936 Act is too stringent and that the rights of demonstrators are being given too much weight as against the interests of the community. In Manchester in October 1977 over 6,000 police officers had to be deployed, and in Leicester in April 1979 5,000 officers were deployed from over 20 forces. It has been argued that it is consistent with the intention of the 1930's legislation that marches should be banned where police forces cannot prevent serious disorder from within their own resources. It can also be argued that local ratepayers should not have to suffer a reduction in normal police cover nor finance expensive mutual aid arrangements in order to enable controversial groups, drawing much of their support from outside the area, to express their views.

44. A provision which had regard to the ability of a particular force to preserve order from its own resources would inevitably bear harder on some areas and police forces than on others. It would bear particularly hard on London and the Metropolitan Police which, because of its size, does not usually need to invoke mutual aid arrangements. It is arguable that capital cities throughout the world are a natural and inevitable focus for demonstrations, and that preventing demonstrations directed at the seat of government represents a more substantial incursion into civil liberties than restrictions elsewhere. But however such restrictions were imposed, they would effectively limit freedom to demonstrate in some areas while in consequence placing a heavier burden on others. For these reasons the suggestion of a public order test linked to the ability of a force to cope with disorder from its own resources seems impracticable.

45. Nevertheless, the policing of demonstrations does divert a good deal of police effort from other tasks, such as preventing and investigating crime, to which the public may attach greater importance. One way of taking this (and incidentally some of the cost considerations) into account might be to enable the effect of an event on the policing of an area as a whole to be taken into consideration, along with the risk to public order, when a ban was being discussed. The test of serious public disorder in the 1936 Act is linked to the power to impose conditions on a procession as well as to ban one. The stringency of the test may have had, as will be suggested later, a more serious effect in restraining the use of the power to impose conditions than in limiting the

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number of bans on marches. There seem good reasons for some relaxation of the present test if the rights of those who wish to march and those of the rest of the community are to be properly balanced.

46. A note of caution should be added, however. If powers to ban demonstrations continue to be confined to marches and processions, it may be unrealistic to think that a lesser public order test will reduce the level of policing required overall. Experience suggests that demonstrations and meetings can provide the focus for as much disorder as marches. The question of powers to control demonstrations and meetings is discussed in paragraphs 74 - 93 below.

Power to Ban more Selectively

47. Section 3 empowers the banning of all public processions or "any class of public procession". It does not permit the banning of a particular march. There is an argument that a ban made on public order grounds should be of broad application rather than directed at a particular march or organisation, which might give an appearance of political or other bias. It has, however, been argued that, as the ban is invariably occasioned by a particular march or marches, it would be more straightforward for the ban to apply to that march or those marches only. People whose marches are affected by a ban but who are not the cause of it feel this particularly strongly. A difficulty might be that any narrowly defined ban might be circumvented by skilful organisers calling themselves by a different name or finding a different pretext for a banned march. However, this difficulty might be lessened if there were a requirement to give advance notice of processions.

Procedure for Banning a March

48. Apart from the question "What should be the criterion for banning a march?", there is also the question "Who should ban a march?" The present procedure outside London is that the chief officer of police decides whether to seek a ban, the district council (in Scotland, the regional council) consider whether to make a banning order, and the Secretary of State decides whether to approve that order. Is there any need for change in the procedure?

49. It has been argued that the decision to ban marches is a political decision, the initiative for which should rest with the local authority or the Secretary of State. It is, however, worth recalling that in 1936, Parliament

conciously gave powers to chief officers of police which in the provinces had formerly been associated with the local authorities. The argument advanced was that a local authority could not be expected to form a judgement on the threat to public order that was presented by a particular march. Such a judgement was properly a matter for the police. It was important to ensure that the initiative in seeking a ban was - and was seen to be - taken by the chief officer of police on public order and not political grounds. But it was equally felt that the police should not be the authority which ultimately decides whether marches can take place or not. This was considered something for the local authority and the Secretary of State to decide, but only on the basis that the police have first assessed that there is a real risk of serious public disorder.

50. Is this still the correct approach ? Clearly the procedure to be followed is related to the criteria on the basis of which a ban may be imposed. The role at present given to the police, for example, stems from the public order test embodied in the 1936 Act. If the criteria were changed, then a different procedure might be appropriate. However, even with the present test, there have been proposals for procedural change. For example, it has been argued that the role of the local authority in the banning of marches should be re-assessed, and that the position in the provinces and Scotland should be brought into line with that in London, with the chief officer of police applying direct to the Secretary of State for approval of a ban. In favour of this, it is argued that there are now far fewer police forces than there were in the 1930's, and that every force now is both more professional and more likely to have experience or knowledge of the problems posed by controversial marches; there is therefore no need for local authorities to act as a check on the view of a chief officer who, save for this exception, is responsible for decisions on operational matters. It is also sometimes argued that the involvement of the local authority may import an undesirable degree of party political controversy into the decision to ban a march, and that the logic of having a public order test as to whether to ban a march is that the chief officer of police should make the banning order, subject to the Secretary of State's approval.

51. Against this view, there is the strongly held opinion that it is right that the people of an area should have a say in the banning process through the involvement of their local authority. Indeed some suggest that the local authority should itself be able to initiate a ban without having to wait for the chief officer of police to seek one - as some local authorities in Scotland are already able to do under the Burgh Police (Scotland) Act 1892 and local legislation. Controversy has in fact arisen not only over decisions to seek a ban, but also over decisions not to do so, where at present the local authority has no statutory role.

52. In Scotland the long established tradition of local authority powers in this field is reflected in the recommendations of the Working Party on Civic Government in Scotland, who reported in 1976; their recommendations and the action the Government propose to take on them are set out in the Annex to this Green Paper.

53. Some compromise might be found between the opposing views. For example, the powers at present vested in England and Wales in the district council might perhaps be conferred on the county council, if only to avoid the chief officer of police having to seek ban after ban from different councils if an organisation kept on switching its marches from district to district in the same locality. It has also been suggested that the power to make an order, or at least the power to initiate consideration of one, should rest with the police authority. (In the Metropolis the consent of the Home Secretary, who is of course the police authority, is required). Others take the view that the present power of the district council to make an order emphasises the involvement of the local community. Whether formal responsibilities are changed or not, there may be a case for a formal requirement for consultation between the chief officer of police and the local authority concerned during the first two stages of the banning process.

The Role of the Secretary of State

54. All orders banning processions under the Public Order Act are required to be made with the consent of the Secretary of State. In England and Wales this means the Home Secretary, and in Scotland the Secretary of State for Scotland. The purpose of this requirement is to ensure that restrictions on the right to protest are not imposed unjustifiably or contrary to the public interest. In particular, the involvement of the Secretary of State ensures that there is Ministerial accountability to Parliament for such restrictions, however temporary, on normal democratic rights.

