



City of Westminster

Committee report

General Purposes Urgency Sub-Committee

Date: **7 December 2011**

Classification: **For General Release**

Title of Report: **Authority to make Byelaws to Control the Use of Tents and Sleeping Equipment in Designated Areas surrounding Parliament Square and to amend existing Byelaws to enable seizure of noise equipment**

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

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

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

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1. Executive Summary

- 1.1. Under the Local Government Act 1972, local authorities are empowered to make their own Byelaws for Good Rule and Government and the suppression of nuisances. This report is seeking authorisation to carry out the necessary procedures and consultation with a view to making new Byelaws under these provisions. If implemented, the proposed Byelaws will prohibit the use of any equipment for sleeping (such as tents or similar structures) in a designated area surrounding Parliament Square. In addition, the proposed Byelaws will 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. The draft proposed Byelaws are attached as Appendix 1.
- 1.2. The proposed Byelaws complement the specific provisions relating to Parliament Square contained in Part 3 of the Police Reform and Social Responsibility Act 2011.
- 1.3. The proposals in this report have the support of the Cabinet Member for City Management. Ward members will be consulted as part of the formal consultation that will follow if the decision is made to proceed with initiating the Byelaws process.

2. Recommendations

- 2.1. That the Sub-Committee authorises the Strategic Director for City Management and the Head of Legal Services to carry out the necessary procedures with a view to making new Byelaws as set out in Appendix 1, with a designated area surrounding Parliament Square as set out in the plan attached at Appendix 2.
- 2.2 That the Sub-Committee authorises the Strategic Director for City Management to consult with ward councillors, land owners (including Westminster Abbey), local businesses and other persons who may have an interest in the Byelaws, making any amendments as appropriate, and thereafter to seek provisional approval (if required) from the Department for Communities and Local Government (DCLG) for the making of those Byelaws.

3. Reasons for Decision

- 3.1. To enable the legal procedures to be carried out with a view to the Council making new Byelaws to prohibit the use of tents and sleeping equipment etc in a designated area surrounding Parliament Square and to 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. The City Council recognises all individuals' right to protest peacefully, in accordance with the European Convention of Human Rights (ECHR) and other legislation. However, under certain circumstances the extent and manner of such protest can have a disproportionate effect on amenity and the rights of the general public to the peaceable enjoyment of the public realm.
- 4.2. As the seat of government and an internationally recognised symbol of London and the country as a whole, the Parliament Square area is perhaps Westminster's most iconic site, attracting millions of tourists every year. The Palace of Westminster has been a grade 1 listed building since 1970, while the open space of Parliament Square Gardens is grade 2 listed. In 1987, together with Westminster Abbey including St Margaret's church; it also became listed as a UNESCO World Heritage Site, in recognition of the outstanding universal architectural, historic and symbolic significance of this group of buildings and spaces.
- 4.3. In a situation that has developed and persisted over several years, groups of individuals have settled as a round-the-clock presence in the Parliament Square area, carrying out their protests whilst living in permanent encampments.

4.4. Responsible Authorities and their Roles

- 4.4.1. There are a number of different authorities with responsibility for managing different parts of Parliament Square and the surrounding area, the key ones being the Greater London Authority (GLA), Royal Parks, and Westminster City Council (WCC). The GLA has statutory responsibility for management and maintenance of Parliament Square Gardens, on behalf of the landowner, The Crown Estates. Meanwhile, as the local authority WCC takes primary responsibility for management of the public highways in the area, including the areas of highway immediately adjacent to Parliament Square Gardens, on the 'central island'. The GLA and WCC take responsibility for enforcing any Byelaws that they make in the areas under their management. Meanwhile, The Royal Parks Agency has its own regulations which it is responsible for enforcing on all areas of land it manages. Within the vicinity of Parliament Square, this includes much of Victoria Tower Gardens.
- 4.4.2. The Metropolitan Police Service (MPS) also has a role. Their core duties are to keep the peace, prevent and detect crime and protect life and property. The MPS can and will support the enforcement role of WCC and GLA, in respect of any Byelaws that apply. Relevant police powers will be used as proportionate and necessary, for example in keeping the peace and ensuring WCC or GLA officers do not become victims of crime in the course of their enforcement duties. MPS officers will also support the enforcement of WCC or GLA Byelaws by providing supporting evidence, contributing witness statements, or assisting in the seizure of items if necessary.

