



Photographing the Police

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Concerns have recently been expressed about potential restrictions on the ability of the press or public to take photographs of the police. The issue has been highlighted by the National Union of Journalists (NUJ) and British Press Photographers' Association (BPPA), following the introduction of certain provisions contained in the *Counter-Terrorism Act 2008*.

The measures, contained in section 76 of the 2008 Act, make eliciting, publishing or communicating information about members of armed forces a criminal offence. The police are covered by the definition of the "armed forces" following a Government amendment at Report stage in the House of Commons.

It is a defence for a person charged with an offence under the section to prove that they had a "reasonable excuse" for their action. The Parliamentary Joint Committee on Human Rights has played down the legal effect of the change, but warned of a potential "chilling effect" on journalists and protestors and suggested that guidance should be issued to the police about the scope of the offence.

There was a Westminster Hall debate on the issue on 1 April 2009.

A separate Library Standard Note, *Photography in Public Places* (SN/HA/4273) is also available.

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1 Photographing Police

1.1 Media guidelines

In general there are few restrictions on photography in places that are genuinely public. Details about restrictions that exist on the taking of photographs in “public” places, and the use to which they may be put are available a separate Library Standard Note, *Photography in Public Places* (SN/HA/4273).

Some additional considerations apply when taking photographs of the police. The Editorial Photographers UK¹ (EPUK) group has indicated that police media guidelines “were first introduced by the Metropolitan Police in March 2006 following two years of negotiations by the BPPA, the NUJ and the CIJ.” They were later adopted by all police forces in Britain in April 2007.²

The EPUK have published these guidelines on its website:

<http://www.epuk.org/Resources/819/acpo-police-media-guidelines>

The guidance indicates, amongst other things, that:

Members of the media have a duty to take photographs and film incidents and we have no legal power or moral responsibility to prevent or restrict what they record. It is a matter for their editors to control what is published or broadcast, not the police. Once images are recorded, we have no power to delete or confiscate them without a court order, even if we think they contain damaging or useful evidence.

If someone who is distressed or bereaved asks for police to intervene to prevent members of the media filming or photographing them, we may pass on their request but we have no power to prevent or restrict media activity. If they are trespassing on private property, the person who owns or controls the premises may eject them and may ask for your help in preventing a breach of the peace while they do so. The media have their own rules of conduct and complaints procedures if members of the public object.

To help you identify genuine members of the media, they carry identification, which they will produce to you on request. [...] Members of the media do not need a permit to photograph or film in public places.

To enter private property while accompanying police, the media must obtain permission, which must be recorded, from the person who owns or is in control of the premises. We cannot give or deny permission to members of the media to enter private premises whether the premises are directly involved in the police operation or not. This is a matter between the person who owns or is in control of the premises and the members of the media.

Giving members of the media access to incident scenes is a matter for the Senior Investigating Officer. The gathering of evidence and forensic retrieval make access unlikely in the early stages and this should be explained to members of the media. Requests for access should be passed to the Senior Investigating Officer who should allow access in appropriate cases as soon as practicable.

¹ EPUK was founded in 1999. It states that it is an organisation “run by a small group of photographers who wanted to create an email group to address business issues affecting photographers working in the UK and Irish markets.”

² See also: <http://www.londonfreelance.org/fl/0704acpo.html>

Advice and assistance in dealing with members of the media is available 24 hours a day via the Press Bureau at New Scotland Yard.

1.2 The Counter-Terrorism Act 2008

The *Counter-Terrorism Act 2008* introduced some changes in the law relating to the eliciting, publishing or communicating information of a kind likely to be useful to a person committing or preparing an act of terrorism.

Section 76 of the 2008 Act makes "Eliciting, publishing or communicating information about members of armed forces etc" an offence. The section is effectively an amendment to s 58 of the *Terrorism Act 2000*. Under the newly introduced s 58A to the 2000 Act, a person commits an offence who—

(a) elicits or attempts to elicit information about an individual who is or has been—

(i) a member of Her Majesty's forces,

(ii) a member of any of the intelligence services, or

(iii) **a constable**, [my emphasis added]

which is of a kind likely to be useful to a person committing or preparing an act of terrorism, or

(b) publishes or communicates any such information.

