

# Committee report

**General Purposes Urgency Sub-Committee**

Date: **19 January 2012**

Classification: **For General Release**

Title of Report: **ADDENDUM TO SUB-COMMITTEE REPORT:**

**Results of Consultation and Authority to Proceed with:**

- i. Making Byelaws to Regulate Tents and Other Structures and Sleeping Equipment in Designated Areas in the City of Westminster; and**
- ii. Amending existing Byelaws to enable seizure of noise equipment.**

Report of: **Report of Strategic Director for City Management and Head of Legal and Democratic Services**

Wards involved: **St. James's**

Financial summary: **There are no direct financial implications in relation to this report**

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## **1. Purpose**

- 1.1. This addendum complements the report to the General Purposes Urgency Sub-Committee dated 19 January 2012, entitled '*Results of Consultation and Authority to Proceed with: Making Byelaws to Regulate Tents and Other Structures and Sleeping Equipment in Designated Areas in the City of Westminster; and Amending existing Byelaws to enable seizure of noise equipment*'. That report should itself be read conjunction with the original report to the General Purposes Urgency Sub-Committee on 7 December 2011.
- 1.2. The purpose of this addendum is to present the outcome of the recent consultation exercise in respect of a draft set of Byelaws, which are proposed for various designated areas near to Parliament Square and Whitehall but also including land surrounding the Home Office buildings in Marsham Street.

## **2. Recommendations**

- 2.1. Having regard to the responses to the consultation exercise, it is recommended that the General Purposes Urgency Sub-Committee decides whether or not to recommend to the Council that it:
  - i. makes the new Byelaws as set out in Appendix 1 to this addendum (with any modification that may be deemed appropriate); and
  - ii. authorises the Head of Legal and Democratic Services to seal the Byelaws and make the application to the Department of Communities and Local Government (DCLG) for confirmation of the Byelaws.

## **3. Reasons for Decision**

- 3.1. If the decision is made to proceed, to enable the post-consultation procedures to progress in order for the Council to:
  - i. Make new Byelaws to prohibit the use of tents and sleeping equipment etc in designated areas in the City of Westminster; and
  - ii. Amend existing Byelaws which control the use of amplified noise equipment, so as to enable the seizure and forfeiture of that equipment when an offence is committed in breach of those Byelaws.

## **4. Background**

- 4.1. On 7 December 2011 the General Purposes Urgency Sub-Committee authorised consultation to take place on the proposals. Copies of the consultation documents, including the draft Byelaws and plan of the proposed designated area, are appended to the Committee report. There have been minor amendments to the draft Byelaws, hence the amended draft is attached to this addendum as Appendix 1.
- 4.2. The consultation sought views from a range of interested parties on the proposal to make the Byelaws, the specific provisions being proposed, and the proposed designated areas. The consultation exercise ran from 8 December 2011 to Friday 13 January 2012.
- 4.3. A total of 114 individual responses to the consultation were received by close of business on 13 January. In deciding whether to recommend that the Byelaws should be made by the Council, the Sub-Committee must have regard to the responses to the consultation exercise. If Members decide to make such a recommendation, consideration will also need to be given to whether any amendments should be made, either to the Byelaws themselves or to the proposed designated areas. As stated in the report dated 19 January, it is not possible to add any new designated areas at this stage of the procedure without carrying out a further consultation exercise.
- 4.4. Specific issues that arise for consideration are as follows:
  - i Are members agreed that the Byelaws should be implemented in some form?
  - ii If so, do members want to exclude any of the proposed designated areas, having particular regard to the request of the Home Office to include land surrounding their Marsham Street premises?
  - iii Do members want to include both elements of the proposed Byelaws, namely the provisions dealing with encampments in the designated areas and the further provisions amending the existing Byelaws for Good Rule and Government so as to provide a power to seize noise equipment that is being used in breach of those Byelaws?

## **5. Summary of Consultation Responses**

- 5.1. A detailed report on the response to the consultation exercise is attached as Appendix 2 to this addendum. Approximately 1400 copies of the consultation papers were distributed either in paper or electronic form. In total there were 114 responses to the consultation before the deadline expired. 84 (74%) of the responses were in the form of completed questionnaires. The rest were in the form of general comments made in emails or emailed letters. Overall, 21% of

the responses received by close of business on 13 January were generally in favour of the proposals and 79% were generally against them.