4.5. History of Encampments at Parliament Square

- 4.5.1. The 24 hour presence of protestors camping opposite the House of Commons has been a familiar sight in Parliament Square for over a decade. In June 2001 the late Mr Brian Haw set up camp on the central island of Parliament Square, to protest about government policy in Iraq. In 2002 The City Council sought an injunction against Mr Haw, on grounds of alleged unlawful obstruction of the highway¹. This action was taken in an attempt to address the issue of obstruction of the pavement by tents and placards, and was not based on any wish to interfere with Mr Haw's right to protest per se.
- 4.5.2. The injunction application was not successful, on the grounds that, while it was accepted that Mr Haw's equipment was causing an obstruction, it was not considered proportionate, in view of Mr Haw's rights under article 10 of the ECHR, to require its removal. Mr Haw remained encamped in Parliament Square on a 24 hour basis, eating and sleeping at the site, with all his placards and equipment still in place.
- 4.5.3. In 2005 the Serious Organised Crime and Police Act (SOCPA) came into force. This act created a new offence of demonstrating without authorisation in a 'designated area'. This area was defined by an Order, but had to be within one kilometre of Parliament Square. The legislation meant that although anyone could legally demonstrate within the designated area, they could only do so with the express permission of the then Metropolitan Police Commissioner. The Commissioner may, if considered necessary and appropriate, impose conditions on those organising or taking part in the demonstrations with the aim of preventing serious public disorder, harm to property, hindrance of the operations of Parliament or Parliamentary personnel, or on account of security risks. The 2005 Act also banned the use of 'amplified noise equipment' (loudspeakers and loudhailers) in the designated area though there was a mechanism by which consent could be granted by the Council pursuant to the Noise and Statutory Nuisance Act 1993.
- 4.5.4. The provisions of SOCPA were subject to challenge from the start. There were ambiguities around what the police could regard as a 'demonstration' and attempts were made to overwhelm the police authorisation process by applying for large numbers of simultaneous 'lone protests'.
- 4.5.5. In addition, Brian Haw successfully argued that the provisions of the Act did not apply to him, as it was not retrospective and his demonstration had been in place well before the legislation came into force. This was overturned at appeal in 2006, but Mr Haw had by then applied for police authorisation and was permitted to continue with his ongoing 24 hour protest, with certain conditions.

¹ Pursuant to section 130 of the Highways Act 1980.

- 4.5.6. In April 2009, Tamil protestors staged a demonstration at Parliament Square which ended up lasting several weeks. Although the demonstration was initially unauthorised, permission was later sought and obtained for 50 people to protest in the Square. However, the number of individuals present frequently exceeded that number, often by hundreds or even thousands.
- 4.5.7. Significant concerns were raised about the inconvenience caused to Members of Parliament and the public by these large scale protests. This highlighted the weaknesses of the SOCPA legislation, to the point where it was concluded by government that “a compulsory prior notification scheme is impractical”².
- 4.5.8. By early 2010 the existing protest site had been joined by a large group of other individuals, forming a large scale encampment on the grass of Parliament Square, calling itself ‘Democracy Village’. In June of that year the Mayor of London successfully sought a possession order, resulting in the removal of a number of individuals from the grass area in the centre of the Square. The protestors moved off the grass area to comply with the order and a temporary fence was erected to prevent further access to the space controlled by the GLA. The protestors, thus displaced, relocated their tents onto the pavement on the central island (joining others who may already have been there). Legal action to this date has therefore only displaced, rather than satisfactorily resolved, the issue.

4.6. The Current Situation

- 4.6.1. The current situation is that a number of protesters continue to camp out on a 24 hour basis on the pavement around Parliament Square Gardens. There are a number of tents and placards in place, plus two fairly large cubic structures. This situation continues to damage the visual amenity of the area, at one of the city’s most sensitive locations, and obstruct the pavement itself. The Council is currently engaged in litigation to seek an injunction against those protestors under the Highways Act 1980.

5. Legislation and Enforcement Options

5.1. The Police Reform and Social Responsibility Act 2011

- 5.1.1. With the aim of fulfilling “the Government’s publically stated commitment to restore rights to non-violent protest” while seeking “to address concerns about encampments and other disruptive activity on Parliament Square which have prevented the public from using the Square”³, Part 3 (sections 141-149) of the Police and Social Responsibility Act (PSRA) was drafted

² *The Government Reply to the Seventh Report of the Joint Committee on Human Rights Session 2008-09 HL Paper 47, HC 320 ‘Demonstrating respect for human rights? A human rights approach to policing protest’ – Cm 7633, May 2009.*

³ *Full Equality Impact Assessment for New measures on Parliament Square Garden and the surrounding area in the Police Reform and Social Responsibility Bill, Home Office Public Order Unit, April 2011*

to contain provisions for the management of protests at Parliament Square. These provisions effectively repeal and replace the provisions of the SOCPA which relate to protests in the area. The relevant sections of the PRSRA prohibit specific types of activity include sleeping or camping, as well as using loudspeakers or loudhailers. The controlled area defined within the Act is a relatively small space, covering only the grassed area of Parliament Square Gardens and the immediately adjacent footways, together making up the central island. This will be enforced by the responsible authority – in the case of Parliament Square Gardens, the Greater London Authority; and in the case of the two adjacent areas of footway, Westminster City Council.

