

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's second reading briefing on the Anti-Social Behaviour Bill in the House of Lords

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Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Introduction

1. Liberty appreciates that the Government is concerned with anti-social behaviour. The Anti Social Behaviour Bill will introduce a new raft of legislative change which, to be effective, will need the application of resources to back them. Unenforceable powers do not tackle deep-rooted social problems. The police already have a wide range of powers which allow them to deal with low level offending. The White Paper ‘Respect and Responsibility - Taking a Stand Against Anti-Social Behaviour’ contained a number of welcome measures, including proposing more use of restorative justice, intensive fostering as an alternative to custody for some young people and more support for struggling parents. We hope that the Government’s stated commitment to these preventative and restorative measures are carried through.
2. It appears that the Anti Social Behaviour Bill has been introduced at the expense of the much-anticipated Victims and Witnesses Bill, as there will be insufficient parliamentary time for both. Liberty believes that the rights of victims should not be sidelined in a desire to produce politically expedient legislation. We hope the Government will carry through its commitments to the rights of victims and that it will consider the recommendations made in Liberty’s publication¹.
3. As the Bill covers mainly low level offending behaviour it does not raise a great number of civil liberty issues. Consequently our briefing is shorter than most of our legislative submissions. However, there are a number of important issues particularly relating to Part 4 – the Dispersal of Groups, and Part 8 – Public Order and Trespass. For simplicity, this briefing will follow the same format as the Bill.
4. It is unfortunate to say the least that Part 8 of the Bill which deals with Public Order and Trespass was only introduced once the bill had already passed through the House of Commons and was not subject to any scrutiny there. Part 8 contains wide ranging alterations to the Public Order Act 1986 (POA) and the Criminal

¹ The Rights of Crime Victims: A Manifesto for Better Treatment of Victims.

Justice and Public Order Act 1994 (CJPOA) and we hope that sufficient time will be allocated to the bill in the House of Lords so that there is detailed debate.

Part 1 – Premises where drugs are used unlawfully

5. Liberty understands that the government is concerned about the effect of Class A drugs on communities and do not take issue with the use of closure orders. However, we believe a distinction should be made between those premises that are solely used for the sale of drugs, and those where drug sales may take place but which are also used as a residence. For example there may be elderly relatives living in the property who either not aware of (or unable to prevent) the sale of drugs. We appreciate that Clause 1(4)(b) states that access to the property will still be possible by those who habitually reside in the premises. However, as a matter of practicality it is debatable how it will be possible for someone to remain in a property subject to a closure order. Access will be denied to anyone else, which may effectively make the property uninhabitable. We believe that the criminal law should target those who are committing offences and that the people who are involved in the sale should be the primary concern of the police. It will be unfortunate if the use of closure notices result in homelessness for those who are not involved in any criminal act and we hope the legislation can be amended to protect the innocent.

6. We also question how much of an impact the use of closure orders will have. Crack houses are used primarily to sell drugs and, presumably, if a property is closed the people involved in selling will be able to find another suitable premises. This displaces and spreads the problem rather than addressing the basic issues of drug use and criminality. Liberty believes that our current drug laws are in need of review and that only a complete overhaul of the law will break the link between drug use, criminality and social exclusion.

7. Clause 9 of the Bill allows constables and chief officers of police exemption from any damages caused when entering a property of for any aspect of closure. While it is appropriate that individual officers are not held personally liable for actions while following orders in accordance with the law, this is an absolute exemption

from liability from judicial review proceedings, negligence or misfeasance in public duty. There is a limit on this exemption if the act was in bad faith or if it breaches any of the rights contained in the Human Rights Act 1998. However, acts of negligence can occur with no bad faith and without breaching convention rights. Similarly removing the right to apply for judicial review effectively means that mistakes in law cannot be rectified. The same applies for the exemption enjoyed by a chief officer of police contained in 9(2). However in this case the argument against liability is weaker. If an executive decision is negligently made (albeit in good faith) it cannot be right to exclude the possibility of testing the legality of that decision.