The Role of the Courts

55. The suggestion is sometimes made that the courts should be given jurisdiction to consider decisions to ban or impose conditions on a march, perhaps by way of an appeal to a Judge in Chambers. It is argued that this would provide an independent and clearly non-political check on the taking of decisions which involve interference with the exercise of what many regard as basic rights. This suggestion raises the whole question of the role of the courts in relation to the taking of decisions about public order.

56. It seems necessary at the outset to distinguish two concepts : judicial review of whether decisions have been properly reached; and judicial involvement in the merits of the decisions themselves. Judicial review - the first of these concepts - already exists in the sense that the decisions of anyone who performs statutory functions may be reviewed by the courts and quashed or declared to be unlawful if the person concerned can be shown not to have exercised his functions in a proper manner. Judicial involvement in the merits of decisions, however, would be a new departure in this field. Essentially such involvement might take one of two forms. In the first, the courts might be involved in the taking of the decision itself, for example they might take the place of the Secretary of State in exercising the function of consenting or not consenting to a ban on a march. In the second, a right of appeal might be given to a court from the decision of an administrative authority.

57. In both these latter cases, the courts would be involved in examining not the procedural propriety of a decision but its actual merits. The arguments for such a novel departure have already been mentioned. The arguments against it in the case of the 1936 Act are substantial. In addition to practical questions, they include the objections of principle that the courts are not best placed to take decisions about major public order matters and that they should not be involved in making decisions about political or administrative matters as opposed to questions of law in such a potentially controversial area. In his report on Red Lion Square, Lord Justice Scarman concluded : "It is best that a decision to ban a march should require the consent of a politically responsible minister such as the Home Secretary - which under the existing law it does". The Government's provisional view in relation to the 1936 Act is that the present requirement that the Secretary of State, who is answerable to Parliament, should approve a

ban on a march is both an appropriate and a sufficient safeguard. It would be inappropriate for the merits of a decision of the Secretary of State under the 1936 Act - as against its procedural propriety - to be subject to appeal to the courts ; moreover it is difficult to see on what basis the courts could determine the appeal except by setting their judgement of what would not be a legal question beside that of the Minister.

Police Powers in relation to Unlawful Processions

58. One of the inhibiting factors in relation to banning marches is that, under the Public Order Act, there is no power to arrest those who defy a ban or who disobey routing instructions given by the police. Admittedly the police can fall back on their common law power to arrest where a breach of the peace seems likely. But this may seem an unnecessary complication for the police in trying to defuse confrontation, and there would appear to be arguments for giving the police an immediate power of arrest for offences under section 3(4) of the Act. It is also arguable that taking part in a banned march should be a criminal offence. It may indeed be suggested that there is some uncertainty in the existing law over police powers to disperse an unlawful procession (or assembly), by reasonable force if necessary, which requires clarification.

The Government is inclined to think that this is desirable.

Powers for the Routing and Ordering of Processions

59. Banning processions is a measure of last resort; in fact, it occurs relatively very rarely and, for its part, the Government has no desire to see bans being imposed more frequently. A ban is the ultimate preventive measure - but are there other steps which can be taken to prevent disorder which fall short of the restriction on the freedom to demonstrate which a ban involves and which can more effectively reconcile the exercise of that freedom with the maintenance of order?

60. The obvious step is to impose conditions on the conduct of a procession. A power to do this is already contained in section 3(1) of the 1936 Act. This gives a chief officer of police power, where he has reasonable grounds for apprehending that a procession which is taking place or is to take place may occasion serious public disorder, to give directions imposing upon those organising or taking part in the procession such conditions as appear to him necessary for the preservation of public order, including conditions prescribing the route to be taken by the procession and conditions prohibiting the procession from entering any public place specified in the directions. There is a saving for the display of flags, banners and emblems but, even in respect of these, conditions can be imposed that are reasonably necessary to prevent risk of a breach of the peace.

61. The section is in general terms. However, in practice it appears to have been used by the police with caution. There may be a number of reasons for this. The police usually prefer to discuss the arrangements for a march with th organisers and reach a mutually acceptable agreement. They tend to resort to formal directions, which could in certain circumstances be regarded as provocative, only if there is a pressing need to do so. On the other hand, the police may be content to rely on other statutory powers: for example, in London the general powers conferred on the Commissioner by section 52 of the Metropolitan Police Act 1839 to make regulations and to give directions to constables to keep order and prevent obstruction of the streets; or, elsewhere, powers conferred by local byelaws.

62. However, it may also be that, in requiring a chief officer of police to hav reasonable ground for apprehending serious disorder before giving directions, th section imposes too stringent a test. This brings us back to the criterion for taking preventive action which is embodied in the 1936 Act. If the test of serious public disorder inhibits directions being given, there may be a case for importing more flexibility into the grounds for giving directions. If the criterion for banning a march were to be widened beyond public order considerations, then a similar widening of the test for imposing conditions on a march would have to be considered. But the Government's provisional view is that public order considerations should remain the ground for imposing conditions on march, as for banning it, although the stringency of the present test of serious disorder might usefully be relaxed and the addition of other criteria need not b ruled out. If on balance it was felt undesirable to lessen the test of serious public disorder for banning a march, it might nevertheless be desirable to introduce a less stringent test (simply of disorder) for the application of conditions to a march. Here the power to impose conditions with reasonable caus would remain in the hands of the police.

63. Another matter which requires consideration in this context is whether the Public Order Act 1936 needs amendment to enable the senior police officer present to re-direct a march which is under way if on reasonable grounds he thinks it necessary in the interests of public order. In his Red Lion Square report Lord Scarman thought it likely that such a power in fact existed. It is indeed arguable that in referring to a procession which "is taking place or intended to take place" and to "the route taken or proposed to be taken by the procession" section 3(1) of the Act explicitly confers such a power on the chief officer of police (though probably not, as Lord Scarman suggested, on the senior police officer present). But there is an apparent uncertainty here which it would be sensible to clear up.

Should Demonstrators be Required to Meet the Costs of Policing their Demonstrations?

64. It may be appropriate to consider at this point the suggestions that have been made from time to time that financial conditions should be imposed on the organisers of marches and demonstrations; for example that they should be required to meet some or all of the cost of the policing arrangements or that they might be required to enter into a bond from which they would be expected to meet the cost of any damage resulting from the march.