5.1.2. It was stated as the Government's intention, during the passage of the Bill, that other parts of the surrounding area be regulated by a City Council byelaw containing equivalent provisions to those contained in the PRSRA, in order that effective management of the entire Square and its immediate environs could be secured. During a debate of the House of Commons Public Bill Committee on 15th February 2011, James Brokenshire, the Parliamentary Under-Secretary of State for the Home Department said; "We want to ensure that the area where the new regime applies is as small as possible so that it targets the problem of the unique situation of Parliament square, without extending matters further than necessary to strike a focused and proportional balance. However, we recognise worries that the controlled area is small by its nature and that the effect of such measures could displace disruptive activities to footways beyond the controlled area. Displacement is a risk, and I do not underestimate the determined individuals who will be looking at different ways to challenge new measures that we seek to bring into force. We have been working with Westminster City Council and the GLA to ensure that relevant Byelaws are strengthened to deal with disruptive activity in the wider area".

5.2. The City Council's Existing Powers

5.2.1. The areas outside the boundaries of the controlled area are not covered by the powers bestowed by the PRSRA. The authorities responsible for managing these areas have limited powers available to manage the issue of permanent encampments. Westminster City Council has explored a number of options over the years in order to address the use of Parliament Square for 24 hour protests and encampment. In terms of currently available legislation, WCC has considered its powers under each of the following:

- Highways Act 1980 – unlawful obstruction of the highway. Our unsuccessful application for an injunction against Mr Haw in 2002 demonstrates the difficulty in enforcing this legislation where to do so might interfere with an individual's right to protest. The Council has now issued further proceedings against 10 named persons and other persons unknown seeking an injunction against them for obstruction of the highway. The matter is set down for hearing during the week commencing 12 March 2012. This is different to the case against Mr Haw in 2002 as the

Council is now alleging obstruction due to the cumulative impact caused by the numbers of people on the footways surrounding Parliament Square Gardens. Although the Council is confident that it will be successful in those proceedings, considerable delay is caused by the litigation process itself. The proposed Byelaws will enable immediate action to be taken to remove any tents or camping equipment etc.

- Noise legislation – the City Council has powers under the Environmental Health Act for enforcing against those who create a statutory noise nuisance. However, these powers cannot be applied to political demonstrations. Existing Westminster Byelaws do contain some provisions relating to noise, but the penalties are minimal and, even if successful, such enforcement would not address the issue of encampment. Moreover, our existing Byelaws do not include any power to seize the noise equipment being used.
- Crime and Disorder Act – save for isolated incidents, there has been no evidence to suggest that the protests meet the criteria for enforcement through Anti Social Behaviour Orders.
- Public Order Act – similarly, enforcement under the Public Order Act requires the words, actions or displayed materials or signs of the individuals to be threatening, abusive or insulting. This is not the nature of the current protests in Parliament Square.
- Trafalgar Square and Parliament Square Garden Byelaws (2000) – these existing Byelaws do prohibit camping without the permission of the Mayor of London. However, they do not allow for the seizure of items used for these purposes, save for any items being used for the purposes of unlicensed street trading. Any effective enforcement under these Byelaws may therefore require protracted action through the courts before removal is achieved.
- Serious Organised Crime and Police Act (2005) – as discussed, various weaknesses in this legislation limit its effectiveness in preventing encampment and other activities that cause long term detriment to proper and peaceful enjoyment of the area by the general public. This is borne out by the decision to repeal the SOCPA provisions with Police Reform and Social Responsibility Act this year.

5.3. The Need for New Byelaws

5.3.1. As can be seen from the above section of this report, existing legislation does not provide the Council or the landowners within the vicinity of Parliament Square with the necessary powers to immediately secure the removal of unauthorised encampments from the highway or other public and/or private land which can easily be accessed by the general public. By way of example, it may be the case that encampments which may be set up

on the highway will not amount to an unlawful obstruction of the highway. That will depend on all the circumstances of the individual case, including the nature and extent of the obstruction, the width of the highway itself and the length of time that the potential obstruction continues. However, even if the encampment does constitute an unlawful obstruction of the highway it is most unlikely that the Council or the police will have the power to immediately remove the tents and bedding equipment etc used to assist people in sleeping overnight. That would only be possible if the encampment constituted a danger to the public.