- 5.2. The most detailed responses were sent by Liberty, Crisis and the Home Office. These specific representations are attached to the Consultation report which also provides a summary of the most pertinent points made by those organisations. The Council's response to those representations is included later in this addendum.
- 5.3. There were very few specific representations about the proposed designated areas apart from a letter from the Home Office in which they set out why they consider it necessary to include their premises within the scope of the proposed Byelaws. However, of those who made general comments in opposition to the Byelaws, 23 stated that the designated area was the centre of government and democracy where protest should be allowed and not prevented. The Byelaws will not, of course, prevent protest from taking place anywhere in Westminster.
- 5.4. Of the 84 persons who completed questionnaires, 62 did not agree with the proposals relating to the giving of directions prohibiting the use of tents and sleeping equipment etc or the proposals to allow for seizure and forfeiture of the tents and equipment. The vast majority of these persons did not agree with the proposals because they objected to the restriction or criminalisation of protests. Of the 21 persons who did agree with the proposals, 16 were Westminster residents living near to the proposed designated areas. The main reasons given for supporting the proposals on the giving of directions related to visual impact, damage to the amenity and environment, obstruction and a view that encampments amounted to an abuse of the legitimate right to protest. The main reason given for supporting the proposals on seizure and forfeiture of tents etc was to enable proper enforcement.
- 5.5. Of the persons who completed the questionnaires, 55 persons did not agree with the proposals to allow for the seizure and forfeiture of amplified noise equipment in cases where it appears that there has been a breach of the Council's existing noise Byelaws, 21 of them citing that they did not agree with the proposals because they objected to the restriction or criminalisation of protests. Of the 22 persons who did agree with the proposals, 16 were Westminster residents living near to the proposed designated areas. The main reasons given for supporting the proposals was to prevent anti-social behaviour, prevent public nuisance and to enable proper enforcement.
- 5.6. 29 respondents to the consultation exercise did not complete the questionnaires but instead sent an email or letter. Of those persons, 3 were generally in favour of the proposals and 26 were generally against them, the vast majority of whom (20) stating that they did not agree with the proposals because they objected to the restriction or criminalisation of protests.

## 6. Rationale For Making the Byelaws

- 6.1. The justification for the proposals to make new Byelaws and amend existing ones is set out in the original report to the Sub-Committee dated 7 December 2011 (which is attached as Appendix 1 to the main report for this Sub-Committee meeting) and the explanatory note which accompanied the consultation documentation. As stated therein, the main issue which the Council is seeking to address is the displacement of the existing encampment and the increasing threat of new encampments appearing on highways and other public or private land near Parliament Square or on other land nearby which is considered to be vulnerable. The other issue is the ability to take effective enforcement action against the unreasonable use of megaphones and other noise amplification equipment in other places in the City.
- 6.2. The Council's prime objective is to safeguard both the interests of users of the highway and the amenity of the Parliament Square and Whitehall area. Under the Highways Act 1980 the City Council has a duty to protect the rights of the public to use and enjoy the highway. It is therefore appropriate that the Council takes such action as is necessary to ensure that, in the areas surrounding Parliament Square as elsewhere in the City, all members of the public including those with particular mobility requirements (e.g. wheelchair users) can safely exercise this right. The right to protest must be balanced with the right of others to use the highway without obstruction or safety hazards. This is a particular concern in most of the areas in the immediate vicinity of Parliament Square where there is a significant risk that there will be displacement of persons who are prevented from camping on Parliament Square itself. It will be seen from the plan attached to the Byelaws that the main designated areas surround Parliament Square on all sides. It is not considered that any kind of encampment could be tolerated on any of this land because of the severe obstruction and safety hazard that would potentially be caused. Nevertheless, the Byelaws still allow discretion to be exercised in that a Direction will only be given when it is considered necessary to do so, having regard to the protocol referred to below.
- 6.3. In addition to the concerns relating to highway access and visual amenity, the City Council is of the view of that it is not appropriate, save in the most exceptional circumstances, for tents and encampments to be set up on or adjoining the public highway, and for individuals to justifying doing so on the basis of articles 10 and 11 of the Human Rights Act. It should be noted that the Government's guidance on the Police Reform and Social Responsibility Act 2011 (PRSRA) is explicit on this point, stating: "*The Government is clear that no one particular person or group of persons should take over the area to the detriment of others. There is accordingly a need to balance the competing and legitimate interests of protestors and members of the public who come to the area as visitors, and members of Parliament and others who need to be able to carry out their daily work*". Through its proposed Byelaws which themselves closely reflect the provisions of the PRSRA, The City Council too seeks to balance the legitimate interests of protestors under the Human Rights Act with the interests of the wider public, including workers and visitors to the area.

