Home Affairs

10 DOWNING STREET

From the Private Secretary

9 August 1982

The Prime Minister has seen the Home Secretary's minute of 5 August about proposals for changes in the law on public order and agrees with the Home Secretary's conclusion that to introduce new "Riot Act" provisions would be unjustified.

The Prime Minister is, however, concerned that the present Middle East situation may produce problems on the streets of London and she wishes to be sure that the review of the Public Order Act 1936 will enable the police as far as possible to prevent potentially troublesome gatherings from taking place and to cope with them if they do take place. I should be grateful if in due course the Home Secretary could let the Prime Minister know the effect of the review of the Public Order Act in this context together with an assessment of the threat posed by the Middle East situation.

I am sending a copy of this letter to the Private Secretaries to members of the Cabinet, the Attorney General, the Lord Advocate and to Sir Robert Armstrong.

TIM FLESHER

John Halliday, Esq.,
Home Office.

I agree with the conclusion Prime Minister: on the 'Riot Act'. But I am not quite sure about the position on the Public Order Act 1936 - and its possible revision. In view of the Middle East situation - there may have some ugly events on London streets - and I want to be sure we have all the powers built to deal from the start should we need to cope with them if/ they do.

The Home Secretary concludes that a new "Riot Act" would not be justified in terms of its effectiveness. Content with his line? TF 6/8.

PRIME MINISTER

The civil disturbances of last year brought under close scrutiny the range of resources needed in combination with other arrangements to secure the capacity of the police to maintain public order and to deal effectively with disorder. My minute of 29th June to you reported among other things improved arrangements for monitoring the potential for disorder and improved provision in protective clothing, vehicles and other equipment (including, as measures of last resort, agressive equipment such as C.S. and baton rounds), tactics, public order training and the mutual aid system, under which chief officers of police provide assistance to colleagues in need, if necessary under central co-ordination.

In parallel to these practical measures for improved operational preparedness, the review of public order law on which the Secretary of State for Scotland and I published the Green Paper "Review of the Public Order Act 1936 and related legislation" in April 1980 has encompassed the disturbances. It has taken account of Lord Scarman's observations on public order law in his Report of his Inquiry into the Brixton Disorders, of the Report of the Royal Commission on Criminal Procedure and of the Law Commission's work on offences against public order: the Commission published a Working Paper, No.82, on this in March and is likely to publish its final report in the autumn.

It is in this context that I have taken forward the invitation to me from Cabinet to consider whether, in light of the civil disturbances, it was necessary to introduce changes in the law like those which were contained in the Riot Act 1714. For convenience of reference I enclose (flag A) a copy of my minute of 14th July 1981 to you about this. On 16th July, Cabinet agreed with the third option, and my preference, in the minute, that I should indicate in the Commons debate on the civil disturbances that day that there might be some value in a provision such as that (flag B) described in the attachment to annex B, but that it should be set in the context of other changes to assist the police in maintaining order and dealing with riots.

(flag C) I enclose a copy of the relevant extract from the Official Report of my speech on 16th July. That reflected the further agreement at Cabinet, that I should examine the value of the provision in consultation with the Lord Chancellor, the Attorney General and the Lord Advocate, and return to Cabinet with our conclusion. Given the context of the public order law review, I have also consulted the Secretary of State for Scotland.

This minute reports my conclusion, with which the colleagues whom I have consulted are content, that it is neither necessary nor appropriate to introduce a statutory power for the police in Great Britain to order an assembly to disperse, with a related offence of non-compliance.

The limitations of and difficulties with such a provision were described in annex B to my minute of 16th July. In brief, they are that it would not fill any significant lacuna in the offences and police powers which relate to unlawful demonstrations and riots, and that there would be difficulties in justifying whatever number were chosen to constitute an assembly, in distinguishing assemblies or groups who might not themselves be causing trouble but who might be opposed by others who wished to cause it, and in attempting not to catch innocent bystanders or passers-by.

The developments since last July have reinforced the belief that, because of its marginal effect and its difficulties, the provision should not be introduced, and that an announcement of this should be acceptable generally. As I indicated in my speech on 16th July last year, the provision could not catch disturbances taking the form of running gangs of looters battling with the police. Although it could have applied to a set-piece confrontation with the police such as that in Toxteth, in those circumstances there was no doubt of the legal powers already available to the police to deal with the disorder. The problem lay in the ability of the police to employ their powers and enforce the law against violence of an unprecedented ferocity. The improved provision for the police reported in my minute of 29th June was the right response

to that. Whilst every effort is being made to avoid it, it would, of course, be complacent to assume that there will be no further attempt to bring about disorder such as that which we saw last year. But, in that event, I hope that the police would deal with the disorder firmly and effectively, because of the better provision which we have encouraged.