5.3.2. The situation is slightly different if a person uses amplified noise equipment in the proposed designated area. The approach for Parliament Square itself is that such equipment cannot be used but discretion must still be exercised before a Direction is given to that effect. Moreover, there is a means to seek an authorisation to use such equipment. In the proposed designated area surrounding Parliament square the approach will be different. Amplified noise equipment can be used without authorisation provided it doesn't breach other legislation, such as section 62 of the Control of Pollution Act 1974 (which prevents the use of such equipment between the hours of 9 pm and 8 am). However, the Council wants to ensure that it has the appropriate powers to immediately deal with the use of any amplified noise equipment that causes a nuisance to persons in the neighbourhood. Our existing Byelaws contain such a power but they do not include a power to seize the equipment. It is the power of seizure that is crucial to being able to take effective enforcement action to prevent the nuisance from continuing.

5.3.3. The drafting of new Byelaws for Good Rule and Government presents the City Council with an opportunity to establish powers of control that are comparable to those bestowed by the PRSRA, in accordance with the declared intentions of Government to achieve an effective management regime for the entirety of the Square and its environs..

5.3.4. The power to make Byelaws under the Local Government Act 1972 is contingent upon the issue the authority means to address being not already covered by general legislation or any local Act, and it not being possible for them or another authority to make Byelaws or take any other action under any other provision. As demonstrated above, it is considered that a proposal to make Byelaws to manage the issue of encampments surrounding Parliament Square would meet these requirements.

6. The Proposed Westminster Byelaws

6.1. Provisions

6.1.1. The proposed Byelaws have been drafted to match as closely as possible the PRSRA provisions that apply to the central island, which have already been debated and agreed by Parliament. That is to say, the proposed

Byelaws empower the City Council to direct individuals to cease any of a range of activities, including using (or starting to use) any sleeping equipment, or erecting a tent or other structure “for the purposes of facilitating sleeping or staying”⁴.

6.1.2. The Byelaws make it an offence to fail to cease such activities after a direction has been given by the police or an authorised Council officer. The penalty for contravention of the Byelaws is liability on summary conviction to a fine not exceeding level 2 on the standard scale (up to £500). The Byelaws also provide authorised officers with a power of seizure, whereby they may seize any prohibited item (e.g. sleeping equipment), retaining it for a maximum of 28 days or until the conclusion of proceedings against the individual for an offence, if such proceedings are undertaken.

6.1.3. The proposed Byelaws do not include provision to enable a direction to be given regarding the operation of amplified noise equipment (including loudspeakers and loudhailers) in the proposed designated area. Consequently, there is no provision allowing an application to be made in that area for the authorisation of such equipment. Instead, a provision has been included which will amend existing Byelaws that apply to the whole of Westminster. These Byelaws already allow action to be taken in respect of the use of such equipment which is considered to be unreasonable. This means that discretion has to be exercised before a person is told to stop using the equipment and no offence is committed unless that instruction is ignored. The proposed amendment to the Byelaws will also allow the equipment to be seized if an offence is committed.

6.1.4. A full copy of the proposed Byelaws is attached as Appendix 1.

6.2. Designated Area

6.2.1. Like the provisions under the Police Reform and Social Responsibility Act, the proposed Westminster Byelaws for Good Rule and Government will apply only within a designated area. As indicated by the map attached as Appendix 2, the proposed designated area will cover an area surrounding Parliament Square itself (excluding the central island space which is managed separately by the existing PRSRA provisions), and extends some way down the surrounding streets, to include those areas within the vicinity of the Square which may be considered vulnerable to the establishment of unauthorised encampments. This may be due to displacement of those persons who are currently camping on the footways adjacent to the Square itself or due to new encampments that may appear.

6.2.2. The boundary to the south west of the designated area covers a portion of Victoria Street and the surrounding space, to encompass the Queen Elizabeth II Conference Centre and Westminster Abbey. This has been

⁴ *City of Westminster draft Byelaws* to regulate tents and other structures and sleeping equipment in designated areas near Parliament Square etc. clause 3(2)(a)(ii).

done in recognition of the particular vulnerability of these areas in the event that encampments displaced from the central island seek alternative locations in the vicinity, offering as they do wide expanses of available space within direct line of sight of Parliament Square.