8. The Bill provides for the police or Local Authority to be able to claim for expenses occurred (Clause 8) or for anyone who suffers loss – usually the owner-to claim compensation (Clause 10). In order to claim compensation for loss the owner has to satisfy a number of requirements. One of these is that the owner took reasonable steps to prevent use. This presumes the owner was aware of the use. It is quite possible that the owner might not be aware of the use the property is being put to, for example if they live overseas. It would be more equitable if this requirement to take reasonable steps were coupled with knowledge of the use being made of the property.

Part 2: Housing

9. Liberty does not generally comment on housing issues, as there are a number of organisations that specialise in this area. We do have concerns about Clause 14 which amends the Housing Act 1985. It allows the demotion of tenancy security in public housing, housing trusts and for people with registered social landlords. This means that people who are in leasehold accommodation with a private landlord, or who own their property, will not face the same sanction for anti social behaviour as those in public housing. Liberty believes that law should apply equally regardless of the economic or social status of the individual.

Part 3: Parental responsibilities

10. Liberty agrees that the introduction of parenting contracts in Clause 19 may well be of benefit in addressing problems with truancy before the need for a parenting order arises. We would normally be concerned that (as in any contractual relationship) the parents are aware of the consequences of agreeing to a parenting contract. However, Clause 19(8) makes this less of an issue as it specifically excludes the creation of any obligation in contract or tort.

11. Clause 23 allows penalty fine notices to be issued for parents in cases of truancy. We do have concerns over the use of penalty notices generally. They are used to cover a wide range of behaviour - some trivial and some suitable for the criminal courts. Liberty believes that penalty notices should only be used for acts that do not amount to recordable offences. Because of this we do not object to the use of penalty notices for truancy but are concerned by the range of people who can issue them. Clause 23 amends s.444 of the Education Act 1996 and the new s444B (4) allows notices to be issued by constables, LEA Officers and authorised staff members. If penalty notices are to be issued it should only be by officials who are democratically accountable such as the police (or for example, traffic wardens for parking penalties). It is inappropriate that teachers are able to issue penalty notices as this makes them more akin to a school disciplinary measure.

Part 4 – Dispersal of groups etc

12. This part of the Bill concerns extending police powers – and the powers of community support officers – to disperse groups and to remove under-16s to their place of residence. Liberty is concerned that these new powers are open to abuse, that socially disadvantaged areas are likely to be unfairly targeted and that these new provisions are unnecessary in light of existing laws to tackle problems of anti-social or criminal behaviour. Clause 30 provides the police with the ability to disperse groups or remove individuals in areas where anti-social behaviour is believed to be a significant and persistent problem.

13. Liberty does not believe that it is acceptable for the police to choose to give themselves greater powers in areas which they believe pose a more significant policing challenge. We believe that police powers should be consistent across different geographical areas and that any exceptions to this should be authorised by an independent body, preferably a court. We do not believe that a police superintendent should have the capacity to vote themselves greater powers in a particular locale. Liberty believes that the present legal arrangements grant the police the capacity to satisfactorily deal with criminal behaviour. For example, individuals could be arrested under s4 or s5 of the Public Order Act 1986 or for breach of the peace.
14. The provision in 30 (2) that the authorisation for these additional powers would be for a period not exceeding six months does little to mitigate our concerns. This is a substantial period of time to deal with what may be a short-term or limited problem. Furthermore, there appears to be no barrier or higher burden of proof to renew the authorisation. In consequence, there must be a likelihood that certain localities will be permanently subject to these additional police powers as the authorisation could be renewed in perpetuity. Liberty is sceptical that superintendents would seek to secure an authorisation for a period of less than six months.
15. Liberty believes that the extensions of police powers which become available following authorisation are excessive and open to abuse. A police constable will have the power to immediately disperse groups, to demand that individuals who are not resident in the area leave the locale immediately and to prevent non-residents returning for a period of up to 24 hours. There are no obvious provisions or guidelines to ensure that such powers are exercised with the lightest possible touch.
16. In particular, Liberty believes that an order not to return to the area within 24 hours is particularly excessive. If the purpose of the power is to disperse a group of individuals with immediate effect, it is difficult to justify why an individual should be prevented from returning to the area the next day. Breaching a direction in an offence carrying a term of imprisonment up to three months. We are