- 6.4. The proposed designated areas include some spaces which are not public highway. In those instances where areas of private open land have been included, for example the areas belonging to Westminster Abbey and the Home Office, it should be noted that the land owners could themselves take possession proceedings if a new encampment was placed on their land. However, a possession order would not be effective in preventing such an encampment from being established, and would not give any power to seize tents or sleeping equipment. Such proceedings would inevitably involve considerable delay. The Byelaws would enable immediate action to be taken to bring an end to any new encampment before it becomes established and attracts other persons.
- 6.5. Much of the designated area surrounding Parliament Square includes part of the UNESCO designated World Heritage Site of Westminster Palace, Westminster Abbey and St Margaret's Church, and contains a significant number of other listed buildings. Apart from the need to prevent unlawful obstruction of the highway and to protect public safety in all the designated areas, the City Council seeks to protect the visual amenity of these iconic spaces and ensure that they can be freely used and enjoyed by all. In those areas which offer wide sections of paving and where obstruction of the highway would not be a concern as a result (for example outside the Queen Elizabeth II Conference Centre), protection of visual amenity is the key aspiration.
- 6.6. With regard to enforcement of the proposed Byelaws, It is important to note that they do not automatically criminalise any activity within the proposed designated areas. An offence is only committed if someone, without reasonable excuse, fails to comply with a Direction given pursuant to the Byelaws by a constable or an authorised officer. One purpose of the enforcement protocol between WCC, the Greater London Authority and the Metropolitan Police Service will be to ensure that a consistent approach to enforcement is adopted by all the agencies involved but another will be to ensure that the criteria for enforcement are based on a need to show that it will be necessary and proportionate in each and every case. The protocol will address some of the issues that have been raised by Crisis who have raised concerns about enforcement action being taken against rough sleepers.
- 6.7. The human rights implications of the proposed Byelaws were dealt with in the original report to the Urgency Sub-Committee on 7 December 2011. It is not accepted that the provisions contained within Part 3 of the 2011 Act are, or that our proposed Byelaws will be, incompatible with the Human Rights Act. The legislation and our proposed Byelaws are only to be utilised to prevent unlawful encampments which have the effect of preventing other people from either protesting or using the land for other purposes. The rights under Articles 10 and 11 of the European Convention on Human Rights (which relate to freedom of expression and the right to peaceful assembly) are qualified rights. They do not provide any right to maintain a campsite on either Parliament Square itself or any of the proposed designated areas referred to in this report. Moreover, the all important right to protest is actually protected and enhanced by the legislation.

## 7. Comments on the Specific Representations from Liberty, Crisis and the Home Office

### Liberty

- 7.1. Liberty considers that the proposed Byelaws constitute an unjustified and disproportionate interference with the rights to freedom of expression, peaceful protest and peaceful enjoyment of possessions enshrined in the Human Rights Act. They state that the proposed Byelaws are unnecessary, overly broad and their use is likely to lead to undesirable confrontation between protestors, the police and the Council.
- 7.2. Specific reference is made to Articles 10 and 11 of the European Convention on Human Rights and to the Court of Appeal decision in the case of *Tabernacle v Secretary of State for Defence [2009] EWCA Civ 23*. This was a challenge to the Byelaws made by the Ministry of Defence, the object of which was to prevent camping in “controlled areas” at Aldermaston Peace Camp. The Court of Appeal found that the justification for the Byelaws was insufficient to make them proportionate under the Human Rights Act and Article 10 in particular. It was acknowledged that the Byelaws were not imposing any kind of ban on the protest itself but it was held that the “manner and form” of the protest (namely the camping overnight) was part of the nature and quality of the protest. In those circumstances, the Secretary of State had not been able to demonstrate a substantial objective justification for the Byelaws which amounted to a “pressing social need”.
- 7.3. The Human Rights implications of the measures now being proposed by the Council were set out in the original report to the Sub-Committee in December. It is considered that the situation in and around Parliament Square is significantly different from the situation that existed at the Aldermaston Peace Camp. The Aldermaston camp had been operating for 23 years but the protestors only assembled on the land in question for one week-end in each month (from Friday evening until Sunday morning). The controlled areas had been open to the public since at least 1986. It was noted that no steps had been taken to put a stop to the camp over the 23 years of its existence. In addition, the Court was of the view that there was no evidence that the presence of the Peace Camp had been incompatible with the operational requirements of the establishment. In short, the presence of the Peace Camp was “no more nor less than a nuisance” and the Secretary of State had not been able to demonstrate a pressing social need for the Byelaws.
- 7.4. The history of the encampments in Parliament Square was set out in the December report to the Sub-Committee. It has a much greater profile than the Aldermaston Peace Camp and has never been tolerated by the Authorities. Various attempts have been made to remove the camp by both the Greater London Authority and the City Council but, until recently, without success. The

main thrust of the argument in relation to the Square itself was that the protest had effectively become an occupation which prevented members of the public from having access to a Grade II listed garden of special historic interest that was also situated in a World Heritage site. Moreover, it prevented other people from exercising their legitimate right to protest within the Square. The situation in Parliament Square was more than a mere nuisance.