6.2.3. Without inclusion in the City Council's proposed Byelaws, the Abbey would have no powers other than those of a private land owner to manage this likely influx. The area to the front of the Abbey and Dean's Yard to the rear (also Westminster Abbey-owned land), have therefore been included in the designated area to reinforce the enforcement position at these locations. This is being done in close consultation with the Abbey.

6.2.4. The current agreement is that largely WCC would enforce the proposed Byelaws on this privately-owned but open land in exactly the same way as it would on the public highway areas within the designated area. However, one key additional provision will apply, so that individuals may carry out activities that would normally be considered to be contrary to the proposed Byelaws if they are doing so with the express permission of the Abbey itself. This allows for organised vigils or other such activities which the Abbey may wish to accommodate.

6.3. Enforcement

6.3.1. Westminster's proposed Byelaws for Parliament Square would be enforced on the ground by the Westminster Wardens service, within City Management, and by the police. As previously stated, enforcement takes the form a direction (written or verbal) which, if not complied with, can lead to seizure of prohibited items and a court summons and potential fine up to £500. The precise details of an enforcement protocol are still under discussion between Westminster City Council, the GLA and the MPS, and will be subject to written agreement to ensure a coordinated and consistent approach.

6.3.2. What is understood at this stage, though, is that operational enforcement activity will fall into two categories: removal of the existing encampment on the footways adjacent to Parliament Square Gardens, and 'business as usual' enforcement to retain control of the wider area once the existing encampment is cleared.

6.3.3. All of the relevant authorities are keen to take a proportionate enforcement approach and avoid criminalising people unnecessarily, so the intention is to first advise individuals that they have or are about to commit an offence under the PRSRA or relevant byelaw and that if they do not cease the activity they will be subject to a formal warning or direction. If they comply at this stage, no further action will be taken. However, if compliance is not achieved, the second stage will be for the police or other authorised officer to obtain the individual's name, at which point the officer may seize prohibited items. If not already present, the presence of the police may be required at this point, as they (unlike Council officers) are authorised to use

reasonable force if required, in order to seize items or verify individuals' names or addresses.

6.3.4. It is important to note that all Byelaws for Good Rule and Government are enforced with an element of professional discretion on the part of the authorised officer. This means that in any given situation the officer may decide whether to take enforcement action or not. This supports police and Council officers to manage problematic behaviour in a proportionate manner, without criminalising people unnecessarily.

6.3.5. In order to support operational coordination and further safeguard consistency, it is obviously important that each of the authorities responsible for sections of land in and around Parliament Square ensure their respective regulations align with and complement each other. Westminster City Council, the GLA and Royal Parks are working together to ensure that the provisions of the PRSRA that are enforced by the GLA on the central island, are mirrored by both the Byelaws WCC propose for the designated area shown in Appendix 2, and the regulations enforced by Royal Parks to maintain order in their open spaces. In this way the responsible authorities hope to collectively deliver a robust and effective solution for the whole area.

7. Procedure

7.1. This section of the report outlines the procedures that will take place if the recommendations in this report are approved.

7.2. Proposed new Byelaws for Good Rule and Government must be confirmed by the Department for Communities and Local Government (DCLG). This is usually preceded by an application to DCLG for provisional approval of the proposed Byelaws. Because there is a desire to bring Byelaws into force as soon as possible after the Part 3 of the Police Reform and Social Responsibility Act 2011 is implemented, discussions are taking place with Central Government to ascertain whether the DCLG will be prepared to dispense with the need for provisional approval on this occasion. Provisional approval is not a statutory requirement. DCLG have been sent a draft copy of the Byelaws and are fully aware of the purpose of the Byelaws bearing in mind the ongoing discussions that have taken place.

7.3. If the recommendations in this report are approved, Westminster City Council will initiate a full consultation exercise which will allow representations to be made to the Council until Friday 13 January. The results of that consultation will then be presented back to another General Purposes Urgency Sub-Committee for further consideration. The Urgency Sub-Committee will be asked to decide whether or not to recommend to the Full Council that the Byelaws are made and sealed.

7.4. If the General Purposes Urgency Sub-Committee decides to recommend to the Full Council that the new Byelaws are made and sealed, a report will be

submitted to that effect to a meeting of the Full Council on 25 January 2012. If the Full Council agrees the recommendation, the Byelaws will be sealed and a notice will be placed in a local newspaper setting out the Council's intention to apply to the Secretary of State for confirmation. The notice will allow objections to be made to the DCLG for a period of one month. Copies of the Byelaws will also be held on deposit at offices of the Council for inspection by members of the public.