65. There are obvious theoretical attractions in making those whose activities occasion disorder liable for the cost, and the Government has a good deal of sympathy with the feelings that often lie behind these suggestions. However, the practical difficulties about such proposals seem formidable. First, it can be argued that it is unreasonable to hold the organiser of what is intended to be a peacful march responsible for the activities of elements who may join the march but over whom he may have no control. Equally, recent events have shown that responsibility for disorder occasioned by marches can be caused almost wholly by counter-demonstrators seeking to disrupt the march, rather than by those taking part. At other times, the blame is more or less equally shared. Then there is the objection of principle that imposing financial restrictions of this sort would in effect be taxing the exercise of a fundamental freedom. The effect of a requirement for a financial guarantee might ultimately be to restrict marches to those on uncontroversial issues and organised by people of considerable financial means. For these reasons, the Government doubts whether these suggestions can profitably be pursued.

Advance Notice of Processions

66. The Government sees more merit in the representations that have been made on many occasions in favour of a national requirement for advance notice of processions. Provisions in local legislation requiring advance notice are at present in effect in some 107 local authority areas in England and Wales, and some 3 areas in Scotland, and such a requirement is a feature of Northern Ireland legislation as well as of that of many West European countries.

67. If a march or procession is expected to be very large, or provoke a significant counter-demonstration, the police will need to make arrangements to divert traffic and to preserve order. Clearly the more time they are given for this, the more satisfactory these arrangements are likely to be. If a march is

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likely to create public order problems, time will be necessary to consider whether conditions should be imposed on it as to route etc. If consideration is given to the use of the powers for banning processions under the Public Order Act 1936, the procedures involved for the police and local authority outside the Metropolitan Police District are bound to take some time. The chief officer of police has to approach the district or regional council. They, in their turn, have to come to a decision and then the Secretary of State has to come to a decision himself on their request. Where a march is likely to require a larger number of police officers to control it than a particular chief constable could have available from his own force, he will have to obtain assistance from other forces. This again takes time to organise.

68. The principal argument advanced against a notice requirement is that it might prevent the procession for which there was a legitimately urgent reason : eg a march to the embassy of a foreign power which had announced that one of its political prisoners was to be executed within 24 hours, or, on a more local level, a march against a factory closure or in favour of a pedestrian crossing outside a school after a fatal road accident.

69. Those opposed to a notice requirement also refer to Lord Scarman's view that, even without specific provision in the law, the police are in fact notified of processions in the majority of cases, and that, where they are not, the police generally do not have undue difficulty in finding out what is planned. It is argued that a notice provision would be a largely unnecessary requirement, which could be an embarrassment to law-abiding citizens. It is also argued that it could militate against public order in that where a controversial group, such as the National Front, gave the minimum notice required, counter-demonstration in the form of a march could not be lawfully organised. Those who wished to demonstrate would therefore be reduced to lining the route of the National Front march to protest, with the consequent risk of public disorder.

70. The problem of the procession organised at short notice could, however, be met in a number of ways. One way would be by giving to some authority, possibly the chief officer of police, the power to waive the notice requirement either at discretion or in particular circumstances. For example, as the requirement would be imposed for public order purposes, the chief officer might be empowered to waive it if he felt it was in the interests of maintaining order to allow a procession to proceed or that there would be no risk to order in so doing. Alternatively the power of waiver might be given to a court, though the police would clearly have to be informed of any application for a waiver and to have a right to have their views heard by the court before it reached a decision. It might be difficult to involve the courts in this way without cutting across the principle mentioned in paragraph 57 above.

Either in addition or as an alternative to a power of waiver, any provision might include the approach now embodied in the recent West Midlands County Council Act, which requires notice to be given at least 72 hours before a procession or as soon thereafter as is reasonably practicable. In the event of a prosecution for a failure to give 72 hours notice, it would be for the courts to judge whether notice had in fact been given as soon as was practicable. If a power of waiver were coupled with such a provision it might give the organisers of a march the opportunity of learning in advance that their ~~march was~~ actions were lawful rather than having to rely on the uncertain "reasonably practicable" provision. In addition, processions of a particular sort - such as religious or festive processions customarily held or charitable or funeral processions - might be exempted altogether from the requirement to give notice. The lack of difficulty experienced with advance notice requirements in local legislation suggests that the problem of the short notice or spontaneous procession is more theoretical than real, and that a way of overcoming any difficulty can be found which is preferable to eschewing a requirement for reasonable notice for the generality of processions.

71. Although the police do often receive advance notice of an event, this does not happen in all cases. The chief advantages of a notice requirement are that it might help ensure the police receive advance warning of an event in more cases than at present, and that it may give the police more time to take action designed to prevent disorder than they might otherwise have. In particular it might serve as the formal trigger for discussions between police and organisers designed to agree the ground rules for a march. These might subsequently be embodied in formal conditions. It might in turn help to encourage organisers to assume more responsibility for policing their own people. And it would serve to emphasise that those who wish to process down the street should have regard to the rest of the community.

72. These considerations suggest that the balance of advantage may lie in introducing a national requirement of advance notice of processions. This would not be the same as introducing a requirement to have a permit to march. Everyone would (still be) free to march as they wished. But they would be required to give a reasonable notice of their intention to the police (and, perhaps, the local authority).

73. If a national requirement of advance notice were introudced, a number of subsidiary questions would need to be considered. In addition to the question

of waiver and exemption mentioned earlier, these would include the length of notice to be given and the authorities to whom it should be given. On the length of notice, the Working Party on Civic Government in Scotland in its study of Scottish local legislation recommended 7 days notice and the police associations in England and Wales are also understood to favour this. On the other hand most English local bills of present before Parliament which include an advance notice clause provide for 3 days notice. 5 days (coupled with suitable provisions for waiver and for exemption) is not without merit. The precise formulation of the associated offence provisions and whether they should carry a power of arrest, as well as the question of any statutory defences, would also need to be considered. In addition the relationship between the national requirement and the provisions in local acts might need to be examined. The Government would welcome views on these matters as well as on the major issues involved.

(2) POWERS TO CONTROL DEMONSTRATIONS AND MEETINGS

74. The powers contained in the Public Order Act 1936 to impose conditions on, and to ban, demonstrations apply only to those which take the form of processions or marches. They do not apply to static demonstrations or to meetings, whether public or private. The only provision in the 1936 Act specifically directed to public meetings is a section amending the Public Meetings Act 1908 to enable the organisers of meetings to obtain the names and addresses of anybody who tries to break up the meeting and to empower the police to arrest anyone who refuses to supply this information.