Under s58A (2) "[i]t is a defence for a person charged with an offence under this section to prove that they had a reasonable excuse for their action."

The offence was originally aimed only at preventing communication of information about members of the armed forces and the police and intelligence services were added by way of an amendment. Lord West of Spithead (for the Government) explained that:

On Report in the Commons, we added the police and members of the security and intelligence agencies to the new offence to be inserted at Section 58A of the Terrorism Act 2000 by Clause 83. The result is that the Armed Forces, police and members of the security and intelligence agencies will all now be protected under this offence.³

The Newspaper Society expressed concern about the provision (as it then related to the armed forces) in a submission to the Public Bill Committee on the Counter-Terrorism Bill. It stated, *inter alia*:

"Obviously, journalists frequently elicit, publish and communicate information about current and past members of the armed forces in the course of normal news gathering. The offence created by the clause is sufficiently wide and uncertain to catch potentially preparatory research, investigation, questions and the onward communication of a huge variety of unpublished or published reports and photographs etc. For example, these could include reports of service life, including media coverage of the Royal Family, dispatches by embedded or independent war correspondents, or the head cams footage and reports from local newspaper reporters invited to live alongside soldiers from their readers' local regiments, during their tour of duty in Afghanistan or elsewhere. But it could also include reporting unrelated to active service, including such staples of day to day local news covered by regional and local newspapers and their websites, such as the reports of cases in the local courts, any news articles or features which might involve past and present members of the armed forces and their

³ HL Deb 21 October 2008, c1073-4

families, items posted on newspapers' websites by readers, including service members and their families.

There is no need for new statutory controls on media coverage. The MoD has recently tightened restrictions on unauthorised communications and publication by service personnel, be they via internet, articles, books, interaction with the media or other means, through changes to the Queen's regulations and other relevant rules governing service personnel and warned them against disclosure of confidential information. The media and MoD are parties to the voluntary DA Notice system and to the Green Book arrangements. Editors already consider carefully whether voluntary restraints would be appropriate in the circumstances of any particular case in order to avoid any threat to the safety of individual members of the armed forces, or operational security, or national security.

However, the media is very wary of unjustified attempts to deter or control unwelcome investigation, reporting and other news coverage and to suppress unwelcome publicity. We are therefore concerned by the Bill's proposed creation of new communication and publication offences of potentially wide and uncertain ambit.

If, contrary to our submissions, the proposed offences are not dropped from the Bill, then their ambit should be narrowed and defences improved, so that journalists and media organisations will not be at risk of prosecution." Extract from Memorandum submitted by the Newspaper Society (CTB 08)

In debate, Lord West of Spithead indicated that:

To establish this defence [under s58A], the defendant needs only to claim to have a reasonable excuse and it is then for the prosecution to prove, beyond reasonable doubt, that there was no such excuse. Further, the DPP must authorise prosecutions under Section 58A. Its decision will take account of the possibility of the person having a reasonable excuse for his or her actions. Therefore, safeguards are in place. It is clear that this is not information that people would normally have, but that, by putting it around, they would put someone at risk.⁴

1.3 Commentary

Despite Ministerial assurances about the existence of a defence, the National Union of Journalists (NUJ) and British Press Photographers' Association have continued to express concerns about the new provision. It was suggested in one newspaper article that Vernon Coaker, Minister for Policing, Crime and Security, had told the NUJ that photography could be limited "on the grounds of national security" in "situations where the taking of photographs may cause or lead to public order situations or inflame an already tense situation or raise security considerations."⁵

Tony McNulty confirmed this approach in answer to a Parliamentary Question, when he indicated that:

Police officers have the discretion to ask people not to take photographs for public safety or security reasons but the taking of photographs in a public place is not subject to any rules or statute.⁶

The same news article quotes Jeremy Dear, the general secretary of the NUJ, who said:

⁴ *Ibid*

⁵ See for example *The Guardian* "Photographers fear they are the target of new terror law", 12 February 2009

⁶ HC Deb, 1 September 2008, c1586W

Police officers [...] believe they have the power to delete images or take editorial decisions about what can and can't be photographed. The right to take photos in public is a precious freedom. It is what enables the press to show the wider world what is going on.⁷

In a letter dated 16 February, Vernon Coaker wrote, in terms, stating that there were no specific laws restricting photography in public places:

The law places no restrictions on photography in public places whether by members of the public or by journalists, and indeed the Government regards the freedom of the press as an integral and important part of our democratic system.