- 7.5. It is accepted that the “manner and form” of the protest in Parliament Square does extend to the camping on the land which has clearly been of considerable importance to the persons who have been exercising their rights to freedom of expression and assembly. Whilst that was an important factor in the *Tabernacle* case, it must carry less weight in relation to Parliament Square. Liberty stresses the point that peaceful protest at the geographical heart of power, around the Houses of Parliament and Whitehall, has been central to Britain’s strong political culture of peaceful protest and dissent. They state as follows:

*“... it is precisely the importance, location and symbolism of Parliament Square and Whitehall which demands that peaceful protest in its vicinity is protected. The right to peaceful protest cannot be divorced from the right to do so in locations where protest will be best heard.”*

The Council endorses those comments from Liberty. The right to peaceful protest in Parliament Square itself is actually being enhanced with the eventual repeal of sections 132 to 138 of the Serious Organised Crime and Police Act 2005. Part 3 of the Police Reform and Social responsibility Act 2011 will ensure that such peaceful protest is available for all persons who might want to protest, whatever their cause might be, whilst also ensuring that this important area is also available for all members of the public to enjoy, whether they wish to protest or not. That objective cannot be achieved if the Square is occupied by an encampment.

- 7.6. The Byelaws are designed to ensure that such encampments are not displaced to other sensitive areas in the vicinity of or close to Parliament Square or Whitehall where they are likely to cause an obstruction with possible safety implications. There are also amenity issues having regard to the fact that much of the area surrounding Parliament Square is a World Heritage site. Whilst parts of the designated areas may be considered suitable for protest, they are not generally considered to be suitable for occupation by any kind of encampment. Obvious exceptions might be short term encampments in carefully managed areas (such as those that take place for just a few days prior to a Royal Wedding or other significant event of national importance). It is for that reason that the Byelaws have not been drafted so as to automatically ban all encampments in the designated areas. The enforcement agencies will be required to exercise discretion in all cases, having regard to an agreed protocol and guidance from the Home Office. However, the Byelaws will ensure that there is the means to bring any encampments to an end with immediate effect where that is necessary to protect the rights and interests of others. Such action

will only be taken when it is considered necessary and proportionate to do so and any potential offence for failing to comply with any Direction that may be given is still subject to the defence of reasonable excuse. Liberty complains about the potential arbitrary or discriminatory use of powers but it is considered that the use of a Direction is far preferable to an outright ban.

- 7.7. Similarly, this is not a case where the authorities have been guilty of delay. The purpose of the Byelaws is to complement the new provisions contained in Part 3 of the Police Reform and Social Responsibility Act 2011 which only came into force last December. The Byelaws could not serve any purpose until that legislation was implemented as the objective of the Byelaws is primarily to deal with any displacement arising from the implementation and enforcement of the 2011 Act. The Council has wasted no time in seeking to bring these Byelaws into force at the earliest opportunity. Moreover, for the Byelaws to be effective they have to include a power to seize tents and other camping equipment in the event that persons do not comply with a Direction given to them. That is the only way of ensuring that any encampment will immediately be brought to an end. There was no power to include such seizure powers until Part 4 of the 20011 Act was brought into force last December. Consequently, there has been no delay on the part of the Council whatsoever. The Council is therefore confident that it can fully justify the making of the proposed Byelaws which are considered to meet a "pressing social need". The Byelaws are both necessary and proportionate in the interests of public safety and for the protection of the rights of others.
- 7.8. Liberty also alleges that the seizure of tents, sleeping equipment or noise equipment would amount to deprivation of property within the meaning of Article 1 of the First Protocol to the Convention. However, the First protocol states that no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law. No one has the right to live on the highway or other public or private land. If they choose to do so in a designated area they take the risk that a Direction will be given requiring the removal of the property. However, the property will not be seized if there is compliance with any Direction that is given.
- 7.9. Finally, Liberty expresses concern about the amendment proposed to the Council's existing Byelaws so as to allow for the seizure of noise amplification equipment in those cases where a person fails to comply with a request to stop using any noise amplification equipment, such as a loudhailer. The power of seizure is being sought in relation to existing Byelaws that apply throughout Westminster. This is to ensure that the powers to prevent noise nuisance can be used effectively.
- 7.10. The existing Byelaws can already potentially apply to noise caused by demonstrators and protestors who use noise amplification devices in Westminster which causes noise that is so loud or so continuous or repeated as to give reasonable cause for annoyance to other persons in the neighbourhood. They do not prevent the use of such noise amplification equipment if that use

