

ADVOCATES FOR ANIMALS

Making full use of the law to help animals



14 April 2021

Dear Members of Parliament and the House of Lords

Introduction

1. Advocates for Animals (AfA) is the UK's first law firm dedicated to ensuring that animals are given the protection intended by the legislature.
2. This Response is written on behalf of animal protection organisations and concerned individuals named in the Annex.
3. The Response focuses on the parts in the Police, Crime, Sentencing and Courts Bill 2021 (the Bill) of most relevance to the signatories.

Areas of Concern in the Bill

Protest

4. Protests already have rigorous requirements placed on them, the police can impose conditions on marches and demonstrations and can even ban a demonstration or march with the approval of the local authority and the Home Secretary.
5. The police also already have a range of powers they can rely on to ensure a protest is kept under control. For example, it is already an offence to use threatening or abusive words or behaviour or to display any sign which is threatening or abusive under the Public Order Act 1986.
6. Further, those who organise a march must give at least seven days' notice to the police, unless it is "not reasonably practicable" to do so, although you should still give as much notice as possible. The notice should include the name and address of at least one of the organisers and the route and it is an offence not to provide this.

7. The new law proposes significant changes that could see protests prevented and stopped for minor and trivial reasons. Currently any restrictions on a static protest (as opposed to a march) are limited to location, duration, and limits on the number of people present. There is also no requirement to notify the police of a static protest. The new law will allow the police to impose more conditions on static protests such as: start and finish time, setting noise limits. These rules can be applied to a demonstration by just one person.
8. Currently, if the police want to place restrictions on a protest, they normally have to show it may result in “serious public disorder, serious damage to property or serious disruption to the life of the community”. It is being proposed that protests, both marches and static, will now be conditioned on whether they involve noise that may cause “serious disruption to the activities of an organisation which are carried on in the vicinity of the procession” or if the noise has a “relevant impact” on persons in the vicinity that “may be significant”.
9. Under The Bill the noise generated in a protest could amount to a relevant impact on persons in the vicinity if it “may result in the intimidation or harassment of persons of reasonable firmness” or if “it may cause such persons to suffer serious unease, alarm or distress” (emphasis added).
10. Through the Home office, the Government is given the power to define what the phrases “serious disruption to the activities of an organisation which are carried on in the vicinity” and “serious disruption to the life of the community” mean for the purposes of the Public Order Act. This can be done without thorough parliamentary scrutiny.

Nuisance

11. Further, the new proposal for nuisance is also of concern and could have implications for those who protest in various ways against animal cruelty.
12. The offence of public nuisance is interpreted under the common law (ie judge-made law) and is understood as:

A person is guilty of a public nuisance who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects.

13. The Bill aims to change the offence as follows:

(1) A person commits an offence if –

(a) the person –

(i) does an act, or

(ii) omits to do an act that they are required to do by any enactment or rule of law,

(b) the person's act or omission –

(i) causes serious harm to the public or a section of the public, or

(ii) obstructs the public or a section of the public in the exercise or enjoyment of a right that may be exercised or enjoyed by the public at large, and

(c) the person intends that their act or omission will have a consequence mentioned in paragraph (b) or is reckless as to whether it will have such a consequence.

(2) For the purposes of subsection (1) an act or omission causes serious harm to a person if, as a result, the person –

(a) suffers death, personal injury or disease,

(b) suffers loss of, or damage to, property,

(c) suffers serious distress, serious annoyance, serious inconvenience or serious loss of amenity, or

(d) is put at risk of suffering anything mentioned in paragraphs (a) to (c).

(3) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for the act or omission mentioned in paragraph (a) of that subsection.

14. This is a vast broadening of the previous law. Firstly there no longer needs to be intention to commit a nuisance, just recklessness. It is also enough to prove an offence has been committed if you simply cause serious annoyance or inconvenience or damage to property that does not need to be serious. In addition, no one has to suffer anything, there just needs to be the risk of suffering it. Its scope has also been broadened to include nuisance to "a section of the public" rather than the current requirement of "the public." This offence carries a maximum sentence of ten years.

General Remarks

15. It is trite but true to say that animals cannot speak for themselves. As such any progress to the welfare and protection of animals is made possible by individuals and organisations speaking out on their behalf. Animals already do not have standing in our courts, so to muffle their mouthpiece in a public arena only puts these vulnerable beings further at risk.
16. The role of animal protection organisations is to give voice to their constituencies, which might otherwise have no means of challenging unlawfulness by public bodies. Their constituencies are the many members of the public concerned about animal welfare and, of course, the animals themselves.
17. The United Kingdom is a nation of animal lovers and from experience most citizens of this country are horrified to learn of some of the abuse that animals face in our society. Protest helps facilitate information and idea exchange. There are many examples of

protests leading to important and necessary progress for animals, these include the ban on fur farming and the ban on hunting wild mammals. In addition, the protests that have taken place at docks and outside Parliament have led to the proposed ban on live exports.

18. Every animal activist and group, no matter how moderate, could think of how any of their protest activities may lead to unease or distress; after all explaining what animals go through can be distressing to hear. It is also true that many activists' activities are seen as a serious inconvenience or annoyance, especially to those who wish to hide what is going on.
19. The serious concern with the nuisance provision is that the terms are so vague; we imagine any controversial animal industry or abuser is "seriously annoyed" by the activities of animal groups and activists. The activities the signatories are concerned with losing are peaceful protest in all its forms without the risk of being guilty of an offence for causing offence.

Unlawful Curtailment

20. The proposed changes run a serious and real risk of falling foul of the Human Rights Act 2008 which puts into domestic law the European Convention on Human Rights (ECHR).
21. The most notable risks include a threat to freedom of expression (Article 10), a threat to freedom of peaceful assembly (Article 11) and for some animal groups and activists a threat to freedom of belief (Article 9), where the manifestation of a belief is also protected.
22. The recent case of *Alexei Navalny v Russia*¹ stated:

Freedom of assembly as enshrined in Article 11 of the Convention protects a demonstration that may annoy or cause offence to persons opposed to the ideas or claims that it is seeking to promote. And:

Any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often even endanger it.

23. It is unlawful for any public body in the United Kingdom to act contrary to the ECHR. Further, Acts of Parliament can be deemed incompatible with the ECHR by the courts.

Request:

24. For the above reasons we ask that you vote against the current version of the Bill until the offending provisions relating to protest and nuisance are removed.

¹ European Court of Human Rights, 15 November 2018

Kind regards

Edie Bowles
Solicitor

Annex

Animal Aid
Animal Equality UK
Animal Justice Project
Animal Protection Agency
Animal Rebellion
Catholic Concern for Animals
Christian Vegetarian Association
Compassion in World Farming
Cruelty Free International
Crustacean Compassion
Four Paws UK
Freedom for Animals
Greyt Exploitations
Hunt Saboteurs Association
Jay Mehta Mahavir Trust
League Against Cruel Sports
Dr Simon Brooman, Senior Lecturer in Law, Liverpool John Moores University
OneKind
Open Cages
People for the Ethical Treatment of Animals (PETA)
Respect For Animals
The Shellfish Network
Surge
Dr Steven McCulloch, Senior Lecturer in Human Animal Studies, University of Winchester
The Animal Advocacy Project
The Animal Interfaith Alliance
The Humane League UK
Viva!
Whale and Dolphin Conservation
Wild Welfare
World Animal Protection