75. However, much recent disorder has arisen not in relation to marches but to meetings and to demonstrations against meetings. Thus in August 1977, two days after the Lewisham disorders, a demonstration against a National Front by-election meeting in Ladywood, Birmingham, led to disturbances in which 97 police officers were injured and there was considerable damage to public and private property. Again, in Birmingham in February 1978, some 2,500 police officers had to be deployed to deal with a demonstration against a private Young National Front meeting in the Civic Hall. 58 police officers were injured (one sustaining a fractured skull) and there were 30 arrests. The demonstration against a National Front election meeting at Southall in April 1979, in which some 3,000 people took part, has already been mentioned.

76. The question arises therefore whether provisions similar to those applying to processions should apply also to static demonstrations and to meetings. Such a step would be a major departure. One view would be that freedom of speech at such gatherings is paramount, provided that the speaker does not transgress the law, and that it would be wrong therefore to take powers, for example, to ban meetings. On the other hand it can be argued that if some controls on marches are felt to be justified in the interests of maintaining order, then it is difficult to see why similar powers should not be justified in relation to other forms of protest activity. In the end the issue can perhaps only be assessed by considering what form controls or restrictions might take and what safeguards could be provided.

Demonstrations and Open Air Meetings

77. The first question to be considered is to what type of public assembly any new controls should apply. Demonstrations may take many different forms and be arranged for a wide variety of purposes. There may be demonstrations outside meetings against the views of those conducting the meeting, demonstrations for other political purposes (such as those outside embassies), or those conducted for industrial purposes (in support of pickets or against plant closures, for example). But there are also other types of gathering on the highway or in public places where public order problems may arise, but which are non-political. Street carnivals, such as that held in Notting Hill (which may embrace a whole range of activities including processions), pop festivals and sporting events are examples of these. Some events may have a major impact on the lives of the community where they are held; others may be in no sense controversial and cause little or no disruption. Some gatherings may be small, yet because the views propounded are objectionable to others may occasion serious disorder; other larger gatherings, eg for religious or ceremonial purposes, may be acceptable to and indeed welcomed by the community as a whole.

78. It seems clear that if legislation is to be considered, it should be directed to particular problems. The difficulties that have arise in preserving order have in the main occurred as a result of gatherings of one sort or another in the open air. In some cases people have gathered to protest against closed meetings, but the major disorder has occurred outside. Here also public rights, eg of passage and re-passage along the highway, are more directly threatened than by meetings held in halls. There may therefore be a case for considering whether a requirement of advance notice and the powers to lay down conditions and, in the last resort, to ban on public order grounds should apply to assemblies of people in public places in the open air (including the highway). Consideration would have to be given to the sorts of activity which should be exempt from these provisions. They might not apply, for example, to peaceful picketing, though they could apply to large scale demonstrations in support of pickets. Social or recreational events might also be exempt. Another possibility might be to exempt all gatherings under a certain size, or those at recognised 'Speakers'

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Corners". The Government would welcome views both on the principle of an extension of controls of this sort and on the practical issues which would be involved. All the questions which have been mentioned in discussion of processions - such as the test for imposing conditions or a ban, the procedure for doing so, and what to do about the spontaneous demonstration-would arise here also. Alternatively, measures might be possible which would fall short of the full range of controls thought appropriate to processions. Again the Government would welcome any views as to these. The Government is in no way committed at present to the view that controls of a more or less extensive character are necessarily desirable.

Meetings in Closed Premises (excluding Election Meetings)

79. It could of course be argued that disorder can occur just as easily at a meeting in a hall as at one in a public square, and that such meetings should similarly be liable to control. A number of questions would then arise. For example, should a distinction be made between meetings in publicly owned halls and those in privately owned ones? Should both private meetings and those to which the public is invited be subject to control? Should the full extent of controls - including for example, the power to ban - be available in relation to meetings? Should there be a power to re-direct meetings to alternative locations? Or should some lesser restriction be imposed? For example, the body letting a room or hall might be required to consult the police where it had reason to fear disorder.

80. Rehearsing these questions underlines the practical problems which any extension of legislation to meetings in closed premises would involve. But there is also a prior issue of principle, which is whether considerations of free speech and assembly mean that no restriction at all should be imposed on such meetings. The Government's preliminary view is that these considerations, together with the various practical difficulties mentioned, rule out any significant extension of controls certainly to private meetings in closed premises and probably to public ones as well. Nevertheless the Government would welcome any practical suggestions for preventing the disorder which may attend these occasions.

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Police Powers

81. Another question which arises in the context of discussion of possible controls on demonstrations and meetings is whether the powers of the police to deal with a disorderly or unlawful assembly are sufficient. The police can arrest individuals for specific offences, such as that in section 5 of the 1936 Act, and they would appear to have a common law power to disperse an unlawful assembly, using reasonable force if necessary. In addition the courts have held that the common law duty of the police to preserve the peace and prevent crime may justify them taking preventive measures, eg. to limit the numbers of people in any one place, where they have reasonable cause to anticipate a breach of the peace. The question arises, however, whether these powers should be strengthened or codified in any way. For example, the police might be given a general statutory power, on the lines perhaps of that in section 24 of the Northern Ireland (Emergency Provisions) Act 1978, to require a gathering of people to disperse if the police consider that the presence of that gathering is likely to result in violence or disorder or is giving rise to / violence or disorder. (Under the Riot Act 1714, which was repealed in 1967, a magistrate had power to call upon an already unlawful assembly to disperse, but there the purpose was to convert an unlawful assembly into a felonious assembly which had certain precise legal consequences). Another possibility would be to place on a statutory footing the existing common law powers of the police to take reasonable action to prevent breaches of the peace. Either of these steps would apply to any assembly of people, whatever the purpose for which they were gathered together. The associated offence provisions would require further consideration.

82. There may also be scope for clarifying police powers to enter and remain at meetings whether in public or private premises and to control disorder at, and if necessary disperse, such meetings. Much of the existing law depends on court judgements in particular cases. In order to avoid any doubt in future, some codification may be desirable.

(3) ELECTION MEETINGS

83. Ever since tight legislative control on the conduct of elections was effected in the late nineteenth century there has been specific legislative provision for election meetings to ensure that they can be held freely and in suitable premises. The Representation of the People Act 1949 - a consolidating measure - provides that parliamentary candidates may, for the purpose of holding public meetings in furtherance of their candidature, use free of charge school rooms and other rooms maintained out of rates, and that local election candidates may use school rooms. Certain expenses have to be paid for.

84. The Act does not empower a local authority to refuse the use of a room on the grounds that a candidate's views are likely to be offensive to the community or that the meeting is likely to occasion disorder. It does not empower the authority to offer an alternative venue if a room is available and there is no prior booking, and it does not define what constitutes a "public" meeting.