does not cause a nuisance. Whilst it is possible to seek an authorisation to use such equipment in Parliament Square, it was not considered appropriate to introduce a similar regime for the streets and land surrounding or close to the Square. In these areas it is considered that such equipment can be used without authorisation but subject always to the activity having to cease if a nuisance is caused.

- 7.11. It is not considered that there should be an automatic exemption where noise amplification equipment is used in connection with any kind of demonstration or protest in the areas surrounding or close to Parliament Square. Consequently, the option remains to take action to put a stop to any unreasonable use of a loudhailer etc and the additional power of seizure is sought so as to ensure that the enforcement measures are effective. In the absence of such powers, an offender might decide to continue the unlawful activity despite the fact that it amounts to an offence. Discretion is required on the part of enforcement officers, but that is often required when enforcing legislation dealing with noise nuisance.

### **Crisis**

- 7.12. Crisis recognises that the Byelaws are designed to target protest camps such as the one in Parliament Square but they have some concerns that they may have an impact on rough sleepers in the area and could be counter-productive in the effort to end rough sleeping. They claim that the Byelaws could potentially be used to penalise people who have little choice but to sleep rough within the designated area and could set back their progress in moving off the streets. They say that it is imperative that the Council seriously considers how the Byelaws can be prevented from affecting rough sleepers in the area.
- 7.13. Crisis is also of the view that the enforcement of Byelaw 3 could result in rough sleepers being moved on to another location without any support. They fear they may be moved out of sight and away from services. The enforcement of byelaw 6 could lead to rough sleepers having their sleeping equipment seized and retained with no guarantee of getting it back, leaving them without any source of shelter from the cold. They state that the fact that the Borough of Westminster consistently contains well over half of all the rough sleepers in London, means that Westminster Council's continued participation in positive, joint working to end rough sleeping is essential. They recognize that it is not Westminster Council's intention to target homeless people but are concerned that the Byelaws may have unintended consequences. They ask that steps should be taken to prevent any impact on rough sleepers.
- 7.14. The Council understands the concerns expressed by Crisis but does not consider that any enforcement will have the unintended consequences that they refer to in the limited area to which the Byelaws would apply. It should be noted that historically there has not been an issue of rough sleeping in the areas covered by these proposed Byelaws. Council records show that there have

been no reported incidents of rough sleeping, other than those directly associated with the encampments, in any part of the designated area within the past 5 years. When any enforcement action is taken, the enforcing authorities will have regard to the joint protocol referred to above and to Home Office guidance. The objective of the Byelaws is to prevent people from camping on the streets and other public and private land to the exclusion of others and is not directed at people whose sole reason for being on the streets is that they have no other place to live. A Direction should never be given without engaging with the person concerned and that person will be given the opportunity to voluntarily remove the tent or camping equipment. Dialogue should take place during which it should become apparent if the person concerned is a rough sleeper.

- 7.15. Although the individual concerned may have to move away from the particular location so as to ensure that bedding etc is not seized, he or she should be put into contact with the appropriate outreach team who should be able to assist in helping the individual to find accommodation.

### **. The Home Office**

- 7.16. The Home Office have set out why they consider it necessary to include the land surrounding Marsham Street within the scope of the Byelaws. In summary, the Home Office believes that they may become a target for encampments because (i) they promoted the legislation to deal with the encampments on Parliament Square; (ii) Ministers have publicly made it clear that they do not consider the right to protest extends to the right to set up encampments and (iii) there are wide walkways and an area of raised grass which will amount to an attraction to those wishing to set up a camp. Essentially, they want to ensure that the open space surrounding their Marsham Street Headquarters is preserved as a valuable amenity for local residents.

- 7.17. Having regard to their responsibilities for counter terrorism, public order and policing, they also site some concerns about security issues that might arise if an encampment or similar intrusion were to appear close to the building. In making these submissions in support of the inclusion of their land in the Byelaws, they nevertheless stress that they do not wish to prevent legitimate demonstrations or protests from taking place outside the building.