Lord Scarman considered the case for a statutory power to disperse an assembly, and concluded that "the existing law is not inadequate and that there is therefore no need for the proposed reform", (Report of the Inquiry, paragraph 8.62). The measure is considered in paragraph 7.31-7.40 of his Report. It would be wrong to seek to make too much of the difficulties which Lord Scarman saw in formulating the power. His objections included problems of establishing that a public warning had been given, of defining the area from which dispersal was to be made, and in the interpretation of any defence such as that of "reasonable excuse". None of these elements forms part of the provision which we considered last July and it is doubtful if these objections of Lord Scarman would prove insuperable. But it is significant that he emphasises the adequacy of the current law and police powers and the difficulty in finding an acceptable formulation of an offence which preserved a balance between the necessity for preventing disorder on the one hand and the need to restrict individual liberties as little as possible on the other.

The Law Commission's Working Paper and the final report which it will produce should prove to be means of addressing the evidential and other difficulties which are said by some to stand in the way of the successful prosecution of the common law offences such as affray and riot, difficulties which often underly advocacy of a simple, summary offence of failure to disperse.

Some police officers will be disappointed at this outcome but we believe that what they really want - heavy penalties for an offence which requires the police to prove very little in order to secure a conviction - is impossible even if it were desirable.

The review of the Public Order Act 1936 and related legislation has concluded that there should be no attempt to codify the common law powers of the police to prevent or deal with public disorder. To leave public order powers at common law need not affect the implementation of recommendations of the Royal Commission on Criminal Procedure for the codification of powers of the police in relation to the prevention and detection of crime. The Royal Commission was not concerned with the public order powers.

The conclusion of the review of the 1936 Act is subject to consideration of the outcome of the Law Commission's work, but it may well prove that codification of the public order offences would not require or depend upon legislation on powers. The general conclusion that the powers of the police in relation to public order should be left at common law does not in itself determine or depend upon the decision on a statutory power of dispersal, although if such a power were introduced it might be difficult to relate that to the retention of other powers, such as that to limit the number of an assembly, at common law. But the conclusion of the review does focus on the advantages of retaining the flexibility of the common law in this area, and provides a coherent context for a decision not to introduce a statutory power of dispersal.

I propose to announce the conclusions of the review of public order law in a White Paper. Unless future events on the streets call for an earlier date, I envisage publication, after appropriate consultations on the draft with colleagues, in October or November. The White Paper would be a suitable vehicle for announcing the conclusion that a statutory power of dispersal should not be introduced.

I should be grateful to know if you are content with that conclusion. Unless I hear to the contrary from the colleagues to whom I am copying this by 3rd September I propose to take it that they are content.

I am copying this to Cabinet colleagues, to the Attorney General and the Lord Advocate and to Sir Robert Armstrong.

MW

5 August 1982

17 JUL 1981

PRIME MINISTER

At Cabinet last week it was agreed that I should give urgent consideration to whether it was now necessary to introduce changes in the law like those which were contained in the Riot Act 1714. This I have done.

The likely value of such a provision, and the practical difficulties to which it could give rise on the ground, are set out in the attached note, together with a brief description of the objective of the Act of 1714, and the common law powers. We now need to decide whether to proceed with legislation, and in the light of this, what approach I should take to the issue in my speech in the debate on Thursday afternoon.

I had the opportunity to test the opinion of backbenchers on the issue at the well-attended meeting of the Home Affairs Group on Monday evening. A minority of those present were in favour of some emergency legislation; a majority said they had grave doubts about the value of any "Riot Act" provision at all. Others who were prepared to consider introducing such a provision were not eager to do so as an emergency measure.

Against that background, we could certainly move to introduce a provision immediately. (A note of what the provision might look like is also attached). Its practical value might be limited, and it would certainly give rise to some difficulties of enforcement. But to act quickly would be a symbolic gesture.

On Thursday afternoon I must, therefore, choose between announcing the introduction of a provision as an emergency; rejecting the introduction of a provision altogether; or indicating that there may be some value in such a provision, but that it should be set in the context of other changes to assist the police in maintaining public order, and dealing with riots, (in which case I consider that it would nevertheless be prudent to draft the provisions of a Bill on a contingency basis).

I would prefer the third course. The introduction of legislation immediately would be portrayed as a sign of panic, at a time when the police, better equipped, are getting things under control. We shall certainly run into demands that the legislation should be temporary. If we can set it in a broader context, we shall be better able to put the new provisions in perspective.

I am copying this minute to our Cabinet colleagues, to the Attorney General and to Sir Robert Armstrong.

