

Alison Johnstone MSP
Presiding Officer
The Scottish Parliament

By email: presidingofficers@parliament.scot
cc: SPCBsecretariat@parliament.scot

Wednesday 29 September 2021

Dear Presiding Officer

Freedom of assembly and association at the Scottish Parliament

I am writing on behalf of the Scottish Human Rights Commission to express our concern at the recent decision by the Scottish Parliament Corporate Body (the SPCB) to arrange to have the status of the Scottish Parliament building and its grounds altered. We are concerned that this interferes with the rights to peaceful assembly and association, and therefore requires a full and transparent human rights assessment. We are also concerned that the change in status has been arranged without apparent public consultation.

We would welcome the opportunity to discuss this further with the SPCB, and to provide any advice that may be appropriate in our capacity as Scotland's independent National Human Rights Institution. In the meantime, we hope the following is helpful in setting out our concerns.

The rights to freedom of assembly and association, which are protected under the Human Rights Act, European and international human rights law, guarantee that people can join with others to collectively express their opinions. Restrictions on these rights must be: (1) necessary to

achieve a pressing social aim, and (2) proportionate, going no further than necessary to achieve that aim.

The test of necessity requires clearly identifying the pressing social aim being addressed, and the evidence relied upon in concluding that the measure is necessary to achieve that aim. Proportionality requires that the measure taken goes no further than necessary to achieve the aim, in terms of its impact on human rights. If there is an alternative measure that involves less interference with people's human rights, that measure ought to be adopted. Proportionality also requires that the measure is only in place for as long as strictly necessary.

In June this year, the [SPCB requested](#) that the Home Office designate the Scottish Parliament as a site under the Serious Organised Crime and Police Act 2005 (the Act). In response to that request, the Home Office signed an [Order](#) on 8 September, which was laid before the House of Commons and House of Lords on [9 September](#) and is scheduled to come into force on [1 October](#).

The effect of the Order will be to designate the Scottish Parliament building and its grounds as a site which is subject to an offence under [Section 129](#) of the Act, the Scottish equivalent of the English criminal offence of trespass. The offence will be committed if a person is on the grounds of the Scottish Parliament "without lawful authority". What constitutes "lawful authority", and how someone ensures they have such authority, is not explained in the Act and is not set out in the Order. The grounds are [delineated](#) on a drawing within the Order and include the outdoor areas around the Parliament building. The [offence](#) is one of strict liability; there is no requirement to prove that the person was, for example, causing a disturbance, obstructing or presenting a danger to others. The offence carries a maximum sentence of [1 year in prison and/or a £5,000 fine](#).

This change in status could have a very significant impact on the ability of people in Scotland to exercise their rights to freedom of peaceful assembly and expression. Currently people can assemble on the grounds of the Scottish Parliament to peacefully demonstrate or protest, and many do. It can be of particular importance to demonstrate close to the Scottish Parliament, where important decisions on policy and law are made.

Existing Scottish criminal law applies to people assembling on the Scottish Parliament's grounds, with Police Scotland able to take action to address conduct which breaches the peace, or which is not peaceful. Police Scotland have exercised their existing powers to remove people from the Parliament on occasion, and the SPCB has used its existing civil law powers to have people removed who were encamped on Scottish Parliament grounds. It is not clear on what basis the SPCB has concluded that it is necessary and proportionate to alter the status of the Parliament grounds, given these existing powers exist and are being used.

In less than six weeks the Conference of Parties (COP26) of the UN Framework Convention on Climate Change (the Paris Agreement) is due to be held in Glasgow. While the UK, and Scotland in particular, have set some of the toughest climate change targets in the world, the route to ensuring these targets are met is still unclear and there is no accountability mechanism built into the Paris Agreement. As a result, individuals and civil society have had to bear the responsibility of advocating for more urgent, robust and effective measures. Exercising the rights of assembly and association has been critical in raising awareness and understanding of the issue and [the need for urgent action](#). COP26 will follow the recent report of the UN's Intergovernmental Panel on Climate Change which issued a ["code red for humanity"](#). This is a critical time to ensure that the rights of freedom of assembly and association are upheld.

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Given the importance of peaceful protest close to Scotland's Parliament, and the significant potential for this change of status to negatively affect people's ability to exercise their rights, the Commission is particularly concerned that this decision was made without public consultation, or a transparent rationale. We therefore urge the SPCB to publish a full human rights assessment of its decision, setting out the basis on which it concluded that it was necessary and proportionate to ask the Home Office to change the status of the Scottish Parliament in the way it has.

The Commission would also like to reiterate that we would welcome the opportunity to discuss the concerns we have raised here in more detail.

With thanks in anticipation of your response.



pp Judith Robertson

Chair, on behalf of the Scottish Human Rights Commission

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