85. Any proposals for powers placing limitations on candidates' rights in relation to election meetings would need compelling reasons in justification. But it was, of course, an election meeting at Southall that occasioned the violent disorders of 23 April 1979, and there were also serious disturbances in the context of other election meetings held by the National Front during the 1979 general election campaign at Leicester, West Bromwich and Bradford. It is necessary therefore to consider to what extent provisions consolidated in legislation over thirty years ago match contemporary needs.

86. First, should election meetings be distinguished from other political meetings, and continue to attract special protection from the law and to impose special obligations upon local authorities? Or should candidates be left to a greater extent to make their own arrangements as best they can, with fewer statutory entitlements? The contest of parliamentary elections in particular is now so much focussed on national politics and national issues, and is the subject of so much reporting on the national media, that it could be argued that constituency election meetings now serve less purpose in informing the electorate than they did when the existing law was first formulated. On the other hand, it could be argued that candidates still have a democratic right, and indeed a duty, to convey their programme to their prospective constituents, and that not all candidates have the opportunity to make themselves known on the national or regional media.

87. If election meetings as presently conceived are to continue, where should they be held? In most areas of the country there are only limited private facilities for the holding of meetings. Some public authorities are therefore bound to be involved.

88. It could be argued that public authorities should not have to make a meeting room available to a candidate if they form the view that disorder will ensue; that members of the public, as opposed to party supporters, will have no chance of admission; and that the party's message will be deeply offensive to many local people (the effect of National Front meetings on multi-racial schools is an example).

89. As to disorder, the suggestion has been made that local authorities proposing to make a room available for a particular meeting should be required to consult the police about the venue. If the police then advise, on public order grounds, against using a particular place, would the local authority have to provide an alternative? A provision on these lines would have attractions: it would have enabled the Metropolitan Police, for example, to object to the National Front meeting taking place in Southall town hall last April. On the other hand the suggestion raises a number of difficulties. Would any alternative venue offered by the local authority have to be within the same area for which the election was to be contested (ie parliamentary constituency or local authority ward) or within the same local government area (eg district council or London Borough area)? In many areas would there be a suitable alternative? Would there be a danger of the local authority in fact having to take decisions on a basis which it would be easy to attack as politically partial? This could lead to litigation and to challenges of election results.

90. One variant might be to extend the existing powers of local authorities (principally district councils) so as to require them to lay down standing general rules relating to the use of particular venues in their areas. These would apply to all election meetings (indeed, if appropriate, to all uses of the halls and rooms) rather than to a specific meeting; and might include, for example, provisions as to the size of meetings which would be accommodated and the number of supervising stewards. Again the local authority might be required to consult the police and perhaps others - such as the prospective users - before promulgating such requirements. But even then the preparation of the general rules would be time-consuming, perhaps quite unnecessarily so, and might be controversial in itself. Moreover, although it might be useful to have the allocation of rooms put on this regular basis, it would not necessarily ease the public order problem. The potential for disorder is not

necessarily related to physical factors such as the size of a meeting. It might also not be easy for the council to operate an effective sanction if the conditions of use were believed not to have been honoured. The actual facts of events, and the responsibility for disorder, at public meetings tend to be disputed and may not be resolved in the courts or elsewhere for a long time after (if at all). On what grounds could a council decide in advance that an applicant did not intend to honour the conditions of use? Would a council be justified in refusing the use of a room to a representative of a party whose organisation had previously misused facilities in other parts of the authority's area - even though different people might have been involved?

Once permission had been given, should it be an offence to seek to prevent an election meeting from taking place? How could this be enforced?

91. As to admission of members of the public, should the meeting organisers have no opportunity to refuse to admit people (which might give unlimited opportunities for disruption)? Should a "public meeting" be defined, and if so how? There is a case for saying that, when privileged access to public rooms at the ratepayers' expense is given to candidates, then the local public should be able freely to attend the meetings or at least that only a proportion of the available places should be taken by imported party supporters. But if there were a quota number of places reserved to members of the public, on what should it be based and how should it be enforced? How could a policeman, or an organiser of an election meeting, decide who is and who is not a resident of the electoral area? How would such an arrangement apply to 'ticket-only' rallies held by the national party leaders during election campaigns?

92. As to the effect on the public, is there any objective standard of judgement available as to which meetings should be prohibited? Should such a proposition be the responsibility of the local authority in whose area the meeting is, or of the public authority who own the meeting room (eg the education authority); or of some other tier of government; or would it be determined judicially on the application of interested authorities or electors? The difficulties in using any criteria other than risk to public order are similar in relation to election meetings as to processions, with the difference perhaps that election meetings are even more fundamental to the democratic process than processions.

93. The difficulty surrounding each of these issues, as well as the fundamental place of election meetings in the democratic process, suggest that it is unlikely that generally acceptable solutions can be found to the various questions posed i the preceeding paragraphs. Unless this proves incorrect, the Government's provisional view is that it would be inappropriate to make major amendments to the law for public order reasons in this highly sensitive area.

(4) PROHIBITION OF OFFENSIVE CONDUCT

94. As mentioned in paragraph 22 of this Paper, the Public Order Act 1936 marked a watershed, not only in conferring powers to take preventive action in respect of marches which might occasion disorder, but also in dealing specifically with the conduct of those who deliberately intend in their activities or behaviour to threaten or insult individuals or sections of the community in such a way as to make a breach of the peace likely.

Prohibition of Political Uniforms

95. Section 1 of the Public Order Act 1936 placed a general prohibition on the wearing of political uniforms in any public place or at any public meeting. There is an exemption procedure for uniforms worn on ceremonial, anniversary or other special occasions where public disorder is not likely to be provoked. In England and Wales, proceedings can only be brought with the consent of the Attorney General. The maximum penalty is three months' imprisonment and/or a fine of £500.

96. The section was enacted because the wearing of such uniforms in the 1930s was provocative. In particular, it imported into politics an air of militarisation which was alien to this country; it produced in the wearers an undesirable spirit of cohesive aggression; and political uniforms were associated with movements which on the Continent had led to upheaval of the established order.

97. The problem of political uniforms, however, appears to be rather less common today, except in an Irish context. In 1974, during Irish Repbulican demonstrations, a number of those participating wore berets, dark glasses and dark clothing. They were convicted under section 1 of the Public Order Act 1936 of wearing political uniforms and the convictions were upheld, on appeal, by the Divisional Court. Subsequently the Prevention of Terrorism (Temporary Provisions) Acts of 1974 and 1976 have created the offence of wearing any item of dress or wearing, carrying or displaying any article so as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation (the only organisations proscribed at present are the IRA and the INLA). In relation to other demonstrations, complaints are occasionally made of National Front supporters wearing Union Jack lapel badges, brown shirts or army-style camouflage jackets. The Government is unaware, however, of any significant evidence to suggest that the

wearing of political uniforms is a general problem at the present time or that the existing law is inadequate in this respect. In the absence of such evidence, no change in the law would seem to be called for.