14 July 1981

THE RIOT ACT 1714 AND COMMON LAW OFFENCES

The essential provisions of the Riot Act 1917 were that, if twelve or more people who were "unlawfully, riotously and tumultously assembled together, to the disturbance of the public peace" continued to be so assembled more than an hour after a justice had by a proclamation in The Queen's name commanded them to disperse, their offence was translated from the lesser offence of misdemeanour into the graver offence of felony; that they might then be "seized and apprehended by any justice or person assisting him"; and that those who thus enforced the law were fully indemnified if, by reason of the rioters resisting their efforts, in dispersing or seizing the rioters they "killed maimed or hurt them". Some recent newspaper descriptions of the effect of the Riot Act 1714 are misleading in that, contrary to what they suggest, mere presence at the scene, as opposed to active participation in the riot, was not an offence.

The Riot Act did not create the offence of riot. Like those of affray, rout and unlawful assembly, riot is an offence at common law, which existed long before the Act of 1714 and likewise survived its repeal. The Act did not remove the common law powers of the civil authority to disperse an assembly if it seemed likely to cause a breach of the peace or was breaching the peace. Those powers co-existed with the Act and remain. Indeed, if anything the Act placed some limitation on, or at least clarified, the exercise of the powers, by implying that it would be extremely imprudent to use an armed force against a mob until the proclamation had been made and an hour had elapsed. The Act was, of course, passed in a different historical context, when there was no effective police force and the response came either from the justice and such few constables and assistants as he could muster or from troops with muskets and sabres.

The abolition of the distinction between misdemeanour and felony by the Criminal Law Act 1967, which consequentially repealed the Act of 1714, did not diminish the gravity of the offence of riot. That is an indictable offence, for which considerable penalties are available to the Crown Court. There may, of course, be evidential difficulties with trial on indictment, which the Law Commission will no doubt look at in its longer term consideration of the possible codification of the common law public order offences.

DISPERSAL OF RIOTOUS ASSEMBLIES:

THE VALUE AND DIFFICULTIES OF A NEW PROVISION

The police already have wide-ranging powers to take action against rioters in statute and common law. These cover criminal damage, theft, assault on the person, threatening or offensive conduct, and obstruction. At common law they already have power to disperse an assembly where an obstruction is being caused, or they reasonably apprehend a breach of the peace, or the assembly itself is judged to be unlawful. A new statutory power to disperse assemblies would make it simply an offence for people merely to be present in riotous circumstances. It would be directed towards assisting the police to deal with a large crowd of rioters opposing them, rather than the most common theme of recent disorders, namely running gangs of looters. Some senior police officers believe that such a change would be valuable because they argue there is a degree of uncertainty about their common law powers which make the police reluctant to use them, and those who riot reluctant to accept their use. It is also evident that bringing charges for common law indictable offences is not always quick nor necessarily successful.

Apart from the limitations of the measure under consideration, certain practical difficulties would have to be resolved. The first is how many people should constitute an assembly. The minimum of three reflects the definition of an assembly or a riot at common law. But it is not a number which in commonsense terms constitute a riot. The smaller the number chosen, the more likely the criticism will be that the police had failed to deal with small groups of offenders under any such new provision, when in fact it was not appropriate.

Secondly, it would be necessary to try to distinguish in the provisions those assemblies or groups who may not themselves be causing trouble, but who may be opposed by others who wish to cause trouble. If the provisions were limited to use against those who had already caused trouble, which would be one way round the difficulty, this would then prevent the police from using a new law to disperse assemblies where they had hard intelligence that major trouble was likely.

Thirdly, it will be necessary to try to draft the provisions in such a way as to avoid catching innocent bystanders or passers-by. Representatives of the media will, no doubt, express concern that journalists might be arrested; and there is the problem of picketing.

Parliamentary discussion of any provisions will focus on some of these practical problems, but provision for the following purposes might prove acceptable (the drafting, of course, being a matter for Parliamentary Counsel).

PROVISION FOR THE DISPERSAL OF RIOTOUS ASSEMBLIES

Where any police officer not below the rank of Assistant Chief Constable, or Commander in the Metropolitan Police, is of the opinion that an assembly of three or more persons is causing or has the purpose of causing serious disorder, he may order the persons constituting the assembly to be required to disperse forthwith. (How and by whom this should be done need perhaps not appear on the face of the Bill, but would have to be announced to the House).

Where such an order is given with respect to an assembly, any person who knowing the order to be given thereafter joined or remained in the assembly or otherwise failed to comply with the order, would be liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding £1,000, or both.

A constable would, without warrant, be empowered to arrest any person reasonably suspected by him to be committing an offence under these provisions.

Mr. Norman Atkinson (Tottenham): Will the right hon. Gentleman give way on that point?