- 7.5. If the Council does agree to make the Byelaws an application will eventually be made to the DCLG for confirmation. The current timetable suggests that such an application can be made in the first week of March 2012. The Secretary of State will then decide whether to confirm the Byelaws having regard to any objections that are received. The Byelaws are either confirmed or rejected by the Secretary of State. They cannot be amended. If confirmed, the Secretary of State will determine when they are to come into effect. If the Byelaws are confirmed, the Council will ask for them to be brought into force at the earliest opportunity.

8. Financial implications

- 8.1. There are no direct financial implications.

9. Legal Implications

- 9.1. The main legal implications of the proposed new Byelaws are dealt with in the body of this report.
- 9.2. One further issue, though, relates to the power of seizure. The City Council's power to seize prohibited items in the course of enforcing its new Byelaws (if approved), is derived from section 150 of the Police Reform and Social Responsibility Act 2011. The Act received Royal Assent on 15 September 2011, but the associated regulations bringing various provisions into force have not yet been made. The Council's power to seize items under the proposed Byelaws for the designated area surrounding Parliament Square is therefore dependent on the appropriate commencement orders coming into force either before, or simultaneously with, the Byelaws themselves.

10. Human Rights Implications

- 10.1. The Byelaws have been specifically designed to complement the powers available in Parliament Square itself pursuant to Part 3 of the Police Reform and Social Responsibility Act 2011. These powers enable the police and authorised officers of the local authority to give directions to persons to cease engaging in various prohibited activities or not to start such activities. The Byelaws do not prevent protest (which will be specifically allowed when sections 132 to 138 of the Serious Organised Crime and Police Act 2005 are repealed) but are designed to deal with the erection of tents and the use of other

equipment which enables persons to sleep overnight in the designated areas identified. This type of activity is considered to be disruptive as the permanent nature of an encampment prevents Parliament Square and the areas surrounding Parliament Square from being available to the public at large.

- 10.2. The Byelaws are designed as a proportionate response to potential problems that might arise if protestors decide to set up camp in any of the streets or other places identified within the designated area surrounding Parliament Square. In addition, the Byelaws amend the Council's existing Byelaws for Good Rule and Government (No.2) which already allow measures to be taken to prevent the use of amplified noise equipment. The amendment will allow the seizure and forfeiture of such equipment in all areas of the City of Westminster. These are discretionary powers which seek to ensure that there is a means to take immediate action to prevent the nuisance from continuing. This amendment is designed to maintain order and to protect the rights and freedoms of residents, local businesses and visitors within the City.
- 10.3. The Byelaws do not automatically prohibit the erection or use of tents or other camping equipment etc. Discretion has to be exercised by the appropriate enforcement agencies, who will do so having regard to a protocol developed between them. When discretion is exercised, a direction will be given to cease the prohibited activity or not to start the prohibited activity and no offence will be committed unless an individual chooses to ignore the direction. Even then, no offence will be committed if the person has a reasonable excuse for not complying with the direction.
- 10.4. In assessing compliance with the Human Rights Act 1998, the Council must obviously have regard to the fact that it is proposing to designate a wider area than Parliament Square itself. The relevant articles of the ECHR are the right to peaceful assembly (article 11); the right to freedom of expression (article 10) and the right to freedom of thought, conscience and religion (article 9). Having regard to the reasons given in the report for the making of the Byelaws and the fact that these proposals having nothing to do with the right of protest per se (which are specifically being restored by the repeal of sections 132 to 138 of SOCPA), it is considered that the proposals constitute a proportionate means of achieving a legitimate objective. To the extent that the proposals do interfere with the rights expressed in articles 9, 10 or 11, it is considered that the interference is necessary for the protection of the rights and freedoms of others. Consequently, the Byelaws are considered to be compatible with the Human Rights Act 1998.

11. Equalities Implications

- 11.1. The Public Sector Equality Duty came into force on 5 April 2011 (pursuant to section 149 of the Equalities Act 2010). The Equality Duty has three aims. It requires public bodies to have due regard to the need to (a) eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act; (b) advance equality of opportunity between people who share a protected characteristic and people who do not share it; and (c) foster good

relations between people who share a protected characteristic and people who do not share it.

11.2. In accordance with the Public Sector Equality Duty, an Equalities Impact Assessment has been carried out in relation to this project. [Note– this is being completed and will follow shortly]. However it is considered that the implementation of the proposed Byelaws will impact on all persons without distinction and that there is no potential to cause unlawful discrimination.