Prohibition of Quasi-Military Organisations

98. Similar considerations apply to section 2 of the 1936 Act. This created an offence of controlling, managing, organising or training an association of persons for the purpose of usurping the functions of the police or the armed forces or for the use or display of physical force in promoting any political object. In England and Wales, prosecutions can only be brought with the consent of the Attorney General and the maximum penalty on conviction on indictment is two years imprisonment and/or a fine. The section confers on the police powers of search and seizure in investigating possible offences. It also includes a saving for stewards employed to preserve order at public meetings held on private premises.

99. The wording of the section clearly reveals its origins - the Mosleyite disturbances of the 1930s. In 1936 it was considered necessary to reinforce the provisions of the Unlawful Drilling Act 1819 and the associated common law to prevent both by Fascists introducing foreign miliaristic methods into this country and their opponents copying those methods in order to meet violence with violence. The problem is less immediate now than it was in the 1930s. Nevertheless, it can be argued that the section is still needed to provide a safeguard against resort to militaristic methods. On this ground, there seems no need to change either the present provisions or penalties.

Offensive Weapons

100. Section 4 of the Public Order Act 1936 makes it an offence for anyone to have with him otherwise than by lawful authority, any offensive weapon while present at any public meeting or procession. Section 7(3) of the Act empowers the police to arrest for this offence without warrant. A more general provision in relation to offensive weapons is contained in the Prevention of Crime Act 1953. This makes it an offence for anyone to have with him in any public place any offensive weapon without lawful authority or reasonable excuse, the existence of which he himself is required to prove. Again the police are able, in certain circumstances, to arrest people for this offence without a warrant.

101. It is possible that problems may arise where demonstrators carry ostensibly innocent items, such as pointed flag poles, which might later be used offensively against the police or others. In paragraph 132 of the Red Lion Square report, Lord Justice Scarman considered a proposal that the police might be given

power to order that any article which, in the opinion of a police officer, was likely to provoke a breach of the peace should not be carried or worn by any person taking part in a procession. Lord Scarman declined to endorse this proposal on the ground that such a power might tend to provoke confrontation betwee the police and those demonstrating. On the other hand, it could be argued that the balance of advantage in preserving the peace might rather lie in granting the police this power. An alternative approach might be to include power to impose conditions, eg as to the construction of banners, in any wider police power to impose conditions on events, and to empower the police to confiscate any articles which contravened their conditions. The Government would welcome views on whether there is any case for extending police powers in this context to take preventive action in relation to offensive weapons. It seems clear that, where disorder actually occurs, the combination of the existing statutory provisions mentioned earlier and the common law duty of the police to prevent breaches of the peace would already give them any necessary powers.

Threatening, Abusive or Insulting Words or Behaviour

102. Section 5 of the 1936 Act, as amended, provides that any person who in any public place or at any public meeting uses words or behaviour or distributes or displays material which is threatening, abusive or insulting with intent to cause a breach of the peace, or whereby a breach of the peace is likely to be occasioned, is guilty of an offence. The offence, which carries a power of arrest without warrant, is triable summarily with a maximum penalty of 6 months' imprisonment and /or a £1,000 fine.

103. Section 5 (together with section 51 of the Police Act 1964 and section 41 of the Police (Scotland) Act 1967 - the offences of assaulting or obstructing a police officer in the execution of his duty) is essential to the ability of the police to preserve order at public demonstrations. It has sometimes been suggested that the ambit of the section should be extended, but it is difficult to see how this could be done without bringing in behaviour or words which should not properly be regarded as criminal. On the other hand, the provision could not be restricted without undermining the basic ability of the police to preserve the peace. The Government therefore sees no need to change this provision.

Incitement to Racial Hatred

104. Section 70 of the Race Relations Act 1976 inserted a new section, section 5A, into the Public Order Act 1936. The section made it an offence for any person

to publish or distribute written matter or to use in any public place or at any public meeting words which were threatening, abusive or insulting in a case where hatred was likely to be stirred up against any racial group in Great Britain by the matter or words in question. It altered the previous law in that it was no longer necessary, as it had been under section 6 of the Race Relations Act 1965, to prove that the accused intended to stir up racial hatred. It did not, however, confer any powers to ban demonstrations or meetings by racialist organisations.

105. The intention of the section was to overcome some of the criticisms levelled against section 6 of the 1965 Act, which had been described by Lord Scarman in his Red Lion Square report as "an embarrassment to the police" and "useless to a policeman on the street". The section added by the 1976 Act was, however, far from uncontroversial. It was (and still is) argued that the removal of subjective intention to incite racial hatred is undesirable, arbitrary and contrary to the fundamental principles of British law. On the other hand, it is argued that, where serious consequences may ensue, the law is justified in penalising irresponsibility, just as section 5 penalises action which is likely to cause a breach of the peace as well as action intended to provoke such a breach.

10.6. Since section 5A came into force in 1977, fifteen people have been prosecuted for incitement to racial hatred or conspiracy to incite racial hatred or both. Nine were found guilty of incitement to racial hatred. One defendant was found not guilty of incitement to racial hatred but guilty of a related charge. In four most recent cases, all six defendants charged with incitement to racial hatred were found guilty, although an appeal against conviction in respect of two defendants is pending. The sentences passed by the courts have included 4 months imprisonment in one case and 9 months imprisonment (reduced on appeal from 15 months) in another.

107. Notwithstanding these figures, it has been argued that the present provision is still largely ineffective, and in particular that it does not catch activities which cause grave offence to the ethnic minority communities. Criticisms have been directed against it on a number of grounds. For example, it is argued that, in requiring evidence of threatening, abusive or insulting language likely to stir up racial hatred, the section imposes too stringent a test; and that, in practice, it remains possible for racialist organisations to cause grave offence to ethnic minority communities, while still keeping their activities just within the law.

108. The section is also criticised because it does not confer on the police a power of summary arrest; though conduct which requires immediate action by the police seems likely to be of a character which would render those concerned liable to arrest in any event, for conduct likely to cause a breach of the peace. Further it is alleged that the requirement of the Attorney General's consent to prosecutions in effect precludes proceedings other than in respect of the most blatant offences. There has also been criticism that the provision does not extend to broadcast programmes and of the exemption for material distributed to members of an association.

109. Suggestions have been made that the scope of this provision should be extended to catch the expression of certain highly objectionable views*.