## **Appendices**

APPENDIX 1 – Amended City of Westminster draft Byelaws to regulate tents and other structures and sleeping equipment in designated areas in the City of Westminster and to amend existing Byelaws to enable seizure of noise equipment.

APPENDIX 2 – Report on the response to the Consultation Exercise carried out between 8 December 2011 and 13 January 2012.



# CITY OF WESTMINSTER

## DRAFT BYELAWS TO REGULATE TENTS AND OTHER STRUCTURES AND SLEEPING EQUIPMENT IN DESIGNATED AREAS IN THE CITY OF WESTMINSTER AND TO AMEND EXISTING BYELAWS TO ENABLE SEIZURE OF NOISE EQUIPMENT

Byelaws made under section 235 of the Local Government Act 1972 by the Council of the City of Westminster for the good rule and government of the City of Westminster and for the prevention and suppression of nuisances.

### 2.1. INTERPRETATION

1. In these Byelaws:

“authorised officer” means—

- (a) an employee of the Council who is authorised in writing by the Council for the purposes of these Byelaws, and
- (b) any other person who, under arrangements made with the Council (whether by that or any other person), is so authorised for the purposes of these Byelaws;

“the Council” means the Council of the City of Westminster;

a “prohibited item” means any item of a kind mentioned in Byelaw 3(2);

“Westminster Abbey” means the Collegiate Church of Saint Peter Westminster.

### EXTENT

2. (1) Subject to Byelaw 2(3), Byelaws 3 to 8 shall apply to the areas of the City of Westminster designated in the Schedule and shown edged red on the plan attached to these Byelaws.

- (2) Subject to Byelaw 2(3), in the event of any discrepancy between the area designated in the Schedule and the area shown on the plan, the area shown on the plan shall be deemed to be correct and shall prevail.
- (3) Byelaws 3 to 8 shall not apply to any park which is or may be the subject of regulations under section 2(1) of the Parks Regulation (Amendment) Act 1926.

### **USE OF TENTS AND SLEEPING EQUIPMENT, ETC.**

- 3. (1) A constable or authorised officer who has reasonable grounds for believing that a person is doing, or is about to do, any of the activities mentioned in Byelaw 3(2) may direct the person—
  - (a) to cease doing that activity; or
  - (b) (as the case may be) not to start doing that activity.
- (2) The activities are—
  - (a) erecting or keeping erected in any area to which Byelaws 3 to 8 apply—
    - (i) any tent; or
    - (ii) any other structure that is designed, or adapted, (solely or mainly) for the purpose of facilitating sleeping or staying in a place for any period;
  - (b) using any tent or other such structure in any area to which Byelaws 3 to 8 apply for the purpose of sleeping or staying in that area;
  - (c) placing or keeping in place in any area to which Byelaws 3 to 8 apply any sleeping equipment with a view to its use (whether or not by the person placing it or keeping it in place) for the purpose of sleeping overnight in that area;
  - (d) using any sleeping equipment in any area to which Byelaws 3 to 8 apply for the purpose of sleeping overnight in that area.
- (3) It is immaterial for the purposes of an activity mentioned in Byelaw 3(2)—
  - (a) in the case of an activity within Byelaw 3(2)(a) or (b) of keeping a tent or other structure erected or using a tent or similar structure, whether the tent or structure was first erected before or after the coming into force of this Byelaw;
  - (b) in the case of an activity within Byelaw 3(2)(c) or (d) of keeping in place any sleeping equipment or using any such equipment, whether

the sleeping equipment was first placed before or after the coming into force of this Byelaw.

- (4) In this Byelaw “sleeping equipment” means any sleeping bag, mattress or other similar item designed, or adapted, (solely or mainly) for the purpose of facilitating sleeping in a place.
- (5) It is an offence for a person, without reasonable excuse, to fail to comply with a direction under Byelaw 3(1).

### **EXEMPTIONS**

- 4. (1) Byelaw 3 does not apply to anything done or to be done—
  - (a) for police, fire and rescue authority or ambulance purposes;
  - (b) by or on behalf of a relevant authority;
  - (c) (in the case of those parts of the precincts of Westminster Abbey to which Byelaws 3 to 8 apply) by, on behalf of or with the consent of the Dean and Chapter of the Collegiate Church of Saint Peter Westminster through its Chapter Clerk;
  - (d) (in the case of those parts of the Parliamentary Estate to which Byelaws 3 to 8 apply) by, on behalf of or with the consent of the Corporate Officer of the House of Commons or the Corporate Officer of the House of Lords, as the case may be.
- (2) In Byelaw 4(1)(b) “relevant authority” means any of the following—
  - (a) a Minister of the Crown or a government department;
  - (b) the Greater London Authority;
  - (c) the Council.
- (3) In Byelaw 4(1)(d) “the Parliamentary Estate” means land which does not form part of the highway and which is in the ownership or under the control of the Corporate Officer of the House of Commons or the Corporate Officer of the House of Lords.