12. Crime and Disorder Act 1989

12.1. Under Section 17 of the Crime and Disorder Act 1988, a Local Authority has a duty to “exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all it reasonably can to prevent, crime and disorder in its area”. The Byelaws have been specifically designed to complement the powers available in Parliament Square itself pursuant to Part 3 of the Police Reform and Social Responsibility Act 2011. These powers enable the police and authorised officers of the local authority to give directions to persons to cease engaging in various prohibited activities or not to start such activities. This element of discretion ensures that there is a mechanism in place for people to avoid criminal liability. However, a failure to comply with such a direction is an offence.

13. Ward member consultation

13.1. Ward members have been consulted on the contents of this report, although no feedback has yet been received. Any feedback received before the Committee convenes on 7 December will be presented at the meeting.

Appendices

APPENDIX 1 – City of Westminster draft Byelaws to regulate tents and other structures and sleeping equipment in designated areas near Parliament Square etc

APPENDIX 2 – Map of proposed designated area



CITY OF WESTMINSTER

DRAFT BYELAWS TO REGULATE TENTS AND OTHER STRUCTURES AND SLEEPING EQUIPMENT IN DESIGNATED AREAS NEAR PARLIAMENT SQUARE AND WHITEHALL 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;
 - (e) by or on behalf of a statutory undertaker for the purposes of its undertaking; or
 - (f) if it comprises the carrying out of development in respect of which planning permission is granted or deemed to be granted under Part 3 of the Town and Country Planning Act 1990.
- (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 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.
- (4) In Byelaw 4(1)(e) “statutory undertaker” means—
 - (a) a licence holder within the meaning of Part 1 of the Electricity Act 1989;

- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991;
- (d) a sewerage undertaker within Part 1 of that Act;
- (e) any local authority which is a relevant authority for the purposes of section 97 of that Act;
- (f) an operator within the meaning given by paragraph 17(1) of Schedule 17 to the Communications Act 2003;
- (g) Transport for London, London Underground Limited or any of its subsidiaries.

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 land 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) An item seized under this Byelaw must be returned to the person from whom it was seized—
 - (a) no later than the end of the period of 28 days beginning with the day on which the item was seized; or
 - (b) if proceedings are commenced against the person for an offence under Byelaw 3(5) before the return of the item under Byelaw 6(4)(a), at the conclusion of those proceedings.
- (5) If it is not possible to return an item under Byelaw 6(4) 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.
- (6) Byelaws 6(4)(b) and (5) do not apply if a court makes an order under Byelaw 7(1) for the forfeiture of the item.
- (7) The references in Byelaws 6(1) and (2) to an item that is “on” any land include references to an item that is in the possession of a person who is on any such land.

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 this section 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 20th 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) An item seized under this Byelaw must be returned to the person from whom it was seized—
 - (a) no later than the end of the period of 28 days beginning with the day on which the item was seized; or
 - (b) if proceedings are commenced against the person for an offence under Byelaw 3 before the return of the item under Byelaw 4A(3)(a), at the conclusion of those proceedings.
- (4) If it is not possible to return an item under Byelaw 4A(3) because the name or address of the person from whom it was seized is not known—
 - (a) the item may be returned to any other 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.
- (5) Byelaws 4A(3)(b) and (4) do not apply if a court makes an order under Byelaw 4B(1) for the forfeiture of the item.

- (6) The references in Byelaws 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.
- (7) 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(7)) that was used in the commission of the offence.
- (2) The power of the court to make an order under this section 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) parts of the precincts of Westminster Abbey (including Dean's Yard and the Sanctuary),
- (i) 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,
- (j) Old Palace Yard,
- (k) part of Abingdon Street,
- (l) Bridge Street,
- (m) part of Canon Row,
- (n) Parliament Street,
- (o) the paved area to the front of 79 Whitehall (Richmond House),
- (p) the garden adjoining Whitehall outside the Ministry of Defence main building, known as Raleigh Green,
- (q) the footway of Whitehall adjoining—
 - (i) Richmond House,
 - (ii) the paved area described in paragraph (o),
 - (iii) Richmond Terrace,
 - (iv) the Ministry of Defence main building, and