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* An example of such a suggestion is a proposal recently put forward by the Ealing Community Relations Council. This is that section 5A(1) of the Public Order Act 1936 should be replaced by the following provision:

> "A person commits an offence if, having regard to all the circumstances, he either stirs up hatred against, or advocates any discriminatory policy or course of action against any ethnic group in the United Kingdom through

/the publication

These suggestions raise important points of principle. Two possible justifications might be advanced for such an extension. One is that the views in question were inherently likely to stir up racial hatred. The other is that the views were so objectionable in themselves that their public utterance ought to be made an offence, whether or not, having regard to all the circumstances, such an utterance would be likely to stir up racial hatred. Whatever the justification preferred, a change of this kind would represent a radical departure from the existing law in at least one, and possibly two, major respects. Consideration of the results likely to be provoked by the utterance of the views would cease to be an essential ingredient of the offence. The requirement that the words or matter should be threatening, abusive or insulting might also disappear.

110. There are many ways in which such a provision might be drafted. The suggestion put forward by Ealing CRC (see footnote) illustrates one possible approach. It is difficult, however, to see how the definition of any offence framed on such a basis could overcome two major obstacles. The first is how to find some defensible principle for determining what views should be proscribed in this way. An analysis of the Ealing CRC proposal highlights this difficulty. It seems very unlikely that there would be general agreement that the opinion, the expression of which, beyond all others, should be made a crime should be the

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the publication or distribution of any written or printed matter, in any public place, or at any public meeting. It is an offence to advocate the expulsion of any ethnic group from the United Kingdom."

This proposal has received support from other organisations in Ealing and from a number of other community relations councils.

One objection to an amendment in these terms would be that words spoken at any public place or at any public meeting would no longer come within the ambit of the law on incitement to racial hatred. Another would be that, in the case of the first limb of the proposed offence, the prosecution would have to prove, not just that hatred was likely to be stirred up, as required by the present provision, but that hatred had actually been stirred up. These, however, may simply be unintended results of the drafting. Objections of more substance are that the change would make it a criminal offence to advocate racially discriminatory policies or courses of action, or the expulsion of any ethnic group from the United Kingdom (section 31 of the Race Relations Act 1976 makes it a civil wrong to induce, or attempt to induce, a person to do any discriminatory act made unlawful by Parts II and III of that Act); and that unless "discrimination" were defined more precisely it would include acts which are specifically made lawful under the existing law including, apparently, certain forms of lawful "positive discrimination" in the fields of education and training.

advocacy of discrimination. It seems much more likely that groups and individuals would seek to add to, or substitute for, it opinions they might regard as equally or more reprehensible.

111. The second obstacle is more fundamental. Such an extension of the offence would penalise the expression of opinion as such. It would make no allowance for genuine discussion and debate or for academic consideration of such proposals. To single out political proposals for proscription by law, regardless of how they are expressed, and in what circumstances, and of the possible consequences would be a new departure. In the Government's view such a departure would be totally inconsistent with a democratic society in which - provided the manner of expression, and the circumstances, do not provoke unacceptable consequences - political proposals, however odious and undesirable, can be freely advocated.

112. There are, however, alternative possibilities which fall short of such a radical departure and the present review will consider both the scope of section 5A and its purpose. Given the existing provision for preserving public order, is it necessary or desirable to have a criminal offence that aims to prevent the use of spoken or written words which incite hatred against racial groups and thereby directly provoke disorder? Or should the objective be to prevent the use of language or behaviour which incites or is intended to incite hostility against racial groups, which could lead to subsequent, though not immediate, disorder or to criminal activity directed against members of racial groups? Should the offence be extended to words which could create racial disharmony, either with or without regard to the likelihood of subsequent actions; if so, should provision be made to safeguard fair and reasonable comment as well as, for example, the publication of the results of academic or medical research? It seems doubtful whether a provision could be drafted that would prevent damaging language and behaviour and would not encroach on the democratic right to express even unpalatable ideas nor present serious problems of enforcement for the police. The Government would welcome views on these complex and difficult questions.

THE LIMITS OF THE LAW

113. This Paper has concentrated so far on possible changes in the law and how they might assist in ensuring that rights to demonstrate are preserved while the peace is maintained. But it would be wrong to assume that changing the law is necessarily the only way to secure a better balance between the interests of demonstrators and those of the rest of the public.

114. There are in fact limits to how far the law itself can reduce or avert disorder. It is arguable that the existing law is deficient in failing to give adequate powers to enable the authorities to prevent disorder before it occurs and that it can be improved. But no amount of tightening of the law - short of draconian measures unacceptable in a democracy - can guarantee the prevention of all disorder. If there are those who seek violence and confrontation, they are unlikely to be prevented by changes in the law from having it. What the law can do, however, is to clarify individuals' liberties and obligations, and to give the authorities sufficient powers to try to prevent disorder before it occurs and to cope effectively with it if it nevertheless breaks out.

115. In the end, the avoidance of disorder depends on the willingness of us all to observe the law. Lord Justice Scarman has observed that British policing of public order envisages a society agreed upon essentials. These essentials include a respect for the law, for the rights of others as well as oneself, and for the lawful actions of the police in carrying out their responsibilities of maintaining the peace and preventing crime. In short, all those involved - demonstrators, those opposed to their views, the rest of the public and the police - have obligations as well as rights.

116. This has two important implications for the way we approach events which pose problems in maintaining order. First there is a clear responsibility on those who organise marches or demonstrations to take sensible precautions to maintain order among their own supporters. A willingness to discuss arrangements for an event openly and responsibly with the police, proper and adequate stewarding, and firm leadership can do much to avoid difficulties. The Government is anxious that any changes in the law should enhance the development of a responsible approach by the organisers of events, including a willingness to steward their own people. Reasonable preventive measures, such as a requirement to give the police advance notice of an event, could help in this respect.

117. Second, it is important that those who wish to demonstrate should know the

extent of their rights and duties under the law and be encouraged early in the organisation of an event to seek an understanding with the police on the practical ground rules by which that event will be run. Neither of these points can be translated directly into the law itself. But it is essential that they be kept in mind both when changes in the law are being considered and when they are being implemented. The Government will wish to discuss with chief officers of police the practical steps that might be taken to assist in this respect.

CONCLUSION

118. It is probably inevitable that, when consideration is given to the law relating to marches, demonstrations and meetings, proposals for change tend to imply the need for restriction on the rights of those who wish to organise and take part in such gatherings. The purpose of this Green Paper has been to deal as comprehensively as possible with the difficulties that have arisen in maintaining order and with the various issues about the law that have been raised. It may be that, on consideration, the balance of advantage will be felt, in many instances, to lie in maintaining the present position, even though this may involve some risk of disorder. The rights of peaceful assembly and public protest are worth paying a high price to preserve.