Mr. Whitelaw: I was asked yesterday whether I would consider reserving to myself a decision to use CS gas or plastic bullets to restore order in riotous circumstances. I have reflected carefully on this , but believe this would, on balance, be mistaken. Despite the fact that any Home Secretary must always be available to be consulted urgently at all hours of the day and night, the responsibility for operations is that of the chief officer alone. He is on the ground. Only he can be in full possession and appreciation of the facts in what, by definition, will usually be very rapisly changing circumstances. I therefore believe that the proper responsibility of the Home Secretary is best discharged in authorising the guidelines and circumstances. I have set out the principles on which these will be based, and will inform the House in due course when the details have been decided.

Mr. Norman Atkinson *rose*——

Mr. Whitelaw: Many criminal charges arising from the riots are now being dealt with in the magistrates' courts. The more serious will be going to the Crown Court for trial. We must be grateful to the magistrates and their staff on whom this extra burden, involving additional sittings, has fallen. The final responsibility for deciding what priority should be given to any case or class of case in the Crown Court rests on the judiciary and, in particular, on the presiding judges of the courts. I have no doubt that they will do whatever circumstances allow to bring these cases to trial without delay.

Some of the charges will result in custodial sentences. It must fall to me to ensure that I provide for necessary facilities so that the sentences can be properly fulfilled. As the House will be aware, the prison population had been increasing even before the recent disturbances began. It now stands at the figure of 45,500. The prison system is under great pressure and I warmly appreciate the prison service's response in dealing with the additional numbers who have been committed to its custody and the inevitable strains that the present level of population places on it. We are discussing with the staff the measures that are now required.

Within the system, arrangements are in hand to provide extra detention centre places at Lowdham Grange in Nottinghamshire and at Erlestoke House in Wiltshire and these will be ready next week. I have also made arrangements with my right hon. Friend the Secretary of State for Defence to use military camps to provide additional prison accomodation. The first of these will be at Rollestone on Salisbury Plain and others will be brought into use if they are required. They will accomodate suitable inmates drawn from the prison population as a whole and they will be staffed by members of the prison service.

I have a duty to ensure that the law that the police and the courts have to enforce not only sets the appropriate limits on what is tolerable but also provides a sufficient means to combat violence and effectively supports the police in their task. I should therefore comment on the recent calls to reintroduce the Riot Act.

Mr. Norman Atkinson *rose*——

Mr. Whitelaw: In fact, the Riot Act 1714 had as its object not the creation of a new criminal offence but the conversion of what was already a misdemeanour into a felony. Under its provisions, people ordered to disperse, were made guilty of felony if they did not do so but instead continued to riot. Many people have something different in mind—that it should be a criminal offence simply not to disperse when ordered to do so. I have considered carefully whether such a provision would have helped quell recent disorders.

We must remind ourselves of what was the nature of these disorders. They were least often, but most dangerously, a large group of violent people confronting the police. They were most often scattered groups of looters causing damage to property. Riot Act provisions are mainly designed for the first category. There are in this field wide-ranging existing powers—in common law offences of riot, rout and unlawful assembly and powers to arrest for actual or threatened breach of the peace. There is also section 5 of the Public Order Act 1936 and the offence of obstructing the police in the execution of their duty. But, despite the range of powers and penalties currently available, I am persuaded that it is indeed often difficult for the police to isolate and identify particular wrongdoers in such violent circumstances.

I am equally sure that it would be wrong, in any event, to hurry forward in this difficult field. I therefore intend to examine in consultation with my right hon. and learned Friends the Lord Chancellor, the Attorney-General, and the Lord Advocate, the value of such proposals in the overall perspective of what new powers generally should be available to the police to maintain order and to deal with disorder.

So far, I have spoken about my duty to take the measures necessary to enable the police and the courts to deal with street violence effectively when it has occurred. It is the duty of every Government to underline, and act on, their fundamental responsibility to uphold the rule of law. I also have the other and wider responsibilities, both as Home Secretary and as a member of the Government. These are simple to state, but complex to carry out and achieve. Put briefly, they are to promote the conditions in which violence does not flourish but is rejected, so that a peaceful and harmonious society is a reality and seen to be a reality for all people.

Many of the young people committing criminal violence on the streets in recent weeks live in inner city areas, which suffer relatively from a range of disadvantages, including serious unemployment over a number of years. Youthful violence and youthful frustration have been evident in outbreaks of football hooliganism and other acts of violence, quite apart from the much more serious outbreaks that have occurred in the past two weeks. The complexity of the issue has to be recognised rather than reduced to a matter of simple slogans. We must, therefore, be prepared to acknowledge some measure of failure in our society, particularly as regards young people. We have to work to minimise the sense of frustration that is evident, and try to prevent it turning into violence.

The problems of urban decay and deprivation are intractable and deep-seated, particularly in Merseyside, despite decades of efforts to remedy them and the expenditure of very considerable sums of public money.

My right hon. Friend the Prime Minister has asked my right hon. Friend the Secretary of State for the Environment, who is, of course, the chairman of the partnership committee for Merseyside, to go up to