[...]

The Association of Chief Police Officers and the National Policing Improvement Agency ... have taken steps to remind all Chief Officers of their guidance that covers photography in public places.⁸

In spite of these assurances, commentators have suggested that the new law may “entrench a growing tendency by the police to prevent anyone taking photographs in public, especially if they (the police) are the subject.”⁹

1.4 The Joint Committee on Human Rights Report

In March 2009, the Joint Committee on Human Rights issued a report entitled *Demonstrating respect for rights? A human rights approach to policing protest*.¹⁰

The report played down the legal concerns involved, but warned of a potential “chilling effect” on journalists and protestors and suggested that guidance should be issued to the police about the scope of the offence. The report commented on the issue of photographing the police in the following terms:

94. Concerns have recently been expressed in the media that a new provision in the Counter Terrorism Act 2008 makes it a criminal offence to take and publish a photograph of a police officer. Section 76 of the 2008 Act makes it an offence to elicit or attempt to elicit information about an individual who is or has been a constable “which is of a kind likely to be useful to a person committing or preparing an act of terrorism.” As the Explanatory Notes to the Counter Terrorism Bill correctly stated, the new offence will only be committed where the information in question is “such as to raise a reasonable suspicion that it was intended to be used to assist in the preparation or commission of an act of terrorism, and must be of a kind that was likely to provide practical assistance to a person committing or preparing an act of terrorism.” That is the effect of a decision of the Court of Appeal¹¹ in a case in 2008 interpreting the same statutory language in the separate terrorism offence of possessing a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism.

95. We therefore do not share the concerns expressed in the media that the new offence criminalises taking photographs of the police. However, we do regard as

⁷ *The Guardian* “Photographers fear they are the target of new terror law”, 12 February 2009

⁸ [Letter from Vernon Coaker \(Minister of State, Home Office\) to Bob Spink MP, 16 February 2009](#)

⁹ *Daily Telegraph*, “Why can't we take pictures of policemen? Counter-terrorism laws are being abused by the police and from today they get stronger”, 16 February 2009 and *BBC Online*, “[Innocent Photographer or Terrorist?](#)” 17 April 2008

¹⁰ HC 320-I, 23 March 2009

¹¹ *R v K* [2008] EWCA Crim 185

significant the fact that this is being widely reported as a matter of concern to journalists. **Legal uncertainty about the reach of criminal offences can have a chilling effect on the activities of journalists and protestors. We therefore recommend that, to eliminate any scope for doubt about the scope of the new offence in section 76 of the Counter Terrorism Act 2008, guidance be issued to the police about the scope of the offence in light of the decision of the Court of Appeal, and specifically addressing concerns about its improper use to prevent photographing or filming police.**

The report also made a number of observations about police relations with journalists.

Police relations with journalists

193. The National Union of Journalists drew our attention to the particular problems faced by journalists, especially photo-journalists, when covering demonstrations. Although recognising that there were some examples of good practice when police engage with the media, the NUJ suggested that this was rare and particularly criticised the work of the police Forward Intelligence Team:

What we are seeing is a group of journalists who regularly cover protests being stopped and searched, way away from the protest, being photographed, having information recorded about what they are wearing, where they are going, who they are working for and so on, and it is creating an intimidatory atmosphere that means people are less likely to go out and cover protests. If we are all saying that publicity is one of the reasons for protest, actually what the police are doing here is undermining that freedom of the media and the ability of the protestors to be able to get their message across via the media.

194. Whilst ACPO/media guidelines have been agreed between police and the Union, the NUJ suggested that they were “useless because the police on the street do not know anything about them”. Jeremy Dear, General Secretary of the NUJ, told us that he wanted the Home Office to make sure that the police abided by the guidelines, rather than force journalists to challenge police practice in the courts. He also advocated better training of police and better enforcement of the guidelines such as through police employment contracts.

195. The Campaign Against the Arms Trade alleged that police appeared to be encouraging journalists not to cover some demonstrations, such as those at the premises of an arms manufacturer, as it would be “irresponsible” to do so.