119. On the other hand it is arguable that, while the fundamental principles on which the present law and our approach to enforcing it are based continue to be sound, the present balance in the law between the interests of those who wish to demonstrate and the rest of the public is weighted somewhat too heavily in favour of the former and merits some readjustment. There may be scope for clarifying the law in some respects and for strengthening and extending it in others, particularly in ways designed to help the police to prevent disorder.

120. On this analysis, the argument might run as follows. At present the law contains relatively little - short of the exercise of the ultimate power to ban a march - designed to encourage those who organise marches to take sensible precautions themselves to avoid disorder or to assist the police in preventing it. If the primary purpose of the law is to reconcile the freedom of demonstrators with the interests of the rest of the community, then in practice the law should encourage dialogue and the avoidance of confrontation between demonstrators and the police and other members of the community. In many cases disorder is avoided at present because there is informal consultation

between the police and the organisers of a demonstration. In order to have a better chance of preventing disorder in future there might be a case for formalising this requirement of consultation through a provision for advance notice of processions and perhaps for extending this to at least some static forms of public demonstration.

121. Informal discussion will in most cases lead to ground rules acceptable to all on the basis of which an event can proceed. Where this does not prove possible and there is a risk of disorder, the police might be given a more flexible power than they now possess, linked to a less stringent public order test, to impose conditions on the event in the interests of maintaining order. Only if the imposition of conditions of this sort seemed unlikely to deter disorder would the police be able to apply for a ban on the event. In this way a series of procedural steps might be embodied in legislation designed to achieve at each stage a reasonable balance between the interests of the demonstrators and of the community.

122. This Green Paper has tried to spell out in detail the form possible changes on these lines might take, and their necessary consequences and also to pose a number of detailed questions which need to be answered if such changes were to be implemented, or if more extensive changes were to be seriously contemplated. In the end it is only by doing this that the balance of advantage to the community of legislation, and how any legislation might best be framed, can be assessed. Before reaching final conclusions the Government would therefore welcome views on the issues discussed or on other relevant points. Comments should be sent in writing before 30 June 1980 to:

The Secretary
Review of the Public Order Act 1936 and Related Legislation
Room 644
Home Office
Queen Anne's Gate
London SW1H 9AT

Telephone enquiries about the submission of comments may be made by ringing (01) 213-6249 or (01) 213-5345.

Comments or enquiries on specifically Scottish aspects should be addressed to:

The Secretary
Division IB/2
Scottish Home and Health Department
Room 3/09
New St Andrew's House Edinburgh EH1 3TF (Telephone: (031)556-8400 x 4667)

Home Office
London SW1

Scottish Office
Edinburgh

[April 1980]

ANNEX

REGULATION OF PUBLIC PROCESSIONS IN SCOTLAND

1. In many parts of Scotland the general powers of the Public Order Act 1936 are supplemented by the following local provisions:

(a) Section 385 of the Burgh Police (Scotland) Act 1892 (as amended) provides that, within the former burgh areas, islands and district councils may make by-laws and issue notices and orders prohibiting or regulating public processions. This Act did not apply to the former cities and landward areas. The circumstances in which a council may exercise these powers are not specified, but it has recently been held by the Court of Session as to that the provision is general both as to its terms and the grounds on which an order can be made and that therefore an order can be made under that provision in the interests of public order: it was not affected by the provisions of the Public Order Act 1936.

(b) Within the area of the former City of Edinburgh, the Edinburgh Corporation Order Confirmation Act 1967 gives the district council substantial powers whereby it can make an order to ban any particular street procession, or in the interests of public safety and order make any necessary order to prescribe the time and route of a procession. There is a saving for public or ceremonial processions regularly held and to act in contravention of an order constitutes an offence. In addition the Act requires the organisers of every street procession to give notice to the council not less than seven days in advance. As in the 1892 Act, the circumstances in which the district council may prohibit a procession are not specified.

(c) Broadly similar powers are available to the district councils within the areas of the former Cities of Aberdeen and Dundee.

2. In their review of existing local provisions the Working Party on Civic Government recommended that the Edinburgh Act should serve as a model for new legislation applying throughout Scotland. The relevant local authority should be the district or islands council which should have power, after consulting the chief constable on any application for a public procession to be held, to make an order either prescribing date, time and route or prohibiting the holding of the procession for up to 3 months. The exception relating to regular public or ceremonial processions should be maintained as should the requirement for 7 days advance notice (but without prejudice to the council's discretion to authorise

a procession at shorter notice). Provisions along these lines should take the place of the provisions of the Public Order Act 1936 as well as those of the Burgh Police Scotland Act and local acts.

3. The existing Scottish local provisions are well accepted by the communities they serve and have largely provided a framework within which the local authorities, the police and the organisers of processions usually have reached amicable agreement. They allow the elected representatives of the community to regulate individual public processions in the general interests of the community without having to satisfy the stringent test of "serious public disorder" required by the 1936 Act. In the Government's view there is a strong case for allowing this well-established Scottish legislation, suitably modernised, to continue in force side by side with the provisions of the 1936 Act, amended in the light of the current review.

4. The Government hopes soon to bring forward a Civic Government (Scotland) Bill to replace the Burgh Police (Scotland) Acts and other local provisions, which will otherwise expire at the end of 1982. To allow as much opportunity as possible for public discussion of the contents of the Bill, the Government intends to publish it first in draft within the next few weeks. This draft Bill will include provisions on public processions broadly along the lines recommended by the Civic Government Working Party. There will however be a number of significant differences:

- the responsible authority will be the regional or islands council, not the district council;

- a council who decide to make an order banning a procession will be required to state the reasons for their decision;

- there will be a right of appeal to the Sheriff against a decision to ban on certain specified grounds a procession and he will be empowered to set aside an order of the local authority. Such a right of appeal seems an essential safeguard, since the Secretary of State's consent will not be required.

5. The Secretary of State for Scotland believes that provisions along these lines would present a continuation of what is valuable in the existing provision and that they would go a long way to deal with such difficulties as have arisen. Most processions in Scotland would be dealt with under these local powers and the Government expects that it would rarely be necessary to make use of the power to ban. If however, following the current review of public order, powers broadly similar to those in the Public Order Act 1936 are continued in force they

might afford the chief constable, with the agreement of the regional or islands council and the Secretary of State, rather stronger powers to deal with a procession which was likely to give rise to disorder and would provide heavier penalties for those who broke the law. In a matter of such public concern, there seems to be every merit in maintaining the Public Order Act 1936 or its successor in force in Scotland.

6. Since the Civic Government (Scotland) Bill will come forward for consideration at the same time as the review of public order in Great Britain as a whole, the Secretary of State will take full account of the results of the main review of public order issues in reconsidering the provisions in the draft Civic Government (Scotland) Bill.