### **DIRECTIONS UNDER BYELAW 3: FURTHER PROVISION**

- 5. (1) A direction requiring a person to cease doing an activity may include a direction that the person does not start doing that activity again after having ceased it.

- (2) A direction requiring a person not to start doing an activity continues in force until—
  - (a) the end of such period beginning with the day on which the direction is given as may be specified by the constable or authorised officer giving the direction; or
  - (b) if no such period is specified, the end of the period of 90 days beginning with the day on which the direction is given.
- (3) A period specified under Byelaw 5(2)(a) may not be longer than 90 days.
- (4) A direction—
  - (a) may be given orally;
  - (b) may be given to any person individually or to two or more persons together; and
  - (c) may be withdrawn or varied by the person who gave it.
- (5) In this Byelaw, “direction” means a direction given under Byelaw 3(1).

### **SEIZURE OF PROHIBITED ITEMS**

6. (1) A constable or authorised officer may seize and retain a prohibited item that is on any land in any area to which Byelaws 3 to 8 apply if it appears to that constable or officer that the item is being, or has been, used in connection with the commission of an offence under Byelaw 3(5).
- (2) A constable may seize and retain a prohibited item that is on any street or other public place in the City of Westminster and outside any area to which Byelaws 3 to 8 apply if it appears to the constable that the item has been used in connection with the commission of an offence under Byelaw 3(5).
- (3) A constable may use reasonable force, if necessary, in exercising a power of seizure under this Byelaw.
- (4) If no proceedings are commenced for an offence under Byelaw 3(5) against the person from whom an item was seized under this Byelaw before the end of the period of 28 days beginning with the day on which the item was seized, the item must be returned to the person from whom it was seized.
- (5) If proceedings are commenced against the person from whom an item was seized under this Byelaw for an offence under Byelaw 3(5) before the end of the period of 28 days mentioned in Byelaw 6(4), and on the conclusion of those proceedings—

- (a) the item has not been returned; and
  - (b) no award is made of costs to be paid by the accused to the Council,  
the item must be returned to the person from whom it was seized.
- (6) If proceedings are commenced against the person for an offence under Byelaw 3(5) before the end of the period of 28 days mentioned in Byelaw 6(4), and on the conclusion of those proceedings—
- (a) the item has not been returned; and
  - (b) an award is made of costs to be paid by the accused to the Council,  
the item must be returned to the person from whom it was seized when the costs have been paid.
- (7) If it is not possible to return an item under Byelaws 6(4) to (6) because the name or address of the person from whom it was seized is not known—
- (a) the item may be returned to any person appearing to have rights in the property who has come forward to claim it; or
  - (b) if there is no such person, the item may be disposed of or destroyed at any time after the end of the period of 90 days beginning with the day on which the item was seized.
- (8) Byelaws 6(5) to (7) do not apply if a court makes an order under Byelaw 7(1) for the forfeiture of the item.
- (9) The references in Byelaws 6(1) and (2) to an item that is “on” any land, street or other public place include references to an item that is in the possession of a person who is on any such land, street or other public place.

### **FORFEITURE OF PROHIBITED ITEMS**

7. (1) The court may, on the conviction of a person of an offence under Byelaw 3(5), make an order providing for the forfeiture of any prohibited item that was used in the commission of the offence.
- (2) The power of the court to make an order under Byelaw 7(1) is in addition to the court's power to impose a fine under Byelaw 8.