concerned that behaviour that is in itself not way unlawful - or in the case of returning to the relevant locality even antisocial - should be criminalised in this way. We are not convinced that the protections in 30 (5) are sufficient to ensure that an individual's rights under Article 11 of the Human Rights Act 1998 (the right to free assembly) would be preserved.

17. The police will also gain additional powers to deal with minors in an authorised area. In effect, they will be able to operate a blanket curfew from 9pm. Liberty believes this power to be excessive. Any minor outdoors without an adult present after 9pm will be subject to removal by the police. The police have sufficient powers to stop search, detain and (if necessary) arrest anyone who is acting in a suspicious manner. If there are areas which are problematic this is properly dealt with through additional resourcing rather than the addition of even greater powers to remove youths who may be doing nothing inappropriate.
18. Clause 31 details the process by which an authorisation can be made. The relevant local authority needs to be consulted but no authorisation is required. Whilst Liberty is opposed to the concept of designated areas with greater police powers, if such areas are to exist we believe it would be reasonable to expect that application for such authorisation be made before a court.
19. Clause 33 extends the powers in designated areas to community support officers. Again, Liberty is opposed to designated areas in principle, but if powers are to be extended in certain locales, we believe that such powers should only be exercised by fully trained police officers. The situations in which such powers are to be used are likely to be volatile and even dangerous. Liberty does not believe that community support officers have the training or expertise to satisfactorily deal with such situations.

Part 5 - Sanctions

20. This part of the Bill revises law relating to Anti-Social Behaviour Orders and fixed penalty notices. Liberty remains concerned that ASBOs can be issued on a civil burden of proof, but incur a criminal penalty if breached. We believe this to

be an unacceptable blurring of the criminal and civil law. Furthermore, we are unconvinced as to the efficacy of Anti-Social Behaviour Orders, believing there are already sufficient laws and police powers in place to deal with so-called “low-level” crime. Additionally, we do not believe that fixed penalty notices are an effective tool in combating crime.

21. Clause 37(2) would allow Housing Association Trusts to apply for an Anti-Social Behaviour Order. Liberty believes that such a power should continue to reside only with the police and local authorities. We would be concerned about HATs acquiring such a power, as they are not democratically accountable bodies. 37 (4) allows local authorities to prosecute for the breach of an ASBO. As the breach of an ASBO constitutes a criminal offence, Liberty believes that such a power should reside only with the Crown Prosecution Service.

22. Clause 39 extends penalty notices to those aged 16 or 17 and allows the Secretary of State to further extend this – by order - to those as young as ten. The parents or guardians would be liable for the penalty. We do not believe that fixed penalty notices should be extended to those under the age of 18. Liberty believes that this could lead to the unacceptable situation whereby relatively affluent parents are able to buy their children out of trouble, whereas less affluent parents may face prosecution if they are unable to afford the fines.

Part 6 – Possession of Firearms

23. Liberty does not have standing policy on firearms and gun control. Our only major concern with regard to this part of the Bill relates to the definition of an “imitation firearm”. We would seek to be persuaded that toy guns or ornamental weaponry, which could not plausibly be used in the commission of an offence, are not caught by the definition of “imitation”.