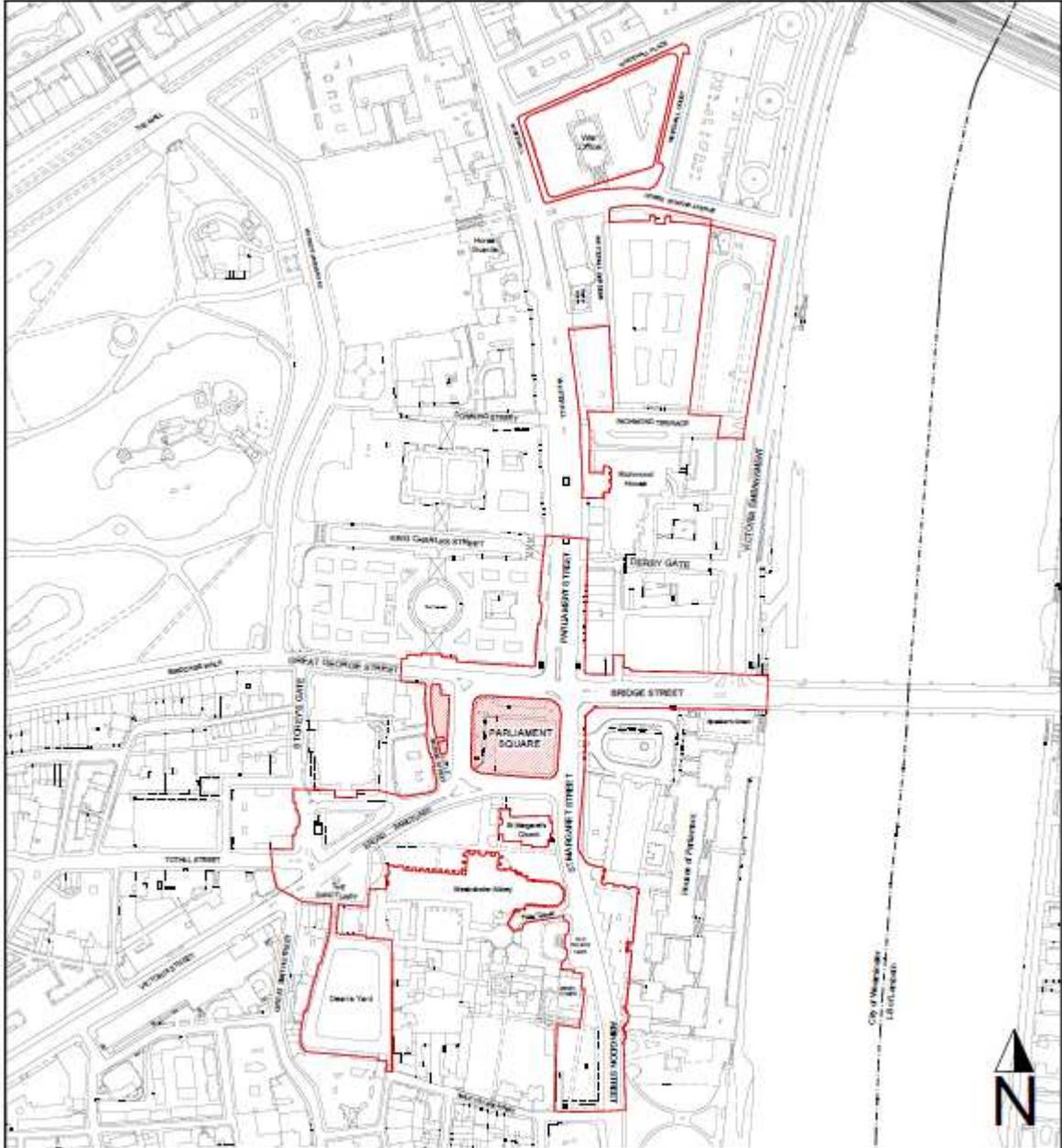
- (v) Raleigh Green,
- (r) the footways of Whitehall, Whitehall Place, Whitehall Court and Horseguards Avenue adjoining the Old War Office building,
- (s) the paved area to the front of the Ministry of Defence main building adjoining Horseguards Avenue and the footway of Horseguards Avenue adjoining that paved area,
- (t) the footway of Victoria Embankment and the gardens known as Embankment Gardens (and their pathways) adjoining the Ministry of Defence main building,
- (u) part of Richmond Terrace adjoining Victoria Embankment.

Draft version 7: 24 Nov 2011

APPENDIX 2
MAP OF PROPOSED DESIGNATED AREA



City of Westminster



Westminster City Council Byelaws 2012: Designated Areas	Figure 1
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Built Environment City Commissioner of Transportation	Legend Controlled Area Excluded Areas	Scale : NOT to Scale Date : 25.11.11 Drawn : C.M.S.S.	MATERIAL REPRODUCED FROM THE ORIGINAL SURVEY MATERIALS WITH THE PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE. © CROWN COPYRIGHT. CITY OF WESTMINSTER. ALL RIGHTS RESERVED. UNLAWFUL REPRODUCTION OF THIS MATERIAL MAY BE PROSECUTED UNDER THE COPYRIGHT ACT 1988 AND/OR UNDER THE DESIGN RIGHT ACT 1987. Acid File Name: WCC BYELAWS 2012
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