## **PENALTY**

8. Any person offending against Byelaw 3(5) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

## **AMENDMENT OF BYELAWS**

9. The Byelaws for the Good Rule and Government of the City of Westminster (No. 2) made on 20<sup>th</sup> July 2001 are amended by the insertion of the following Byelaws after Byelaw 4—

### **“SEIZURE OF NOISE EQUIPMENT**

- 4A. (1) A constable or authorised officer may seize and retain a prohibited item that is in a street or public place to which these Byelaws apply if it appears to that constable or officer that the item is being, or has been, used in connection with the commission of an offence under Byelaw 3.
- (2) A constable may use reasonable force, if necessary, in exercising a power of seizure under this Byelaw.
- (3) If no proceedings are commenced for an offence under Byelaw 3 against the person from whom an item was seized under this Byelaw before the end of the period of 28 days beginning with the day on which the item was seized, the item must be returned to the person from whom it was seized.
- (4) If proceedings are commenced against the person from whom an item was seized under this Byelaw for an offence under Byelaw 3 before the end of the period of 28 days mentioned in Byelaw 4A(3), and on the conclusion of those proceedings —
  - (a) the item has not been returned; and
  - (b) no award is made of costs to be paid by the accused to the Council,the item must be returned to the person from whom it was seized.
- (5) If proceedings are commenced against the person from whom an item was seized under this Byelaw for an offence under Byelaw 3 before the end of the period of 28 days mentioned in Byelaw 4A(3), and on conclusion of those proceedings —
  - (a) the item has not been returned; and

- (b) an award is made of costs to be paid by the accused to the Council,

the item must be returned to the person from whom it was seized when the costs have been paid.

- (6) If it is not possible to return an item under Byelaws 4A(3) to (5) because the name or address of the person from whom it was seized is not known—
  - (a) the item may be returned to any person appearing to have rights in the property who has come forward to claim it; or
  - (b) if there is no such person, the item may be disposed of or destroyed at any time after the end of the period of 90 days beginning with the day on which the item was seized.
- (7) Byelaws 4A(4) to (6) do not apply if a court makes an order under Byelaw 4B(1) for the forfeiture of the item.
- (8) The references in Byelaw 4A(1) to an item that is in a street or public place include references to an item that is in the possession of a person who is in any such street or public place.
- (9) In this Byelaw, “prohibited item” means an item of any kind mentioned in Byelaws 3(b) or (c).

#### **FORFEITURE OF NOISE EQUIPMENT**

- 4B. (1) The court may, on the conviction of a person of an offence under Byelaw 3, make an order providing for the forfeiture of any prohibited item (within the meaning given by Byelaw 4A(9)) that was used in the commission of the offence.
- (2) The power of the court to make an order under Byelaw 4B(1) is in addition to the court’s power to impose a fine under Byelaw 6.”.

THE COMMON SEAL OF WESTMINSTER

CITY COUNCIL was hereunto affixed

This                      day of                      2012

in the presence of:

Peter Large

Head of Legal Services

## SCHEDULE

The designated areas for the purposes of Byelaw 2 are:

- (a) those parts of Parliament Square which are outside the controlled area of Parliament Square (within the meaning given by section 142(1) of the Police Reform and Social Responsibility Act 2011),
- (b) Little George Street,
- (c) part of Great George Street,
- (d) Broad Sanctuary,
- (e) part of Storey's Gate,
- (f) the paved and grassed area to the front of the Queen Elizabeth II Conference Centre,
- (g) part of Tothill Street,
- (h) Monck Street,
- (i) Marsham Street between its junctions with Great Peter Street and Horseferry Road,
- (j) Horseferry Road between its junctions with Monck Street and Marsham Street,
- (k) the paved and grassed areas not comprising highway adjoining the constituent buildings of 2 Marsham Street,
- (l) parts of the precincts of Westminster Abbey (including Dean's Yard and the Sanctuary),
- (m) Abingdon Street Garden and its pathways, being the garden constructed on the sites of properties formerly known as 18-28 (both inclusive) Abingdon Street, London SW1,
- (n) Old Palace Yard,
- (o) part of Abingdon Street,
- (p) Bridge Street,
- (q) part of Canon Row,
- (r) Parliament Street,

- (s) the paved area to the front of 79 Whitehall (Richmond House),
- (t) the garden adjoining Whitehall outside the Ministry of Defence main building, known as Raleigh Green,
- (u) the footway of Whitehall adjoining—
  - (i) Richmond House,
  - (ii) the paved area described in paragraph (s),
  - (iii) Richmond Terrace,
  - (iv) the Ministry of Defence main building, and
  - (v) Raleigh Green,
- (v) the footways of Whitehall, Whitehall Place, Whitehall Court and Horseguards Avenue adjoining the Old War Office building,
- (w) the paved area to the front of the Ministry of Defence main building adjoining Horseguards Avenue and the footway of Horseguards Avenue adjoining that paved area,
- (x) the footway of Victoria Embankment and the gardens known as Embankment Gardens (and their pathways) adjoining the Ministry of Defence main building,
- (y) part of Richmond Terrace adjoining Victoria Embankment.