Part 7 – The environment

24. Our only major concern in this part of the Bill relates to the banning of the sale of spray paint to minors. New powers in the Criminal Justice Bill will allow the

police to stop and search those suspected of carrying items to be used for criminal damage, this would include aerosol paint. Liberty believes that these new powers are excessive and certainly do not need to be complemented by criminalising the sale of spray paint to under 18s. Selling spray paint to under-18s *may* lead to a criminal act but there are also many legitimate, productive and worthwhile uses for such a product.

Part 8 – Public Order and Trespass

25. As mentioned earlier it is unfortunate this part of the bill was only introduced once the bill had finished in the House of Commons. Clause 59 amends the definition of ‘public assembly’ in Section 16 of the Public Order Act 1986 so that instead of 20 people being required to constitute an assembly only 2 are now needed. The relevance of this is that Section 14 of the Act gives a senior police officer wide ranging powers to impose conditions on assemblies. These conditions include restrictions on the place where it may be held, its duration, the number of people who constitute an assembly. Failing to comply with such a condition is an offence. It is necessary for the officer to believe that there may be serious disorder damage to property and so on but there is no need to justify this belief to any other person or court.

26. Any situation where the police are able to self authorise restrictions on the right to protest should be treated with great caution. While we acknowledge that the police should have appropriate powers to deal with violent protests, Liberty has always been concerned about the way in which these powers give rise to criminal sanction for behaviour that would not in itself be unlawful other than the imposition of conditions. The fact that over 20 people were required to trigger the powers was at least a concession to the fact that it would only be appropriate for them to be used when there were a substantial number of people involved. We find it incredible that the government has decided that two people can constitute an assembly. We are not aware of the reasoning or justification for this, as it appears to be no more than a desire to dispose of an inconvenient zero. It is now the case that if a senior police officer decides that two people could cause disorder he could order that a third person could not join them and if an extra person did

appear the 'organiser' (if two people can have an organiser) will commit an offence punishable by up to three months imprisonment. It cannot be right that powers such as those contained in the 1986 Act that are not subject to accountability should be used in this manner.

27. Clause 60 amends Sections 68 and 69 of the Criminal Justice and Public Order Act 1994 so that the offence of aggravated trespass can now apply to buildings as well as the open air. This is presumably aimed at situations where protestors invade buildings of a targeted company. While we acknowledge the existence of this loophole which exempted trespass in buildings and do not take issue with it being closed our concerns remain over the wide-ranging nature of the powers contained in the original act. 'Obstructing' or 'disrupting' the activity on the land constitutes an offence carrying up to three months imprisonment. We accept that businesses should be able to carry out their activities and would not take issue with the fact that 'intimidation' might warrant the triggering of these powers. However, perfectly peaceful protests may cause an obstruction and thus be criminal. As this part of the CJPOA is being revisited in the bill we would like to see the definition of activity tightened so that while aggressive or intimidating behaviour remains criminalised peaceful protest is not.

28. Clauses 61 to 63 amend the CJPOA by inserting new clauses 62A, 62B and 62C. A senior police officer may now direct trespassers with their vehicle provided there is at least one vehicle, that they intend to reside there and that the officer believes there is other appropriate site for them to go to. This supplements the powers to move on travellers contained in the 1994 act where powers were restricted to situations where there had been threats or damage or where there were six or more vehicles.

29. While we are pleased to see that there is at least a requirement that the officer believes there is an alternative site. However, this is only in the opinion of the officer. If there is to be such a requirement it should be extended the whole of the CJPOA as otherwise there is only the need for another site to be found if there are one to five vehicles. If the CJPOA is to be extended each local authority should ensure that there are sufficient suitable sites for travellers.

30. Clause 62 creates an offence if someone who has been instructed to leave fails to leave the land or enters any other land in the whole local authority area within three months. This is entirely disproportionate as it makes any form of trespass (which should always be a civil matter unless there is aggravation) criminal. If there is to be an offence it should be restricted to the same property. What the bill does is greatly extend the range of potential criminality for travellers for acts which would under normal circumstances be civil torts. Provisions relating to alternative sites should not detract from this considerable extension to the criminal law.

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