196. The NUJ wrote to the Home Secretary expressing concern at police surveillance of journalists and subsequently had a meeting with the Minister, Vernon Coaker MP. Following the meeting, the ACPO/media guidelines were revised and the Minister wrote to the NUJ stating:

We have addressed this directly in the revised guidance making it clear that the Terrorism Act 2000 does not prohibit people from taking photographs or digital images. The guidance also makes it clear that film and memory cards may be seized as part of a search but officers do not have a legal power to delete images or destroy film.

197. The Minister also told us that the NUJ had been invited to talk to ACPO and to attend demonstrations with the police to advise them on possible changes to procedures.

198. When we asked police representatives about the concerns surrounding police relations with journalists, the Metropolitan Police told us that “it is in all of our operation

orders that journalists have a right to operate and we would not seek to stop it... We fully accept that we are accountable and we can be photographed and they have a right to operate and we try to ensure that that message gets to all of our officers all of the time".

199. The OSCE/ODIHR Guidelines note the important role that journalists play in covering demonstrations and protests:

Journalists have an important role to play in providing independent coverage of public assemblies. As such, they must be distinguished from participants and be given as much access as possible by the authorities.

200. It is unacceptable that individual journalists are left with no option but to take court action against officers who unlawfully interfere with their work. Journalists have the right to carry out their lawful business and report the way in which demonstrations are handled by the police without state interference, unless such interference is necessary and proportionate, and journalists need to be confident that they can carry out their role. The public in turn have the right to impart and receive information: the media are the eyes and ears of the public, helping to ensure that the police are accountable to the people they serve. Effective training of front line police officers on the role of journalists in protests is vital. Police forces should consider how to ensure their officers follow the media guidelines which have been agreed between ACPO and the NUJ, and take steps to deal with officers who do not follow them.¹²

1.5 Westminster Hall Debate

On 1 April 2009, there was a short debate entitled Photography (Public Places) in Westminster Hall¹³. During the course of the debate, the Parliamentary Under-Secretary of State, Shahid Malik, made a number of observations on the issue of police interventions. In effect, he indicated that there were two separate issues, namely: police powers to stop and search under s 44 of the *Terrorism Act 2000* and the new powers under s 76 of the 2008 Act.

In respect of s 44 of the 2000 Act, Mr Malik stated that:

I accept that there are concerns about how some of our laws are being, or might be, applied. There are two separate issues and I would like to deal with each in turn. First, concerns have been expressed about the stop-and-search powers used under section 44 of the *Terrorism Act 2000*. As hon. Members will know, section 44 enables the police to stop and search anyone within an authorised area for the purposes of searching for articles of a kind that could be used in connection with terrorism. The powers do not require a reasonable suspicion that such articles exist.

That is a useful power, but it is also wide-ranging, and concerns have been expressed that the power is being used to stop people taking photographs—whether of buildings or of people—within authorised areas. There are also concerns that cameras are being confiscated as part of such searches. Those are genuine concerns that people have raised.

I would like to make it clear that section 44 does not prohibit the taking of photographs. In November last year, the National Police Improvement Agency issued revised guidance on the use of section 44 that made it clear that the power does not stop the taking of photographs in an authorised area and that the police should not use those powers to prevent people from taking pictures. The police may stop and search

¹² The report is available at: <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/47/4702.htm>

¹³ [HC Deb, 1 April 2009, c262WH](#)

someone who is taking photographs in an authorised area, just as they may stop and search any member of the public, but the powers should not be targeted on photographers.

[...]

I made it clear that in the designated areas, the police and PCSOs—because their approach is not intelligence led—have the right to stop and search people if they feel it necessary to do so. Parliament passed those laws many years ago.

My hon. Friend the Minister for Security, Counter-Terrorism, Crime and Policing has met with several MPs and with representatives of *Amateur Photographer* to discuss the issue. He has also written to Ken Jones, president of the Association of Chief Police Officers, to ask him what steps are being taken to ensure that the revised guidance is being cascaded to all police officers on the street.

In answer to a specific question by Hugh Bayley MP, as to whether, if the police take a camera when they search someone and subsequently, having examined the images on it, satisfy themselves that no offence has been committed and that there was no mal-intent, they always return the camera and the images on it, Mr Malik replied:

Common sense and justice say that that ought to be the case. Again, if my hon. Friend has information to the contrary, I would be happy to receive it. We are putting out guidance to ensure that the laws are implemented correctly and that people's liberties are not being infringed upon unnecessarily. That is crucial.

In respect of s 76, the Minister indicated that:

The second issue concerns the new offence in section 58A of the Terrorism Act 2000, which was inserted by section 76 of the Counter-Terrorism Act 2008. It makes it an offence to elicit, attempt to elicit, publish or communicate information about an individual who is or has been a constable, or a member of the armed forces or intelligence services. The information must be of a kind that is likely to be useful to a person committing or preparing acts of terrorism.

It has been suggested that the new offence could criminalise people taking or publishing photographs of police officers. A photograph of a police officer may fall within the scope of the offence, but would do so in only limited circumstances. The offence is designed to capture terrorist activity directed at members of the protected groups, which, sadly, we know occurs. An offence might be committed, therefore, if someone provides a person with information about the names, addresses or details of car registration numbers of persons in the protected groups. The important thing is that the photographs would have to be of a kind likely to provide practical assistance to terrorists, and the person taking or providing the photograph would have to have no reasonable excuse, such as responsible journalism, for taking it.

I can assure my hon. Friend the Member for City of York (Hugh Bayley)—York is a great city—that had he taken a photograph of a billboard in an underground station, he would have been on safe ground. I hope that the incident did not cost him the prize for being the best MP photographer in that year.

I want to be clear about this: the offence does not capture an innocent tourist taking a photograph of a police officer, or a journalist photographing police officers as part of his or her job. It does not criminalise the normal taking of photographs of the police. Police officers have the discretion to ask people not to take photographs for public safety or security reasons, but the taking of photographs in a public place is not subject to any

rule or statute. There are no legal restrictions on photography in a public place, and there is no presumption of privacy for individuals in a public place.

My hon. Friend the Minister for Security, Counter-Terrorism, Crime and Policing has said that we will issue all police officers and forces with a circular on the new offence. It will set out the policy intentions behind the offence and make it clear that it does not criminalise legitimate photographic or journalistic activity. The circular will be discussed with interested parties before it is issued.

Designated areas may cover any area. They may, for example, cover a town or a borough. They must be approved by the Secretary of State, and, prior to that, by the Director of Public Prosecutions.

It is worth noting in this context the two important safeguards in the statute, which I just mentioned. It is also worth remembering why Parliament only recently agreed to create the new offence. The offence is aimed at protecting those who are on the front line of our efforts to tackle terrorism. Sadly, recent events in Northern Ireland have shown that members of the armed forces and the police continue to be targets for terrorists. We also judge that the police, the armed forces and the intelligence services are regarded as potential targets by extremists in the UK. The new offence is therefore important, and I would not want concerns about its potential application to photographers to overshadow that.

Although the offence came into force only on 16 February this year, a similar offence applied in Northern Ireland between 2001 and 2007. There was no attempt to prosecute journalists under the old offence in Northern Ireland, and we are not aware of any suggestions that the new offence has been used against people taking photographs.

On a separate issue, we have recently been made aware of the publication on the internet of detailed street images of the capital and other major UK cities. The hon. Member for Uxbridge raised the matter. It freely demonstrates that the ability to take photographs in a public place is not subject to any set of rules or to statute. There are no legal restrictions on photography in a public place except where the picture is taken with the intent of committing a crime or terrorist act.

I hope that I have provided some reassurance that we take the issue seriously and that we are doing all we can to ensure that legislation is not misused against photographers, whether journalists, tourists or just enthusiasts. I make it absolutely clear that unless someone is engaged in criminal activity, they must be allowed to take photographs in public places and that the law should not be used to discourage or hamper that activity. I hope the hon. Gentleman accepts that the Government's intentions in this area are right and that we are working hard to ensure that the law does not have an unintended impact on photography.

The hon. Member for Croydon, Central (Mr. Pelling) spoke about a journalist in his constituency. Freedom of the press is a fundamental foundation of any democracy, and the idea that journalists are being blocked willy-nilly from engaging in their lawful activity is completely unacceptable. Anecdotally, there seems to be a disconnect between what the Government intended and what might be happening on the ground.